



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO. 2434 OF 2022

Saurabh s/o Kakasaheb Shirsath,
Age : 23 years, Occu. Student,
R/o. Raskarmala, Marutinagar, Ward No. 2,
Shrirampur, Taluka Shrirampur,
District Ahmednagar.

....Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Department of Tribal Development,
Mantralaya, Mumbai.
2. Scheduled Tribes Certificate Scrutiny Committee,
Through its Member Secretary,
Nashik Division, Nashik,
Dist. Nashik.
3. Shri. Siddhivinayak Polytechnic,
Siddhatek Berdi, Taluka Karjat,
District Ahmednagar,
Through its Principal

....Respondents

....
Mr. Deepak D. Chaudhari – Advocate for the petitioner
Mr. M. M. Nerlikar – AGP for respondent nos. 1 and 2
Respondent no. 3 served (Absent)

....

**CORAM : MANGESH S. PATIL
AND
NEERAJ P. DHOTE, JJ.
DATE : 06.12.2023**

ORAL JUDGMENT [Per Neeraj P. Dhote, J.] : -

1. Rule. Rule made returnable forthwith. Heard finally with
the consent of the parties and taken up for final disposal at the stage of
admission. Perused the papers on record.

2. By the present petition filed under Article 226 and 227 of the Constitution of India, the petitioner, who was the student in Respondent No. 3 – College, is challenging the order dated 24.11.2021 passed by the Respondent No. 2 – Scrutiny Committee invaliding his claim of belonging to “Koli Mahadev (ST-29)”.

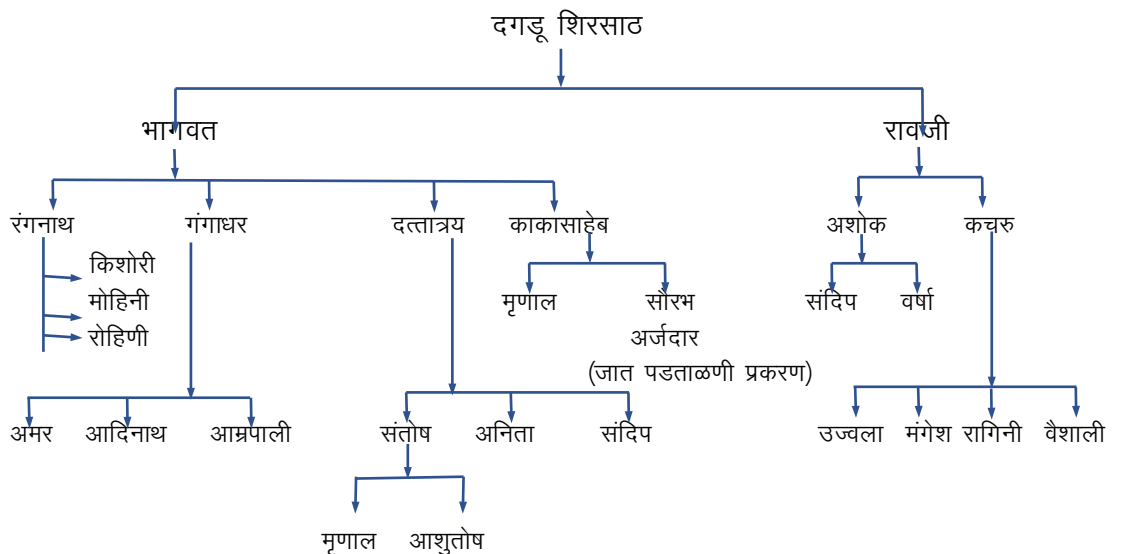
3. It is submitted by the learned advocate for the Petitioner that despite seven (7) validity certificates have been issued by various Scrutiny Committees to seven (7) paternal blood relatives of the petitioner and were tendered in support of his claim, the Respondent No. 2 - Scrutiny Committee has invalidated the petitioner’s claim. It is submitted that the Respondent No. 2 – Scrutiny Committee has discarded the validities by stating that the same were issued without proper inquiry. He submitted that till the validity certificates of the blood relatives of the Petitioner are not cancelled and confiscated by Respondent No. 2 – Scrutiny Committee, the Petitioner cannot be denied the validity. He further submitted that the other grounds on which the Respondent No. 2 – Scrutiny Committee has invalidated the claim are affinity test and area restrictions, which are unsustainable in the eye of law in the light of the judgments of the Hon’ble Supreme Court in the cases of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra Ors.* reported in *2023 SCC Online SC 326, Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of*

Kerala and Anr. reported in *(1994) 1 SCC 359* and *Jaywant Dilip Pawar Vs. State of Maharashtra and Ors.* reported in *2018 (5) All MR 975* and, therefore, the impugned order be quashed and set aside.

4. Learned AGP appearing for Respondent No. 2 – Committee submitted that though there are validities issued to the paternal blood relatives of the petitioner, the same cannot form the basis to validate the petitioner's claim for the reason that no proper inquiry was held before issuing the validities. He relies upon the judgment in the case of *Maharashtra Adiwasi (supra)* wherein the Hon'ble Apex Court carved out the exception that when the validity certificate has been granted without holding a proper inquiry or without recording reasons, the Scrutiny Committee cannot validate the caste certificate only on the basis of such validity certificates of the blood relatives. He submitted that in the case in hand the Respondent No. 2 – Scrutiny Committee has recorded reasons for discarding the validities issued by the erstwhile Scrutiny Committees and, therefore, no fault can be found with the impugned order. It is further submitted by the learned AGP that the Respondent No. 2 – Scrutiny Committee in the impugned judgment has referred to the judgment of the Hon'ble Supreme Court in the case of *Raju Ramsing Vasave Versus Mahesh Deorao Bhivapurkar & Ors.* reported in *(2008) 9 SCC 54* and applying the ratio, the respondent no. 2 – Scrutiny Committee has rightly invalidated the petitioner's tribe claim.

5. Before enactment of the the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 [hereinafter referred to as the “said Act”] the tribe claims were processed by the Scheduled Tribe Certificate Scrutiny Committee as per the guidelines issued by the Hon’ble Apex Court in the case of **Kumari Madhuri Patil vs Addl. Commissioner** reported in **1995 AIR 94**. After coming into force the said Act and the Rules, 2003 framed under the Act, the procedure of verification of tribe claims are regulated by the said Act and the Rules. Under the said Act and Rules, the vigilance inquiry is to be done only if the Scrutiny Committee is not satisfied with the material available before it.

6. The undisputed genealogy in the case in hand is shown as under : -



7. From the impugned order, it is seen that the first validity holder in the family of the petitioner is Mangesh Kacharu Shirsath, who

got the validity certificate on 11.08.2009. Undisputedly and as can be seen from the impugned order, vigilance was conducted in the matter of Mangesh Kacharu Shirsath. Respondent No. 2 – Scrutiny Committee has discarded his validity on the ground that the vigilance inquiry in the matter was not made in detail and Mangesh had not brought before the erstwhile Committee the contrary entries of his cousin uncles. It is not in dispute that Mangesh Kacharu Shirsath and the present petitioner are cousins and the validity certificate of Mangesh Kacharu Shirsath was issued after following due process. It is debatable as to whether the Respondent No. 2 – Scrutiny Committee can comment on the vigilance report in earlier proceedings, which are concluded and can examine the correctness of the erstwhile Committee's order as if sitting in Appeal. It can be said that the inability of the said validity holder to produce the old documents cannot be said to have been done to hide the unfavourable material i.e. contrary entries. Thus, the reason given by the Committee to discard the validity of Mangesh is not acceptable being unsustainable.

8. Another validity holder in the blood relation of the Petitioner, as seen from the impugned order, is Amrapali Gangadhar Shirsath. Respondent No. 2 – Committee has also discarded the same by observing that no document prior to 1950 was produced and further went to observe that while issuing the validity certificate to Amrapali,

only caste certificate, school certificate and 7/12 extract were taken into consideration. The reason given to discard the entry in the 7/12 is that the entry was of the year 1966, which was not prior to 1950 and, therefore, could not be used. It was further observed that the validity of Mangesh Kacharu Shirsth is referred in the matter of Amrapali, which is not accepted by the Committee. Eventually, Respondent No. 2 – Committee discarded the validity issued to Amrapali. There is no dispute that during the validity of said Amrapali, the vigilance inquiry was resorted to and it submitted its report dated 07.11.2009. The vigilance inquiry report refers to the contrary entry i.e. Koli against the names of Rangnath Bhagwat Shirsath and Dattatraya Bhagwat Shirsath, who are the uncles of the petitioner. However, the concerned Tribe Validity Scrutiny Committee had issued the validity certificate to Amrapali. Thus, the reasons given by the Respondent No. 2 – Committee to discard the validity of Amrapali, cannot be accepted.

9. As the contrary entries of Rangnath and Dattatraya which were not before the then Tribe Validity Scrutiny Committee which had issued validity certificate to the first validity holder i.e. Mangesh Kacharu Shirsath, were before the Committee which dealt with and validated the tribe claim of Amrapali and the validity certificate was issued to her on 04.03.2010. As the coordinate Committee has considered those contrary entries and issued validity to Amrapali, the

reasons given by the Respondent No. 2 – Committee for discarding the validity of Mangesh falls down.

10. The other validity holder in the family of the Petitioner is Amar Gangadhar Shirsath. His validity is discarded by the Respondent No. 2 – Committee by observing that no documents prior to 1950 were made available and also referred to the contra entries of 'Koli' in the school record of Rangnath, which has been considered in the case of Amrapali. It is observed that the validity certificate was issued without conducting police vigilance inquiry. The copy of the order dated 23.04.2010 passed by the Scrutiny Committee at Nashik, validating the tribe claim of Amar Gangadhar Shirsath is made available by the learned advocate for the petitioner. Perusal of the order shows that the case was handed over to the Vigilance Cell for detail home and school inquiry and Inquiry Officer had submitted his report. The said order further notes that in the old record the caste entries of the candidate's of genuine Mahadeo Koli community are found as plain 'Koli' and, therefore, the affinity test was resorted to. It is clearly recorded in the order that the applicant proved his affinity with the Mahadev Koli Scheduled Tribe Community. The order records that the Scrutiny Committee considered the inquiry report of the Vigilance Cell, the satisfactory replies given by the applicant during hearing and documentary evidence placed on record and that the candidate belonged to Mahadev Koli Scheduled

Tribe Community. In this background, the observation of respondent no.2 Committee discarding the validity of Amar is not acceptable.

11. We would not discuss further about the observations of the Respondent No. 2 for discarding the validity certificates of the other parental blood relatives of the present petitioner.

12. From the above discussion, it is clear that the aforementioned three validities were issued after holding due inquiry and by following due procedure. Further there is no dispute that the validity holders, which have been discussed above, are the parental blood relatives of the petitioner. Applying the principles laid down by the Hon'ble Apex Court in the above referred judgments in paragraph no. 3, the contention of the learned AGP has no merit. Even the reliance placed by learned AGP on the observations made in the impugned order from the Apex Court decision in the case of Raju Ramsing Vasave (supra) is misplaced for the reason that it is not shown that the vital evidences had been ignored by the said Committees which had granted the validity certificates to the above referred parental blood relatives. However, it is seen that the old two contrary entries have been considered by the Scrutiny Committees in the case of Amrapali and Amar. The other grounds on which the Respondent No. 2 has rejected the petitioner's claim is affinity test and area restrictions which are

unsustainable in view of the observations made by the Hon'ble Supreme Court in the judgments referred to in paragraph no. 3 herein.

13. In the conspectus of the matter, the impugned order is unsustainable in the eye of law and the petitioner cannot be denied the validity certificate of 'Koli Mahadev (ST-29)' and, hence, we pass the following order : -

ORDER

- i) The writ petition is partly allowed.
- ii) The impugned order is quashed and set aside.
- iii) The Respondent – Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Koli Mahadev (ST-29)' in the prescribed format without adding anything.
- iv) The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.
- v) The petitioner shall not be entitled to claim equities.

14. Rule made absolute in the aforesaid terms with no order as to costs.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE