

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9717 OF 2021

Shrinivas S/o Sureshrao Kanke,
Age : 19 years, Occu. : Student,
R/o. At Shirshi Kh., Post. Lohgaon,
Tq. and Dist. : Parbhani

.. Petitioner

Versus

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

2] The Commissioner & Competent Authority,
Government of Maharashtra,
State Common Entrance Test Cell,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai – 400 001.

3] Deputy Director (Research)
and Member Secretary,
Scheduled Tribe Certificate
Verification Committee,
Near Saint Lawrence High School,
Town Centre, CIDCO, Aurangabad,
Dist. Aurangabad

.. Respondents

...
Advocate for petitioner : Mr. C.R. Thorat
AGP for the respondents 1 and 3 : Mr. V.M. Jaware
Advocate for the respondent no. 2 : Mr. S.G. Karlekar
...

**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 07 DECEMBER 2023
PRONOUNCED ON : 12 DECEMBER 2023**

ORDER (MANGESH S. PATIL, J.) :

Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. The petitioner is challenging the order of invalidation of his tribe claim whereby his Mannervarlu scheduled tribe certificate has been confiscated and cancelled.

3. Having heard both the sides, it transpires that since the petitioner has been relying upon the certificates of validity granted to one Prathamesh Laxman Kanke under the order dated 23.06.2023 of this Court in writ petition no. 1430 of 2023, since on the last date of hearing, one of the members of the scrutiny committee was present in the Court hall, the learned AGP, on his instructions, had sought time to verify the fact as to if Prathamesh is related to the petitioner by blood.

4. On 07-12-2023, the learned AGP tendered across the bar the genealogy prepared on 04-12-2023 by the officer of the vigilance cell of the respondent - committee. He submitted that pursuant to the happenings in the Court in presence of the member of the scrutiny committee, this exercise was undertaken by the vigilance officer and he has, after verification, confirmed the fact that Prathamesh is related to the petitioner from the paternal side. Pertinently, it contains a note that the vigilance officer had prepared this genealogy by going through the

files of Prathamesh, petitioner, one Pankaj Ganesh Kanke, Dhananjay Asaram Kanke, Vitthal Bhagoji Kanke and Ganesh Jayramji Kanke and also based on the affidavits filed in form 'F' submitted in those files.

5. Once it is found that the petitioner is related to Prathamesh Laxman Kanke by blood from paternal side, when Prathamesh was found entitled to have a certificate of validity by this Court, that in itself should be sufficient to recognize the petitioner's claim *albeit* conditionally.

6. Independent of above state-of-affairs, though the order under challenge contains few contrary entries of blood relations wherein they have been described as Hindu / Maratha, simultaneously, there are several favourable entries as well, wherein the petitioner's blood relations have been described as belonging to Mannervarlu scheduled tribe.

7. Pertinently, the impugned order contains a chart of the family members who have been issued certificates of validity from time to time which are about 10 in number. Prathamesh was found entitled to have certificate of validity on the basis of one Bhagwat Manilkrao Kanke whose name also appears in the chart from the impugned order, wherein the committee has described Bhagwat as paternal uncle of the petitioner.

8. It is precisely for this reason that time was sought by the learned AGP to ascertain if there is any blood relationship between petitioner and Prathamesh as discussed herein-above.

9. There is no dispute about the fact that the petitioner's blood relatives i.e. cousins - Vikas Bhagwat Kanke, Santosh Bhagwat Kanke and Geeta Ghanshyam Kanke have 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.

10. Again, even if a blood relative's claim faces initial invalidation, the others may be able to discharge the burden and obviously would be entitled to claim validation of the tribe certificate/s. Therefore, the observation of the committee that petitioner's cousins - Vikas Bhagwat Kanke, Santosh Bhagwat Kanke and Geeta

Ghanshyam Kanke had obtained certificates of validity concealing the invalidities in the family that would not be a legally sustainable ground.

11. In view of the above, the following order :-

I) The writ petition is partly allowed.

II) Impugned order is quashed and set aside.

III) The respondent - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Mannervarlu' scheduled tribe in the prescribed format. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

IV) The petitioner shall not be entitled to claim equities.

V) Rule is made absolute accordingly.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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