

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13505 OF 2019

Nandkishor S/o Sanjay Yenchewad

.. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.

2] The Scheduled Tribe Caste Certificate
Verification Committee, Aurangabad
Through its Dy. Director (R),
Aurangabad

.. Respondents

AND

WRIT PETITION NO. 4542 OF 2020

Shubham S/o Sanjay Yenchewad

.. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.

2] The Scheduled Tribe Caste Certificate
Verification Committee Aurangabad,
Through its Dy. Director (R),
Aurangabad

.. Respondents

...

Advocate for petitioner in both WPs : Mr. S.M. Vibhute
Addl. GP for the respondent – State : Mr. S.B. Yawalkar

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

DATE : 16 OCTOBER 2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. The petitioners who are the real brothers, are challenging the common order of the respondent scrutiny committee in their respective matters, confiscating and cancelling their Koli Mahadev scheduled tribe certificates.

3. We have heard both the sides.

4. The learned advocate for the petitioners would advert our attention to the genealogy and the fact that the petitioners' father - Sanjay possesses a certificate of validity and so does their first degree paternal uncle Navnath. He would also point out that a distinct paternal aunt - Savita Baburao Yenchewad also possesses a certificate of validity. This Court had directed certificate of validity to be issued to one Omkar Gopal Yenchewad and Shantanu Gopal Yenchewad who are their distinct cousins and happen to be the first degree nephews of validity holder - Savita Baburao. He would submit that since it is not the stand of the committee that the certificates of validity were issued to Savita Baburao, Sanjay Janardhan and Navnath Janardhan without following due process of law in the light of the decision in the matter of

Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326, the petitioners are entitled to have the conditional validity as was granted to Omkar and Shantanu. They are ready to run the risk of facing the consequences as observed in the matter of ***Shweta Balaji Isankar Vs. State of Maharashtra and others (writ petition no. 6320 of 2017)***.

5. Mr. Vibhute would further submit that the oldest contrary entry of petitioners' grandfather Janardhan Mahadu Yenchewad of 1958 relied upon by the committee in the impugned order to draw adverse inference against the petitioners was also relied upon by the scrutiny committee which had invalidated claims of Omkar and Shantanu and still this Court had directed certificates of validity to be issued to them and the petitioners be granted the conditional validity.

6. The learned AGP would submit that admittedly the petitioners grandfather's contrary entry of 1958 describing him to be 'Koli' being the oldest entry, would carry greatest probative value and would outweigh the subsequent favourable entries. He would submit that the committee has expressly assigned the reasons as to how the validity holders had obtained certificates of validity by resorting to fraud and the committee has decided to undertake review for which notices were to be issued to Sanjay and Navnath.

7. Having considered both the sides, suffice for the purpose to observe that admittedly, the petitioners' father and paternal uncle both possess certificates of validity. Besides, even certificate of validity is possessed by Savita Baburao who is a distant cousin sister of petitioners' father – Sanjay. In writ petition no. 1469 of 2022, by the order dated 22.08.2023, Savita's nephews Omkar and Shantanu have been directed to be issued with certificates of validities subject to the final outcome of the decision to be taken by the committee in respect of the validity holders. When it is not the stand of the committee that these certificates of validity were issued without following due process of law, the petitioners would be entitled to certificates of validity in the light of the decision in the matter of ***Maharashtra Adiwasi Jamat*** (supra).

8. Even if the committee has now made certain observations by referring to circumstances indicating that it is entitled to undertake a review of the certificates of validity since those were obtained by fraud, we do not intend to make any comment on the powers of the committee to undertake a review and the facts which according to the committee constitute fraud or misrepresentation. We are doing so for two reasons; firstly the validity holders are not before us and we do not intend to cause any prejudice to them by making observations in this matter behind their back and secondly, any observation made by us

could have a bearing on the matters which the committee has decided to re-open.

9. In the result, the following order :-

I) The writ petitions are partly allowed. The impugned order is quashed and set aside. The respondent - committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Koli Mahadev' scheduled tribe in the prescribed format without adding anything. The validities shall be subject to the final outcome of the matters which the committee has decided to re-open.

II) The petitioners shall not be entitled to claim equities.

III) Rule is made absolute accordingly.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/