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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

916 WRIT PETITION NO.131 OF 2023

Mr. Aryan S/o Arvind Kakulte,
Age: 18 years, Occu. Student,
R/o: "Silvernest", Plot No. 701, "B" Wing
JSPM College Road, Narhe, Pune,
District Pune

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. The Scheduled Tribes Certificate Scrutiny
Committee, Aurangabad Division,
Aurangabad, through its
Member – Secretary

...RESPONDENTS

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Mr S. R. Barlinge, Advocate for petitioner;
Mr S. K. Tambe, A.G.P. for respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 7th January, 2023

ORAL JUDGMENT : (Per : Ravindra V. Ghuge, J.)

1. Leave to correct prayer clause (B). Corrections be carried out forthwith.

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2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The petitioner has put forth prayer clauses (A) and (B), which read as under :-

“A] By a writ of certiorari or any other appropriate writ or order or directions in the like nature, the impugned judgment and order dated 30-11-2022 passed by respondent No. 2 – Committee (Exhibit-F) may kindly be quashed and set aside.

B] By a writ of mandamus or any other appropriate writ or order or directions in the like nature, respondent No. 2 – Committee be directed to issue validity certificate in favour of the petitioner as belonging to “Koli Mahadev” scheduled tribe.”

4. Having considered the strenuous submission of the learned Advocate for the petitioner and the learned A.G.P. appearing on behalf of the respondents, we are assisted in going through the petition paper book and the record available.

5. We have perused the family tree tendered by the petitioner along with his affidavit, before the authorities. We have also gone through the reported judgment in the case of **Yogesh Madhavrao Kakulte Vs. State of Maharashtra and anr., 2006 (3) Mh.L.J. 691**. The family tree indicates that said Yogesh Madhavrao

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Kakulte (supra) is the biological son of Madhavrao. Madhavrao is the son of Martandrao Tanhaji. The petitioner is the son of Arvind. Arvind is the son of Tejrao Sanduji and grandson of Sanduji Tanhaji. Sanduji is the son of Tanhaji. As such, Yogesh is the paternal cousin brother of the petitioner. He was granted validity by the High Court. His biological sister Savita Madhavrao is also granted validity by the High Court. The father of the petitioner, Arvind is granted validity by the High Court.

6. The learned A.G.P. submits that the authorities are moving a Special Leave Petition before the Hon'ble Supreme Court to challenge the validity granted to Arvind. Be that as it may, the Special Leave Petition is yet to be filed and Arvind is the biological cousin brother of Madhavrao. As such, there are four validity holders in the family tree from the paternal side, having been granted such certificates under the orders of the High Court.

7. Considering the above and in the light of the submission of the learned A.G.P. that, if the petitioner's father's validity, as granted by the High Court, is taken away by the Hon'ble Supreme Court, it would be a futile exercise to grant any relief to the petitioner, today. The answer to this contention lies in **Shweta**

Balaji Isankar Vs. State of Maharashtra and others, 2018

SCC OnLine Bom 10363, wherein this Court (Coram :- S. C. Dharmadhikari and Bharati H. Dangre, JJ.) had concluded in paragraph Nos.2 to 4 and 8, as under :-

“2. On the earlier occasion, we found that though the petitioner produced credible evidence in the form of certificates of validity issued to her real uncle Govind Sambhaji Isankar and which concededly has been issued way back on 5th December 2005 and another certificate of validity dated 5th September 2006 to his cousin uncle Ramdas Sambhaji Isankar, the Committee finds that the certificate of validity issued to the real uncle Govind, is not free from suspicion. It is held by the Committee in the impugned order that a notice to show cause has been issued to said Govind on 14th September 2017, calling upon him to show cause as to why this certificate of validity should not be cancelled as its issuance is vitiated by fraud or suppression of material facts by the said Govind.

3. On such a finding being rendered by the Committee, we called upon the learned AGP on the earlier two occasions to produce the record. We also indicated to the learned AGP as to how the certificate of validity is denied to the petitioner though she has established her relationship with the said Govind and only on the ground that a show cause notice has been issued, but no proceedings in

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furtherance thereof came to be initiated till date. The learned AGP sought time to file an affidavit. Now, the Joint Commissioner, Schedule Tribe Scrutiny Committee, Aurangabad has filed an affidavit in reply. That is taken on record. The said affidavit admits that the certificate of validity has been issued to her real uncle and cousin uncle of the petitioner. The affidavit admits that the petitioner relies heavily on these two documents, but clarifies that there is a suppression detected from the original record of the certificate holder and that is how a show cause notice has been issued to Govind. The show cause notice could not be taken to its logical end on account of the huge pendency of cases before this Committee. In all, 7,000 matters were pending on the date when this Joint Commissioner took charge and he has reduced the pendency by 2500 cases being decided. In the circumstances, he says that appropriate orders and directions be issued by this Court.

4. We are not impressed by this explanation and the justification not to proceed against a person who has perpetrated a fraud on the public. If it is a serious allegation and which is termed as fraud, then, it should have been taken to its logical end. Mere issuance of a show cause notice in the present case would not suffice for there are two certificates of validity relied upon. The only reason assigned in the impugned order to discard them, cannot be sustained. The justification in the above affidavit is also not

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enough to straightaway discard the certificates of validity issued in the family. It is conceded that other reasons assigned in the impugned order cannot be supported in law.

8. This order does not prevent the Committee from proceeding against Govind in accordance with law and needless to further clarify that in the event Govind's claim is invalidated, all the consequences shall be taken by the petitioner as well.”

8. In view of the above, we find that the petitioner is covered by the law laid down by this Court in **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1, Nagpur, 2010 (6) Mh.L.J. 401 : AIR 2010 (6) BOM R 21** and Shweta Balaji Isankar (supra). When the father, paternal uncle and paternal aunt have been granted validity certificates by the High Court, it is surprising that the Committee ventures to negate the claim of the petitioner. This leads to the conclusion that, though four paternal blood relations are granted validity for belonging to the ‘Koli Mahadev’ - Scheduled Tribe category, inclusive of the father of the petitioner, the petitioner would not belong to the ‘Koli Mahadev’ - Scheduled Tribe category. This is unconscionable. Such conclusions cannot be sustained. We have

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noticed several orders passed by this Court, wherein there are observations against the Committee for issuing orders, which have the trappings of high handedness. Such orders have been held to be unjustified and unjusticiable. Time has come for us to warn the Committee that, where there are plentiful validity certificates amongst the blood relatives, and more importantly having been granted by the High Court, the Committee cannot become adventurous in concluding that the son of the father, whose claim is validated, does not belong to the caste/tribe of his father.

9. In view of the above, this petition is partly allowed. The impugned order is quashed and set aside. The Committee shall issue a validity certificate to the petitioner upholding his claim of belonging to “Koli Mahadev” - Scheduled Tribe category, on or before 15/02/2023.

10. Needless to state, in the event, the authorities approach the Hon’ble Supreme Court for challenging the validity granted to the father of the petitioner and if the validity is cancelled by the Hon’ble Supreme Court, the consequences suffered by the father of the petitioner would befall upon the petitioner and he would

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also be liable to suffer the same, in the light of the paragraph 8 of the judgment in Shweta Balaji Isankar (supra).

11. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)

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