



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
907 WRIT PETITION NO. 11690 OF 2010
DEEPASHREE BHARATSINGH THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

.....
Advocate for the Petitioner : Mr. Mahesh Deshmukh h/f. Mr. Phatale Sagar S.
AGP for Respondent/State : Mrs. R.R. Tandale
Advocate for Respondent No. 3: Mrs. S.T. Kazi

...

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

DATE : 31st JANUARY 2025

PER COURT :

1. Heard both sides finally considering exigency in the matter.
2. The petitioner is challenging order dated 21.10.2005 passed by respondent no.2/scrutiny committee confiscating and invalidating tribe certificate of tribe Thakur.
3. Petitioner is relying on the oldest entry of her grandfather Gajesingh Kashiram Thakur of 12.06.1944. She is also relying on the school record of herself and her father. On the basis of those entries she is claiming to be belonging to Scheduled tribe Thakur.
4. Learned counsel for the petitioner Mr. Deshmukh holding for Mr. Phatale submits that the scrutiny committee has committed

perversity in holding that due to area restrictions the petitioner and her forefathers can not be held to be belonging to Scheduled tribe 'Thakur'. He would further submit that in view of pronouncements of Hon'ble Supreme Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarkshan Samiti vs. State of Maharashtra and others** reported in 2023(2) Mh.L.J.785, resorting to affinity test and findings recorded in that regard are unsustainable.

5. It is further submitted that latest pronouncement of coordinate bench of this Court in the matter of **Sunil Murlidhar Thakur and Others vs. State of Maharashtra and Others** in Writ Petition No.2878 of 2022 validity has been granted and the scrutiny committee sought to rely on the said case when it was decided in the earlier round of litigation. It is further submitted that when the documents and the relationship which are pressed into service by the petitioner are not disputed, there is no alternative for the scrutiny committee than to validate the tribe claim.

6. Learned AGP Mrs.Tandale supports impugned judgment and order. It is submitted that the findings recorded by the scrutiny committee are based on evidence on record and plausible. The petitioner did not withstand the affinity test. There is no clinching evidence on record to corroborate the petitioner's claim. The petitioners were unable to produce any validity certificate issued in the family. She would therefore lastly submit that no case is made out to cause any interference with the impugned judgment and order.

7. Heard rival submissions of the parties. The petitioner is relying on school leaving certificate of her grandfather Gajesing Kashiram Thakur as well as the admission extract of 12.06.1944. She is also relying on leaving certificate of her father Bharatsing Gajesing Thakur of the year 1970. The vigilance enquiry was conducted into the documentary evidence produced by the petitioner. It reveals from record that no doubt has been expressed regarding the genuineness of the school record of her father and grandfather. If that is the case then certainly her grandfather's school record of 1944 is clinching and having greater probative value. In view of law laid down by Hon'ble Supreme Court in the matter of **Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others** reported in (2012) 1 SCC 113, the per-constitutional record of grandfather having greater probative value should have been accepted and validity should have been granted.

8. Our attention is adverted to the findings recorded by the committee in respect of area restrictions. However, the area restrictions were removed by the order of 1976. Therefore the findings regarding the ordinary place of residence of the petitioner and her forefather is inconsequential and those are unsustainable.

9. The petitioner could not withstand the affinity test. When there is documentary evidence that too clinching piece of evidence of school record of petitioner's grandfather, resort to the affinity test is

of no consequence. In the latest judgment of Hon'ble Supreme Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarkshan Samiti** (supra) it has been ruled that affinity test is not a litmus test. Therefore findings in that regard are also unsustainable.

10. Petitioner is relying on the judgment of this Court in the matter of **Sunil Murlidhar Thakur and Others** (supra) decided on 28.11.2023 granting validity to the then petitioner. The scrutiny committee has also referred to the decision of Hon'ble Apex Court in the matter of **State of Maharashtra vs. Sunil Murlidhar Thakur and another** in Civil Appeal No.4088 of 1981 in the impugned judgment and order. In that case the appeal was allowed relegating the matter to the High Court. After order of remand, High Court allowed the appeal which was again challenged by state by preferring Special leave to appeal (S.L.P). Again the matter was relegated to scrutiny committee. The scrutiny committee invalidated the tribe certificate.

11. Being aggrieved, Writ Petition No.2878 of 2022 was preferred by Sunil Murlidhar Thakur. Ultimately vide judgment dated 28.11.2023, the writ petition was allowed. In view of the reasons assigned in paragraph nos. 4 and 5, the coordinate bench directed the committee to grant the validity. We find that the observations can be made applicable to the present case also.

12. The reasons assigned for invalidating the tribe claim of the petitioner are unsustainable. We therefore pass following order :

ORDER

- a) Impugned judgment and order dated 21.10.2005 is quashed and set-aside.
- b) The respondent no.2/Scrutiny Committee shall forthwith issue tribe validity certificate of Scheduled Tribe 'Thakur' to the petitioner.
- c) The petitioner shall be entitled to consequential benefits which are disbursable at the end of respondent nos. 3 and 4.
- d) Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]**[S. G. MEHARE, J.]**

vsj..