

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12562 OF 2023

Vrushali Vijaysing Thakur ... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary,
Tribal Development Department
Mantralaya, Mumbai-32
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Nandurbar Division, Nandurbar,
through its Member Secretary
3. The Sub-Divisional Officer
Talode, Nandurbar

... **RESPONDENTS**

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Advocate for Petitioner : Mr. Golegaonkar Madhur A.
A.G.P. for respondent/State : Mr. S.G. Sangale

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, J.J.**

DATE : 10.10.2023

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service. Considering the exigency, the matter is taken up for final disposal at the admission stage. The petitioner is impugning the order of the Scrutiny Committee invalidating her claim of belonging to 'Thakur' scheduled tribe.

2. The learned advocate for the petitioner submits that the petitioner's father possesses certificate of validity granted by following due process of law. He submits that even the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and**

Anr.; (1994) 1 SCC 359 was referred to by the then committee while granting him certificate of validity. The impugned order in the matter of petitioner does not seek to take any exception to that order and still the Committee has refused to extend the benefit.

3. The learned advocate would submit that the petitioner has been relying upon the so called contrary record of one Tumdu Bhagwan Bhat and Fakira Nathu Thakur stated to be the cousin great grandfathers, which record is of 1906 and 1911. He submits that in response to the vigilance cell report the petitioner had expressly denied any relationship with these two individuals. Even the genealogy produced before the Committee and the one prepared during the vigilance does not indicate in any manner as to how these two individuals are from the same genealogy.

4. The learned advocate then submits that if these two oldest entries relied upon by the committee are ignored, there is no plausible explanation coming forth in the impugned order as to why the favourable entries of the year 1936 and 1943 in respect of the sister of the petitioner's grandfather Latkanbai Bahadursing and cousin grandfather Mangalsing Badhadursing, genuineness of which has not been doubted, could not be relied upon to substantiate the claim. He would submit that contrary to the principle that the area restriction stands removed as interpreted in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti** (supra), the committee has refused to extend the benefit of these favourable and old school record by applying the area restriction and the affinity test which it

could not have. The decision is based on perverse and arbitrary conclusions and be set aside.

5. The learned AGP submits that the oldest contrary entries have been referred to by the Committee to discard the claim. The oldest entries would outweigh the favourable record of the latter period. The decision of the Committee is based on plausible appreciation of the material and this Court cannot sit in appeal.

6. We have carefully considered the rival submissions and perused the impugned order and the papers. Obviously, the Committee has been relying upon the two entries in the matter of Tumdu Bhagwan Bhat and Fakira Nathu Thakur, however, both these individuals are not traceable in the genealogies furnished by the petitioner and also the one prepared during the vigilance enquiry. Pertinently, in response to the vigilance report petitioner had expressly denied any relation with these two individuals. There is nothing to be found in the impugned order as to how these two individuals are from the same family. No endeavour has been made to demonstrate this fact. It was imperative for the Committee to express its views in respect of these two individuals when relationship with whom has been expressly denied in the reply to the vigilance report in paragraph No.9. Therefore, the inference of the Committee based on these two contrary entries is clearly perverse and arbitrary.

7. If the aforementioned two oldest contrary entries are ignored, the observation of the Committee being perverse and arbitrary in that

respect, the next oldest entries would be of the year 1936 and 1943 which have been referred to in the impugned order in respect of Latkanbai Bahadursing and Mangalsing Badhadursing. The Committee has not doubted its genuineness. It was, therefore, necessary for the Committee to have stated as to why these oldest entries of the pre-constitutional period would not enure to the benefit of the petitioner.

8. The Committee have endeavoured to demonstrate as to how there was no evidence to demonstrate that the petitioner's ancestors migrated from the place to which Thakur scheduled tribe originally belonged. Such observation would be contrary to the principle laid down in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti** (supra). Resorting to such approach cannot be countenanced. Merely because the Committee observes that Thakurs also could be from the higher caste that inference would not be justified particularly when Thakur has been described in the school record of Latkanbai Bahadursing and Mangalsing Badhadursing as a caste in the caste column. Therefore, the observation and the conclusion of the Committee discarding this pre-constitutional record which is favourable to the petitioner is also perverse and arbitrary.

9. Admittedly, the petitioner's father possesses certificate of validity. The committee has not sought to take any exception to such validity by pointing out as to why it harbours a view about he having practised the fraud and intends to reopen his matter. Be that as it may, since it is a matter of alleged fraud, we avoid to comment upon the facts which

according to the Committee constitute fraud since it would be a subject matter of a fresh scrutiny by the committee and the petitioner's father is not before us.

10. The writ petition is partly allowed. The impugned order is quashed and set aside. The Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' scheduled tribe during the course of the day. Since the order is dictated in the open court in presence of the learned AGP, the order shall be communicated to the Committee. The certificate of validity shall be subject to the final outcome of the matter of the petitioner's father which the Committee has decided to re-open

11. The petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)