

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

25] WRIT PETITION NO. 4393 OF 2023

Ajay s/o Girdhari Molke

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Mr. S. M. Kulkarni h/f Mr. O. B. Boinwad – Advocate for the petitioner

Mr. S. K. Tambe – AGP for respondent/State

Mr. P. G. Rodge – Advocate for respondent nos. 2 and 3

.....

AND

106] WRIT PETITION NO. 4643 OF 2023

Rahul s/o Girdhari Molke

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Mr. S. M. Kulkarni h/f Mr. O. B. Boinwad – Advocate for the petitioner

Mr. S. K. Tambe – AGP for respondent/State

.....

CORAM : RAVINDRA V. GHUGE

AND

SANJAY A. DESHMUKH, JJ.

DATED : 24th APRIL 2023

PER COURT : -

1. Both the petitioners are siblings. They have two more siblings, namely, Gangadhar & Sonali. Gangadhar has been granted a validity certificate of "Koli Mahadev" Scheduled Tribe category since his biological father Girdhari was granted a validity certificate. His sister Sonali was granted a validity certificate by the High Court.

2. Girdhari has two sisters namely, Aruna and Sangita and one brother Sanjay. Girdhari's father is Purbhaji and Purbhaji's father is Kashinath. Kashinath and Munjaji are biological children of Kanhoji Baba. Munjaji had one son Namdeo, who had four sons namely, Maruti, Madhav, Sanjay and Santosh and one daughter Godavari. Maruti and Madhav have been granted validity certificates by the Committee. One son of Maruti, namely Munjaji, has been granted validity certificate by the High Court.

3. The learned AGP has strenuously opposed the petition and has supported the impugned order. He submits that all these validity holders on whom the petitioners place reliance, are now subjected to reopening of their cases. One hearing has already been completed. He, therefore, submits that this court may not consider this petition.

4. A somewhat similar situation arose before this Court in **Shweta Balaji Isankar vs. State of Maharashtra and others** [Writ Petition No. 5611 of 2018, decided on 27.07.2018], wherein this Court has 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 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 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."

5. In light of the above, the case of these two petitioners would be covered by **Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee No. 1 and others**, 2010(6) Mh.L.J. 401 and the recent view taken by the Hon'ble Supreme Court in the matter of **Mah. Adiwasi Thakur Jamat Swarakshan Samiti v. The State of Maharashtra & Ors.** [Civil Appeal No. 2502 of 2022, decided on 24th March, 2023].

6. In view of the above, **these two petitions are partly allowed**. The impugned orders are quashed and set aside and the petitioners are granted the validity certificate of belonging to "Koli Mahadev" Scheduled Tribe. Needless to state, that if any of the candidates on whom the petitioners have placed reliance, suffer invalidation as the cases have already been re-opened by the committee, the consequences suffered by such candidates would also befall upon these two petitioners as well as Gangadhar, Sonali and Girdhari. These petitioners would then be subjected to the same action by following the due procedure.

[SANJAY A. DESHMUKH]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE