



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8337 OF 2024

Deepak S/o. Kakasaheb Thakar
through natural guardian i.e. father
Kakasaheb s/o Govind Thakar

... PETITIONER

VERSUS

Scheduled Tribe Certificate
Scrutiny Committee, Chhatrapati Sambhaji Nagar
Near to CIDCO Bus stand,
Dist. Chhatrapati Sambhaji Nagar
through its Member Secretary

... RESPONDENT

...

Advocate for petitioner : Mr. S.S. Phatale
A.G.P for Respondent/State: Mr. V.M. Jaware

...

CORAM

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

DATE

: **19.08.2024**

ORDER (PER : MANGESH S. PATIL, J.) :

By resorting to Article 226 of the Constitution of India and presumably Sub-Section 2 of Section 7 of the Maharashtra Act No. XXIII of 2001, the petitioner is taking exception to the judgment and order of the respondent - Scrutiny Committee constituted under that Act, refusing to validate his 'Thakar' scheduled tribe certificate.

2. In view of the exigency being demonstrated, at the joint request of both the sides, the matter is heard finally at the stage of admission.

3. The learned advocate for the petitioner would submit that in spite of undertaking a vigilance inquiry, not a single contrary

entry/record could be traced and none has been referred to in the impugned judgment and order. Consistent record describing the petitioner and his blood relatives as 'Thakar' has been conveniently ignored. Even pre-constitutional favourable record has been illegally discarded. When it was a matter of enormous favourable record, the Committee ought not to have discarded the claim.

4. Learned advocate would further submit that the petitioner has been relying upon a certificate of validity possessed by one Dattatray Parshuram Thakar. Even as per Rule 11 of the Rules of 2003 framed under the Maharashtra Act No.XXIII of 2001, Dattatray had come forward and had filed affidavit along with a genealogy supporting the petitioner's claim. There was no sound reason for the Committee to entertain any doubt about the relationship between the petitioner and Dattatray still it has ignored it and has illegally refused to extend the benefit of his validity. The observation and conclusion of the Committee in this respect is perverse and arbitrary.

5. Per contra, the learned AGP would submit that mere entry in the record as 'Thakar' could not have been treated as 'Thakar' scheduled tribe when, as observed by the Committee, surname 'Thakar' is used even in the class of the society, which is not either a scheduled caste or scheduled tribe. No fault can be found with the observation of the Committee in refusing to consider the record demonstrating 'Thakar' in the caste column. He would submit that the petitioner also failed in

substantiating his claim on the anvil of affinity test.

6. Learned AGP would further submit that the Committee has given sufficient and cogent reasons to entertain doubt about any blood relationship between the petitioner and the validity holder Dattatray. The petitioner has not been consistent in referring to the genealogy. The impugned order takes a plausible view based on appropriate scrutiny of the material being relied upon by the petitioner and what could be traced during vigilance inquiry.

7. We have considered the rival submissions and perused the record. As far as merit is concerned, a bare perusal at the impugned order would reveal that the Committee has not entertained any doubt about genuineness of the record collected during the vigilance inquiry and expressly reproduced in the impugned judgment and order. These are consistent entries describing the petitioner and his blood relatives as 'Thakar' or 'Hindu Thakar'. Needless to state that 'Hindu' being not a caste but religion, these entries of 'Hindu Thakar' cannot be treated as contrary or incompatible with the tribe claim of 'Thakar'.

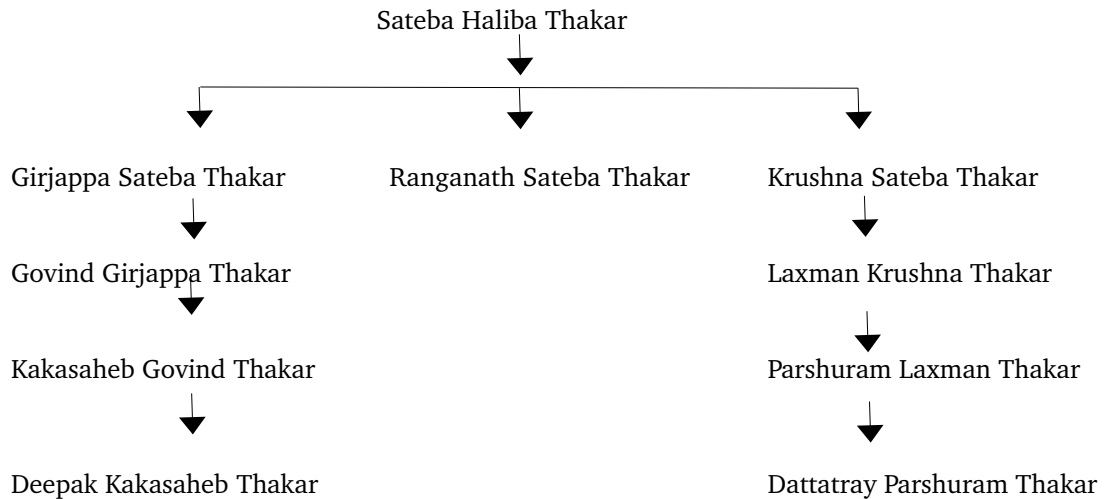
8. Even if the Committee has endeavoured to demonstrate as to how 'Thakar' scheduled tribe is different than the 'Thakar' of the developed communities, the observation is merely academic and has been made by applying the principle of area restriction, by passing the Amendment Act of 1976, and even the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala**

and Anr.; (1994) 1 SCC 359. The approach of the Committee, still, applying the principle of area restriction to draw some inference is not legally sustainable. When in the caste column, the petitioner's relations have been consistently described as 'Thakar' there is no room for treating it as 'Thakar' which is not a scheduled tribe.

9. If such was the enormous documentary evidence before the scrutiny committee, in the absence of any contrary record the conduct of the Committee in discarding it by applying the outdated principle of area restriction is clearly perverse and arbitrary.

10. So far as, the validity possessed by Dattatray, admittedly, in accordance with Rule 11 of the Rules 2003, the petitioner had produced affidavit of Dattatray giving a genealogy, demonstrating as to how he is related to the validity holder. The imputed order does not deal with this aspect of the matter. If the validity holder is coming forward and is filing affidavit in support of the claim of the petitioner and even furnishing a genealogy to substantiate his stand, it was imperative for the Committee to assign cogent and convincing reason to dislodge it.

11. The Committee is entertaining a doubt about the relationship between the petitioner and Dattatray on the ground that there is variance in the genealogy furnished by petitioner's father and the statement of validity holder Dattatray's father Parshuram Laxman Thakar dated 16.09.2003 recorded in Dattatray's matter. The genealogy given by the petitioner's father is as under :



12. The committee observes that Parshuram in his statement has stated that he had one real paternal uncle by name Yashvanta Krushna Thakar, whereas, petitioner's father Kakasaheb has demonstrated that his cousin grandfather Krsuhna was having one son Laxman, whereas, the validity holder during his claim had stated that Krushna also had a son by name Yashavanta.

13. When there is no dispute about the fact that Krushna is the great grandfather of Dattatray and genealogy furnished by the petitioner's father is as mentioned herein above, we cannot approve of the observation of the Committee that the genealogy furnished by the petitioner's father is not compatible with the stand being taken by Parshuram merely because Parshuram has stated that he has a paternal uncle by name Yashavanta which is not to be seen in the genealogy furnished by the petitioner's father. At the most, it would demonstrate that the genealogy furnished by the petitioner's father is not complete

since it does not disclose that Krushna's son Laxman who is father of Parshuram was having real brother by name Yashvanta Krushna, more so when it is the stand of Parshuram in his statement dated 16.09.2003 that Yashavanta was not alive.

14. This being the only reason assigned by the Committee to entertain doubt about the relationship for refusing to extend the benefit of validity possessed by Dattatray in spite of he having filed affidavit supporting the petitioner, the observation and conclusion is clearly perverse and arbitrary.

15. In view of above, the impugned order is not sustainable in law and is liable to be reversed.

16. The writ petition is allowed. The respondent – Scrutiny Committee shall immediately issue certificate of validity to the petitioner of 'Thakar' scheduled tribe (44).

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE