

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11105 OF 2023

- 1] Vyankati S/o Baliram Nilawad
2] Madhav S/o Balaji Nilawad .. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai
- 2] The Scheduled Tribe Caste Certificate
Verification Committee Kinwat
Head Quarter at Aurangabad
Through its Dy. Director (R),
Dist. Aurangabad .. Respondents

**WITH
WRIT PETITION NO. 11128 OF 2023**

- 1] Mayuri D/o Madhavrao Nilawad
2] Swapnil S/o Vyankatrao Nilawad
3] Pankaj S/o Marotirao Nilawad .. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai
- 2] The Scheduled Tribe Caste Certificate
Verification Committee Kinwat
Head Quarter at Aurangabad
Through its Dy. Director (R),
Dist. Aurangabad .. Respondents

**WITH
WRIT PETITION NO. 11129 OF 2023**

- Shital D/o Uttam Nilawad .. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai
 - 2] The Scheduled Tribe Caste Certificate
Verification Committee Kinwat
Head Quarter at Aurangabad
Through its Dy. Director (R),
Dist. Aurangabad
 - 3] The Principal,
Sarswati Uchha Madhyamik Vidhyalay
Pawdewadi, Nanded, Dist. Nanded (**Deleted**)
 - 4] The Registrar,
Maharashtra Animal & Fishery
Sciences University,
Futala Lake Road, Nagpur
Dist. Nagpur (**Deleted**)
 - 5] The Associate Dean
College of Veterinary
and Animal Sciences, Udgir
Dist. Latur (**Deleted**)
- .. Respondents

**AND
WRIT PETITION NO. 11130 OF 2023**

Shivjit S/o Uttam Nilawad .. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai
 - 2] The Scheduled Tribe Caste Certificate
Verification Committee Kinwat
Head Quarter at Aurangabad
Through its Dy. Director (R),
Dist. Aurangabad
- .. Respondents

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Advocate for petitioners in all WPs : Mr. Sunil M. Vibhute
AGP for the respondent – State : Mr. S.G. Sangale

Respondents no. 3 to 5 in WP/11129/2023 deleted as per Court's order dated 06-09-2023

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

DATE : 7 SEPTEMBER 2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith in all these petitions. Learned AGP waives service. Considering the urgency, at the joint request of the parties, the matters are heard finally at the stage of admission.

3. By way of these separate writ petitions, the petitioners are challenging the order passed by the respondent - scrutiny committee on 25.08.2023 confiscating and cancelling the certificate of petitioner - Shivjit of Mannervarlu scheduled tribe and confiscating and cancelling the certificates of validities of rest of the petitioners by resorting to section 7(1) of the Maharashtra Act no. XXIII of 2001.

4. The learned advocate for the petitioner Mr. Vibhute would submit that petitioner - Shivjit has been in urgent need of the certificate of validity to secure his admission and had approached this Court since the committee was not deciding his proposal. In writ petition no. 9594 of 2023 by the order dated 10.08.2023 this Court had requested the committee to pass the final order by 14.08.2023 since he was to furnish

the certificate of validity on 16.08.2023 by 03.00 pm. Pursuant to such direction, the committee has passed the impugned order in his matter.

5. He would further point out that since Shivjit was relying upon numerous validities in the family, while observing as to how he was not entitled to derive the benefit of these many validities, the committee without there being any occasion has not only demonstrated as to why it was not ready to extend the benefit of these validities to the petitioner, has proceeded to confiscate and cancel the certificates of validities possessed by these validity holders without undertaking any independent scrutiny. He would point out that in fact, simultaneously the committee had issued show cause notices to these validity holders as to why the certificates of validity granted to them be not confiscated and cancelled for the fraud alleged in those notices.

6. He would point out that these validity holders challenged those notices in separate writ petitions which are pending before this Court (writ petition no. 4465 of 2022 and others). Even this Court by a common order passed in those petitions on 22.04.2022 had entertained the petitions but had permitted the scrutiny committee to proceed with their matters pursuant to the impugned show cause notices and those petitioners were directed to co-operate with the scrutiny committee.

7. He would submit that even affidavit in reply was directed to be filed within four weeks. He would submit that in spite of such state-of-affairs, the committee has proceeded to make an observations touching the issue regarding the alleged fraud practised on the respective scrutiny committees which issued certificates of validities and while deciding petitioner - Shivjit's matter, has even ventured to confiscate and cancel the certificates of validities. He would submit that when the respective matters of those validity holders were independently pending before the scrutiny committee, it could not have embarked upon and confiscated and cancelled their certificates while deciding petitioner - Shivjit's matter.

8. On facts, Mr. Vibhute would submit that the committee has attempted to demonstrate as to how the certificates of validities were obtained by the validity holders concealing the orders of invalidation passed in the matter of Vivek Digambar Nilawar (Nilawad) and his sister Kum. Swati Digambar Nilawar (Nilawad). He would submit that these to individuals are not related to the petitioner - Shivjit and the other validity holders from the paternal side and, therefore, factually the observation of the committee that such concealment of invalidity in the matters of Vivek and Swati would constitute concealment or suppression of the material fact is not legally sustainable.

9. Mr. Vibhute would then submit that these two invalidities of Vivek and Swati are of the year 2000 and 2002 whereas, there were couple of validities in the family even issued prior thereto, namely, Bhanudas Baliram Nilawad dated 08.08.1997 and Madhav Balaji Nilawad dated 08.08.1997. He would, therefore, submit that even if this circumstance being resorted to by the scrutiny committee regarding suppression of the invalidities of Vivek and Swati are accepted, still, when there were two earlier validities in the family, at least that ground will not be available in respect of those two earlier validities. The petitioner - Shivjit is therefore even entitled to derive the benefit of those two validities which were first in point of time even before the orders of invalidity in the matters of Vivek and Swati.

10. He would submit that the approach of the committee in refusing to extend the benefit of at least those two earliest validities to petitioner - Shivjit is clearly arbitrary. He would also submit that even the conduct of the committee in confiscating and cancelling the certificates of validity of the other petitioners is also clearly arbitrary. When their separate matters were pending before the committee, instead of undertaking enquiries, the committee could not have in the matter of Shivjit confiscated and cancelled their certificates of validity. Principles of natural justice have not been followed in respect of six other petitioners and the impugned order being perverse, arbitrary and capricious, be quashed and set aside.

11. The learned AGP with the assistance of the law officer of the respondent scrutiny committee who is present in the Court supports the impugned order and opposes the petitions. He would at the outset submit that it is clear case of fraud. Though petitioners are now disputing the relationship with the invalidity holders - Vivek and Swati, petitioner - Shivjit's father had filed affidavit in their matters supporting their claim and giving a genealogy so as to demonstrate as to how Vivek and Swati were related to this family. He, would, therefore submit that the petitioners are not entitled to now raise any dispute about their relationship with these two individuals - Vivek and Swati.

12. The learned AGP would then submit that fraud vitiates everything. The committee has demonstrated as to how there was a fraud and was justified in confiscating and cancelling not only the tribe certificate of petitioner - Shivjit but even the certificates of validities of the rest of the petitioners and their other family members.

13. The learned AGP would then referred to us the original file of the scrutiny committee and particularly the Roznama in the matter of petitioner - Pankaj Marotirao Nilawad which has been observed in the impugned order to point out that an opportunity of being heard was extended to the validity holders who were served with the show cause notices. Their learned advocates also submitted arguments, since they

were not co-operating the committee has passed the order confiscating and cancelling even their certificates of validity.

14. The learned AGP would also raise the objection to the maintainability of these petitions on the ground that some of these petitions have been filed through the power of attorney.

15. The learned AGP would then rely upon following decisions to buttress his submission that in an appropriate case, if it is a matter of fraud, the committee has the power and jurisdiction to undertake re-scrutiny and it is not denuded of the powers:-

(i) ***Rajeshwar Baburao Bone Vs. State of Maharashtra; 2015 (14) SCC 497,***

(ii) ***Machhindra Soniram Nagtilak Vs. State of Maharashtra*** and others (writ petition no. 9797 of 2017 with connected matters - Principal Seat, order dated 28-11-2017)

(iii) ***Darshan Chandravikas Bhamare Vs. State of Maharashtra and others*** (writ petition no. 2332 of 2018 - Principal Seat – order dated 31.01.2020)

(iv) ***Prashaat Hanmantrao Barlawar Vs. Scheduled Tribe Scrutiny Committee and another*** (writ petition no. 7095 of 2021, order dated 03-10-2022)

(v) ***Chaitanya D/o. Sanjay Palekar Vs. State of Maharashtra and others*** (writ petition no. 8531 of 2022 - Aurangabad Bench, judgment dated 24-07-2023).

16. We have considered the rival submissions and perused the papers.

17. As can be appreciated from the rival submissions and the reasoning resorted to by the scrutiny committee in the impugned order, the committee has laboured to point out that suppression of the orders of invalidity in the matters of Vivek and Swati as the main circumstance which according to it constitutes fraud and entitles it to undertake review. We could have entered into this controversy but for the reason that as we would be demonstrating hereinafter, in fact, the committee has already issued notices to show cause to the validity holders as to why their certificates of validities be not confiscated and cancelled.

18. Even if the committee in the matter of Shivjit has proceeded to embark upon and even has passed the order confiscating and cancelling certificate of validity of the other petitioners and other validity holders who are not before us, in fact, as can be seen from the Roznama in the matter of Pankaj Marotirao Nilawad those matters apparently have been still pending with the committee.

19. In fact, as is pointed out hereinabove, the validity holders have already put up a challenge to the show cause notices and the

petitions are pending in this Court wherein this Court has directed affidavits in reply to be filed, albeit, the enquiries were not stayed. Even the impugned order in the title only mentions the proceeding number of Shivjit which indicates that the committee was deciding only his proposal. It is only in the flow, while demonstrating as to why the benefit of the validities in the family was not to be extended to him, it appears that the committee has proceeded to embark upon and has even confiscated and cancelled the validity certificates even while their respective proceedings are pending with the committee and the writ petitions challenging the power and jurisdiction of the committee to undertake that exercise are pending in this Court.

20. Since it is a matter of fraud, which is an issue which is directly and substantially under consideration not only of the scrutiny committee but even of this Court in the writ petitions of the validity holders, we do not feel it appropriate that we should make any observation in this order examining the circumstances which according to the committee constitutes fraud. We leave that issue to be agitated, considered and decided in those other proceedings.

21. Precisely for this reason, even we are not recording any observation as to the power and jurisdiction of the committee to undertake review or reconsideration of the validities.

22. The glaring fact which we have noticed from the impugned order is that the committee is demonstrating as to how the orders of invalidity in the matter of Vivek and Swati were decisive factors which were deliberately concealed from the committee and the certificates of validities were obtained, as the main reason for it to conclude that this would constitute fraud.

23. In our considered view, these are the matters of social status. By virtue of section 8 of the Maharashtra Act no. XXIII of 2001, the burden is on the claimant to substantiate his claim of being belonging to a particular caste or tribe. If a family member is unable to substantiate his claim by leading cogent and convincing evidence so as to discharge the burden, obviously the committee may not validate his claim. However, hypothetically some other member of the family at a later point of time may be able to discharge the burden by leading cogent and convincing evidence. In such eventuality the earlier order of invalidation would certainly be not binding on the other relative who is able to discharge the burden. To put it differently, the order of invalidation in the family cannot ipso facto vitiate the subsequent validities. The earlier decision would only bind the concerned individual whose proposal is considered and certificate is cancelled by the committee under section 7(1). However, that decision would not bind the other members who were not before the committees. Therefore, in our considered view, there is a serious doubt as to if mere

concealment of earlier orders of invalidation would vitiate the subsequent validities.

24. Pertinently, as has been pointed out earlier, even prior to the orders of invalidity in the matter of Vivek of the year 2000 and Swati of the year 2002, there were at least two validities in the family, of Bhanudas and Madhav issued in 1997. Even if it is assumed for the sake of arguments that the concealment of invalidities in the family would be a vitiating circumstance qua the subsequent orders of validations, that would not vitiate the validities which were obtained even prior to such orders of invalidity.

25. We are making these observations with a purpose to demonstrate as to how even if the committee was not inclined to grant benefit of the subsequent validities to the petitioner for the alleged fraud, it was imperative for the committee to comment upon and decide as to why he was not entitled to even the earlier validities in favour of Bhanudas and Madhav of 1997. The impugned order is conspicuously silent about this aspect. The committee ought to have deliberated and decided as to why and how even validities of Bhanudas and Madhav would not benefit Shivjit. No such attempt has been made by the committee. If this is so, the observations and the conclusion of the committee ignoring the validities of Bhanudas and Madhav are clearly perverse and arbitrary.

26. We must make a comment on the conduct of the committee. In spite of being aware that the matters of validity holders are not only pending before it awaiting the decision on their own merits but even pending in this Court wherein in response to the serious objection regarding its power and jurisdiction to undertake a review in respect of certificates of validity, it has for the reasons best known to it while deciding petitioner - Shivjit's matter, has proceeded to confiscate and cancel the certificates of validities of the other relatives. It could not have done so. We strongly deprecate such approach of the committee.

27. In the result, the following order:-

- I) The writ petitions are partly allowed.
- II) The impugned judgment and order is quashed and set aside.
- III) The respondent/Scrutiny Committee shall immediately issue certificate of validity to the petitioner-Shivjit Uttam Nilawad as belonging to 'Mannervarlu' (Scheduled Tribe), which shall be subject to final outcome of the matters which the Committee has reopened in respect of the petitioners and other validity holders.
- IV) The matters of other petitioners in Writ Petition No.11105 of 2023, Writ Petition No. 11128 of 2023 and Writ Petition No. 11129 of

2023 are remanded to the Scrutiny Committee for passing fresh orders in their respective matters.

V) The learned AGP shall immediately communicate this order to the Scrutiny Committee.

VI) The petitioner/Shivjit Uttam Nilawad shall not be entitled to claim equities.

VII) The other petitioners in Writ Petition No. 11105 of 2023, Writ Petition No. 11128 of 2023 and Writ Petition No. 11129 of 2023 shall appear before the Scrutiny Committee on 18.09.2023.

VIII) The Writ Petitions are disposed of.

IX) Rule is made absolute accordingly.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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