

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4875 OF 2020

- 1] Rupali Rajendra Majkuri
2] Ravi Rajendra Majkuri .. Petitioners

Versus

- 1] The State of Maharashtra
Through its Secretary,
Tribal Department,
Mantralaya, Mumbai – 32
- 2] The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad
Through its Deputy Director (R)
- 3] The Dean / Principal,
Government Medical College
& Hospital, Aurangabad Tq. &
Dist. Aurangabad
- 4] The Registrar,
Maharashtra University of Health Sciences,
Nashik, Dindori Road, Nashik,
Tq. & Dist. Nashik
- 5] Registrar,
Maharashtra Medical Council, Mumbai
- 6] The Principal Secretary,
Public Works Department,
Govt. of Maharashtra
Mantralaya, Mumbai – 32.
- 7] Chief Engineer,
Public Works Region, Kokan,
Marzban Road, For, Mumbai – 400 001.
- 8] The Superintending Engineer,
Raigad Public Works Circle,
Kokan Bhavan, Navi Mumbai
- 9] The Executive Engineer,
Public Works Division,
Alibag – 402 201. .. Respondents

...
Advocate for petitioner : Mr. Suresh M. Kulkarni i/b. Mr. K.P. Rodge
Addl.GP for the respondent – State : Mrs. M.A. Deshpande
Advocate for respondent no. 4 : Mr. Dhananjay P. Deshpande
Respondents 5 to 9 added as per Court's order dated 09-06-2023
...

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

DATE : 17 JULY 2023

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. The petitioners who are the siblings are challenging the order passed by the respondent no. 2 - The Scheduled Tribe Certificate Scrutiny Committee thereby refuting their claim for validity certificate as belonging to *Koli Mahadeo* scheduled tribe.

3. The learned advocate for the petitioners would submit that the petitioners' father Rajendra was issued validity certificate. During that enquiry the vigilance report was solicited. His school record was found to be mentioning him to be belonging to *Koli Mahadeo* scheduled tribe. Accordingly, a validity certificate was issued to him. He would submit that the committee has overlooked such validity certificate issued to Rajendra and has discarded the petitioners' claim illegally. He would submit that even no opportunity to respondent to the vigilance report was extended to the petitioners. Had such an opportunity been extended, they could have responded to the observations in the report

and could have controverted the adverse views. The petitioners are ready to go before the committee given the opportunity to contest it and lead evidence to substantiate their claim.

4. The learned AGP strongly opposes the petition. She submits that the petitioners' father Rajendra had obtained validity by misleading the committee. It was obtained fraudulently by hiding material circumstances. It would reveal that he was originally hailing from village Hangarga, Tq. Aurad, District – Bidar from Karnataka state. The fact was not disclosed. He had relied upon the validity certificates of one Vidya Shivram Boinwad and Varsharani Gunderao Degaonkar who were not related to him from his paternal side. Even validity certificate was issued by the then Deputy Director Mr. Shinde who was a member of the committee unauthorizedly and without concurrence of the committee. FIR was lodged against him and the crime was registered. It was found that validity certificate was issued to Rajendra by Mr. Shinde after he stood superannuated. Therefore, the petitioners are not entitled to rely upon such validity of father Rajendra.

5. The learned AGP further points out that the committee had given sufficient opportunity to the petitioners to file response to the vigilance report still there was no co-operation and left with no alternative but to decide the case on the basis of the available record. She would lastly submit that the petitioners also failed in the affinity

test. There are several contrary entries of Koli which belong to other backward class as distinguished from *Koli Mahadeo* which is a scheduled tribe.

6. We have carefully considered the rival submissions and perused the papers.

7. There is no dispute about the fact that the petitioners' father – Rajendra has been issued a validity certificate. We have perused his original file made available by the scrutiny committee. The fact that he hails from village Hangarga from Karnataka state was sufficiently made known to the then committee. Even the school leaving certificate of the school from that village can be found in the original file wherein his caste has been mentioned as *Koli Mahadeo*. We are pointing out this circumstance just to demonstrate that the observation of the scrutiny committee and the submission of the learned AGP that the fact that Rajendra originally hails from Hangarga from Karnataka state was hidden from the then committee is factually incorrect. It and was very well made known to it.

8. True it is that apparently, petitioners' father – Rajendra has been issued validity certificate relying upon the validity certificate granted to one Vidya Shivram Boinwad and Varsharani Gunderao Degaonkar, however, as mentioned in their affidavits filed in the matter of Rajendra he is not related to both these girls from his paternal side.

Consequently, he could not have legally derived the benefit and none can be derived by the petitioners on the basis of validities of these two girls.

9. So far as the alleged crime attributed to one of the members of the then committee Mr. Shinde, it does appear that he was prosecuted for indulging in crime in issuing validity certificates unauthorizedly. However, it is now being informed that he has been acquitted. Whether and to what extent such acquittal would have a bearing is a matter to be pondered upon by the committee now that the case has resulted in acquittal. Obviously, the committee had no occasion to undertake this aspect since only the crime was registered and the trial was to get over.

10. Similarly, admittedly, for whatever reason, the petitioners could not avail of the opportunity to oppose the vigilance report and even failed to take active part during the enquiry before the scrutiny committee. Bearing in mind the fact that it is an enquiry into the tribe claim and not an adversarial litigation, coupled with the fact that the petitioners were not to gain anything by allowing the decision to be taken by the scrutiny committee without their participation, we are of the considered view, that this is a fit case where the matter needs to be remanded to the scrutiny committee for decision afresh by extending an opportunity to the petitioners to participate in the enquiry. This

would enable them to oppose the report of the vigilance cell and also would enable them to lead evidence. Simultaneously, even the scrutiny committee would get an opportunity to reflect on the effect of Mr. Shinde's acquittal.

11. It is to be borne in mind that there is a validity certificate in favour of the petitioners' father – Rajendra. The committee intends to re-open that case but the enquiry would take some time. In the meanwhile, the petitioners who are undertaking education in professional courses, and one of whom has even completed it, cannot be made to wait till the committee takes a fresh decision in their matter and also takes some final decision in the matter of Rajendra which it intends to re-open.

12. Considering all the above aspects, it would be appropriate that the impugned order is quashed and set aside and the matter is remanded for decision afresh. However, simultaneously, the scrutiny committee needs to be directed to issue validity certificates to the petitioners conditionally.

13. The writ petition is partly allowed.

14. The impugned order is quashed and set aside.

15. The matter is remitted back to the respondent no. 2 – scrutiny committee for decision afresh by extending the petitioners an

opportunity of filing reply to the vigilance cell report and further participation in the enquiry. They would file reply to the report of the vigilance cell within four (4) weeks and the committee shall decide their claim expeditiously.

16. Such validity certificate to be granted to the petitioners shall be subject to the ultimate decision in their own matter as also in the matter of their father – Rajendra being re-opened by the committee.

17. The petitioners shall be entitled to claim equities and would stand to lose all the benefits in case their claim is ultimately rejected.

18. Petitioners' father and petitioners shall co-operate in the enquiries.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/