

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE**

WRIT PETITION NO.11356 OF 2013

Sainath Krishna Mane & another ... Petitioners

Vs

State of Maharashtra & others ... Respondents

Mr.R.K. Mendadkar with Ms.Tejaswini Bhamare for the Petitioners

Mr.B.V. Samant, AGP, for Respondent Nos.1 & 2

Ms.Namrata Kadam h/f Mr.Vijay Killedar for Respondent No.3

**CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

DATED: JANUARY 10, 2020

P.C.:

1. This Writ Petition challenges order dated 23.10.2013 of the Scheduled Tribe Certificate Scrutiny Committee, Pune Division, Pune. The petitioners before us claim that they belong to Mahadev Koli Scheduled Tribe.
2. The Tribe Certificate issued by the Competent Authority was forwarded to the Scrutiny Committee for verification and scrutiny of the underlying claim by a communication of 13.2.2006.

3. The Tribe Certificate in this case is dated 6.7.2005 whereas the forwarding letter is of 13.2.2006 but till 23.10.2013, the Committee found no time to pass an order invalidating the claim.

4. The Petitioner No.1 is working with the Zilla Parishad, Solapur, as an Assistant Teacher and appointed against a reserved post on 21.6.2000.

5. During the course of arguments before us, reliance was placed on the Certificate of Validity issued to Dinkar Krishna Mane, brother of petitioner No.1 and father of petitioner No.2.

6. The Committee has not allowed the petitioners to rely upon this Certificate of Validity on the ground that when Dinkar Krishna Mane was issued the Certificate of Validity, he had suppressed material facts.

7. On such an argument canvassed by Mr.Samant, we passed the following order on 6.1.2020:

“1. Let Mr.Samant take instructions and inform this Court as to whether any steps have been taken in order to cancel the Validity Certificate of Dinkar Krishna Mane, brother of petitioner No.1 and father of petitioner No.2. If that certificate is allegedly vitiated by suppression of material facts, then,

neither Dinkar Mane or anybody claiming through him can be entitled to the benefit of reservation. By now, we expected action to be taken against Dinkar Mane but from the affidavits placed on record, it is not clear whether the Committee has taken any further steps. The law enables the Committee to issue show-cause notice to Dinkar Mane calling upon him to show cause as to why his Certificate of Validity should not be cancelled for suppression of material facts. There are no details of such a show-cause notice having been issued to Dinkar Mane or issued and pursued in right earnest.

2. We have seen that the petition is pending in this Court for more than six years. Now, this petition has entered its 7th year. If Dinkar Mane has not been deprived of the Validity Certificate in his favour, then, relying on that, his brother, petitioner No.1 and his niece, petitioner No.2, would be entitled to similar Certificate of Validity albeit with conditions attached to it. We would pass that order if Mr.Samant has no instructions.

3. S.O. to Friday, the 10th January, 2020, to be listed on supplementary board.”

8. Mr.Samant informs us very fairly that till date, no steps have been taken to issue a show-cause notice to Dinkar Krishna Mane calling upon him to show cause as to why the Certificate of Validity issued in his favour should not be cancelled on account of suppression of relevant and material facts by him.

9. Mr.Samant says that the show-cause notice may be issued in near future but presently no such notice has been issued. In the impugned order, the Committee does not dispute that the said

Dinkar Krishna Mane is the brother of petitioner No.1 and father of petitioner No.2. When reliance was placed upon the Certificate of Validity issued to Dinkar Krishna Mane way back on 2.6.2005, the reasoning of the Committee is that the Certificate of Validity has no probative value because the oldest record shows that as against the caste column, the word "Koli" appears. That is prior to 1950, i.e., before the first Presidential Order of 1950 notifying the Scheduled Tribes. The said fact did not appear to have been noticed while issuing the Certificate of Validity to Dinkar Mane. The Committee says that the detailed enquiry carried out in the instant case would enable it to negate the claim. However, as far as issue No.4 is concerned, it reads as under:

"Whether the ratio of the validity certificate of one Shri Dinkar Krushna Mane can be applied in the instant case?"

As regards this issue, the Committee opines that it is true that the Certificate of Validity has been issued to Dinkar Krishna Mane, who is the father of petitioner No.2 and real brother of petitioner No.1. However, the record pertaining to the Certificate of Validity issued to Dinkar Krishna Mane was produced. The Committee observes that this Certificate of Validity is vitiated

because there is suppression of facts. The facts are that every document prior to 1950 shows the entry as 'Koli'. That was never placed before the Committee in the case of Dinkar Krishna Mane. There is clinching evidence in this case and of the year 1915 in the form of entries in the caste column. All of them are 'Koli'. This is a vital piece of evidence placed on record by the enquiry officer. That was placed in the present case and not in the case of Dinkar Krishna Mane. Hence, according to the Committee, the Certificate of Validity issued to Dinkar Krishna Mane has lost its probative value.

10. To our mind, it would be fair, just and proper in such cases to give an opportunity to the litigant or the applicant before the Committee to meet such a case. It is not the petitioners, who are alleged to have suppressed the facts but the said Dinkar Krishna Mane. The Committee could have postponed the enquiry and after issuing notice to Dinkar Krishna Mane, taken up all the cases together. It could have issued a Certificate of Validity to the present petitioners based on their relationship and the Certificate of Validity issued to Dinkar Krishna Mane. The Committee does neither and straightaway rejects the claim. This is no way of

discarding a vital piece of evidence nor its probative value is lost only because the Committee assumes that there is suppression of facts by Dinkar Krishna Mane. Ultimately, there has to be a finding of suppression of facts. That finding can be arrived at on a proper enquiry in which Dinkar Mane is allowed to participate and meet the specific allegation. In the absence of any show-cause notice to Dinkar Krishna Mane, now, questioning the Certificate of Validity issued in this case and that too, after a lapse of eight years and more, would certainly enable us to hold that the Committee has not performed its duty in accordance with law. It has failed to adhere to the principles of natural justice. It has also failed to consider the valid documentary piece of evidence and the reasons for discarding the same cannot be accepted.

11. Although Mr.Mendadkar would pray for issuance of Certificate of Validity to both the petitioners by relying on the Certificate of Validity issued to Dinkar Krishna Mane, we think that in such matters, the larger public interest should not suffer. In ***Kumari Madhuri Patil vs. Additional Commissioner, Tribal Development*** reported in **AIR 1995 SC 94**, the Supreme Court has noted that there is a tendency to grab the benefits and

concessions meant for genuine and real Scheduled Tribes. There are cases of unscrupulous applicants abusing the process and obtaining reliefs or concessions although they do not belong to the Scheduled Tribe or fail to establish and prove their claim in accordance with law. The law, namely, the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, 'the Maharashtra Act No.XXIII of 2001') obliges the applicant to establish and prove his claim. The burden is on the one who asserts or avers that he belongs to Scheduled Tribe or Scheduled Caste and not the State to refute the same. The initial burden being cast on the applicant, we do not think Mr.Mendadkar is justified in contending that even if the Certificate of Validity issued to Dinkar Krishna Mane is termed to be vitiated on account of suppression of facts by him or suppression of relevant and material documentary evidence, then, it is the larger public interest that suffers. There is a difference between power of recall and power of review. The Committee may not possess the power of review but if the Committee is apprised of the fact that its jurisdiction has been abused and it has been

misled into granting a Certificate of Validity to the Applicant, although material facts have been suppressed from the Committee, then, there is certainly a power or jurisdiction vesting in the Committee to recall such orders. If there are cases of miscarriage of justice, as has been noticed in this case, then, the Committee is not powerless or helpless and to hold so, would make a mockery of the rule of law.

12. Therefore, we direct the Committee to issue a show-cause notice to Dinkar Krishna Mane within two weeks from today and call his response thereto so as to reach the Committee within two weeks from the date of receipt of the show-cause notice by the said Dinkar Krishna Mane. After the response or reply is received, the Committee shall take up the claim of Dinkar Krishna Mane together with the case of the present petitioners. The Committee shall then peruse the entire record and if there is any material adverse to the interest of the present petitioners and Dinkar Krishna Mane, specifically bring it to their notice and invite their response to the same. The Committee should not rely on any adverse material unless it complies with the principles of natural justice. While we quash and set aside the impugned order, we

direct the Committee to pass a fresh order in accordance with law after the mandate of Maharashtra Act No.XXIII of 2001 is followed. The Committee must give a personal hearing to all the affected parties and pass a speaking order.

13. The entire exercise be completed by the Committee within a period of four months from today. No extension shall be granted. Till the Committee completes the exercise, as directed by us, the petitioners' employment with respondent No.3 shall not be terminated only on the ground of want of production of Tribe Validity Certificate. We clarify that we have not expressed any opinion on the rival contentions. Our order should not be construed as an expression of opinion particularly, that there was a suppression of material facts by this family.

14. The Writ Petition is disposed of accordingly. No order as to costs.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

Vishwanath
S. Sherla
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