



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

WRIT PETITION NO. 9621 OF 2024

1) Pooja s/o Govind Gattuwar,
Age 20 years, Occ. Student,
R/o. At post Kundalwadi, Tq.
Biloli, Dist. Nanded.

2) Swapnil s/o Govind Gattuwar,
Age 24 years, Occ. Student,
R/o. At post Kundalwadi, Tq.
Biloli, Dist. Nanded.

... **Petitioners**

VERSUS

1) The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.

2) The Scheduled Tribe Certificate
Verification Committee, Kinwat,
Headquarter Chhatrapati Sambhajanagar,
Through Deputy Director (Research)
and Member Secretary.

... **Respondents**

...

Advocate for Petitioners : Mr. Thorat Chandrakant R.
A.G.P. for Respondent nos. 1 & 2 : Mr. V.M. Chate

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

DATE : 04.09.2024

ORDER : (MANGESH S. PATIL, J.)

The petitioners, who are siblings, are challenging the common judgment and order of respondent no. 2-scrutiny committee constituted under the Maharashtra Act XXIII of 2001, refusing to validate their '*Mannervarlu*' scheduled tribe certificates.

2. Since petitioner-Pooja has been allotted a college through NEET-UG(2024) and is supposed to tender certificate of validity latest by tomorrow, we have taken up the matter for final disposal at the stage of admission.

3. The learned advocate for the petitioners would submit that there are number of validity holders in the family. Though the petitioners were relying upon the validity of their father Govind and second degree cousin uncle Rajesh Vyankati Gattuwar, the committee on its own, has traced out and referred to in the impugned order, the validities issued to as many as eight individuals by making observation that even these eight individuals are related to the petitioners by blood from the paternal side. He would submit that the committee has refused to extend benefit of these validities on the ground that all those were obtained by concealing the earlier invalidation in the matter of Potanna Gangadhar Gattuwar on 31.05.2003. He would submit that the order of invalidation would merely bind the claimant Potanna. It is not a judgment *in rem*. He would, therefore, submit that assuming that the invalidation was concealed that would not turn on anything.

4. Mr. Thorat would further submit that the committee has refused to extend the benefit of validities also on the ground that some contrary record was concealed by the validity holders and the committee has decided to undertake rescrutiny. He would submit that till the time the committee is able to undertake the due process of law and recall the validities, the petitioners cannot be made to wait at the cost of their career. Once it is noticed that the validities were issued by following due process of law and by passing a reasoned order, the petitioners are entitled to possess atleast a validity conditioned upon the final outcome of the matters to be reopened by the committee.

5. Mr. Thorat would, lastly, submit that the petitioners are ready to run

the risk of facing the consequences as has been observed in the matter of ***Shweta Balaji Isankar Vs. State of Maharashtra and others*** (writ petition no. 6320 of 2017) and may be issued with certificates of validity.

6. The learned A.G.P., strongly opposes the petition. He would support the order and the inference drawn by the committee about the validity holders having resorted to fraud. He would submit that Potanna's invalidation was consciously concealed and the subsequent validity holders could manage to have the validities. It is a fraud which would vitiate all these validities.

7. He would also submit that even contrary record as mentioned by the committee in the impugned order was concealed by the validity holders. Had they disclosed it, they would not have been granted certificates of validity.

8. The learned A.G.P. would submit that one Krishna Vyankanna Gattuwar is the first validity holder in the family. He had obtained the certificate of validity on the basis of validities of maternal side blood relatives and that would vitiate his validity.

9. We have considered the rival submissions and perused the papers. There is no dispute about the fact that there are several validities in the family including that of petitioners' father Govind.

10. Even if the committee has now drawn some inference about the manner in which the validities were obtained and has observed that those would be vitiated on the ground of fraud, the committee will have to resort to due process of law for recalling these validities. Since these validity holders are not before us, we refrain from making any comment in respect of the inference of fraud drawn by the committee, as it may cause prejudice to the validity holders or even the committee. However, the fact remains that these validities would hold good till the time they are recalled by

following due process of law. Obviously, a scrutiny into the circumstances in which the validities were granted will have to be looked into in light of the parameters laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326.***

11. Even according to the committee Krishna Vyankanna Gattuwar was the first validity holder in the family albeit, the conduct of the committee in directly *suo motu* referring to his validity and commenting the circumstances under which he was held entitled to, has been done, apparently, without giving any intimation to the petitioners. There is no reference about it in the vigilance enquiry report. The conduct of the committee to use certain circumstances without allowing the petitioners even to contest such contrary record is clearly in defiance of the observations of the Supreme Court in the matter of ***Sayanna Vs. State of Maharashtra and ors. (2009) 10 SCC 268.*** If at all the committee wanted to use such record of the other validity holders and was to make comment on that, the interest of justice would have been met by putting the petitioners to notice that the committee was intending to use such record, and the inferences ought to have been drawn by extending an opportunity to the petitioners to meet such record dugged out by the committee on its own.

12. Be that as it may, Krishna's file made available to us demonstrates that a vigilance enquiry was conducted and by a reasoned order he was held entitled to have a certificate of validity. True it is, as is being submitted by the learned A.G.P., the original order is a computer output having printed material but keeping the blanks for inserting the particulars of the evidence in hand. However, in our considered view, when the committee is headed by persons, who may not be having legal acumen and it is a matter of decision to be taken by the scrutiny committee which in the matter of Krishna was comprising of four individuals, it would not be appropriate to expect the committee to have written the order as is expected of the officer exercising a

judicial power. The original record clearly demonstrates that the school record was duly verified by the vigilance officer and each of these extracts contain an endorsement of the vigilance officer about having verified it from the original record.

13. True it is that Krishna had relied upon the validities of the persons who were not related to him by blood from the paternal side. However, the original papers would clearly indicate that even in the vigilance enquiry report it was expressly indicated that those two individuals Sainath Shivaji Gopuwar and Nagesh Dattaram Lakhamawar were Krishna's maternal side cousins. The order passed by the committee in Krishna's matter though is not an ideal one, it is well nigh clear that a vigilance enquiry was conducted. There was a detailed report. The school record was collected, duly verified and by recording reasons he was held entitled to have a certificate of validity. The stand of the committee regarding Krishna having practised fraud and so was by the other validity holders apart, once it is seen that he was granted a certificate of validity by following due process of law, the petitioners are entitled to derive its benefit in the light of the decision in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*.

14. So far as non disclosure of the earliest invalidation of Potanna, we have been consistently holding that the orders of invalidation would only operate *in personam* and not *in rem*. Those will bind only the individual claimant. We have been also observing that when it is a matter of proving a tribe or caste claim and the burden is cast upon the claimant under Section 8 of the Maharashtra Act XXIII of 2001, even if a member of the family is unable to discharge the burden, some other family member may be able to do so, by leading cogent and convincing evidence. Allowing such invalidation to operate *in rem* would be hazardous and would put the other blood relatives to a serious prejudice. These claim proceedings cannot be treated as the claims in representative capacity so as to bind every

member of the family/blood relative. Precisely for this reason, assuming for the sake of arguments that the validity holders had deliberately concealed invalidation of Potanna Gangadhar, that would not vitiate the validities obtained at a later point of time.

15. In the light of above, the impugned order refusing to extend the benefit of validities to the petitioners is not sustainable in law.

16. The writ petition is partly allowed. The impugned order is quashed and set aside. The petitioners are held entitled to receive certificates of validity of belonging to '*Mannervarlu*' scheduled tribe in the prescribed format.

17. Though it is almost 6 pm, the petitioner no. 1-Pooja Govind Gattuwar having been allotted a college and is supposed to file the certificate of validity latest by tomorrow, we request the respondent-committee, to issue her the certificate of validity during the course of the day. The validities shall be subject to the final outcome of the matters which the committee has decided to reopen.

18. The petitioners shall not claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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