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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.786/2011

Dinesh Lalji Wagh.

...Petitioner..

Versus

Scheduled Tribe Certificate
Scrutiny Committee, Nashik.

...Respondent...

.....

Shri Mahesh S. Deshmukh, Advocate for petitioner.

Shri P.S. Patil, AGP for respondent.

.....

**CORAM: S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE: 27.07.2017

ORDER :

1] Heard both the sides. Perused the order passed by the scrutiny committee impugned in this petition.

2] The petitioner relied upon the certificate of validity issued to his real sister. Dinesh Lalji Wagh is the petitioner, who applied for verification of his tribe

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claim as belonging to 'Thakur' scheduled tribe. In support of his claim, he relied upon the order of the Scrutiny Committee, Nashik and the certificate of validity issued to his sister Ambika Lalji Wagh. There was an affidavit filed by Ambika Lalji Wagh dated 25.5.2005 mentioning that her claim was validated by the Scrutiny Committee, Nashik, the case details were given and the affidavit asserted that the present petitioner – applicant is her brother.

3] In discarding certificate issued to the real sister and invalidating the petitioner's claim, the committee has gone into not only the historical and anthropological background of the tribe, the requirement to subject everybody to cultural affinity test, but when it came to reliance on this certificate of validity issued to the real sister, it is stated that the scrutiny committee has assigned cogent reasons for discarding it.

4] It is common ground that the certificate of validity was issued to the petitioner's real sister. The documents at Sr.Nos.24 and 25 are photo copies of the certificate of validity and the affidavit of real sister. The committee observes that the certificate of validity

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may have been issued, but it was in pursuance of the order passed by this Court in Writ Petition No.3153/1996. A Special Leave Petition was filed against this judgment and order and that was allowed and the matter was sent back to this Court. The Supreme Court in the case of *State of Maharashtra & others v. Ravi Prakash Babulsing Parmar & another* in Civil Appeal No.789/2005 held that certificate of validity issued to the relatives cannot be relied upon in the event there is an established fraud or that there is mis-representation. Thereafter, the Hon'ble Supreme Court's judgment in the case of *Kum.Mdhuri Patil (AIR 1995 SC 94)* is relied upon to record a stereo-type conclusion namely each case has to be considered in the backdrop of its own facts. That is how the certificate of validity issued to the real sister has been brushed aside.

5] We do not know how in the same family, there could be facts peculiar to the sister and which would not be so peculiar or applicable to the brother, and that too to the real brother. Such artificial distinctions, which are carved out by the Scrutiny Committee, have not been supported by any legal basis or principle. The only

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principle or exception, that is carved out, when such certificates of validity issued to close relatives from the paternal side are relied upon, is that in the event the claim of the real brother or close relative from the paternal side is found to be vitiated by a fraud or that there is a mis-representation, then that certificate loses its evidentiary value. Pertinently, such a finding has not been recorded. There is no conclusion that the applicant - petitioner before us or his real sister or the family misled the committee in the past and obtained a certificate of validity. There is no proof of any fraud as such. In the circumstances, this convenient reasoning, which is recorded in every case and order cannot be sustained. Once we have found that it is without any legal basis or foundation, then all the more we cannot sustain the impugned order. The only contention of the petitioner's counsel, therefore, deserves acceptance that the committee shall now proceed to issue a certificate of validity to the petitioner as well.

6] We quash and set aside the impugned order passed by the respondent - scrutiny committee. The Scrutiny

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Committee is directed to issue a certificate of validity to the petitioner within a period of eight weeks from the date of receipt of copy of this order. The petition is disposed of accordingly. No costs.

(MANGESH S. PATIL, J.) (S.C. DHARMADHIKARI, J.)