

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

**WRIT PETITION NO.13640 OF 2019
WITH CA/911/2020 IN WP/13640/2019**

1. Miss. Yogeshwari d/o Balasaheb Pawar,
2. Arun s/o Balasaheb Pawar, ... **PETITIONERS**

VERSUS

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad Division,
Aurangabad, through its Member Secretary.
3. The Sub Divisional Officer,
Office of SDO, Ambejogai,
District Beed.
4. Maharashtra Council of Agriculture
Education and Research Pune,
132/B, Bharmuda, Dhosale Nagar, Pune,
through its Director (Education)
5. The CSMSS College of Agriculture,
Kanchanwadi, Paithan Road,
Aurangabad, through its Principal ... **RESPONDENTS**

...

Advocate for Petitioners : Mr. M.L. Paithane h/f. Mr. M.A. Golegaonkar
AGP for Respondent Nos.1 to 3: Mr. S.G. Sangale
Advocate for Respondent No.5 : Mr. S.B. Kakde

...

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

DATE : 07.08.2023

PER COURT :

Heard both the sides finally at the stage of admission.

2. The petitioners who are the siblings *inter se* are challenging the

order passed by the respondent No.2 – Scrutiny Committee, confiscating and cancelling their tribe certificates as belonging to ‘Thakur’ scheduled tribe under Section 7 (1) of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

3. The learned advocate for the petitioners submits that several validities have been conveniently overlooked by the Committee. The petitioners’ father Balasaheb, paternal uncle Tukaram and paternal aunt Shakuntala are the validity holders apart from the couple of individuals from the distant blood relations. There was no reason for the Committee to discard these validities. The reasons assigned are also not convincing and are rather perverse.

4. The learned advocate would further submit that even the old record in the form of sale deed, wherein, the petitioners’ ancestors were described as ‘Thakur’ have been overlooked by resorting to area restriction which has been outdated by virtue of the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359**. Even the Committee has illegally applied the affinity test and has acted in a prejudiced manner.

5. The learned AGP opposes the petition. He submits that the affinity test cannot be out rightly overlooked though its scope is limited. If the documents produced on the record are not reliable, it can be resorted to.

The sale deed merely describes the petitioners' ancestors as 'Thakur' and does not indicate that use of word 'Thakur' was mean to describe his caste since it was not the record for maintaining caste.

6. Similarly, the petitioners have given a genealogy which conspicuously omits to state their blood relations with the couple of individuals whose validity certificates their father Balasaheb had relied upon and obtained the validity certificate. No error is committed by the Committee in refusing to recognize the petitioners as belonging to 'Thakur' schedule tribe.

7. We have carefully considered the rival submission and perused the record including the original record in the matter of petitioners' father Balasaheb.

8. At the outset, it is necessary to note that the Committee has not recorded reasons as to why it was not relying upon the validities issued to Tukaram, Balasaheb and Shakuntala. It has vaguely observed that the then Committees had not undertaken detail inquiry into their claims and the validities were granted. For instance we have taken up the matter of petitioners' father Balasaheb and have gone through the original record. It is not that there was no inquiry at all as has been observed by the present Committee. All the necessary steps leading to the issuance of the validity certificates were followed. A vigilance report was sought, a reply was solicited, affidavits were called and by a speaking order referring to various documents including the pre-constitutional documents the Committee had

decided to issue validity certificate to Balasaheb.

9. In addition, the then Committee had also relied upon the validity certificates of one Sanjay Narayan Pawar and Paras Murlidhar Pawar. Though their names do not appear in the genealogy furnished by the petitioners in the present matter, admittedly, Balasahab had furnished the genealogy expressly demonstrating his relation with those two individuals which was not doubted by the then Committee. For that matter even the present Committee does not dispute petitioners' blood relationship with Sanjay Narayan Pawar and Paras Murlidhar Pawar. If such is the state of affairs, the observation of the committee that no threadbare inquiry was conducted at the time of Balasaheb is clearly perverse and arbitrary. In our considered view, if Balasaheb who is petitioners' father possesses the validity certificate, so long as it is not confiscated and cancelled by following due process of law, the petitioners cannot be deprived of the benefit.

10. Besides, the Committee overlooks the pre-constitutional record in the form of sale deed, wherein, the petitioners' grandfather Jayram was described as 'Thakur'. True it is that it is not a document which is supposed to keep a record regarding caste of the parties to the sale deed, however, it is a pre-constitutional record and petitioners' grandfather has been described therein as a 'Thakur'. Even if that is not taken to be a favourable entry, it cannot be resorted to as an adverse as well.

11. Be that as it may, when the petitioners' father is possessing a validity certificate and so does their paternal uncle and paternal aunt, they

are entitled to have validity certificates.

12. The writ petition is partly allowed. The impugned order is quashed and set aside. The committee shall immediately issue tribe validity certificate to the petitioners as belonging to 'Thakur' scheduled tribe. Their validity shall be subject to the final outcome of the matters which the Committee had intended to reopen but still to take steps.

13. The petitioners shall not be entitled to claim equities.

14. Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)