

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

WRIT PETITION NO.14167 OF 2023

Vishal s/o Manohar Pawar,
Age : 24 years, Occu. Education,
R/o. Adarsh Nagar, Palam,
Tq. Palam, Dist. Parbhani.

....Petitioner

Versus

1. State of Maharashtra,
through Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad, through its
Member Secretary

...Respondents

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Mr. Sagar S. Phatale – Advocate for the petitioner
Mr. S. R. Yadav – Lonikar – AGP for respondent/State

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

DATED : NOVEMBER 09, 2023

JUDGMENT (PER NEERAJ P. DHOTE, J) :

. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at the stage of admission. Perused the papers.

2. The Petitioner is challenging the order dated 20.10.2023

passed by the respondent no.2 – Scrutiny Committee invalidating his tribe claim towards ‘Thakur’ Scheduled Tribe.

3. It is submitted by the learned advocate for the Petitioner that though oldest entry of caste in the family of the Petitioner is shown as ‘Thakur’ and there being validity certificates issued to the blood relatives of the Petitioner i.e. sister, father and cousin uncle, the Scrutiny Committee invalidated the claim in view of the entry as ‘Maratha’ in the school record of the Petitioner’s father. He submitted that until the validity certificates of the Petitioner’s relatives are intact, the Petitioner cannot be deprived of the validity certificate towards the same tribe.

4. It is submitted by the learned AGP that first validity certificate in the Petitioner’s family was issued to his real sister and the entry of ‘Maratha’ in the school record of the Petitioner’s father was not before the committee at that point of time. He further submitted that the committee has rightly invalidated the tribe claim of the Petitioner.

5. Perusal of the impugned order of the Scrutiny Committee shows that the committee invalidated the tribe claim of the petitioner in view of the ‘Maratha’ entry in the school record of the petitioner’s

father. According to the committee, the said 'Maratha' entry was manipulated and 'Thakur Hindu' came to be written in the said school document of the father of the petitioner, therefore, the validity issued to the father of the Petitioner was based on incomplete information. The committee has also taken into consideration the aspect in the sale transaction of land, wherein there is a statement that the grandfather and cousin grandfather of the Petitioner do not belong to the Scheduled Tribe. However, merely because of such statement in the sale deed, which in all probability are made to avoid a permission under Sections 36 & 36A of the Maharashtra Land Revenue Code, a caste cannot be denounced in such a manner. There has to be evidence regarding abandonment of faith or about out casting.

6. Accepting the same as it is, on the other hand, it is an admitted fact that the real sister of the Petitioner is the first validity holder in the Petitioner's family. The Vigilance / Research Officer during the enquiry of the sister's claim found that her affinity was with the 'Thakur' Tribe. There is no dispute that the Petitioner's sister is issued validity by following due process by Scrutiny Committee. Another aspect is that the Petitioner's father is also issued the validity certificate in the year 2011 by following due process by the Scrutiny

Committee. There is no dispute about the genealogy.

7. Though the committee has decided to re-open the cases of validity issued to the Petitioner's family, we find substance in the submission of the learned advocate for the Petitioner that until the validity certificates in the blood relation of the Petitioner are not cancelled and confiscated, the Petitioner cannot be deprived of the said tribe claim. It is also submitted by the learned advocate for the Petitioner that the petitioner is ready to run the risk and the consequences as observed in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra, 2018 SCC OnLine Bom 10363**.

8. It is not disputed by the learned AGP that the oldest entry in the school record of the Petitioner's relative i.e. real uncle shows the caste as 'Thakur'.

9. Considering the factual aspects of the matter and the principles laid down by the Hon'ble Supreme Court in the cases of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.** reported in **2023 SCC Online SC 326**, **Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Anr.** reported in **(1994) 1 SCC 359** and **Jaywant Dilip Pawar Vs. State of Maharashtra and Ors.** reported in **2018 (5) All MR**

975, the impugned order is unsustainable in the eye of law and needs to be quashed and set aside with a direction to the Scrutiny Committee to issue tribe validity certificate to the Petitioner as belonging to “Thakur” Scheduled Tribe subject to the final outcome of the matters which the committee has decided to re-open. Thus, we proceed to pass the following order :

ORDER

- (i) The writ petition is partly allowed.
 - (ii) The impugned order is quashed and set aside.
 - (iii) The committee shall immediately issue tribe certificate to the Petitioner as belonging to “Thakur” Scheduled Tribe, which shall be subject to the decision to be taken by the committee in the reopened matters.
 - (iv) The petitioner shall not be entitled to claim equities.
10. Rule is made absolute in above terms.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE