

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14805 OF 2021

NIRAJ NAGESH LAKHMAWAR THROUGH POWER OF ATTORNEY
HOLDER NAGESH DATTARAM LAKHMAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.M.Vibhute, Advocate for the petitioner.
Mrs.M.A.Deshpande, AGP for State.
Mr.K.C.Sant, Advocate for respondent No.4.

(CORAM : RAVINDRA V. GHUGE AND
S.G. DIGE, JJ.)

DATE : APRIL 1, 2022

PER COURT :

1. By an order dated 03.01.2022, this Court had recorded as under :-

"1. It is the contention of the learned counsel for the petitioner that the validity of caste of father of petitioner namely Nagesh Lakhmawar and uncle Shyam Dattaram Lakhmawar has been upheld by this Court. The said orders are annexed at Page Nos. 54 and 63 respectively to the petition.

2. Learned AGP seeks time to take instructions.

At his request, stand over to 21.02 .2022.

3. *Till the next date, ad-interim relief in terms of prayer clause "C". "*

2. The petitioner in this petition is Niraj s/o Nagesh Lakhmawar. His brother Atharva Nagesh Lakhmawar was the petitioner before this Court in WP No.273/2022. The tribe claim of both these petitioners with regard to Mannervarlu (ST), is invalidated.

3. By order dated 06.01.2022 passed in WP No.273/2022 by this Court (Coram : S.V. Gangapurwala and S.G.Dighe, JJ.), the learned Division Bench recorded in paragraph Nos. 2 to 9 as under :-

"2. The learned counsel for the petitioner submits that father of the petitioner had applied for validation of the tribe claim. The same was invalidated. He filed Writ Petition No. 1940 of 1990 before this Court. The Division Bench of this Court under order dated 06.03.1991 allowed the writ petition and directed the committee to issue validity certificate to him. Similarly, real uncle of the petitioner namely Shyam had also applied for the validity certificate. The same was invalidated. He filed Writ Petition No. 2079 of 1993 before this Court. The Division Bench of this Court under order dated 26.07.1993 allowed the writ petition and directed the committee to issue validity certificate to him. Thereafter, the paternal relatives of the petitioner are issued with the validity certificates by the committee. According to the learned counsel, contra entries which the committee relies upon were also

*subject matter of consideration in the earlier proceedings. According to the learned counsel, validity certificates issued to the near relatives is a relevant fact. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and Ors.** reported in 2010 (6) Mh.L.J. 401.*

3. *Mr. Tambe, learned A.G.P submits that the judgments of this Court in case of father of the petitioner and real uncle of the petitioner are before the judgment of the Apex Court in case of Madhuri Patil. The show cause notices are issued to the son and daughter of real uncle of the petitioner. There are contra entries on record. The same have been considered by the committee.*

4. *The relationship of the petitioner with the validity holders is not disputed. The father of the petitioner is issued with the validity certificate under the orders of this Court dated 06.03.1991 in Writ Petition No. 1940 of 1990. One real uncle of the petitioner namely Shyam is issued with the validity certificate under the orders of this Court dated 26.07.1993 in Writ Petition No. 2079 of 1993. Another real uncle of the petitioner namely Kisan is issued with the validity certificate by the committee. Son namely Pratik and daughter namely Neha of real uncle of the petitioner namely Kishan are issued with the validity certificates by the committee. Two sons and one daughter of another real uncle of the petitioner namely Narayan are also issued with the validity certificates by the committee.*

5. *The validity issued to the near relative is a relevant fact. It is submitted that some of the contra entries were subject matter while granting validity to the father of the petitioner and other paternal relatives.*

6. *In the light of the judgment delivered by this Court in case of father of the petitioner and real uncle of the petitioner, we pass the following order.*

7. *The committee shall issue validity certificate to the petitioner of "Mannervarlu" (Scheduled Tribe).*

8. *In case, the proceedings are reopened of the validity holders relied by the petitioner including judgment of this Court in case of father of the petitioner and real uncle of the petitioner, then the same would be subject to the decision that may be taken by the committee in validation proceedings reopened of the validity holders relied by the petitioner.*

9. *Writ petition is disposed of. No costs."*

4. Considering the law laid down in Apoorva Vinay Nichale (supra) and in view of the order reproduced above in the case of Atharva Lakhmawar, we find that both these biological brothers are identically placed.

5. As recorded in the order dated 06.01.2022 (reproduced above) ,
we are passing the following order :-

[a] The validity issued to the near relative is a relevant fact. It is submitted that some of the contra entries were subject matter while granting validity to the father of the petitioner and other paternal relatives.

[b] In the light of the judgment delivered by this Court in the case of the father of the petitioner and the real uncle of the petitioner, we pass the following order :-

[i] The committee shall issue a validity certificate to the petitioner of “Mannervarlu” (Scheduled Tribe).

[ii] In case, the proceedings of the validity holders relied upon by the petitioner are reopened, including the case of the father of the petitioner and the real uncle of the petitioner, the validity granted by this order would be subject to the decision that may be taken by the committee in the re-opened validation proceedings.

[c] This writ petition is disposed off. No costs.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)