



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4735 OF 2022

Jairam S/o Pandurang Nagalwad,
Age : 24 years, Occu. : Student,
R/o. Ritha, Tq. Bhokar,
Dist. Nanded

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai – 32.
- 2] Deputy Director (Research)
and Member Secretary
Scheduled Tribe Certificate
Verification Committee, Kinwat,
Headquarter Aurangabad,
Near Saint Lawrence High School,
Town Centre, CIDCO, Aurangabad,
Dist. Aurangabad
- 3] Swami Ramanand Teerth
Marathwada University,
University Campus, Nanded,
Through its Registrar
- 4] Guru Govind Singhji Institute of
Engineering and Technology,
Vishnupuri, Nanded,
Through its Registrar

.. Respondents

...
Advocate for petitioner : Mr. C.R. Thorat
AGP for the respondents 1 and 2 : Mr. K.N. Lokhande
Respondents 3 and 4 - served (absent)
...

CORAM : **MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : **07 DECEMBER 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Rule. Rule is made returnable forthwith. With the consent of the parties, the petition is heard finally.

2. The petitioner is challenging the order of invalidation whereby the respondent - scrutiny committee has confiscated and cancelled his Mannervarlu scheduled tribe certificate.

3. The learned advocate for the petitioner would submit that petitioner's real brother - Narendra possesses a certificate of validity issued by the committee by following due process of law and also by undertaking a vigilance enquiry. It recorded cogent reasons pointing out as to how he was entitled to have a certificate of validity. He would submit that the committee has illegally refused to extend its benefit to the petitioner by observing that he had obtained certificate of validity concealing couple of invalidities in the family, of Kavita Subhash Nagalwad and Jayashree Subhash Nagalwad. Even if it is assumed that the invalidities were not disclosed, that would not per se amount to concealment of contrary record. The decision of invalidation would not bind the petitioner or his brother. Independent enquiry was undertaken and he was found entitled to have a certificate of validity. He would, therefore, submit that apart from the fact that there are few other validities in the family, the petitioner is entitled to have a certificate of validity till the time the validity possessed by his brother - Narendra

continues. He would then submit that the petitioner is ready to run the risk of facing the consequences as contemplated in the matter of ***Shweta Balaji Isankar Vs. State of Maharashtra and others (writ petition no. 6320 of 2017)***.

4. The learned advocate would thereafter submit that the committee has relied upon the revenue record of couple of individuals of 1352 *Fasli* (1942 A.D.) wherein the entires were recorded as Munurwar. However, in reply to the vigilance report, the petitioner has expressly denied any relationship with these two individuals and in the absence of any other proof, the committee could not have resorted to this revenue record.

5. The learned advocate for the petitioner would submit that the committee has based its decision also on the basis of few entries in the school record of petitioner's relatives wherein they have been described as Munnarvar. He would submit that there is no tribe with that nomenclature. This Court had an occasion to consider such aspect in the matter of Sanjay Haribhau Munurvar in writ petition no. 3223 of 2002 decided on 13-09-2017. It was a matter wherein the contrary record relied upon by the committee for discarding a similar claim describing them as Munnervarlu. This Court had specifically observed that in the absence of any tribe with that nomenclature, it could not have been treated as a contrary entry. He would, therefore,

submit that since there is no tribe by name Munnarvar, the contrary record of the relatives with that nomenclature could not have been treated as inconsistent with the claim.

6. The learned advocate would, lastly, submit that the committee's approach of resorting to some statement made in the sale deed executed by the petitioner's father stating that he was not belonging to any tribe also is inconsequential. The caste cannot be renounced in this manner. In all probability, it could be a erroneous statement may be objectively made to come out of the wriggle of the provisions of the Maharashtra Land Revenue Code which prevents transfer of tribal land.

7. The learned AGP would submit that the committee has given cogent and plausible reasons for refusing to extend the benefit of validity possessed by petitioner's brother - Narendra. Narendra was not granted a certificate of validity by following due process. The committee has rightly relied upon the decision in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***. The validity certificates were obtained by concealing initial invalidities of Kavita Subhash Nagalwad and Jayashree Subhash Nagalwad. At least Kavita Subhash finds place in the genealogy prepared under the signature of petitioner's father during vigilance enquiry. Similarly, he

would submit that though the petitioner has been denying any relationship with the two individuals whose revenue record of survey no. 128 of 1352 *Fasli* could be traced, Maruti Jayram Nagalwad could be seen in the genealogy prepared under the signature of the petitioner's father. The committee could trace out inconsistent record of blood relatives wherein they were described as Manurvar, Munnarvar and Mannervar. By concealing all such contrary entries, Narendra was successful in getting his tribe certificate validated. The committee has decided to undertake a fresh scrutiny by issuing him notice. He would then submit that the committee also could trace that the petitioner's father in the sale deed executed by him on 06-01-2016 expressly declared to be not belonging to any tribe.

8. We have considered the rival submissions and perused the papers.

9. There is no dispute about the fact that Narendra was granted a certificate of validity who happens to be the petitioner's full brother. As far as the stand of the committee that Narendra had obtained certificate of validity by concealing the invalidities of Kavita Subhash and Jayashree Subhash is concerned, in our considered view, it would not be a relevant circumstance. Any decision in their matters would not bind the other blood relatives. If by virtue of section 8 of the Maharashtra Act No. XXIII of 2001, the burden lies on the

claimant to substantiate that he belongs to a particular caste or tribe, even if one of the family members fails to substantiate it, that decision would not operate as *res judicata* against the other blood relatives which obviously would not be parties to that invalidation proceedings.

10. Again, if a blood relative in spite of initial invalidation, is able to discharge the burden obviously he would be entitled to claim validation of his tribe certificate. Therefore, the observation of the committee that Narendra had obtained certificate of validity concealing the invalidities in the family, would not be legally sustainable.

11. As far as the observation of the committee regarding the revenue record of couple of individuals of 1352 *Fasli*, the petitioner in reply to the vigilance report had expressly denied any relationship with these two individuals.

12. The learned AGP tried to demonstrate that in spite of such denial, one of these two individuals by name Maruti Jayram Nagalwad could be seen in the genealogy prepared by the vigilance officer under the signature of the petitioner's father though he admits that the other individual Jalba Poshatti Nagalwad cannot be seen in the genealogy.

13. If it is a matter of revenue record, the committee could have, but has not taken any steps to ascertain as to if Maruti Jayram Nagalwad whose revenue record it was relying upon is the same as is

appearing in the genealogy. There could be an issue of identity. The committee could have traced if the petitioner or his family members have inherited any portion of the land survey no. 128. No such exercise has been undertaken. Therefore, merely because the genealogy points out existence of one Maruti Jayram, in the absence of any evidence linking that individual with the revenue record collected by the committee, it could not have used the revenue record to discard the petitioner's claim.

14. True it is that there are some contrary entries of family members as described herein-above like, Manurvar, Munnurvar and Mannervar. Though Munurvar and Mannervar are also recognized tribes in the Presidential Order, Munnurvar is not a tribe in the Order and as has been observed in the matter of ***Sanjay Haribhau Munnur Vs. The State of Maharashtra and others*** (writ petition no. 3223 of 2002) to which one of us (Mangesh S. Patil, J.) was a party, in the absence of any entry and the nomenclature elsewhere in the Presidential Order, those could not have been treated as adverse entries.

15. What remains is that there would be isolated entries of blood relatives wherein in the school record they were described as Manurvar and Mannervar. Under section 8 the burden to be discharged by the claimant is on the basis of preponderance of

probabilities and strict proof is not necessary. Since there are other favourable entries, the approach of the committee to pick and choose only few contrary entries and discard the claim is not appropriate.

16. Again, as regards the declaration in the sale deed executed by the petitioner's father that he did not belong to any tribe, in our considered view, this circumstance can be looked at from two angles. There is every possibility that in order to facilitate the disposal of the land which otherwise would not have been easily possible since there is a bar under the provisions of Maharashtra Land Revenue Code for a tribal to dispose of the land without prior permission, in all probability, such a shortcut could have been resorted to.

17. The other aspect would be, merely by making a statement in a registered document, one cannot renounce the caste which is an attribute which comes to an individual by birth inasmuch as he takes the caste of his father by default. It is trite that several aspects have to be considered for an individual to renounce his caste. There will have to be evidence to that effect which is conspicuously absent in the present matter. Any statement made in the sale deed, will have its inherent limitations and merely because petitioner's father stated that he did not belong to any tribe, one cannot resort to such declaration as a conscious admission of the fact that he did not belong to any tribe.

Therefore, the committee could not have adopted such a rigid approach to discard the claim.

18. Having seen the fact that the petitioner's brother was granted certificate of validity by following due process of law and for the reasons recorded, the petitioner is entitled to have a certificate of validity conditionally.

19. The writ petition is partly allowed.

20. The impugned order is quashed and set aside.

21. The respondent - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Mannervarlu' scheduled tribe in the prescribed format. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

22. The petitioner shall not be entitled to claim equities.

23. Rule is made absolute accordingly.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/