

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9988 OF 2023

1. Samarth s/o Hanuman Shinde
 2. Parth s/o Hanuman Shinde
- ... Petitioners

Versus

1. The State of Maharashtra,
Through Secretary to General
Administration Department,
Mantralaya, Mumbai.
 2. The Scheduled Tribe Certificate
Verification Committee, Kinwat
Head Quarter at Aurangabad
Through its Dy. Director (R), Aurangabad.
- ... Respondents

...

Advocate for Petitioner : Mr. Sunil M. Vibhute
AGP for Respondents/State : Mr. S. G. Sangale

...

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

DATE : 10 AUGUST 2023

ORDER (MANGESH S. PATIL, J.) :

The petitioners who are real brothers inter se are challenging the order of the respondent - scrutiny committee confiscating and cancelling their tribe certificates as belonging to Thakur scheduled tribe.

2. Considering the fact that the petitioners are participating in the current admission process through NEET-UG-2024 and MHT-CET-2023, respectively, the matter is taken up for final disposal at the admission stage.

3. The learned advocate for the petitioners would submit that there are several validities in the family which have been ignored by the committee. He would particularly advert our attention to the fact that petitioners' real paternal aunt - Prabhawati Sitaram Shinde has been granted certificate of validity pursuant to the order of this Court (Nagpur bench in writ petition no. 2997 of 2017 by the order dated 04-06-2019). Since it is a blanket validity, the scrutiny committee ought to have straightaway granted certificates of validity to the petitioners. It has unnecessarily resorted to take inspection by pointing out some unsustainable reasons. He would submit that none of the reasons is maintainable. The order is perverse and arbitrary and it be quashed and set aside.

4. The learned AGP supports the order.

5. We have carefully gone through the papers.

6. There is no dispute about the fact that there are several validity holders in the family and even the impugned order, in paragraph no. 7 gives the details. It is also conspicuous that the

committee was alive to the fact that not only the petitioners paternal aunt - Prabhawati but even one Namdeo Niloba Shinde have been granted certificates of validity by the order of the High Court. However, the committee has devised some grounds to not to extend the benefit of these validities to the petitioners.

7. The committee has now observed that there is a sale deed wherein petitioners' cousin great grandfather Dattaji Bhikaji Suryawanshi had purchased a land wherein there is a declaration that the parties were not adiwasis which document according to the committee was concealed while obtaining the validity certificates by the blood relations.

8. As can be seen from the impugned order, it was a sale deed executed by the owner of the property and the petitioners' cousin great grandfather - Rajaram Keshavrao Shinde was the purchaser. Any statement made in the sale deed can be attributed to the executant and not the purchaser. Besides assuming that there is any such renouncement, still, in our considered view, a caste cannot be renounced in this manner at least such a declaration simplicitor would not be sufficient to reach a conclusion that there is renouncement of the caste by the individual.

9. The committee has then referred to the revenue record wherein petitioners' great grandfather was described as 'Maratha' which according to the committee was a fact which was concealed. It has then vaguely observed that concealing several other facts and circumstances, the previous validity holders had practised fraud and the committee has inherent powers to undertake a review.

10. We do not intend to make any comment on this aspect of the matter, 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.

11. The committee has thereafter questioned the composition of the then committee which decided the matter of one of the validity holders - Pralhad Dnyanoba Shinde. In our considered view, a successor committee cannot question such composition more so when according to rule 9(3) 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 Rules, 2003, the

decision of the committee which comprises of three members can be by majority. In this view of the matter when there was no dispute about the eligibility of the other two members consequently, this ground will not be sustainable.

12. The committee has then observed that the committee which granted validities to Datta Dnyanoba Shinde and Uddhav Pralhad Shinde was headed by one Mr. V.S. Patil and the functioning of the committee then was regarded as dubious by the government which directed re-consideration of the decisions made by it. We need not deliberate on this. So long as the certificates of validity issued by following necessary procedure in accordance with law are not confiscated and cancelled in accordance with law as is prescribed under section 7(1) of the Maharashtra Act no. XXIII of 2001, the committee could not have refused to extend the benefit of the validities in the family by questioning the functioning of the then scrutiny committee.

13. In the result, since the petitioners' blood relations possess certificates of validity issued by following the procedure prescribed under the law and when their real paternal aunt has been found entitled to a certificate of validity by this Court, the petitioners are entitled to derive the benefit. The impugned order is clearly illegal being perverse and arbitrary.

14. Hence, the following order :-

ORDER

- (i) The writ petition is partly allowed.
- (ii) The impugned order dated 02.08.2023 passed by the respondent no.2/Scrutiny Committee is quashed and set aside.
- (iii) The Committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Thakur' scheduled tribe, which shall be subject to the decision to be taken by the Committee in the matters which it intends to reopen in respect of the validity holders.
- (iv) The certificates of validity shall be issued in the prescribed format without incorporating any other conditions/additions.
- (v) The petitioners shall not be entitled to claim equities.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/