

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

WRIT PETITION NO. 7175 OF 2023

1. Sandhyarani Shankar Pupalwar
Age : 25 years, Occu. : Student,

2. Balaji Shankar Pupalwar
Aged 26 years, Occu. : Student,

Residing at Sunrise Apartment,
Kailas Nagar, Dist. Nanded.

.. Petitioners

Versus

1. State of Maharashtra,
Through it's Secretary,
Tribal Development Department,
Mantralaya, Mumbai-400 032.

2. Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division,
through its Member Secretary
having its office at Kashmira Bhuwan,
Station Road, Dist. Aurangabad.

3. Scheduled Tribe Certificate Scrutiny
Committee, Kinwat,
through its Member Secretary
having its office at Aurangabad,
Dist. Aurangabad.

.. Respondents

Shri P. K. Mendadkar, Advocate h/f Shri S. S. Phatale, Advocate
for the Petitioners.

Shri S. G. Sangle, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 27 JULY 2023.**

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

. Heard learned counsel for the respective parties and taken up for final hearing considering the urgency in the matter.

2. The petitioners have challenged the judgment and order dated 16.06.2022 passed by the scrutiny committee invalidating their caste claims and confiscating the tribe certificates as belonging to 'Mannervarlu' (Scheduled Tribe).

3. The petitioners have relied upon validity certificates issued in favour of their father and real sister. Besides that there is vigilance report in case of their father, validity certificates, genealogy, vigilance report in case of their sister, the school record and the affidavits. The learned counsel for the petitioners would submit that the impugned judgment and order is discriminatory and perverse.

4. The learned Assistant Government Pleader submits that the impugned judgment and order is passed after considering contrary entries, the result of the affinity test and the vigilance reports. The scrutiny committee is justified in holding that the record produced by the petitioners was incompatible with the tribe claim. The scrutiny committee has rightly discarded the validity certificates. According to him no perversity and illegality is committed by the scrutiny committee.

5. We have carefully considered the submissions and the record before us. We find that petitioners' father Shankar Sayanna Pupalwar and his daughter i. e. real sister of the petitioners Shalini Shankar Pupalwar were issued with the validity certificates. There was vigilance enquiry in their matters. Thereafter, by reasoned order the validity certificates were issued. All the contrary entries and adverse circumstances were taken into account while issuing validity certificates.

6. It would not be out of place to mention that the vigilance report in case of Shalini which is on record shows that the oldest entry of grandfather of the petitioners namey Sayanna Ranganna Pupalwar along with other entries disclosed Mannervarlu as caste. Having considered the old record, validity certificate was issued. We hold that petitioners' father and sister were issued with the validity certificates after following due procedure of law. We do not hesitate to rely upon those certificates and confer the same social status upon the petitioners.

7. The learned A. G. P. would submit that the composition of scrutiny committee at the time of petitioners' sister Shalini was not legal and vitiated because of inclusion of Mr. B. V. Shirurkar. It is further submitted that, validity certificate was issued to petitioner's father during the tenure of Mr. V. S. Patil, who was then Assistant Commissioner who was alleged to have involved in illegalities. We do not find any merit in this submission. The

judgments of the scrutiny committee are passed by majority as per Rule 9(3) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003.

8. The learned A. G. P. would further submit that the orders of invalidation in the case of Mohan and Akash were suppressed and therefore validity certificates of the father and sister of the petitioners cannot be relied upon. It is our consistent view that an order of invalidity in the family may not in all cases preclude the Court from conferring the validity certificate if convincing material is placed on record or there are validity certificates secured by following due procedure of law.

9. The learned A. G. P. has placed reliance on order dated 30 March 2011 in case of Vishwanath Govinda Johari Vs. State of Maharashtra in Writ Petition No. 8202 of 2010 and orders passed on 01 July 2016 in case of Lala Gopichand More Vs. State of Maharashtra in Writ Petition No 9413 of 2010. Because of participation of Mr. V. S. Patil in the then proceedings before the Scrutiny Committee, High Court had quashed the decisions passed by the scrutiny committee and the matters were remitted back for fresh consideration. We notice that in the matter of Vishwanath Govinda Johari Vs. State of Maharashtra, it is recorded that the learned counsels had agreed for setting aside the order under challenge and remitting the matter to the Committee for deciding the same afresh. It was an order based upon the concession of the lawyers. Order in the case of Lala

Gopichand More Vs. The State of Maharashtra and others may not set out any binding precedent. Therefore, the submissions of the learned A. G. P. has no merit and we are not prepared to accept the same.

10. For the reasons recorded above, we find that the scrutiny committee has committed perversity and patent illegality in passing the impugned judgment and order. We therefore allow this petition partly by passing following order.

ORDER

A. The writ petition is partly allowed.

B. The impugned judgment and order dated 16.06.2022 passed by the respondent No. 2/Scrutiny Committee is quashed and set aside.

B. The respondent No. 2/Scrutiny Committee shall issue tribe validity certificate to the petitioners as belonging to 'Mannervarlu' (Scheduled Tribe) forthwith on following conditions :

- (i) The validity certificates shall be subject to the outcome of the revocation proposed by the committee of the validity holders.
- (ii) The petitioners shall not claim equity and shall co-operate with the enquiry of reverification.

C. The writ petition is disposed of. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/July 23