

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

WRIT PETITION NO. 9499 OF 2019

Saiprasad s/o Maruti Kacheboinwad,
Age : 23 years, Occu. Student,
R/o. Ballal, Tq. Bhokar,
Dist. Nanded.

...Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Director of Medical Education,
Saint John Hospital Campus,
Mumbai.
3. Maharashtra University of Health Science,
through its Registrar,
Dindori Road, Mhasrul,
Nasik, Dist. Nasik.
4. Deputy Director (Research) and Member Secretary,
Scheduled Tribe Certificate Verification Committee,
Near Saint Lawrence High School,
Town Centre, CIDCO, Aurangabad,
Dist. Aurangabad.
5. Maharashtra Institute of Medical Sciences and
Research, Latur,
Vishwanathpuram, Ambajogai Road,
Latur, through the Principal

...Respondents

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Mr. Om D. Totawad h/f Mr. C. R. Thorat – Advocate for the petitioner
Mr. S. G. Karlekar – AGP for respondent nos. 1, 2 and 4
Mr. K. M. Suryawanshi – Advocate for respondent no. 3

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**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATED : 18th APRIL 2023

ORAL JUDGMENT [Per Ravindra V. Ghuge, J.] : -

1. Leave to correct prayer clause 'B'. Correction be carried out forthwith.
2. Rule. Rule made returnable forthwith and heard finally, by the consent of the parties.
3. The petitioner is aggrieved by the order dated 13th July, 2019 passed by the competent committee, respondent no. 4 herein, vide which his claim of belonging to the Koli Mahadev Scheduled Tribe has been invalidated.
4. Having considered the strenuous submissions of the learned counsel for the respective sides, we have perused the family tree. The petitioner's father is Maruti who has been granted a validity certificate by the committee. The biological brother of the petitioner, namely, Nikhil, who was before this court in Writ Petition No. 9362 of 2019 at the Principal Seat, succeeded by judgment dated 26th August, 2019. The law laid down by this court in **Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny**

Committee No. 1 and others, 2010(6) Mh.L.J. 401 was made applicable to Nikhil in the light of his father having been granted a validity certificate.

5. The Learned AGP submits that the case of the petitioner's father Maruti, has been re-opened. The rehearing has occurred and the matter has been closed for judgment around a year ago. No orders have, as yet, been passed. He hastens to clarify that as the constitution of the committee has now undergone a change and the committee is re-constituted, Maruti's case will have to be reheard.

6. This Court has passed an order in **Shweta Balaji Isankar vs. State of Maharashtra and others** [Writ Petition No. 5611 of 2018, decided on 27.07.2018] wherein, the contentions as regards a reopened case of a validity holder have been considered and this court has recorded in paragraph nos. 2 to 4 and 8, as under :

"2. On the earlier occasion, we found that though the petitioner produced credible evidence in the form of certificates of validity issued to her real uncle Govind Sambhaji Isankar and which concededly has been issued way back on 5th December 2005 and another certificate of validity dated 5th September 2006 to his cousin uncle Ramdas Sambhaji Isankar, the Committee finds that the certificate of validity issued to the real uncle Govind, is not free from suspicion. It is held by the Committee in the impugned order that a notice to show cause has been issued to said Govind on 14th September 2017, calling upon him to show cause as to why this certificate of validity should not be cancelled as its issuance is vitiated

by fraud or suppression of material facts by the said Govind.

3. On such a finding being rendered by the Committee, we called upon the learned AGP on the earlier two occasions to produce the record. We also indicated to the learned AGP as to how the certificate of validity is denied to the petitioner though she has established her relationship with the said Govind and only on the ground that a show cause notice has been issued, but no proceedings in furtherance thereof came to be initiated till date. The learned AGP sought time to file an affidavit. Now, the Joint Commissioner, Schedule Tribe Scrutiny Committee, Aurangabad has filed an affidavit in reply. That is taken on record. The said affidavit admits that the certificate of validity has been issued to her real uncle and cousin uncle of the petitioner. The affidavit admits that the petitioner relies heavily on these two documents, but clarifies that there is a suppression detected from the original record of the certificate holder and that is how a show cause notice has been issued to Govind. The show cause notice could not be taken to its logical end on account of the huge pendency of cases before this Committee. In all, 7,000 matters were pending on the date when this Joint Commissioner took charge and he has reduced the pendency by 2500 cases being decided. In the circumstances, he says that appropriate orders and directions be issued by this Court.
4. We are not impressed by this explanation and the justification not to proceed against a person who has perpetrated a fraud on the public. If it is a serious allegation and which is termed as fraud, then, it should have been taken to its logical end. Mere issuance of a show cause notice in the present case would not suffice for there are two certificates of validity relied upon. The only reason assigned in the impugned order to discard them, cannot be sustained. The justification in the above affidavit is also not enough to straightaway discard the certificates of validity issued in the family. It is conceded that other reasons assigned in the impugned order cannot be supported in law.
8. This order does not prevent the Committee from proceeding against Govind in accordance with law and needless to further clarify that in the event Govind's claim

is invalidated, all the consequences shall be taken by the petitioner as well.”

7. It is well settled that there cannot be an anomaly of a father and biological son belonging to a particular tribe / caste and the petitioner’s claim being invalidated, thereby concluding that he does not belong to the same caste/tribe. In **Apoorva Vinay Nichale (supra)**, this Court has dealt with such issue and has laid down the law that when a close blood relative from the paternal side has a validity, the petitioner, unless there are circumstances warranting a different view, cannot be deprived of such a validity certificate.

8. Recently, the Hon’ble Supreme Court has delivered a judgment on 24th March, 2023 in **Mah. Adiwasi Thakur Jamat Swarakshan Samiti v. The State of Maharashtra & Ors.** [Civil Appeal No. 2502 of 2022, decided on 24th March, 2023], wherein the Hon’ble Supreme Court has held in paragraph nos. 22 and 23 that the onus and burden would lie upon the petitioner to establish his blood relations with a validity holder. If an appropriate inquiry is caused while granting validity to such a beneficiary, the case need not be referred to the Vigilance Cell. Taking into account the law laid down in **Shweta Balaji Isankar (supra)**, if Maruti subsequently suffers invalidation, the consequences that would be attracted, would also befall upon Nikhil and the present petitioner – Saiprasad.

9. In view of the above, **this petition is partly allowed**. The impugned order dated 13th July, 2019 which is a common judgment in the case of the present petitioner and Nikhil, is quashed and set aside. The committee shall issue a Koli Mahadev Scheduled Tribe Validity Certificate to the petitioner, on or before 30th May, 2023.

10. Needless to state that in the event Maruti suffers an invalidation, Nikhil as well as the present petitioner – Saiprasad will suffer similar consequences.

11. Rule made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE