

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13853 OF 2021

Anshu D/o Devidas Thakur,
Age – 17 years (Minor), Occu. Student,
U/g father, viz. Devidas S/o Khandu Thakur .. 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 .. Respondents

...
Advocate for petitioner : Mr. S.C. Yeramwar
AGP for the respondent – State : Mr. A.S. Shinde
...

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

DATE : 28 AUGUST 2023

ORDER (MANGESH S. PATIL, J.) :

We have heard learned advocate for the petitioner and the learned AGP. At their joint request, the matter is being heard finally at the stage of admission.

2. The petitioner is challenging the order of invalidation passed by the respondent – scrutiny committee thereby confiscating and cancelling her tribe certificate of Thakur scheduled tribe under

section 7(1) of the Maharashtra Act no. XXIII of 2001 and the rules of 2003 framed thereunder.

3. The learned advocate for the petitioner would submit that the petitioner has been relying upon the oldest school record of Dharma Zendu, Anshu Devidas Thakur which is of 01.04.1928 mentioning their caste as Thakur. He would submit that ignoring such oldest entries, some entries stated to be contrary entries of a later period has been relied upon by the committee to invalidate the claim. Such approach of the committee discarding the oldest record and drawing inference on the basis of the latter record is not sustainable.

4. There was nothing before the committee to disbelieve the afore-mentioned two oldest school records. He would submit that even if the committee entertains a doubt about the birth record of the gram panchayat village Waghadi (Khurd) having been destroyed and could not be verified, even ignoring that record, the afore-mentioned entries were sufficient to substantiate petitioner's claim which is to be established on preponderance of probabilities. He would submit that the approach of the committee in discarding such oldest entries regarding which there is no doubt, is clearly perverse and arbitrary.

5. The learned advocate would further submit that the petitioner has denied the relationship with the persons whose record

the vigilance has collected and relied upon by the committee to be her relations by blood. He would therefore submit that the approach of the committee is clearly perverse and arbitrary and the decision be reversed.

6. Per contra, the learned AGP supports the order. He submits that the birth record relied upon by the petitioner, the extract of which was heavily relied upon was found to be doubtful. He would submit that the entire record of village Waghadi (Khurd) was destroyed by fire on 01-11-2016. The petitioner had managed to create the certified copies of such birth record. It is mentioned in the certified copies about those having been obtained prior to 01-11-2016. No explanation is coming forth from her side as to why the certified copies which purportedly were obtained before this fire were not produced at any time earlier. He would submit that for the first time when the petitioner had approached this Court in writ petition no. 8192 of 2021 that such certified copies of the birth record was sought to be produced and this Court by order dated 02-08-2021 had remanded the matter for producing such birth record. He would therefore submit that no fault can be found with the observation of the committee in discarding such birth record being not reliable.

7. The learned AGP would further submit that the petitioner has been relying upon validity of Digambar Ramdas Thakur. However,

he was issued with a notice to show cause as to why certificate of validity issued to him be not confiscated and cancelled. Pursuant to such notice he appeared before the committee and by the impugned order even the certificate of validity issued to him has been recalled and cancelled for the reasons mentioned in the order. He, therefore, submits that the committee has reached a plausible decision. Has applied affinity test as well as considered the area restriction and has passed the impugned order having noticed several pre-constitutional contrary entries.

8. Having considered both the sides, it is necessary to observe at the outset that the impugned order is in fact a common order passed in respect of four individuals. Apart from petitioner, one Aparna Madhukar Thakur, Monika Digambar Thakur and Digambar Ramdas Thakur are those persons . Admittedly, it is only the present petitioner – Anshu who is before us. Considering the exigency inasmuch as she intends to pursue further studies and is in need of early decision that we have taken up her matter for adjudication.

9. Perusal of the impugned order reveals that the committee has been relying upon several entries stated to be of blood relations which according to it were contrary entries like Bhat, Hindu Bhat, Brahmbhat, Hindu Brahmbhat. These are of the period 1930 – 1939. However, committee has conspicuously omitted to consider favourable

record wherein petitioner's ancestors have been shown as Thakur in the years 1923, 1926 and 1928.

10. Even if one entertains a doubt about the birth record of village Waghadi (Khrud) which is stated to have been destroyed by fire on 01-11-2016, these oldest record was the school record in respect of Dharma Zendu and Bhatu Dhangar of 1928. The committee has not undertaken any scrutiny and has not assigned reasons for discarding oldest school records having two favourable entries. In the result, keeping aside the doubtful record of birth, the oldest school record having favourable entries has been overlooked and some contrary entries of the later period between 1930 to 1939 has been relied upon. This approach, in our considered view, is clearly contrary to the observations and the principles laid down in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113**. Oldest record having greater probative value could not have been overlooked and an inference could not been drawn by relying upon the contrary entries of some later period.

11. Obviously, even if the petitioner was intending to rely upon the certificate of validity of Digambar Ramdas Thakur, when admittedly by the impugned order it has been recalled and cancelled, the petitioner is not entitled to derive the benefit of that validity, the aforementioned piece of evidence in the form of school record of 1928, in

our considered opinion will outweigh the contrary record of later period and is sufficient to substantiate petitioner's claim. The observations and the conclusions of the committee are clearly perverse and arbitrary and is liable to be quashed and reversed.

12. Hence, the following order :-

- (i) The writ petition is partly allowed.
- (ii) The impugned order is quashed and set aside.
- (iii) The respondent - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matter of Digambar Ramdas Thakur which the committee has decided to re-open.
- (iv) The petitioner and her relations shall co-operate the committee in early decision of the re-opened matter.
- (v) The petitioner shall not be entitled to claim equities.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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