

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

916 WRIT PETITION NO.10814 OF 2010

Suvarna d/o Shamsing Thakur,
Age 30 years, Occ. Student,
R/o. 98, Ekvira Nagar, Nakhane Road,
Deopur, Dhule Tq. & Dist. Dhule.

... **Petitioner.**

VERSUS

- 1) The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai-32.
Through its Secretary.
- 2) The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division,
Nandurbar, Through its Member Secretary.
- 3) The Sub Divisional Officer,
Shirpur Division, Shirpur.
- 4) College of Education,
Run by Abhay Yuwa Kalyan Kendra,
New Mumbai-Agra Road, Dhule
Through its Principal.
- 5) North Maharashtra University,
Jalgaon-425001.
Through its Registrar & Chief
Examination Controller

... **Respondents**

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Advocate for Petitioner : Mr. M.A. Golegaonkar h/f Mr. Anil S. Golegaonkar
A.G.P. for Respondent Nos. 1 & 3 : Mr. V.M. Jaware
Advocate for Respondent No. 2 : Mr. R.P. Phatke, Standing Counsel

CORAM : **MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : **05.12.2023**

PER COURT :

Heard. Rule. Rule is made returnable forthwith.

2. The petitioner is challenging the order of the respondent-scrutiny committee confiscating and cancelling her certificate of 'Thakur' scheduled tribe (44).

3. Admittedly, the petitioner's real brother Bhatusing was issued with a certificate of validity by the order of the then committee in the year 2002. Though even his sister Sonali was also issued with a similar certificate of validity in the year 2005, the committee has refused to consider latter's validity on the ground that it was not produced before the committee. It has refused to extend the benefit of Bhatusing's validity on the count that the principles of area restriction and affinity test were overlooked. Admittedly, Bhatusing's validity has never been questioned or sought to be recalled or confiscated and so is the case in respect of the petitioner's sister Sonali. The committee has noted that the committee had invalidated tribe certificate of petitioner's cousin although his brother was possessed of a certificate of validity and this Court had quashed that order and had saddled the committee with a costs of Rs. 1000/- and the State's challenge to that order did not yield any fruit before the Supreme Court since the Special Leave Petition was dismissed. In spite of being aware about this fact, the committee has been bold enough to ignore the validities possessed by the petitioner's brother and sister.

4. So far as the aspect of area restriction is concerned, the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samikti and Anr. Vs. State of Kerala and Anr (1994) 1 SCC 359** has also been sought to be interpreted by the committee in the manner inconsistent with the consistent view of this Court in catena of orders following it, that by virtue of Amendment of 1976, the issue regarding area restriction would not be

relevant. Needless to state that that in the matter of **Jaywant Dilip Pawar Vs. State of Maharashtra and others; 2018(5) All.M.R. 975** the Supreme Court has reiterated its stand. The observations of the committee, and its approach of resorting to the principle of area restriction would be clearly illegal.

5. Again, the question of affinity test has been held to have a limited scope. In the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023(2) Mh.L.J.785***, it has been laid down that it is only if the documents relied upon by the claimants are not sufficient enough, there would be a scope to resort to the affinity test.

6. Conspicuously, even without entertaining any doubt about genuineness of the school record being relied upon by the petitioner, as indicated in the impugned order, in respect of one Ajabsing Ragho Thakur who was the petitioner's grandfather mentioning his caste as 'Thakur' in the school leaving certificate dated 02.07.1934, the committee has simply refused to consider it by applying the principle of area restriction and the affinity test which it could not have legally done.

7. In the light of the above, the impugned order refusing to recognize the petitioner's tribe certificate is clearly perverse, arbitrary and illegal.

8. The writ petition is allowed. The impugned order is quashed and set aside. The respondent-committee shall issue tribe validity certificate to the petitioner of 'Thakur' scheduled tribe (44) immediately.

9. Rule is made absolute.

(NEERAJ P. DHOTE, J.)

(MANGESH S. PATIL, J.)

mkd/-