

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

924 WRIT PETITION NO.9057 OF 2019

Rohit s/o Sanjay Sarge  
Age : minor, occ : education  
R/o Hasala, Taluka Ausa,  
District Latur.  
Through father and natural  
guardian  
Sanjay s/o Digambar Sarage  
Age : 45 yrs, occ : service  
R/o as above.

Petitioner

versus

1. The State of Maharashtra  
Through its Secretary,  
Agriculture, Animal Husbandry,  
Dairy Development and Fisheries  
Department.
2. The Scheduled Tribe Caste  
Certificate Verification Committee  
Aurangabad.  
Through its Member Secretary,  
Aurangabad.
3. The Commissioner and Competent  
Authority, Commissionerate  
Common Entrance Test Cell,  
Government of Maharashtra,  
8<sup>th</sup> Floor, New Excelsior Building,  
A.K. Naik Marg, Fort, Mumbai.

Respondents

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Mr. S.M. Vibhute, Advocate for the petitioner.  
Mr. S.S. Dande, A.G.P. for respondent Nos.1 and 2.

...

CORAM : **SUNIL P. DESHMUKH &  
ABHAY AHUJA, JJ.**

DATE : 15<sup>th</sup> January 2021.

**JUDGMENT :-**

1. Rule. Rule made returnable forthwith. Heard learned counsel for the petitioner as well as learned additional government pleader for the respondents.

2. Petitioner's claim to be of "*Koli Mahadev*" scheduled tribe has been decided in the negative by the committee.

3. Learned counsel Mr. Vibhute vehemently contends not only the father but father's first cousin have been issued validity certificates of being "*Koli Mahadev*". In both the cases vigilance had taken place and the same record which had been scanned by the vigilance in the matter of petitioner, had been taken into account and appreciated and no interpolation then had been found. However, with the change in committee members, the matter is being viewed differently. He submits that this is not permissible. He purports to refer to the caste rules wherein when blood relations on paternal side are issued validity certificate, vigilance may not be necessary, submitting that on that analogy no further inquiry could have been legitimately possible but such an inquiry has been taken into account to decline claim of the petitioner.

4. Learned Assistant Government Pleader submits that during vigilance in the matter of petitioner, it had surfaced that quite a few persons' tribe has been recorded as "*Koli*" who are stated to be related to the petitioner and that father of the petitioner has been issued validity certificate with reference to validity holders who are related to him not from paternal side and that in respect of record of tribe of father, there had been certain interpolations, and thus the decision ought not to be faulted with. He further purports to contend that the petitioner has not even been able to pass the affinity test.

5. Although this is being so submitted, fact remains that relationship of petitioner with the validity holders has not been disputed nor genealogy has been in dispute.

6. It would have to be considered that there is no denial of the factual position that as on the date, committee has not invalidated certificates issued to petitioner's aforesaid relatives, *albeit*, it has been referred to that matter is under investigation and much progress has been made.

7. It has been referred to that if proceedings for cancellation of caste validity holders are answered against such certificate holders, it would be open for the committee to issue show cause notice to petitioner, as to why validity

certificate granted to him should not be cancelled and keeping it open for the committee to take those proceedings to its logical end. The decisions even refer to that certificate issued to the petitioner, would be subject to outcome of proceedings for cancellation of validity issued in favour of his blood relatives.

8. It is further to be noted that the courts have time and again considered to that ethnic linkage is not a litmus test and would hardly be determinative. A decision of the Supreme Court in the case of *"Anand V/s The Committee for Scrutiny Verification and Others"* reported in (2012) 1 SCC 113, may be taken into account for said purpose.

9. It is indisputable position as on the date the certificates of validity holders relied on by petitioner are intact, albeit it is being referred to that the cases have been reopened.

10. It may not be out of place to consider that various division benches of this court in similar circumstances have issued directions to issue validity certificate to the petitioners taking into account Apoorva Nichale's [ 2010 (6) Mh.L.J. 401] case and several other cases making the certificates subject to decision in the reopened cases. In the circumstances, it would be appropriate that we follow the course charted by

various decision of division bench viz., writ petition No. 5641 of 2020 (*Kum. Maseera Parvin d/o Mohd. Asfaque Shaikh and Another V/s the State of Maharashtra and Others*), writ petition No. 9056 of 2019 (*Ganesh s/o Sudhakar Bodhgire V/s The State of Maharashtra*) dated 21<sup>st</sup> August, 2019, and a judgment of the Supreme Court in the case of “*Raju Ramsing Vasave V/s Mahesh Deorao Bhivapurkar and Others*” reported in (2008) 9 SCC 54.

11. Having regard to decisions, facts and circumstances and forgoing discussion, it appears to be expedient to set aside the impugned order while it is not in dispute that the petitioner’s father as well as his first cousin have been issued validity certificate and direct issuance of validity certificate to petitioner, which shall be subject to the outcome of the proceedings stated to have been taken up against the validity holders relied on behalf of the petitioner.

12. In the circumstances, impugned order dated 18<sup>th</sup> July, 2019 passed by respondent No. 2 Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is set aside. Respondent No. 2 Committee shall forthwith issue validity certificate to the petitioner as belonging to “*Koli Mahadev*” scheduled tribe. The certificate would be subject to decision that would be taken by the committee in the proceeding

stated to have been reopened of the validity holder relied upon on behalf of the petitioner. In case, said certificate is cancelled, then the petitioner may not be in a position to claim any equities and it would be open for the committee, if the committee is of the view that validity certificate obtained by the validity holder is by playing fraud, then the committee may resort to action against the petitioner as would be available in law.

13. Rule is made absolute accordingly. Writ petition is disposed of.

14. Parties to act upon authenticated copy of this order.

**(ABHAY AHUJA, J.)**

**(SUNIL P. DESHMUKH, J.)**