

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1125 OF 2007

Monali Suresh Deore, aged 19 years

Resident of Chittaranjan Housing Society,

Plot No.11, Ganesh Nagar, Jail Road,

Nashik Road, Nashik.

.. Petitioner

Vs.

1. The State of Maharashtra,

its Secretary, Tribal Development Department,

Mantralaya, Mumbai – 400 032.

2. Scheduled Tribe Caste Certificate

Scrutiny Committee, Nashik Division,

Nashik, through its Deputy Director & Member

Secretary having its address at

Adivashi Bhavan, Old Agra Road,

Nashik, District Nashik.

3. Directorate of Technical Education

3, Mahapalika Marg, Mumbai.

4. Principal, Pravanagar Engineering College,

Loni, Taluka Shrirampur,

District Ahmednagar.

.. Respondents

- Mr. R.K. Mendadkar a/w. Ms. Priyanka Shah, for the Petitioner.
- Mr. P.P. Kakade, GP a/w. Mr. P.V. Nelson Rajan, AGP for Respondent Nos.1 to 3-State.

CORAM : SUNIL B. SHUKRE &
JITENDRA JAIN, JJ

DATE : 16th JUNE, 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith, by consent of learned counsel for the respective parties.
3. The petitioner claims herself to be belonging to Thakur, Scheduled Tribe and accordingly she has obtained a tribal certificate from the Competent Authority. However, when it came to its validation by the Scrutiny Committee, things changed and Scrutiny Committee found that the claim of petitioner that she belongs to Thakur, Scheduled Tribe was not sustainable in law and accordingly the Scrutiny Committee by its order dated 05.10.2006 invalidated the claim and passed consequential directions regarding cancellation and confiscation of the certificate. Being aggrieved by the same, the petitioner is before us in this petition.
4. Learned counsel for the petitioner submits that it is well settled law that when several validities are granted in the paternal family of the claimant and there is no finding recorded by the Scrutiny Committee that those validities have been obtained by playing fraud upon the

committee or by suppressing material facts or by making misrepresentations before the committee and notice issued to those claimants for cancellation of their validity certificates, Scrutiny Committee cannot discard those validity certificates. He relies upon the observations made by the Apex Court in the case of ***Mah. Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra & Ors.***¹

5. Learned GP does not dispute the law settled on the issue by the Apex Court. He, however, submits that facts of each case are required to be examined on their own merits and appropriate decision would have to be arrived at accordingly.

6. In the present case, there is no dispute about relationship between the petitioner and the persons in whose favour validity certificates have been issued. One of those persons is the father of the petitioner, who has been issued validity certificate as he belonging to Thakur, Scheduled Tribe, by Pune Scrutiny Committee on 16.04.2004. It is also not in dispute that while ignoring those validity certificates, no finding has been recorded by the present Scrutiny Committee to the effect that this validity certificate was obtained by father of the petitioner by playing fraud or by suppressing material facts or by making misrepresentations to the Scrutiny Committee. It is also not in dispute

1 2023 SCC Online SC 326

that no notice seeking cancellation of the validity certificates has been issued to the paternal relatives of the petitioner. If this is so, there was no reason for the Scrutiny Committee to have discarded these validity certificates. In our opinion, on the backdrop of the admitted facts, these validity certificates constitute conclusive proof of the social status of the persons to whom those validity certificates have been issued.

7. In the case of *Mah. Aadiwasi (supra)*, the Supreme Court has observed that when the Scrutiny Committee is satisfied that the person in whose favour validity certificate has been issued, is a blood relative of the applicant and a lawful enquiry has been conducted before issuing validity certificate, the Scrutiny Committee would have to issue validity certificate even if the applicant does not satisfy the affinity test. In the instant case, the Scrutiny Committee has found that the petitioner does not satisfy the affinity test. But, the Scrutiny Committee has not found that the persons in whose favour validity certificates have been issued, are not blood relatives of the petitioner. The Scrutiny Committee has also not found that while issuing those validates certificates, no lawful enquiry was conducted. On the contrary, there is no dispute about the fact that those persons are the blood relatives of the petitioner and that they have been issued by following the proper procedure. It would then mean that the law laid down by the Apex

Court in the above referred case of *Mah. Aadiwasi (supra)*, would be squarely applicable to the facts of the present case.

8. Thus, we find that a material error has been committed by the Scrutiny Committee in ignoring the validity certificates issued to the blood relatives of the petitioner from the paternal side and failing to take into account their probative value.

9. Here we would like to make it clear that the findings recorded by us are only confined to the approach adopted by the Scrutiny Committee in ignoring validity certificates of blood relatives of the petitioner and we have not considered the other observations of the Scrutiny Committee relating to the care and caution required to be taken while dealing with the claims of the tribals claiming themselves to be belonging to Thakur, Scheduled Tribe. The Scrutiny Committee has observed that, as a result of removal of area restrictions, the communities having entirely different ethnic stocks, customs, traits and characteristics started taking advantage of similar nomenclature of the entry as Thakur in the records with their surnames and that they started declaring themselves as belonging to Thakur, Scheduled Tribe. The Committee has further observed that as far as the benefits of constitutional reservations are concerned, for a person claiming himself to be belonging to Thakur, Scheduled Tribe, it is essential and important

for the Scrutiny Committee to verify the claim not only by relying on the documents submitted, but also by applying the affinity test, as contemplated by the Apex Court in the case of Kum. Madhuri Patil Vs. State of Maharashtra & Ors.

10. These observations of the Scrutiny Committee have not been considered for their correctness or otherwise while passing this order as it is not necessary in view of the fact that there is already in existence a conclusive evidence of validity certificates issued to blood relatives of the petitioner from her paternal side, which have not been issued as a result of some fraud or suppression of facts or misrepresentation of material facts on the part of those certificate holders. In the result, we are inclined to allow the petition and it is allowed accordingly.

11. We direct Respondent No.2 to issue validity certificate to the petitioner, as she belonging to Thakur, Scheduled Tribe, within a period of two weeks from the date of receipt of writ of this Court.

12. Rule is made absolute in the above terms. No costs.

13. Petition is disposed of in the above terms.

[JITENDRA JAIN, J.]

[SUNIL B. SHUKRE, J.]