

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

WRIT PETITION NO. 8947 OF 2023

1. Shivprasad Vasant Sambutwad
Age : 22 years, Occ. Student.

2. Om Sudhir Sambutwad,
Age : 19 years, Occ. Student.

Both are R/o. Tabela Galli, Mukhed, Tq. Mukhed,
Dist. Nanded.

Versus

1. The State of Maharashtra,
Through its Secretary,
Tribal Development,
Mantralaya, Mumbai.

2. The Scheduled Tribe Certificate Scrutiny
Committee, Kinvat,
Head Quarter, Aurangabad,
Through its Deputy Director (R).

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Advocate for Petitioners : Mr. Jadhavar Pratap V.
AGP for Respondents/State : Mr. A. S. Shinde

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

DATE : 25 JULY 2023.

ORAL ORDER [MANGESH S. PATIL J.] :

. Heard learned Advocate for the petitioners. Rule. Rule is made returnable forthwith. At the joint request, the matter is taken up for final disposal at the admission stage.

2. The petitioners who are cousins *inter-se* are questioning the legality and validity of the order passed by the respondent no.2/Scrutiny Committee in the proceeding under Section 7 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, thereby seizing and cancelling their certificates as belonging to 'Koli Mahadev scheduled tribe'. It was a common order in respect of both these petitioners.

3. The learned Advocate for petitioners would submit that there are more than 8 to 10 validity holders in the blood relation from the paternal side. There is no dispute about the genealogy. Petitioners' (Shivprasad) two sisters have been granted validity by this Court conditionally namely Aishwarya Vasant and Shivani Vasant. Petitioner Om is their real cousin. Since the petitioners are claiming social status, so long as there are validities in the family subsisting as on the date, petitioners cannot be deprived of same benefit.

4. The learned AGP takes us through the papers and points out that the petitioners' cousin Rajesh Chandrakant was the first validity holder. This Court in Writ Petition No.3268/1996 vide order dated 11.07.1996 had directed him to be issued with a validity certificate. However as can be seen from that order, the High Court was persuaded to concede to the request on a statement made on behalf of Rajesh's father

Chandrakant through whom he had filed the writ petition that his (Chandrakant) caste certificate was verified by the Social Welfare and Sports Department and it was held to be valid. In fact there was no such validity certificate issued to Chandrakant. Merely because of some communication between the departments touching this aspect that Chandrakant was posing to have secured validity when in fact there was none. The learned AGP, therefore, submits that since Rajesh's validity is based upon an order of Court passed by practicing fraud, the subsequent validities granted to the blood relations from time to time based on the validity of Rajesh would not be legal.

5. The learned AGP would also point out that even the petitioners' (Shivprasad) father Vasant, has also practised fraud. His original tribe certificate was seized and cancelled. He had preferred an appeal before the Commissioner and even that was dismissed. In spite of that he managed to obtain another tribe certificate and then obtained validity certificate based on the validity of Rajesh. Once his claim was invalidated and the appeal was dismissed, he could not have obtained another certificate much less could have got it validated. In view of such apparent fraud coupled with the manipulation of the school record as discussed in detail by the Committee in the impugned order, the petitioners cannot be granted benefit.

6. It is a matter of record that Rajesh Chandrakant is the first validity holder in the family. It is also a matter of record that he was

granted validity certificate by the order of this Court in Writ Petition No.3268/1996 dated 11.07.1996. It is also apparent from that order that the Court was made to believe that the father of the petitioner i.e. Rajesh's father Chandrakant was serving in Irrigation Department and his caste claim was verified by the Social Welfare Department and the caste certificate issued in his favour as belonging to Mahadev Koli was held to be valid.

7. When we asked the learned Advocate for the petitioner as to whether there is a validity certificate of Chandrakant, he merely points out the communication at page no.73 dated 20.05.1982 addressed by the Under Secretary to the Government of Maharashtra to several individuals/employees from the Irrigation Department *inter alia* containing a statement that the Director of the Social Welfare, Pune was being informed that while Chandrakant was being promoted as Sub-Divisional Engineer, his caste certificate of scheduled tribe Koli Mahadev was verified by the Social Welfare and Sports Department, Mantralaya and it was certified as valid by the department and therefore a question of its verification did not arise.

8. We can only observe that though there are serious allegations about fraud, accepting the stand being taken by the Committee now, as submitted by the learned AGP, so long as the order of this Court in the matter of Rajesh Chandrakant is subsisting, we are bound to follow it. Precisely this was the reason for this Court to allow the Writ Petition of

Aishwarya Vasant and Shivani Vasant being Writ Petition No.2472/2021 and 14035/2021. Both were directed to be issued validity certificates on the backdrop of similar arguments.

9. Though we are prima facie of the view that Vasant has practised fraud in as much as in spite of his earlier tribe certificate was seized and cancelled and even though his appeal was dismissed, he could manage to obtain another tribe certificate and then it was got validated. This was clearly not only a suppression of material fact, but an active fraud.

10. But then, when there is no dispute about the genealogy, so long as the validity of Rajesh Chandrakant is in existence, even if Vasant had practiced fraud, the petitioners being the blood relations from the paternal side of Rajesh and when this Court has granted conditional validity to Aishwarya Vasant and Shivani Vasant, the petitioners cannot be deprived of a similar benefit.

11. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The respondent no.2/Scrutiny Committee shall immediately issue tribe validity certificates to the petitioners. Those would be subject to following conditions:

- (i) The validity certificates would be subject to the outcome of the decision in the matters sought to be reopened.

(ii) The petitioners shall not claim any equities.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

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