

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

**WRIT PETITION NO. 7767 OF 2020
WITH CA/1416/2021 IN WP/7767/2020**

Shravanti d/o Sanjay Kudade,
Age 19 years, Occ. Student,
R/o. At Post Jamb Bk. Tq. Mukhed,
Dist. Nanded.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra
Through its 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,
District Aurangabad.

... **Respondents**

...

Advocate for the Petitioner : Mr. C.R. Thorat
A.G.P. for the Respondent Nos. 1 & 3 : Mr. S.B. Yawalkar

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

DATE : 17.10.2023

PER COURT :

Heard. Rule. Rule is made returnable forthwith. Learned A.G.P.

waives service for the respondent Nos. 1 and 3. At the joint request of the parties the matter is heard finally at the stage of admission.

2. By invoking the powers under Article 226 of the Constitution of India, the petitioner is challenging the order of the respondent No. 3 a scrutiny committee constituted under Section 6 of the Maharashtra Act XXIII of 2001, thereby confiscating and cancelling her 'Mannervarlu' scheduled tribe certificate issued by the competent authority under Section 4 of that Act.

3. The learned advocate for the petitioner submits that the petitioner belongs to '*Mannervarlu*' scheduled tribe. She attempted to establish this fact by relying upon the consistent school record which has been wrongly discarded by the scrutiny committee for unsustainable reasons. He would submit that petitioner's cousins Pradip Prakashrao Kudade and his brother Umesh Prakashrao Kudade have been issued with certificates of validity way back in the year 2010 by the then committee by following due process of law and even by conducting vigilance enquiry. The committee has not assigned cogent and convincing reasons to discard these validities and not to extend its benefit to the petitioner. The oldest school record of petitioner's cousin grand father Vitthal Dhondiba Kudade, who is the paternal grand father of validity holders Pradip and Umesh of 1955, has been overlooked by the committee for irrelevant reason. The petitioner is entitled to derive the benefit of the validities possessed by her cousins. She is ready to run the risk of facing the consequences as contemplated in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra and others (Writ Petition No. 6320 of 2017)**.

4. The learned A.G.P. would strongly oppose the petition. He would advert our attention to the genealogy prepared by the vigilance officer and the one furnished by the validity holder Pradip in his matter. He would point out that in the petitioner's matter one Mashna is shown to be the common ancestor stated to be Dhondiba's father. However, in the matter of

Pradip one Linganna has been shown to be the father of Dhondiba. He would submit that for this reason the petitioner's claim based on the validity of Pradip could not be entertained. He would submit that the committee has now formed an opinion that both these validity holders had obtained certificates of validity by resorting to fraud and has decided to undertake a fresh scrutiny.

5. The learned A.G.P. would then submit that several contrary entries were revealed wherein the petitioner's blood relations were shown to be '*Manurvar*' which is distinct than the petitioner's claim of '*Mannervarlu*' scheduled tribe and the committee has taken a plausible view.

6. We have considered arguments of both the sides and perused the papers. It is a matter of record that the genealogy prepared in the instant matter demonstrates that one Dhondiba Mashnaji Kudade was the common ancestor whereas validity holder Pradip in his matter had furnished a genealogy showing that one Linganna was the father of Dhondiba. However, conspicuously, both these genealogies are compatible to the extent that both these show Dhondiba to be the common ancestor having two sons Vitthal and Maruti. The petitioner is the grand daughter of Maruti whereas validity holders Pradip and Umesh are the grand children of Vitthal. Pertinently, the committee has not doubted that these validity holders Pradip and Umesh are the cousins of the petitioner. It is the observation of the committee that Pradip had wrongly shown Linganna to be the father of his grand father Dhondiba when it should have been Mashnaji and Pradip and Umesh had made that attempt to derive the benefit of validity possessed by one Sadashiv Vyankati Kudade who was not related to them.

7. Obviously, as far as the alleged circumstances which according to the committee constitute fraud will have to be gone into and decided by the committee in the matters which it has decided to reopen in respect of these two validity holders.

8. 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.

9. Pertinently, it is not the observation of the committee that Pradip and Umesh were granted certificates of validity without following due process of law which is a parameter laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326*** . Consequently, till the time the certificates of validity issued to Pradip and Umesh are not confiscated and cancelled by following due process of law, the petitioner cannot be denied the benefit of having a similar validity.

10. Independently, though there are few inconsistent and contrary entries referred to in the impugned order of the blood relations of the petitioner, all those are of the period between 1964 and 1979. The school record of petitioner's cousin grandfather Pandurang Dhondiba Mannurvar of 1948, in fact shows that entry is Hindu which is a religion and not a caste. Therefore, the committee has fallen in error in treating this as a contrary entry. As against this, a favourable entry in the school record of Vitthal Dhondiba Kudade, stated to be cousin grandfather, of 1955 mentioning him to be 'Mannervarlu' has been ignored by the committee by observing that the petitioner's father in his statement recorded during vigilance enquiry had stated that Vitthal was illiterate. When it is a matter of documentary evidence, such oral statement cannot outweigh the documentary proof,

more so when the genuineness of this documentary evidence has not been doubted by the committee. Since this is the oldest entry of the year 1955 it would carry a greater probative value than the subsequent contrary entries referred to by the committee.

11. Apart from the aforementioned validities being relied upon by the petitioner, this Court in the matter of one Sachin Laxmanrao Kudade in Writ Petition No. 10018/2023 by the order dated 18.08.2023 has directed certificate of validity to be issued to him. Sachin happens to be the real cousin of validity holders Pradip and Umesh. Even Sachin's real brother Amol possesses certificate of validity. Pertinently, all these contrary entries being relied upon by the committee in the matter in hand were resorted to by the committee while discarding Sachin's claim.

12. Resultantly, the committee's observations are clearly perverse and arbitrary. The impugned order is liable to be quashed and set aside and the petitioner deserves to be granted a certificate of validity subject to the final decision in the matters of the validity holders which the committee has decided to reopen.

13. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The respondent-scrutiny committee shall immediately issue tribe validity certificate to the petitioner as belonging to '*Mannervaru*' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to reopen.

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

15. Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)
mkd/-

(MANGESH S. PATIL, J.)