



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

954 WRIT PETITION NO. 9750 OF 2018

SACHIN GOVINDRAO PAWAR U/G FATHER GOVIND WAMANRAO PAWAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Mr. Golegaonkar Anil S.
AGP for Respondent nos. 1 to 3 & 5 : Mrs. K.B. Patil-Bharaswadkar
Advocate fo Respondent no. 4 : Mr. M. D. Narwadkar

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

DATE : 26.07.2024

PER COURT :

The petitioner is challenging the order of invalidation.

2. We have heard both the sides finally.

3. The learned advocate for the petitioner submits that a bare look at the impugned judgment and order would demonstrate that not even a single contrary entry, could be traced in spite of vigilance enquiry. He would submit that contrary to the trite principles, the committee has illegally applied area restriction as also affinity test. He would further point out that petitioner's real cousin Shakuntala possesses a certificate of validity issued by the then committee way back in the year 2011 by following due process of law and the petitioner ought to have been extended its benefit, even if the committee was of the view that a reenquiry into her validity was necessary.

4. The learned advocate for the petitioner submits that the petitioner is ready to face the consequences as contemplated in the matter of **Shweta**

Balaji Isankar Vs. State of Maharashtra and others (Writ Petition No. 6320 of 2017) and he be granted a certificate of validity, may be conditionally.

5. Per contra, the learned A.G.P. opposes the petition by submitting that already Shakuntala's matter has been reopened. It cannot be said that she was granted the certificate of validity by following due process of law. The order passed by the then committee in her matter is a cyclostyled order wherein blanks have been filled in by hand. The learned A.G.P. would further submit that the committee has rightly observed by resorting to area restriction that there was no evidence about the petitioner's forefathers having resided in the geographical areas where 'Thakur' scheduled tribes originate or belong to. Similarly, even the petitioner has failed the affinity test and no exception can be taken to the observations and the conclusions of the committee.

6. Having considered the rival submissions and having perused the papers, at the outset it is necessary to reiterate that in the light of decision of the Supreme Court in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samikti and Anr. Vs. State of Kerala and Anr (1994) 1 SCC 359**, with removal of area restrictions in the year 1976, the conduct of the committee in still applying the principle, is illegal.

7. Similarly, in spite of the scope of affinity test being limited, as is indicated in the matter of ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors; (2012) 1 SCC 113*** and even ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023(2) Mh.L.J. 785***, the committee could not have applied the affinity test.

8. Surprisingly, though the committee has refused to extend the benefit of validity possessed by the petitioner's cousin Shakuntala on the ground that she had obtained the certificate of validity by suppressing material fact, the committee has conveniently omitted to state in the entire judgment and order as to what are those circumstances or evidence, which she had

suppressed. Only vague sentences attributing her with suppression of material facts have been incorporated in the order at three places. It is indeed serious that though the committee was castigating her with such a serious allegation it has conveniently omitted to quote even a single circumstance, which makes it believe about she having practised fraud.

9. As far as the manner in which Shakuntala was granted a certificate of validity and applying the principles laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023(2) Mh.L.J.785***, we have gone through the original papers in her matter. A vigilance enquiry was conducted and though the order passed in her matter is in the form of filling in the blanks, even favourable record has been reproduced therein that was traced in the vigilance enquiry. Even the committee had objectively considered the fact that she could not get through the affinity test, which is demonstrative of the fact of application of mind. Therefore, merely for the reason that the judgment and order is in the form of filling in some blanks, it would be hazardous to reach a conclusion that no due process of law was followed when the vigilance was conducted, documents were collected and the committee had applied its mind before passing the order.

10. Again, if the present committee was able to go through the papers of Shakuntala, even it could have noticed the fact that one of the documents relied upon by the then committee was stated to be of 1950, of one Bayanabai stated to be the father's paternal aunt. It is not clear as to what had prevented the present committee in examining that entry and if it had a doubt to resort to a vigilance enquiry to verify its genuineness.

11. Be that as it may, Shakuntala was granted a certificate of validity by following due process of law and the petitioner is entitled to derive the benefit thereof, more so in the absence of any contrary entry.

12. The Writ Petition is allowed partly. The impugned order is quashed

and set aside. The committee shall immediately issue a certificate of validity to the petitioner as belonging to 'Thakur' scheduled tribe. Its validity would be subject to final outcome of the matter of Shakuntala, which the committee has reopened. The petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-