

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

WRIT PETITION NO.9046 OF 2023

Viraj Balaji Potulwar ... PETITIONER

VERSUS

1. The State of Maharashtra
through it's Secretary
Tribal Department,
Mantralaya, Mumbai-32
2. The Scheduled Tribe Certificate Scrutiny
Committee, Kinvat,
Head Quarter, Aurangabad
through its Deputy Director (R) ... RESPONDENTS

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Advocate for Petitioner : Mr. Jadhavar Pratap V.

Advocate for respondents : Mr. S.G. Sangle

...

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

DATE : 28.07.2023

PER COURT :

Heard the learned advocate for the petitioner and the learned AGP finally, in view of the fact that the petitioner is aspiring to undertake further education in health science course and is in urgent need of early hearing and decision.

2. The petitioner is challenging the order passed by the respondent No.2 – Scrutiny Committee confiscating and cancelling his tribe certificate as 'Mannervarlu' under Section 7(1) of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance

and Verification of) Caste Certificate Act, 2000 (herein after the Act).

3. The learned advocate for the petitioner would submit that the petitioner's father Balaji has been granted validity certificate in the year 2009. The Committee has refused to rely upon it for unsustainable reasons. It has undertaken a fresh scrutiny as if Balaji was before the Committee. Even if, according to the Committee, Balaji had obtained the validity by not bringing entire record and was issued validity certificate relying upon the validities of maternal side relations, so long as that certificate is not confiscated and cancelled the petitioner cannot be deprived of the benefit.

4. The learned AGP supports the order and submits that the Committee has powers to reopen the cases more so in the matters where validity certificates have been obtained by practicing fraud. He would submit that in view of the decision in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**, if the validity certificate has been granted without holding proper inquiry or without recording reasons, the Scrutiny Committee cannot validate the caste certificate only on the basis of such validity certificate of a blood relative. He would submit that the Committee found that the school record of the petitioner's paternal side blood relations described them as 'मुनुरवाड', 'मुनवार' and 'मुन्नरवार'. The Committee found that school record of paternal uncle, cousin paternal uncle were manipulated. The Committee also found that Balaji was given validity certificate relying upon the validity of couple of individuals who were his relations from the

maternal side and for all these reasons the Committee has rightly refused to rely upon the validity certificate of Balaji while refuting the petitioner's claim. He would submit that even the petitioner could not get through the affinity test and the Committee has elaborately considered that aspect as well.

5. We have carefully considered the rival submissions and perused the papers. It is apparent that admittedly the petitioner's father Balaji was issued validity certificate way back in the year 2009. The learned AGP provides us the original file of Balaji. We could go through the order of the then Scrutiny Committee. Though it is a fact that Balaji had produced validity certificates of the persons named therein who are none other than the one referred to by the Scrutiny Committee in the impugned order who admittedly are not his relatives from paternal side. However, conspicuously, it was only one of the pieces of evidence that was scrutinized by the then Scrutiny Committee. It is not that only on the basis of these two validity certificates of maternal side relations he was granted the validity certificate. As can be noticed there were several other circumstances which had weighed with the Committee while granting validity certificate to him.

6. True it is that in the impugned order the Committee has been referring to few manipulation which according to it tantamount to fraud and it has also expressed its intention to undertake reconsideration of the validity certificate of Balaji. We are consciously refraining ourselves from undertaking a threadbare scrutiny of examining this aspect of the reasoning

in the impugned order since in our considered view, it would be a matter to be considered by the Committee in the case which it intends to reopen. Any observation made by us in that respect could have a bearing on that inquiry. Balaji is not a party before us and if and when the Committee intends to reopen the matter he will have to be served with a show cause notice and thereafter he will have an opportunity to counter the allegations and participate in the inquiry. Therefore, it will not be proper on our part to undertake that inquiry behind his back which is likely to cause prejudice to him.

7. The fact remains that petitioner's father Balaji has a validity certificate. So long as it is not confiscated and cancelled by resorting to Section 7(1) of the Act, it would remain in force and cannot be regarded as *void ab initio* merely because the Committee now entertains a doubt and intends to undertake a fresh inquiry.

8. In the circumstances, the law and convenience demands that the petitioner is granted benefit of the validity certificate of his father which can be made conditioned upon the outcome of Balaji's matter sought to be reopened.

ORDER

- i. The writ petition is partly allowed.
- ii. The impugned order is quashed and set aside. The respondent No.2 - Scrutiny Committee shall issue a tribe validity certificate of "Mannervarlu" scheduled tribe to petitioner immediately which shall

be subject to the final outcome of the decision to be taken by the Committee in the matter of validity holder which it intends to re-verify.

- iii. Petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)