

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

WRIT PETITION NO. 420 OF 2022

Ashwin S/o Raghunath Mature,
Age : 19 years, Occu. : Education,
R/o Kabirwadi, Tq. Degloor,
District Nanded. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Aurangabad
Through its Dy. Director (R),
Aurangabad.
3. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Kinwat at
Aurangabad
Through its Dy. Director ®.
4. The Commissioner & Competent Authority,
Commissionerate of Common Entrance
Test Cell, Government of Maharashtra
8th Floor, New Excelsoir Building,
A. K. Naik Marg, Fort, Mumbai. .. Respondents

Shri R. K. Mendadkar, Advocate h/f Shri Sagar S. Phatale,
Advocate for the Petitioner.

Shri A. A. Jagatkar, A.G.P. for the Respondent Nos. 1 to 4.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

DATE : 30TH JUNE, 2023.

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

. Heard learned counsel for the respective parties for final disposal at the admission stage.

2. The petitioner is assailing the judgment and order dated 15.12.2021 passed by the respondent No. 2/Scrutiny Committee thereby invaliding his tribe claim of 'Koli Mahadev (Scheduled Tribe). He was issued with a tribe certificate which was referred to the Scrutiny Committee.

3. It was held by the Scrutiny Committee that the school record and the revenue record of the blood relatives was not matching with the claim asserted. There were contrary entries of relatives Savitra, Kishan, Sheshrao, Triveni. The school record of Eknath and Nagnath was found to be tampered. The record revealed that the petitioner and his relatives were Koli, but to derive the benefits the tribe was recorded as Koli Mahadev. Their place of residence was also incompatible with the place/native of the persons of that tribe.

4. The reliance upon the validity holders of relatives of the petitioner Eknath and Nagnath was found to be unsafe for the reason of tampering. The tribe validity issued in favour of his father Rangnath was also discarded because of false genealogy. The affinity test also did not find favourable to the petitioner.

5. The petitioner assails the order mainly on the ground of

parity. His father Raghunath Ramrao Mature was issued the validity certificate, which is at page 16 of the petition. The vigilance enquiry was conducted and all the material was considered before issuing the validity. There is no dispute about the relationship.

6. We are guided by the law laid down by the Supreme Court in the case of **Maharashtra Adavasi Thakur Jamat Swarakshak Samiti Vs. State of Maharashtra and others** reported in **2023(2) Mh.L.J. 785** in the following paragraphs.

"22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil's case¹ or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of Kumari Madhuri Patil¹, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the

Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.

23. In a given case, the Scrutiny Committee may be satisfied that the caste validity certificate relied upon by the applicant has been issued after making a lawful enquiry. But if the Scrutiny Committee is of the view that the applicant has not clearly established that the person to whom caste validity certificate produced on record has been granted is his blood relative, in terms of subrule (2) of Rule 12 of the ST Rules, the Caste Scrutiny Committee will have to refer the case for conducting an enquiry through Vigilance Cell. In such a case, the Vigilance Cell can be directed by the Scrutiny Committee to conduct an enquiry limited to the relationship claimed by the applicant with the person in whose favour the caste validity certificate has been issued. If, on the basis of the report of the Vigilance Cell, the Scrutiny Committee is satisfied that the person in whose favour caste validity certificate has been issued is a blood relative of the applicant and lawful enquiry has been conducted before issuing the validity certificate, the Scrutiny Committee will have to issue validity certificate even if the applicant does not satisfy the affinity test. For example, if it is established that the father or grandfather of the applicant has been given a caste validity certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee cannot hold that the grandfather or father of the applicant, as the case may be, belongs to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established, the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee."

7. The above guidelines are applicable to present case. Father was issued with validity certificate after conducting due enquiry by vigilance cell. Reasoned order was passed by Scrutiny Committee to validate the claim. The Scrutiny Committee discriminated the petitioner in discarding the validity issued in favour of his father. The identical material was examined by the Scrutiny Committee in case of the father of the petitioner. Therefore, findings recorded by the Scrutiny Committee are unsustainable and liable to be quashed and set aside.

8. The Committee did not accept the validity of the father because a false genealogy was produced at the time of his scrutiny. It was found that the material facts were suppressed and on false documents, the validity was procured. Therefore the Scrutiny Committee proposed to review caste claim of Rathunath. Obviously, we have not been called upon to assess validity of Raghunath. We cannot comment upon the legality of the decision of the Committee to reopen the case of claim of Raghunath.

9. We are informed by the learned Assistant Government Pleader that the validity certificate issued to the father of the petitioner has not been reopened yet. Therefore, we are of the considered opinion that the petitioner is entitled to receive validity conditionally.

10. In the light of the above, we dispose of this petition partly on following terms.

- A. The judgment and order dated 21.12.2020 passed by the respondent No. 2/Scrutiny Committee is quashed and set aside.
- B. The respondent No. 2/Scrutiny Committee shall issue validity certificate of 'Koli Mahadev' (Scheduled Tribe) to the petitioner within a period of two (02) weeks from today.
- C. The validity certificate issued to the petitioner shall be subject to the decision of the Committee in case of revocation or cancellation of certificate of validity holder, related to petitioner.
- D. The petitioner shall not claim any equity in case the validity certificate of the blood relative is revoked or cancelled.
- E. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/June 23