



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9968 OF 2024

Prathamesh s/o Ganesh Bhosale

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary
Tribal Development Department
Mantralaya, Mumbai – 32

2. Scrutiny Committee for Scheduled Tribes
through Vice-Chairman,
Chhatrapati Sambhajinagar
through its Member Secretary
Chhatrapati Sambhajinagar

... RESPONDENTS

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Advocate for petitioner : Mr. Omgashad B. Boinwad

Addl.G.P. for respondent/State : Mr. P.S. Patil

...

CORAM

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

DATE

: 10.09.2024

ORDER (MANGESH S. PATIL, J.) :

By way of this petition under Article 226 of the Constitution of India read with Sub-Section 2 of Section 7 of Maharashtra Act No.XXIII of 2001, the petitioner is challenging the decision of the respondent No.2 – Scrutiny Committee constituted under that Act, dated 09.09.2024, refusing to validate his ‘Thakur’ scheduled tribe certificate.

2. Considering the urgency, inasmuch as, the petitioner has been allotted a college in the admission process conducted by the State Common Entrance Test Cell and the Admission Authority, the matter is

taken up for final disposal at the admission stage. Issue notice for final disposal. Learned AGP waives service for both the respondents.

3. The learned advocate for the petitioner Mr. Boinwad would submit that the petitioner's father Ganesh as also the real uncles Apparao and Hanumant possess certificates of validity and irrespective of the stand of the Committee about they having obtained the certificates by resorting to fraud and irrespective of its decision to undertake the process for recalling these validities, till the time those validity certificates are in force, the petitioner is entitled to derive the benefit. He is ready to face the consequences contemplated in **Shweta Balaji Isankar Vs. State of Maharashtra and Ors.;WP No.6320/2017**, and may be issued with a certificate of validity subject to the final outcome of the matters of the validity holders which the Committee has decided to reopen.

4. Learned AGP Mr. Patil would strongly oppose the petition. He would submit that petitioner claims to be 'Thakur' and possesses such a certificate, whereas, the Committee could notice several entries in the school records of petitioner's father Ganesh and uncles Apparao and Hanumant describing them in the caste column as 'Thakar'. He would submit that though 'Thakur' and 'Thakar' fall under the same serial No.44 of the Presidential Order, as laid down in the matter of **State of Maharashtra Vs. Milind and Ors.; (2001) 1 Supreme Court 4**, every entry in constitutional order has to be strictly understood in the same manner. 'Thakar' and 'Thakur' are distinct tribes and no fault can be found in the

stand of the Committee in treating 'Thakar' entry as contrary to the petitioner's claim 'Thakur'.

5. Mr. Patil would further submit that in fact Apparao was issued with validity certificate of 'Thakar' scheduled tribe. Apparao who is petitioner's uncle was issued with a certificate of validity in the year 2004 in first point of time. He had relied upon the validities of the individuals not related to him by blood from the paternal side. He had also concealed contrary record and had obtained certificate of validity without sufficient evidence and by suppressing material facts which enables the committee to revisit his validity. He would, therefore, pray to dismiss the petition.

6. We have carefully considered the rival submissions and perused the papers including the original file of Apparao and petitioner's father Ganesh. It appears that the Committees which have been undertaking the process either at the time of Apparao and Ganesh and even the incumbent Committee apparently are responsible for creation of all the confusion. There is even room and circumstances to believe that even the successive committees have ignored or overlooked and have not been able to distinguish between 'Thakar' and 'Thakur' scheduled tribes. Apparao was granted validity certificate of 'Thakar'. The original papers in his file would indicate that he was issued with 'Thakar' scheduled tribe certificate by undertaking vigilance inquiry, by a detailed and reasoned order. Even if validities of certain individuals allegedly not related to him

by blood were referred to and relied upon, that was not the only piece of evidence on the basis of which his tribe certificate was validated. In fact, after facing earlier invalidation, he had approached this Court. The matter was remanded and thereafter by another speaking and detailed order he was held entitled to have a certificate of validity. The present Committee cannot be allowed to sit in appeal against the decision of its predecessor. The only scope for it is to revisit the validity to substantiate its inference of alleged fraud practised by him. Sustainability of the decision taken by the predecessor Committee is not the parameter laid down in **the Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**. Since Apparao was issued with certificate of validity by due process of law and by a reasoned order, in the normal course, the petitioner would be entitled to derive its benefit.

7. However, it is interesting enough to note that petitioner claims to be 'Thakur', whereas, Apparao who is his real paternal uncle, possesses a certificate of validity of 'Thakar' scheduled tribe.

8. It is still more interesting to note that petitioner's father Ganesh was possessing 'Thakur' scheduled tribe certificate and sought it to be validated. The proposal was considered by the then committee, a vigilance inquiry was conducted and by a reasoned order he was held entitled to have a certificate of validity, that too, in spite of the record relied upon by him was demonstrating entries of 'Thakar'. The original

order passed in his matter in the title mentions that his tribe claim was 'Thakar', however, in the operative part, it was described as 'Thakur'. There is apparent manipulation, inasmuch as, letter 'a' between 'k' and 'r' is overwritten by letter 'u'. Even the form filled by him under Rule 11 (2) in Form 'F' he had mentioned 'Thakar', *albeit*, his tribe certificate was of 'Thakur' and ultimately, he was issued with a certificate of validity as 'Thakur'.

9. Petitioner's father had also relied upon the validity of Apparao which was in fact of 'Thakar' scheduled tribe and still petitioner's father Ganesh was issued with a certificate of validity as 'Thakur'.

10. It is to be noted that since petitioner's father Ganesh was issued with 'Thakur' scheduled tribe certificate, there could not have been any proposal/claim by him of validation of any other certificate, of 'Thakar' scheduled tribe which he did not possess. It is only a certificate issued under Section 4 is subject to the validation by the Scrutiny Committee under Section 7 of the Maharashtra Act No.XXIII of 2001. The resultant situation is that Appasaheb who is real uncle of the petitioner possesses certificate of validity of 'Thakar' scheduled tribe and his father Ganesh who is the real brother of Apparao, possesses validity certificate of 'Thakur' scheduled tribe.

11. It is in view of such peculiar state of affairs, the submission of the learned advocate for the petitioner Mr. Boinwad that since 'Thakar'

and 'Thakur' both tribes form part of the same entry at serial No.44 of the Constitutional Order, neither could be taken as contrary to the other, more so, when even the committees have not been consistent. In view of such peculiar state of affairs, when petitioner's father Ganesh has been issued with certificate of validity by following due process of law, irrespective of the stand of the Committee, to resort to scrutiny of the validities for the alleged fraud and irrespective of the submission of the learned AGP, demonstrating the aforementioned circumstances, the petitioner deserves to be issued with a certificate of validity.

12. In the impugned order Committee has also assigned few reasons by referring to the different genealogies for entertaining some suspicion. Even statement of Babasaheb Kashinath Bhosle stated to be petitioner's grandfather recorded in the matter of Apparao has been reproduced, wherein, Babasaheb on 29.04.2002 had stated to have only two sons Apparao and Hanumant and one daughter Aruna, but petitioner's father Ganesh while showing the genealogy has demonstrated that he is also a son of Babasaheb, to derive the benefit of Apparao's validity.

13. Suffice for the purpose to observe that we need not indulge in objective scrutiny of this part of the impugned judgment for the reason that the Committee has assigned these to substantiate its inference of petitioner's father having practised fraud. It would be a matter of an independent and threadbare scrutiny which will have to be undertaken

by the Committee by following due process of law. Since Ganesh is not before us and so is Apparao, we cannot undertake such scrutiny to their prejudice when they are not before us.

14. The fact remains that petitioner's father possesses a certificate of validity and so long as it is not recalled by following due process of law and when it can be seen that he was issued with the certificate of validity by following due process of law, the petitioner is entitled to have a certificate of validity.

15. The writ petition is partly allowed. The impugned order is quashed and set aside. The respondent – Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' scheduled tribe. The validity shall be co-terminus with the validity of his father Ganesh.

16. The petitioner shall not claim equities.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE