



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15304 OF 2023

Disha d/o Dinesh Thakur,
Age 19 years, Occ. Student,
R/o. House No. 61, Sambhaji Nagar,
Near Balaji Mandir, Bhokardan Naka,
Jalna, Tq. & Dist. Jalna.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai-32,
Through its Secretary.
- 2) The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division,
Aurangabad, Tq. & Dist. Aurangabad,
Through its Member Secretary

... **Respondents**

...

Advocate for Petitioner : Mr. S.C. Yeramwar.
A.G.P. for Respondents/State : Mr. P .S. Patil

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

RESERVED ON : **10.07.2024**

PRONOUNCED ON : **01.08.2024**

ORDER : (MANGESH S. PATIL, J.)

In this petition under Article 226 of the Constitution of India read with Section 7(2) of the Maharashtra Act XXIII of 2001, the petitioner is challenging the order of respondent no. 2-Scrutiny Committee whereby it has refused to validate her 'Thakur(44)' scheduled tribe certificate and directing its confiscation and cancellation.

2. We have heard both the sides.

3. The learned advocate for the petitioner submits that the impugned judgment and order is perverse and arbitrary. Isolated contrary entries of post constitutional period have been considered ignoring the old favourable entries. 'Thakur' itself has been treated as not sufficient to indicate the caste or tribe. The committee has illegally applied the area restriction as also affinity test in arriving at the conclusion.

4. The learned advocate for the petitioner would further submit that there are few invalidities in the family that of petitioner's father Dinesh and her paternal uncle Vithal. They have also challenged similar orders of invalidation and the writ petitions are pending. Already there are few validities in the family. Its benefit could have been extended to the petitioner. Her paternal uncle Shivaji possesses a certificate of validity. Even her third degree paternal uncle Baban Laxman Shankpal (Thakur) and Baban's son Swapnil possess certificates of validity. Even one Avinash Dattatraya Thakur, who is another third degree cousin of her father possesses a certificate of validity. The petitioner intends to pursue studies, and even if the committee has some reservations as to the manner in which the certificates of validity were issued, till the time the committee does not undertake and conclude the enquiry in respect of the matters which it intends to reopen, the petitioner can be allowed to derive the benefit of reservation. She is ready to run the risk of facing the consequences as contemplated in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra and others (Writ Petition No. 6320 of 2017)**.

5. Per contra, the learned A.G.P. strongly opposes the petition. He submits that in light of the parameters laid down in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023(2) Mh.L.J. 785***, the committee has expressed precise reasons why it was not ready to extend the benefit of the validites in the family. Those were

apparently obtained by resorting to fraud and the committee intends to reopen the enquiries.

6. Independently, the learned A.G.P. submits that the committee has been able to discover several contrary entries. Some favourable record has turned out to be a product of manipulation and forgery. The reasons have been expressly quoted by the committee by referring to the vigilance report. Since none of the documents being relied upon by the petitioner were believable and acceptable, no fault can be found with the committee in applying the principle of area restriction and affinity test.

7. We have considered the rival submissions and perused the papers. There is no dispute about the fact that there are several orders of invalidation in the family referred to in the impugned judgment, which are subject matter of the writ petitions filed by those individuals, which are still pending. Needless to state that these other writ petitions would take their own course. However, the anxiety of the petitioner and looking up to the fact that she is of a tender age, desirous of pursuing studies, it would be inappropriate to make her wait for the decisions in the other writ petitions and even till the time the committee is able to finally decide the matters of the validity holders which it intends to reopen. When the petitioner is ready to face the consequences as contemplated in **Shweta (supra)**, in our considered view, unless the validities which are in existence can be said to be not fitting in the parameters laid down in paragraph no. 22 of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)***, she cannot be deprived of the benefit of validities.

8. As can be seen, Baban Laxman Thakur is the first validity holder, who was held entitled to have it by the order dated 26.04.2004. The original file of Baban has been made available to us. No dispute has been raised by the committee about he being related to the petitioner by blood from the paternal side. A careful look at the original file of Baban reveals that he had

submitted the proposal in the prescribed form. A vigilance enquiry was conducted. An old school record in Urdu of one Tulshiram Piraji Thakur of 1345 Fasli was relied upon. Even few contrary entries which were reported by the vigilance officer were taken into account. Baban's reply to the vigilance report was solicited and by a speaking order, he was held to be entitled to have the certificate of validity. True it is that some kind of format seems to have been used by the then committee while preparing the order. However, one cannot lose sight of the fact that the members of the scrutiny committee are not the legal persons though assigned with the job of considering and deciding the tribe claims. When expressly referring to several documents the committee had decided to grant certificate of validity having been satisfied with the claim, we are of the considered view that the order is a reasoned order.

9. In view of such state of affairs, the order passed in the matter of Baban fulfills the parameters laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*** and consequently the petitioner is entitled to rely upon the validity of Baban Laxman Shankapal (Thakur).

10. True it is that the self-same Fasli record referred to in Baban's matter and accepted by the then committee is now being sought to be referred to and relied upon by the present committee in the matter of petitioner to reach a contrary conclusion to the effect that the record is forged one. We need not elaborate in this respect any more.

11. When, apparently, Baban is related to the petitioner and possesses a validity which is still to be revoked by following due process of law and when he apparently was granted the validity by following a due process of law, the petitioner deserves to be extended the benefit, may be with usual condition.

12. The writ petition is partly allowed. The impugned order is quashed

and set aside. Respondent No. 2 - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur (44)' scheduled tribe. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open. The petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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