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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7845 OF 2019

Omkar Changdev FulkarPetitioner

V/s.

State of Maharashtra & Ors.Respondents

Mr. R.K. Mendadkar, Advocate for the petitioner.

Mrs. Ashwini A. Purav, AGP for the State-
respondents no.1, 2 and 4.

Mr. S.S. Patwardhan, Advocate for respondent no.3.

Ms. Manisha Varma-Principle Secretary, Tribal
Development Department present.

Mr. Laxmikant Dhoke, Deputy Secretary, Tribal
Development Department present.

Mr. Anand Raite, Commissioner, CET present.

Mr. Shiv Prasad, M.L.O., Nashik present.

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Mr. Arun Padekar, Assistant Law Officer, Nashik present.

Mr. Ajjay Sathe, Assistant Law Officer, Nadurbar present.

CORAM : S.C. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Tuesday, 16th July, 2019.

P.C. :

1. After having heard Mr. Mendadkar, at some length and perusing with his assistance the writ petition and all the annexures thereto, we are of the view that the Certificate of Validity granted to the petitioner's father dated 19.03.2008, copy of which is annexed at Exhibit-B to the petition, was enough to grant similar certificate to the petitioner. Firstly, the Committee commits obvious and typographical error in not referring to the

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correct name of the petitioner's father. The petitioner's father is Changdev N. Fulkare. There was a common ancestor. He had two sons, Changdev and Dnyandev. The Committee in the impugned order refers to both Changdev and Dnyandev as petitioner's Uncles, whereas, Changdev is petitioner's father.

2. The certificate of validity granted to the petitioner's father was not found to be of any probative value. The reason appears to be that, there was no school record available in relation to petitioner's father, Changdev. It is in order to test the correctness of the submission of Mr. Mendadkar that, we had called for the original records. In the original records, there is a certificate from the Zilla Parishad, Primary School, Walan, Taluka-Rahuri, District-Ahmednagar

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certifying that the petitioner's father, Changdev entered that school and was a bonafide student of that school. A copy of that certificate which is there in the original records of the Committee is annexed at page-37 of the petition paper-book. It is apparent from the same that, the said Changdev was born on 27.7.1967. He was in the School from 29.6.1972 till 21.6.1980 after which the said, Changdev is supposed to have left the school for education elsewhere. The education elsewhere appears to be in the middle school. That middle school is run by Ahmednagar Zilla Parishad. It is a Residential High School. That Residential high school was also attended by Changdev, the father of the petitioner. It is based on that, certificate of validity was issued to Changdev and that is dated 19.03.2008. Even a Certificate of Validity has been

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issued to Dnyandev and his branch. Dnyandev had also attended the school but the impugned order recites that the school records in relation to Dnyandev are in torn and mutilated condition and therefore not available. The learned AGP was therefore unable to support the conclusion that the petitioner has not established his claim as belonging to Hindu-Mahadev-Koli Schedule tribe. This Certificates of Validity relied upon are in all five in number. When five persons in the same family (close relatives from the paternal side) have been issued the Certificate of Validity, then it is inconceivable that the other family members having no such Certificate of Validity would by itself and simplicitor dilute the probative value of the other Validity Certificates issued. The Committee has doubted the Certificate of Validity on the ground

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that, there are other members of the family in relation to whom entries are mixed (Hindu-Koli/Hindu-Koli-Mahadev) and it is stated that there is a cousin grandfather of the petitioner, Damodar Baburav Fulkar in relation to whom the school records were accepted and the school records do not indicate or support that such a person attended the school. The statement of one, Ganesh Ambadas Fulkar has been recorded. It is in relation to these persons that the entries have been claimed to be doubtful and there are over writings and insertions in the columns pertaining to caste/tribe. It is also recorded that, there are mixed entries and in 1937, 1943, 1959, 1961, 1962, 1965 and 1966, the entries are Hindu-Koli and there are entries Hindu-Mahadev-Koli in the years 1966, 1994, 1995. Pertinently, Hindu-Mahadev-Koli is an

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entry in 1960 and 1962. The tribe is known as Hindu-Mahadev Schedule Tribe. Merely because the description is in the aforementioned terms, does not mean that all Certificates of Validity relied upon have lost their probative value. Infact, the Committee doubts all documents by holding that, in so far as this family is concerned, none of the pre 1950 entries denote the tribe as Mahadev-Koli or Koli-Mahadev. It is only post 1950 documents that one finds the entry or remark as Mahadev-Koli instead of Koli. This is an deliberate and intentional act. However, in the entire order, we have not been able to find anything which would pinpoint the role of the Validity Certificate holders including the father of the petitioner, in the alleged acts of mis-representation.

3. We do not think that the Committee has proceeded to issue any show cause notice to Changdev. The mere issuance of the show cause notice would not in any event suffice and one would be required to prove fraud and mis-representation so as to nullify the documentary evidence.

4. In the circumstances, the order of the Committee is perverse. It is vitiated by total non-application of mind to the relevant and germane piece of evidence particularly the Certificate of Validity issued to Changdev, who is erroneously referred to as the cousin uncle. On the other hand, Changdev is the father of the petitioner.

5. For the aforementioned reasons, we quash and set aside, the order of the Scrutiny Committee.

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On par with Changdev, his son Omkar shall be issued a Validity Certificate within a period of 10 days from the date of communication of this order.

6. Rule is made absolute in terms of prayer clause (a).

7. We are informed that, the petitioner-Omkar Changdev Fulkare has appeared for the professional courses and has been granted admission for the Academic Year 2019-20 in the fourth respondent college against the reserved seat. The order of this Court shall be treated as Certificate of Validity validating the claim of the petitioner as belonging to Koli-Mahadev Schedule Tribe. The Common Entrance Test Cell-respondent no.3 shall act on the authenticated copy of this order. The

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Certificate of Validity on being issued by the Scrutiny Committee as directed above, shall be produced before the Common Entrance Test Cell within a period of four weeks from today.

8. Let the petitioner continue his education in the respondent no.4 College. However, we clarify that this order is passed subject to the power of the Scrutiny Committee to reopen the case of Changdev and Dnyandev and in the event these cases are reopened and fraud is established, the consequences would be obvious. In the event, Changdev's Certificate is confiscated, then all consequences shall be visited on the petitioner as well. Thereafter, petitioner cannot claim any equities.

(SANDEEP K. SHINDE J.)

(S.C. DHARMADHIKARI, J.)