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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.383 OF 2009

Keshav s/o Dattatraya Thakur,
Age-29 years, Occu-Service,
R/o Near Amalner Darwaja,
Erandol, Tq.Erandol,
Dist. Jalgaon

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Chief Secretary,
Triable Development Department,
Mantralaya, Fort, Mumbai.
2. The Scheduled Tribes Certificate Scrutiny
Committee, Nandurbar Division,
Nandurbar,
3. The Chief Executive Officer,
Zilla parishad, Jalgaon
4. The Medical Officer,
Primary Health Centre (Z.P.)
Girad, Tq. Wadgaon,
Dist. Jalgaon

-- RESPONDENTS

Mr.Vijay B.Patil, Advocate for the petitioner.
Ms.P.J.Bharad, AGP for respondent Nos. 1 and 2.
Mr.S.B.Munde, Advocate for respondent No.3.

(CORAM : MANGESH S. PATIL AND
PRAFULLA S. KHUBALKAR, JJ.)

DATE : FEBRUARY 24, 2025

ORAL JUDGMENT : (Per Prafulla S.Khubalkar, J.)

1. The petitioner has assailed order dated 28.08.2008 passed by respondent No.2 / Caste Scrutiny Committee invalidating his claim for 'Thakur' Scheduled Tribe. By order dated 27.01.2009, ad-interim relief was granted in favour of the petitioner and the same is operating till today.

2. Heard the learned Advocates for the parties. Rule. Rule made returnable forthwith and heard finally by consent of parties.

3. By the impugned order, the Committee has invalidated the petitioner's claim by concluding that the petitioner has failed to establish his claim on the basis of documentary evidence as well as on account of failure to prove affinity with 'Thakur' Scheduled Tribe.

4. Advocate Mr.Patil, learned counsel for petitioner has vehemently submitted that on the basis of documentary evidence of pre independence era and also validity certificates of close blood relatives the petitioner has established his claim. He has submitted that the Committee has erroneously discarded the old documents by wrongly

observing that the residence of the petitioner's family members was not from scheduled area. He has also submitted that the approach of the Committee in discarding the validity certificates demonstrates perversity. He has submitted that in view of validity of his close blood relatives, Kalpana and Shobha who are his cousin sisters, the Committee ought to have validated his claim.

5. Per contra, the learned AGP for respondent Nos. 1 and 2 and Mr.S.V.Munde for respondent No.3 have opposed the petition and justified the impugned order. The respondents have submitted that the Committee has rightly disbelieved the documentary evidence, which did not conclusively establish that the petitioner belonged to 'Thakur' Scheduled Tribe. It is submitted that in view of invalidation of claim of Dinesh Ramesh Thakur, who is one of the family members of the petitioner, reliance cannot be placed on validities of other family members namely Shobha and Kalpana as relied upon by the petitioner.

6. We have considered the rival submissions and perused the papers. We have also perused the original record in the matter of Kalpana Ramdas Baviskar and Dinesh Ramesh Thakur, which are made

available by the Scrutiny Committee.

7. It is to be noted that in support of his caste claim, the petitioner filed a number of documents including documents of the year 1925 and 1944. All these documents consistently showed the caste as 'Thakur'. Vigilance enquiry report makes pertinent mention of the school record of petitioner's father and uncle of the year 1925, which records the caste as 'Thakur'. There is no document showing any contrary entry than 'Thakur'. The Committee has discarded the documents of pre independence era showing entry as 'Thakur', only on the ground that the forefathers of petitioner were residing in a non scheduled area. In this regard, it has to be noted that area restriction stood removed and in view of the position of Law as laid down in the matter of **Jaywant Dilip Pawar Vs. State of Maharashtra and others [2018(5) ALL MR 975]** and **Palghat Jilla Thandan Samudhaya Samrakshana Samithi and another Vs. State of Kerala and another [1994(1) SCC 359]**, invalidation order only on account of area restriction is unsustainable.

8. It has to be noted that apart from the documentary

evidence of pre independence era, petitioner has relied upon validity certificates of Shobha Ramdas and Kalpana Ramdas, who are his cousin sisters, as shown in the genealogy filed on record. Relationship of the petitioner with these validity holders is not disputed, as can be seen from the Vigilance Cell report and impugned order. Perusal of the original record of Kalpana reveals that her claim was validated on the basis of Vigilance Cell Enquiry and by a reasoned order. On the basis of validity of Kalpana, claim of Shobha also validated. The petitioner being undisputedly related to Kalpana and shobha, is entitled to derive its benefits. The respondents have vehemently argued that the claim of another cousin Dinesh Ramesh Thakur was invalidated and therefore the petitioner cannot rely only on validities of Shobha and Kalpana. It is pertinent to note that order of invalidation of Dilip cannot operate as *res-judicata* for deciding caste claims of other family members and claim of petitioner was required to be decided on the strength of all the documents relied upon by him. In view of validity of Kalpana and Shobha, which are in force, the petitioner is entitled for claiming its benefits.

9. In view of the Law laid down in **Maharashtra Adiwasi**

Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and Others, Civil Appeal No.2502/2022 (AIR 2023 SC 1657 = (2023) 3 S.C.R. 1100) and Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and Ors. reported in 2010 (6) Mh.L.J. 401, petitioner being close relative of validity holders, is entitled to validation of his claim.

10. As regards affinity test is concerned, in view of the position of Law as laid down in the matter of **Anand s/o. Nilkanth Katole Vs. The Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati & Another, 2014(5) ALL MR 181,** affinity test is not a litmus test and in view of validities of blood relatives, the claim cannot be negated on account of failure of affinity test.

11. Hence, we pass the following order :-

[a] The impugned order dated 28.08.2008 passed by the respondent No.2 / Committee is quashed and set aside.

[b] The respondent No.2 Committee is directed to immediately issue a validity certificate of 'Thakur' Scheduled Tribe, to the petitioner in prescribed proforma.

[c] Rule is made absolute in above terms.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)