

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

WRIT PETITION NO. 10835 OF 2021

Pallavi Sitaram Johare,
Age 22 years, Occ. Student,
R/o. Soygaon, Tq. Soygaon,
Dist. Aurangabad.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra
- 2) The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad,
Through its Deputy Director (R)
- 3) The Dean/Principal,
Dr. Ulhas Patil Medical College
and Hospital, Jalgaon, Tq. &
Dist. Jalgaon.
- 4) The Registrar,
Maharashtra University of Health Sciences,
Dindori Road, Nashik, Tq. & Dist. Nashik

... **Respondents.**

...

Advocate for the Petitioner : Mr. Pratap V. Jadhavar
A.G.P. for the Respondents/State : Mr. A.A. Jagatkar
Advocate for Respondent No. 4 : Mr. Shrikant S. Patil

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

DATE : 11.08.2023

PER COURT :

The petitioner is challenging the order passed by the respondent No. 2-scrutiny committee confiscating and cancelling her tribe certificate as 'Koli Malhar' under Section 7(1) of the Maharashtra Act XXIII of 2001.

2. Since the petitioner has completed her M.B.B.S. and is aspiring to take admission for the post graduation course is in need of early decision, we

have taken up this matter for final decision at admission stage.

3. The learned advocate for the petitioner submits that the petitioner's real brother Mohitkumar Johare is a validity holder. Her distant cousins Anil Sakharam and Sanjay Sakharam have been granted validity certificates by this Court. There is no dispute about the genealogy and the petitioner is entitled to have a certificate of validity following the decision in the matters of *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*.

4. The learned advocate would submit that the grounds for the committee not to extend benefit of the earlier validities are not sustainable. As far as invalidation of one Rajendra Govind Johare, it is submitted that his certificate was confiscated and cancelled on 20.08.1996 but he died soon thereafter on 20.12.1996 and therefore, there was no question of any concealment. There are subsequent validities from the year 2008 and the petitioner should be granted benefit. He would submit that it is only after following due process of law that the certificates of validities were issued.

5. The learned advocate would then submit that though there are several entries describing the petitioner's relatives to be 'Koli' that cannot be treated as an adverse entry particularly when parallelly there are several entries in the school record and the revenue record describing her relations as 'Koli Malhar'.

6. The learned advocate for the petitioner would submit that the committee has resorted to area restriction and has even applied affinity test which have lost efficacy in the light of the decision in the matter of *Palaghat Jila Thandan Samuday Sanrakshan Samikti and Anr. Vs. State of Kerala and Anr (1994) 1 SCC 359* and *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*.

7. The learned advocate submits that the petitioner is ready to have a conditional validity by running the risk of the consequences as contemplated in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra and others (writ Petition No. 5611 of 2018)** .

8. The learned A.G.P. opposes the petition. He submits that the petitioner's claim is false and bogus. The committee could find out that the earlier validity holders had obtained the validity certificates by indulging in fraud and deceit. Contrary record was not disclosed and the certificates were obtained. He would submit that the earlier invalidation was not disclosed. Sanjay, who had obtained the certificate of validity first in point of time in the year 2008 was granted validity certificate by relying upon the certificate of validity from the maternal side which is not legally permissible. The composition of the committee was faulty inasmuch as one of the three members of the then committee was not eligible to be a member of the committee and considering all these aspects, he would submit that the committee is entitled to and has decided to undertake reconsideration of the matters of all the validity holders.

9. We have carefully considered the rival submissions and perused the papers. At the outset, it is necessary to note that there is no dispute about the genealogy. Though the committee has resorted to several grounds not to extend the benefit of earlier validities to the petitioner, it conspicuously does not observe that no procedure as prescribed by the Act and the Rules framed thereunder of 2003 were followed. We are making these observations for the reason that in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*** the Supreme Court has observed that if there is no dispute regarding the genealogy or relationship between the validity holders and the claimants, he is entitled to derive the benefit if the certificates of validity are issued by following due process of law and in the light of the decision in the matter of ***Ku. Madhuri Patil and another Vs. Additional Commissioner, Tribal Development, Thane and others; (1997) 5***

SCC 437. What the committee has done is that it has discussed several reasons which according to it constitute an attempt at fraud and misrepresentation and treats that all those certificates of validities stand vitiated, which observation is clearly illegal. These vitiating factors will have to be first enquired into and decided.

10. We do not intend to make any comment on the aspect of the powers of the committee to undertake a review and the facts which according to the committee constitute fraud or misrepresentation. We are doing so for two reasons; firstly, the validity holders are not before us and we do not intend to cause any prejudice to them by making observations in this matter behind their back and, secondly, any observation made by us could have a bearing on the matters which the committee has decided to re-open. Till the time, the certificates of validity are not confiscated and cancelled by following due process of law this would hold good and the petitioner would be entitled to have a similar certificate.

11. As far as the non disclosure of the first invalidation in the family of the year 1996, according to us that would not have any bearing on the petitioner's claim inasmuch as that decision would operate in *personam* and the petitioner being not a party to that decision will not be bound by it.

12. The committee has thereafter questioned the composition of the then committee which decided the matter of one of the validity holders. In our considered view, a successor committee cannot question such composition more so when according to rule 9(3) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 the decision of the committee which comprises of three members can be by majority. In that matter, there was no dispute about the eligibility of the other two members and consequently, this ground will not be sustainable.

13. The committee has observed that Sanjay Sakharam had obtained validity certificate relying upon the certificates of validity of the persons who

were related to him from the maternal side. However, we have gone through the order passed in his matter and find that the certificate of validity was not issued **only** on the basis of those earlier validities of the maternal side relations even though those were placed on record and referred to by the then committee. Apart from that the committee had relied upon several other documents while finding Sanjay Sakharam entitled to have a validity certificate.

14. In the light of the above, when the petitioner is ready to run the risk of facing the consequences as contemplated under **Shweta Balaji Isankar case (supra)**, in our considered view, she deserves to be granted a certificate of validity subject to the final outcome of the matters of the validity holders which the committee has now decided to reopen.

15. The writ petition is partly allowed.

16. The impugned order passed by the respondent-scrutiny committee is quashed and set aside.

17. The committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Koli Malhar' scheduled tribe, which shall be subject to the final decision to be taken by the committee in the reopened matters.

18. The certificate of validity shall be issued in the prescribed format without incorporating any other conditions/additions.

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

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-