



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

WRIT PETITION NO. 4644 OF 2009

Kum. Trupti D/o Laxman Thakur,
Age : 23 years, Occu. : Student,
R/o 30, Shram Saffalya Colony,
Gondur Road, Near Home Guard Office,
Walwandi, Deopur, Dhule,
District Dhule.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.
2. The Committee for Scrutiny and
Verification of Tribe Claims,
Through its Dy. Director (Research),
Nandurbar, Division, Nandurbar.
3. The Director (Education),
Maharashtra Council of Agriculture
Education and Research, Pune.
4. The Registrar,
Mahatma Phule Krishi Vidyapeeth,
Rahuri, District Ahmednagar.
5. The Chief Conservator of Forest
Vanbhavan, Ramgiri Road,
Civil Lines, Nagpur.
6. The Conservator of Forests,
Near Govt. Printing Press,
Civil Lines, Nagpur.

.. Respondents

Shri A. S. Golegaonkar, Advocate for the Petitioner.
 Shri V. M. Jaware, A.G.P. for the Respondent Nos. 1 to 3.
 Shri M. N. Navandar, Advocate for the Respondent No. 4.

**WITH
 WRIT PETITION NO. 4743 OF 2009**

Laxman S/o Mohansing Thakur,
 Age : 47 Years, Occu. : Service,
 R/o 30, Shram Saffalya Colony,
 Gondur Road, Near Home Guard Office,
 Walwandi, Deopur, Dhule,
 District Dhule. .. Petitioner

Versus

1. The State of Maharashtra,
 Through its Secretary,
 Tribal Development Department,
 Mantralaya, Mumbai – 32.
2. The Committee for Scrutiny and
 Verification of Tribe Claims,
 Through its Dy. Director (Research),
 Nandurbar, Division, Nandurbar.
3. The Executive Magistrate,
 Sindkheda, District Dhule.
4. The Deputy Director of Accounts
 and Treasury, Kosh Bhawan,
 Near Collector Office, Nasik
 Region, Nasik.
5. The Treasury Officer
 Collector Compound, Sakri
 Road, Nandurbar. .. Respondents

Shri A. S. Golegaonkar, Advocate for the Petitioner.
 Shri V. M. Jaware, A.G.P. for the Respondent Nos. 1 to 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 30 AUGUST, 2024.**

ORAL JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Heard both the sides finally in view of the exigency in the matter.

2. The petitioners are daughter and father respectively, whose tribe certificates are invalidated by the respondent No. 2/Scrutiny Committee vide distinct judgments and orders dated 26.06.2009 in Writ Petition No. 4644 of 2009 and dated 08.07.2009 in Writ Petition No. 4743 of 2009, which are under challenge.

3. The petitioners are relying on pre-constitutional record of their blood relatives and the certificate of validity issued to Prakash Mohansing Thakur, who happens to be real brother of the one of the petitioners. The learned counsel for the petitioner submits that pre-constitutional record was already verified in the matter of Prakash and was found to be genuine. The validity certificate issued to Prakash is reliable one. In view of the old record having greater probative value, the petitioners are entitled to receive certificates of validity.

4. The learned Assistant Government Pleader supports the impugned judgments and orders. He would submit that the petitioners could not satisfy the affinity test. The Scrutiny Committee is justified in rejecting the tribe claims considering place of residence of the petitioners and their forefathers. It is

further contended that, the petitioners and their relatives upon which reliance is placed are highly qualified and in all probabilities they are belonging to upper caste. The certificate of validity of Prakash is not reliable one and it was issued relying upon the judgment of the High Court rendered in Writ Petition Nos. 2746 of 1998 and Writ Petition No. 5454 of 1998.

5. We have considered rival submissions of the parties. There is no dispute that petitioner – Laxman in Writ Petition No. 4743 of 2009 is the real brother of validity holder Prakash Mohansing Thakur. In case of Prakash vigilance enquiry was conducted. Birth record of Bhagwan Shivaji Thakur of the year 1925, his school record of the year 1937 and birth record of Mohan Shivla of 1928 was already verified by the vigilance cell and found to be genuine. As the documents are pre-constitutional, in view of the law laid down by the Division Bench of this Court in the matter of Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others reported in 2010 (6) Mh. L. J. 401 greater probative value is attached to them and they corroborate the tribe claim.

6. It has been laid down by the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others reported in *2023 SCC Online SC 326* that affinity test is not a conclusive proof. It is not a litmus test. When there is clinching documentary evidence on record the affinity test is inconsequential.

7. It has been recorded by the Committee that the place of residence of the petitioner and their forefathers is not compatible with the tribe claims. This aspect has already been dealt with by the Supreme Court in the matter of Palghat Jila Thandan Samuday Sanrakshan Samiti and another Vs. State of Kerala : (1994) 1 SCC 351. We, therefore, do not approve the submissions of the learned A. G. P.

8. Our attention is invited to the findings recorded by the Committee in respect of validity holder Prakash Mohansing Thakur. Prakash was issued with the validity certificate relying upon the judgment rendered by the High Court and later on a different view was taken. The Committee has passed impugned orders on 26.06.2009 and 08.07.2009 respectively. Thereafter, the law has underwent a change. We are governed by the latest judgment of Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others (supra). Considering paragraph Nos. 22 and 23 of the judgment of the Supreme Court in above referred matter, we are of the considered view that the validity certificate issued to Prakash would enure to the benefit of the petitioners.

9. It is further contended by the learned A. G. P. that petitioners and their relatives are highly qualified and in the record of right Thakur is mentioned which is synonymous with the upper caste Thakur. This submission also cannot be countenanced because in the caste column specific caste Thakur is mentioned in old record. We have already recorded that the old

record has a greater probative value. We are of the considered view that the petitioners have made out case for issuance of validity certificates. The committee will be at liberty to conduct reverification if such occasion arises. We find that the impugned judgments and orders are unsustainable and, therefore, we pass following order :

O R D E R

- a. The writ petitions are allowed partly.
- b. The impugned judgments and orders dated 26.06.2009 in Writ Petition No. 4644 of 2009 and dated 08.07.2009 in Writ Petition No. 4743 of 2009 passed by the respondent No. 2/scrutiny committee are quashed and set aside.
- c. The respondent No. 2/scrutiny committee shall issue tribe validity certificates to the petitioners of 'Thakur' (scheduled tribe) immediately in prescribed proforma.
- d. The validity certificates of the petitioners shall be subject to out come of the reverification proposed to be undertaken by the Committee.
- e. The petitioners shall not be entitled to claim equities.
- f. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]
bsb/Aug. 24