

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

WRIT PETITION NO.2140 OF 2018

Deepak s/o Shalikrao Wakade,

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary,
Tribal Development
Mantralaya, Mumbai
2. The Scheduled Tribe
Certificate Scrutiny Committee,
Nandurbar Region Nandurbar,
District Nandurbar

... **RESPONDENTS**

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Advocate for Petitioner : Mr. Anandsingh Bayas
A.G.P. for respondent Nos.1 and 2: Mr. S.G. Sangale

...

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

DATE : 02.11.2023

ORDER (MANGESH S. PATIL, J.) :

The petitioner is challenging the order of invalidation passed by the Scrutiny Committee thereby confiscating and cancelling his certificate of “Tokre Koli” scheduled tribe.

2. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The learned advocate for the petitioner submits that the impugned order is perverse and arbitrary. He would submit that consistent favourable record has been discarded without sufficient and cogent reasons.

A contrary record which was not a part and was revealed during the

vigilance inquiry has been taken recourse to by the Committee for invalidating the claim. There is nothing in the order under challenge to demonstrate that these so called contrary entries were ever brought to the notice of the petitioner. The Committee on its own has gathered it from the files of two individuals Mayur and Dhiraj Duryodhan Wakade who are not related to the petitioner.

4. He would submit that apart from anything else, admittedly there are several validity holders in the family. One Chaganrao Hilal Wakade who is the real cousin of his father was issued with a certificate of validity by the appellate authority which had quashed and set aside the order refusing to issue him certificate of validity. Subsequently other blood relations were also granted certificates of validity. Hilal's son Pratik and daughter Shital, their cousins Sagar Jagannath Wakade, Lalita Shivaji Wakade, Yogita Shivaji Wakade, Rupesh Shivaji Wakade, Siddheshwar Subhash Wakade and Akash Subhash Wakade have been granted certificates of validity. Even if the Committee has decided to undertake fresh scrutiny of the validity holders till the time these certificates of validity are not confiscated and cancelled the petitioner cannot be deprived of having the benefit. He would submit that all these persons were granted certificates of validity by following due process of law and in the absence of any dispute about genealogy, about these validity holders being the blood relatives of the petitioner, he be granted certificate of validity subject to the final outcome of the matters which the committee has decided to reopen.

5. Learned advocate would further submit that contrary to the settled law the Committee has applied area restriction.

6. Learned AGP strongly opposes the petition, albeit he admits that there is no dispute about the genealogy and particularly the fact that the validity holders are the petitioner's blood relatives from the paternal side. He, however, submits that none of the validity holders was granted certificate of validity by following due process. The initial validity holder Chagan was granted validity simply based on the tribe certificate of his father. No vigilance inquiry was conducted. There was no evidence about they having migrated from the original place of Tokre Koli scheduled tribe. There was ample evidence demonstrating that the petitioner's ancestors were treated and their school record described them to be 'Koli' which is SBC. He would also point out that the validity certificate issued to Shital has been subsequently confiscated and cancelled and she has preferred a Writ Petition No.626/2023 which is still pending at the Principal Seat. He would submit that since none of the validity holders was granted certificate of validity by following due process of law, the Committee has rightly refused to extend its benefit to the petitioner.

7. As can be noticed the Committee seems to have relied upon some contrary record, wherein, petitioner's blood relatives have been shown to be Hindu Koli or Hindu Mahadev Koli. However, simultaneously, the Committee has also taken recourse to the record of one Mayur and Dhiraj Duryodhan Wakade and has observed that it was revealed that this was a

contrary record and has used it to discard the petitioner's claim. In the light of the decision of the Supreme Court in the matter of **Sayanna Vs. State of Maharashtra; Civil Appeal No.6253/2009 (arising out of SLP (C) No.1774/2007)** decided on 15.05.2009, if this contrary record which was not part of the vigilance inquiry was to be used by the Committee, it was imperative for it to have brought it to the notice of the petitioner before using it against him else it would be clearly in violation of the principles of natural justice.

8. There is no dispute about the fact that the successive committees have, from time to time issued certificates of validity to the blood relatives. In fact, Chagan was held entitled to have it pursuant to the order passed in an appeal which then would lie before the Divisional Commissioner, way back in the year 1996. Pertinently even a contrary entry of 1928 mentioning Chagan's and petitioner's ancestor was also looked into and still he was held to be entitled to a certificate of validity.

9. Obviously, relying upon his validity the subsequent committees have issued the certificate of validity to the rest of the blood relatives mentioned herein above. However, that was not the only ground for which they were granted certificates of validity. Independently, even the documents were looked into which were filed in support of the claims as can be noticed from the orders passed by in the matter of Siddheshwar Subhash Wakade, Akash Subhash Wakade.

10. As far as the observation of the Committee that since no

vigilance inquiry was conducted, it cannot be said that the certificates of validity were issued without following due process of law would not be sustainable in the light of ratio in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**. It has been laid down that a Committee is not supposed to invariably resort to vigilance inquiry, as is contemplated under Rule 12 of the Rules of 2003 framed under the Maharashtra Act XXIII of 2001. It is only if the Committee entertains a doubt about the documents being relied upon by the claimants that it can resort to the vigilance inquiry. If such is the law, the stand of the Committee to overlook to the validities and to refuse to grant its benefit to the petitioner, would be contrary to the law.

11. Consequently, if the validity holders have been granted certificates of validity by following due process of law and in fact the original validity holder Chagan has been found entitled to have a certificate of validity in an appeal, the petitioner deserves to be issued with a certificate of validity *albeit* subject to the final outcome of the matters which the Committee has decided to reopen.

12. So far as the subsequent invalidation, confiscation and cancellation of the certificate of validity issued to Shital is concerned, admittedly, it is a matter which is sub judice and no comment can be made about it. The fact remains that the certificates of validity of the rest of the individuals are still intact and till the time those are not confiscated and cancelled the petitioner cannot be denied to have the benefit.

13. The writ petition is partly allowed. The impugned order is quashed and set aside. The respondent - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Tokre Koli' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

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

(NEERAJ P. DHOTE, J.)

(MANGESH S. PATIL, J.)