



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7053 OF 2011

Smt. Sharmistha d/o Ravindranath Thakur,
Age 29 years, Occ. Service,
Presently residing at Aurangabad,
District Aurangabad

... Petitioner

VERSUS

- 1) The State of Maharashtra
- 2) The Committee for Scrutiny and Verification
of Tribe Claims, Nandurbar Region,
Nandurbar.
- 3) Vivekanand Shikshan Sanstha,
Aurangabad, Dist. Aurangabad,
through its Secretary

... Respondents

...

Advocate for Petitioner : Mr. S.C. Yeramwar
Advocate for Respondent nos. 1 & 2 : Mr. P. S. Patil

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

DATE : **15.07.2024**

PER COURT :

This is a petition under Article 226 of the Constitution of India read with Section 7(2) of the Maharashtra Act XXIII of 2001 taking exception to the judgment and order dated 29.03.2011, of respondent no. 2, which is a committee, constituted under that Act for verification of the tribe certificates, thereby refusing to validate petitioner's 'Thakur' scheduled tribe certificate and directing its confiscation and cancellation.

2. We have heard both sides extensively. Though both sides made several

submissions touching the merits of the writ petition, in our considered view, our task has become simpler in view of decision of the Supreme Court in the matter of *Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others; 2010 (6) Mh.L.J. 401*, and more importantly, *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023(2) Mh.L.J.785*.

3. As can be understood, both these decisions lay down that a person claiming to be belonging to a particular scheduled caste or scheduled tribe is entitled to derive the benefit of certificates of validity possessed by the blood relation from the paternal side. Para nos. 21 and 22 of the *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)* read as under:

“21. In the impugned judgment in Civil Appeal No. 2502 of 2022 (Shilpa Vishnu Thakur's case), the Full Bench of the Bombay High Court has noted that people having the surname “Thakur” belong to both forward castes and various backward castes. Therefore, the Full Bench may be right in saying that in every case, only on the basis of the surname Thakur, it cannot be concluded by the Scrutiny Committee that the applicant belongs to Scheduled Tribe Thakur notified in the Entry 44 of the Maharashtra list. However, we must note that in the case of a person having the surname Thakur, there may be evidence in the form of entry of the name of the caste as a Tribe or Scheduled Tribe in the land records, school or college records or any official records concerning the applicant or his ancestors. Only on the ground that the persons having the surname Thakur may belong to a forward caste as well, it is not necessary that in every case, the Scrutiny Committee should send the case to Vigilance Cell. It all depends on the nature of the documents produced before the Caste Scrutiny Committee and the probative value of the documents. Therefore, whenever a caste claim regarding Thakur Scheduled Tribe is considered, the Caste Scrutiny Committee in every case should not mechanically refer the case to the Vigilance Cell for conducting an enquiry including affinity test. The reference to the Vigilance Cell can be made only if the Scrutiny Committee is not satisfied with the material produced by the applicant.

22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in *Kumari Madhuri Patil's* case [(1994) 6 SCC 241] or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of *Kumari Madhuri Patil*, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee

cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.”

4. As can be noticed, extension of the benefit of the validity holders come with certain riders. It is only when there is no dispute about the relationship between the two individuals of being blood relatives from the paternal side and the certificate of validity is issued to one of them by following due process of law and for the reasons to be assigned.

5. True it is that when the impugned judgment and order was passed, the decision of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*** had not seen the light of day. However, it is a matter of logic that if one blood relative possesses a certificate of validity issued by the competent authority under the law prevailing at the relevant time, and pursuant to the full fledged enquiry with reasons assigned therefor, it would be indiscrimination to not to extend the benefit of such earlier certificate of validity to the blood relatives at a later point of time. The matter being of a social status, one cannot comprehend a situation where the members of the same family or extended family, related by blood from the paternal side, could be treated as belonging to different castes or tribes.

6. It is in view of such state of affairs and the law, the impugned order expressly refusing to take cognizance and extend the benefit of the validity possessed by one Yashwant Maharu Pawar is clearly perverse and arbitrary. No dispute has been raised by the committee about any relationship between the petitioner and Yashwant Maharu Pawar and few other blood relatives, namely, Kalyani Bhagwat Pawar, Sunanda Babulal Pawar, which have been expressly referred to by the scrutiny committee in the impugned order. The reason assigned by the committee not to extend the benefit of these validities is to the effect that those certificates of validity were issued prior to the enactment of the Maharashtra Act XXIII of 2001, when the decision of the Supreme Court in the matter of ***Ku. Madhuri Patil and another Vs. Additional Commissioner, Tribal Development, Thane and***

others; (1997) 5 SCC 437 was holding the field. The procedure of the Caste Scrutiny Committees prior to coming into force of the Act was not streamlined. It was regulated by instructions. The authorities were not experts and the orders passed by such authorities were not fitting in the legal framework.

7. Surprisingly, in spite of having noted that the decision of the then Divisional Commissioner, who was the appellate authority, validating the tribe certificate of Yashwant Maharu Pawar was challenged by the State in Writ Petition No. 703/1988 before this Court and it was dismissed, confirming the order of the appellate authority, the committee was bold enough even to overlook this circumstance and the decision of the High Court only for the reason that it was rendered prior to 1988. This clearly demonstrates an utter lack of legal acumen in the members of the committee. They seem to be oblivious of the principle of *stare decisis* else they would not have been so bold. When, admittedly, as per the regulations as were prevailing at the relevant time, petitioner's cousin grandfather Yashwant Maharu Pawar was granted a certificate of validity by the appellate authority, which was subjected to challenge before the High Court, and the High Court had, for the elaborate reasons, confirmed the certificate of validity issued to him, the committee could not have discarded it for whatever reason when the State Government had not challenged the order of the High Court. In our considered view, such approach of the committee is clearly perverse, arbitrary and capricious and is contrary to the principles laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*** . A bare look at the judgment of the High Court clearly demonstrates that all the relevant aspects and evidence was minutely scrutinized in a threadbare manner. For this reason alone, in our considered view, when there are several validities in the family of the blood relatives from the paternal side, it would be inconsequential and irrelevant to once again undertake a scrutiny of the evidence discussed by the scrutiny

committee.

8. Incidentally, during pendency of this petition, few other blood relatives of the petitioner from the paternal side have been directed to be issued with certificates of validity namely Bhagwat Shivram Pawar in Writ Petition No. 6659/2016, decided on 01.02.2017 (Principal Seat). A copy of affidavit filed by him in the petitioner's matter dated 17.06.2017 expressly gives a genealogy to demonstrate his relationship with the petitioner. Again, one Shrikant Narendra Thakur and Ravindranath Narayan Thakur, who are the first degree cousin and father of the petitioner have also been granted certificates of validity by a detailed order dated 29.1.2020 by Nandurbar Scrutiny Committee. Pertinently, the committee validated their claims *inter alia* on the basis of the certificates of validity possessed by Yashwant Maharu Pawar, Smt. Sunanda Babulal Pawar, Bhagwat Shivram Pawar, Kalyani Bhagwat Pawar and Ajinkya Suryakant Pawar. It is necessary to note that the committee had directed certificates of validity to be issued to them without even hinting that it was inclined to do so merely conditionally, subject to some reenquiry of validity of any of these relatives who had received it at an earlier point of time.

9. The Writ Petition is allowed. The impugned order is quashed and set aside. The respondent no. 2 shall immediately issue a certificate of validity to the petitioner of 'Thakur' scheduled tribe.

10. Rule is made absolute.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-