

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

WRIT PETITION NO. 5814 OF 2023

Sanket s/o Chhotulal Avale,
Age 20 years, Occ. Student,
R/o. SRT 104, Labour Colony,
Aurangabad

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through it's Secretary
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2) The Scheduled Tribe Caste Certificate
Scrutiny Committee, Aurangabad
Division, Plot No. 10, Sector E-1,
Near Saint Lawrence High School
Opp. CIDCO Bus Stand, Aurangabad
Through its Member Secretary
- 3) The Sub Divisional Officer,
Aurangabad, Dist. Aurangabad.

... **Respondents.**

...

Advocate for the Petitioner : Mr. A.S. Golegaonkar h/f Mr. M.A.
Golegaonkar

A.G.P. for the Respondents/State : Mr. S.G. Sangale

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

DATE : 14.09.2023

PER COURT :

The petitioner is challenging the order of the respondent-scrutiny committee confiscating and cancelling his certificate of 'Mannervarlu' scheduled tribe.

2. The learned advocate for the petitioner submits that though there was

some confusion regarding the surname of his paternal uncle and his caste inasmuch as his uncle Baban Ramesh was admitted to a school as Baban Ramesh Gaikwad showing his caste to be 'Boudh', the issue has been put to rest by virtue of the observations of this Court in Writ Petition No. 7674/2005 wherein Baban was challenging the order of invalidation. This Court had quashed and set aside the order of invalidation and remanded the matter to the scrutiny. Subsequently statements of petitioner's mother and her neighbour by name Shivram Sonaji Gaikwad was recorded. They had stated that since the family had come to stay in Aurangabad from Hyderabad, that Shivram Gaikwad had taken initiative being the neighbour while admitting Baban to school. They stated that erroneously, assuming that Shivram is Baban's father the entries were made in the school record. All these facts were brought to the notice of the committee and ultimately he was granted a certificate of validity.

3. The learned advocate would then submit that the committee could not have refused to extend the benefit of Baban's validity. Though the committee has now expressed its intention to reopen his case, till the time his certificate of validity is not confiscated and cancelled, the petitioner cannot be deprived of deriving the benefit.

4. The learned advocate would submit that the petitioner is ready to run the risk of facing the consequences if and when the committee is able to undertake any enquiry and confiscate and cancel the certificate of validity of Baban.

5. The learned A.G.P. would support the decision of the committee. He would point out that there are several contrary entries referred to by the committee even in the service book of the petitioner's grandfather there was manipulation. The word 'Mannervarlu' has been inserted at a later point of time in a different ink and handwriting. This being the service role of 10.01.1950, which would have the greatest probative value. There being no

record of some earlier point. The committee has rightly discarded the petitioner's claim.

6. The learned A.G.P would submit that even the committee has noticed that Baban had obtained certificate of validity from a committee headed by one Mr. V.S. Patil whose functioning was dubious and even the State Government has decided to undertake reconsideration of the decisions taken by the committee.

7. We have considered the rival submissions and perused the papers. Admittedly, the petitioner's uncle Baban possesses a certificate of validity albeit the committee castigates it for variety of reasons. Irrespective of its power and jurisdiction to undertake such review or reconsideration, till the time that certificate of validity is not confiscated and cancelled, it will have to be treated as legal for all practical purposes, more so in view of the aforementioned history. His invalidity was challenged before this Court. This Court had remanded the matter twice and ultimately the committee had issued him certificate of validity. If this is so, in our considered view, till the time the committee does not confiscate and cancel it its benefit cannot be denied to the petitioner in the light of the observations in the matter of *Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others*; 2023 SCC Online SC 326 .

8. There is no dispute about the fact that the petitioner's paternal uncle Baban, has been granted validity by the Committee by following due process of law. The Committee has now sought to take exception to that order by observing that the conduct of the then Committee members was dubious. It was headed by one V.S. Patil. We need not deliberate on this. So long as the certificates of validity issued by following necessary procedure in accordance with law are not confiscated and cancelled in accordance with law as is prescribed under section 7(1) of the Maharashtra Act No. XXIII of 2001, the committee could not have refused to extend the benefit of the validities in

the family by questioning the functioning of the then scrutiny committee.

9. We do not intend to comment on the powers of the Committee to undertake such review or reopen the inquiries. Even if it has such a power, we do not intend to make any observations touching the circumstances which according to the Committee constitute fraud, for two reasons. Since it is an issue which is directly and substantially in issue under consideration of the Scrutiny Committee we cannot make any observation which could have some bearing on that inquiry. Secondly, the validity holders are not before us. Therefore, we also do not intend to cause any prejudice to them by making certain observations touching the alleged fraud. We leave it at that.

10. Pertinently, when the petitioner is ready to run the risk of facing the consequences of confiscation and cancelling of the validity certificate of Baban, in the light of the observations in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra and others (Writ Petition No. 6320 of 2017)**, in our considered view, the petitioner is entitled to derive the benefit of those validities.

11. The Writ Petition is partly allowed.

12. The impugned order is quashed and set aside. The respondent-scrutiny committee shall immediately issue certificate of validity to the petitioner of 'Mannervarlu' scheduled tribe. It shall be subject to the final outcome of the matters which the committee has decided to reopen.

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

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-