

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

WRIT PETITION NO. 9062 OF 2023

1. Aditya s/o Kishorsing Bhokan
 2. Ajay s/o Ishwarsing Bhokan
 3. Pavan s/o Bhagchand Bhokan
- ... **PETITIONERS**

VERSUS

1. The State of Maharashtra
through the Secretary for
Tribal Development Department,
Maharashtra State,
Mantralaya, Mumbai
 2. The Scheduled Tribe Scrutiny
Committee, Aurangabad Division
Aurangabad
through its Secretary
- ... **RESPONDENTS**

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Advocate for Petitioners : Mr. V.D. Hon, Senior advocate i/b. Mr. A.V. Hon
Advocate for respondents : Mr. P.S. Patil

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

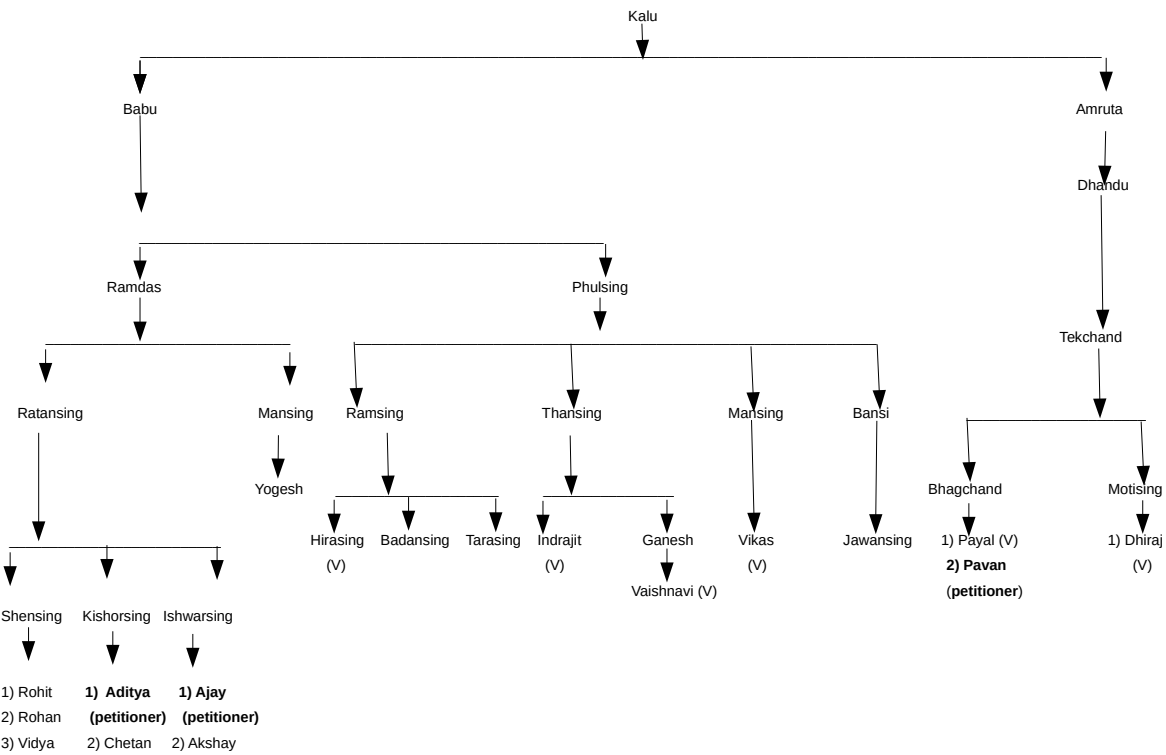
DATE : 28.07.2023

ORDER (MANGESH S. PATIL, J.) :

This is joint petition by three individuals whose three separate claims as belonging to *Naikada* scheduled tribe and their tribe certificates have been confiscated and cancelled by the committee constituted in a proceeding under section 6 of the Maharashtra Act No. XXIII of 2001 (**Act**) by resorting to section 7(1) of the Act. They are challenging the order which is a common order.

2. Considering the exigency pointed out at the bar regarding petitioner nos. 1 and 2's aspirations to undergo medical education having appeared at the NEET-UG-2023 and petitioner no. 3 desiring to take admission from a reserved category to the B.Sc. Nursing course, the matter is taken up for final decision at the admission stage.

3. Learned Senior Advocate Mr. Hon for the petitioners would vehemently submit that in spite of there being several validity holders in the family, the committee has ignored those validities which ought to have been followed by resorting to ***Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee no. 1 and others; 2010 (6) Mh.L.J. 401*** and ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***. He would refer to the following genealogy provided by one Kishorsing Rajatsing Bhokan who is the father of the petitioner nos. 1 and 2.



Referring to this genealogy, Mr. Hon would submit that Hirasing Ramsing, Indrajit Thansing and Vikas Mansing from the branch of Phulsing are the validity holders whereas petitioner Pavan's real sister Payal Bhagchand is also a validity holder. Since the petitioner nos. 1 and 2 are descendants of the branch headed by Ramdas who was the real brother of Phulsing who was grandfather of Hirasing, Indrajit and Vikas, petitioner nos. 1 and 2 are entitled to derive the benefit of the validity apart from the validity of Payal Bhagchand.

4. He would submit that in-fact, Vaishnavi who is daughter of Ganesh Thansing has been granted validity certificate by the order of this Court in writ petition no. 8943 of 2023. Payal has been granted validity certificate by the order of the High Court in writ petition no. 8942 of 2023 and even Dhiraj Motising has been held to be entitled to a validity certificate by the order of the High Court in writ petition no. 8943 of 2023 which is subject to the decision in the matters which the committee has expressed its intention to re-open for the alleged misrepresentation or fraud. In view of so many validities three of which have been issued by the order of this Court, the petitioners being the blood relatives from the paternal side are entitled to derive the benefit of having a validity certificate of tribe *Naikada*.

5. He would submit that the committee had no valid reason to discard these validities and the approach of the committee is clearly inconsistent with the observations in the matter of ***Apoorva Nichale*** (supra) and ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra).

For this reason alone, the impugned order is liable to be quashed and set aside.

6. Mr. Hon would then submit that the committee has undertaken the vigilance enquiry and a common vigilance report was submitted in the matters of Vaishnavi, Ganesh and Dhiraj Motising. However, when there was already a vigilance enquiry in the matters of several other blood relations, there was no reason for the committee to once again resort to it. The petitioners had adopted the vigilance report conducted in the matters of Vaishnavi, Ganesh and Dhiraj Motising.

7. Mr. Hon would submit that the committee has entertained a doubt about several entries in the name of blood relations showing their caste as *Naikada* alleging the so-called manipulation. The observations have been made in slipshod manner and the inference drawn by the committee is clearly perverse and arbitrary. He would submit that even if the committee has now expressed its intention to re-open the validities being relied upon by the petitioners, so long as the existing validity certificates are not confiscated and cancelled by resorting to the provisions of law, the earlier validity certificates having been issued by following necessary procedure and in accordance with law, the petitioners deserve to be issued with at least conditional validities.

8. Per contra, the learned AGP would submit that fraud vitiates everything. If during the course of vigilance enquiry, the committee could lay hands on rampant manipulations in the matters of several blood

relations as quoted in the impugned order, the committee is entitled to undertake a fresh scrutiny. The inference has been drawn by the committee by meticulously going through the vigilance report and even the record of the concerned school, namely, Zilla Parishad Primary School, Taroda Panchayat Samiti, Motala, District – Buldhana was inspected. In that inspection, it was revealed that the original entries in the caste column were erased by using blade and/or pen. Those were over-writings and inference drawn by the committee on the basis of such a report regarding rampant manipulations need not be doubted. He would, therefore, submit that even Hirasing Ramsing, Indrajit Thansing and Vikas Mansing and others had obtained the validity certificates by taking advantage of such manipulated school record and being a clear case of fraud and misrepresentation, the committee has decided to re-open their validities.

9. The learned AGP would then take us through the genealogy provided by Hirasing Ramsing during the vigilance enquiry of his own case wherein he had given a genealogy which conspicuously does not demonstrate the branch of Ramdas stated to be the other son of Babu Kalu. He had expressly stated that his grandfather Phulsing Babu had no brother whereas the genealogy given by the petitioner nos. 1 and 2's father Kishorsing and even furnished by the petitioner Aditya by way of affidavit demonstrates existence of this branch of Ramdas. He would, therefore, submit that without there being any nexus with the family of which Kalu was the common ancestor, the petitioner nos. 1 and 2 Aditya and Ajay are

seeking to take advantage of the validity certificates issued to the aforementioned persons. Incidentally, none of the blood relations of Aditya and Ajay as shown in the genealogy up to their great grandfather Ramdas have obtained any validity certificate.

10. The learned AGP would then submit that even Bhagchand Tekchand who is the father of petitioner - Pawan in his statement recording during the vigilance enquiry dated 28-09-2020 had expressly stated that Kalu Bhokan was his great great grandfather. He was having two sons Babu and Amruta. Phulsing is the only son of Babu. Phulsing had no real brother. However, he has conspicuously mentioned that is great grandfather had no real brother still the petitioners Aditya and Ajay are seeking to derive the benefit of the validities in spite of being not related by blood.

11. The learned AGP would then submit that there are several contrary entries and manipulations which the committee has taken into consideration while confiscating and seizing the petitioners' certificates.

12. We have carefully gone through the papers and appreciated the arguments of both the sides.

13. As can be discerned from the above discussion, as far as petitioner Pavan is concerned, there is no dispute about the genealogy and particularly the fact that his real sister Payal, his first degree cousin Dhiraj and paternal uncles Hirasing, Indrajit and Vikas have been issued validity

certificates by the order of this Court. Even Vaishnavi Ganesh who is the niece of Indrajit Thansing has been granted validity by the order of this Court. Vaishnavi Ganesh, Payal Bhagchand and Dhiraj Motising have been granted validity certificates which have been made subject to the decision to be taken in the matters which the committee has intended to re-open. There cannot be any impediment for granting similar benefit to the petitioner - Pavan. Obviously, if and when the committee is able to take the matters to the logical end, even Pavan would suffer the same fate as would the other validity holders. Time does not wait for anybody and the convenience demands that he is allowed to pursue his education at his own peril, running the risk of the decision in the re-opened enquiries. We, therefore, need not go into the other aspects and reasons assigned by the committee regarding rampant manipulations and forgeries.

14. At this juncture itself, it would be appropriate to observe that whether in-fact, and in law, the committee is entitled to re-open the validities would depend upon the circumstances which it may be able to demonstrate like misrepresentation or fraud. Obviously, if it is a case of fraud, it would go to the root of the validity of any decision but whether in-fact, there was a fraud or otherwise would be a subject which would be directly and substantially in issue before the committee. Any comment made by us in that regard would have a bearing on that enquiry and precisely for this reason, in our considered view, we should avoid making any comment on the alleged manipulation in the school record. Besides, these allegations would be against the individuals who are not before us. Therefore, any

observation made by us regarding alleged manipulations and fraud is likely to cause prejudice to them.

15. Consequently, petitioner - Pavan deserves to be extended the benefit which his real sister Payal has been extended to, of issuing conditional validity certificate.

16. However, so far as the petitioner - Aditya and Ajay are concerned, though according to them they belong to the family of the common ancestor Kalu, as has been rightly pointed out by the learned AGP, there is a serious doubt as to if they really belong to the family of which Kalu is the ancestor.

17. Hirasing Ramsing and Bhagchand Tekchand in their affidavits have expressly excluded the branch of Ramdas being shown in the affidavits of petitioners Ajay and Aditya and Aditya's father Kishorsing. Hirasing Ramsing has expressly stated that his grandfather Phulsing was the only son of his great grandfather Balu and had no full brother. The attempt by the petitioners Aditya and Ajay to demonstrate that one Ramdas was the full brother of Phulsing and they were sons of Babu, is liable to be discarded.

18. During the course of arguments, when we asked Mr. Hon to demonstrate as to if any individual from the branch of either Babu or Amruta who were the two sons of original ancestor Kalu have ever admitted their blood relation with this branch of Ramdas, he was unable to point out.

He would request for the matter to be remanded to enable the evidence to be led in that regard.

19. Since there is not a single affidavit of any individual from the branch of Phulsing Babu and Amruta Kalu admitting their blood relations with petitioner - Aditya and Ajay's family when Hirasing and Bhagchand have expressly stated on oath that Phulsing was the only son of Babu and was not having any full brother, this is sufficient to discard the claim of the petitioners Aditya and Ajay.

20. True it is that for whatever reason petitioners Aditya and Ajay together with petitioner - Pavan have jointly responded to the report of the vigilance and even a common hearing has been conducted by the committee. For that matter even they have preferred this joint writ petition challenging the common order passed in their separate proposals with the committee.

21. However, in our considered view, merely on the basis of this circumstance, one cannot draw an inference that petitioners Aditya and Ajay are related by blood to the other validity holders who are from the branch of Phulsing Babu and Amruta Kalu. For the reasons unknown they had responded to and adopted the reply of Vaishnavi and Dhiraj in the vigilance enquiry conducted. Since petitioner Aditya's father Kishorsing had given the genealogy showing the branch of Ramdas, in all probability, the committee proceeded to decide their claims together. That would not *ipso facto* lead to any inference about acceptance of the fact that Aditya and

Ajay belong to the family of common ancestor Kalu.

22. Consequently not being the blood relatives of the validity holders, the petitioners Aditya and Ajay cannot be granted the benefit of even conditional validity certificate. Besides, their attempt to mislead the committee and even this Court in putting up a claim by showing such patently false genealogy in itself is a strong circumstance to discard their claims. The petition to their extent is liable to be dismissed.

23. Hence the following order :

ORDER

- i. The writ petition is partly allowed.
- ii. The impugned order is quashed and set aside to the extent of petitioner Pavan s/o Bhagchand Bhokan partly. The Scrutiny Committee shall issue him a tribe validity certificate of "Naikada" scheduled tribe immediately which shall be subject to the final outcome of the decision to be taken by the Committee in the reopened matters.
- iii. Petitioner - Pavan Bhagchand Bhokan shall not be entitled to claim equity.
- iv. The petition to the extent of petitioner No.1 - Aditya and No. 2 - Ajay is dismissed.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

arp/-