

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

WRIT PETITION NO. 9783 OF 2021

- 1) Nikita D/o Sambhaji Jinkalwad,
Age 19 years, Occ. Education,
R/o. Dnyaneshwar Nagar, Hudco,
Nanded, Tq. & Dist. Nanded.
 - 2) Ganesh s/o Sambhaji Jinkalwad,
Age 22 years, Occ. Education,
R/o. Dnyaneshwar Nagar, Hudco,
Nanded, Tq. & Dist. Nanded.
- ... **Petitioners**

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
 - 2) The Scheduled Tribe Caste Certificate
Verification Committee Aurangabad,
Through its Dy. Director (R),
Aurangabad.
 - 3) The Commissioner & Competent Authority
Commissionerate of Common Entrance
Test Cell, Government of Maharashtra,
8th Floor, New Excelsior Building,
A.K. Naik Marg, Fort, Mumbai.
- ... **Respondents**

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Advocate for the Petitioners : Mr. S.M. Vibhute,
A.G.P. for the Respondents/State : Mr. S.G. Sangale
Advocate for Respondent No. 3 : Mr. S.G. Karlekar

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AND

WRIT PETITION NO. 10447 OF 2023

- Sai s/o Sambhaji Jinkalwad,
Age 20 years, Occ. Education,
R/o. Tekli, Tq. Loha, Dist. Nanded.
- ... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs
Department, Mantralaya Mumbai.
- 2) The Scheduled Tribe Caste Certificate
Verification Committee Kinwat,
Head Quarter at Aurangabad
Through its Dy. Director (R)
Dist. Aurangabad.

... Respondents

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Advocate for the Petitioner : Mr. Sunil Mahadevappa Vibhute
A.G.P for the Respondents/State : Mr. S.G. Sangale
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AND
WRIT PETITION NO. 9776 OF 2021

- 1) Sandeep s/o Nivrutti Jinkalwad
Age 26 years, Occ. Education,
R/o. Dnyaneshwar Nagar, Hudco,
Nanded, Tq. & Dist. Nanded.
- 2) Sourav s/o Nivrutti Jinkalwad,
Age 22 years, Occ. Education,
R/o. Dnyaneshwar Nagar, Hudco,
Nanded, Tq. & Dist. Nanded.

... Petitioners

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
- 2) The Scheduled Tribe Caste Certificate
Verification Committee, Aurangabad.
Through its Dy. Director (R) ,
Aurangabad.
- 3) The Principal,
SCTR'S, Pune Institute of
Computer Technology, Dhanakwadi
Pune, Dist. Pune

4) The Registrar,
Savitribai Phule Pune University,
Pune Dist. Pune

... Respondents

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Advocate for the Petitioners : Mr. Vibhute Sunil M.
A.G.P for the Respondent Nos. 1 & 2 : Mr. S.G. Sangale

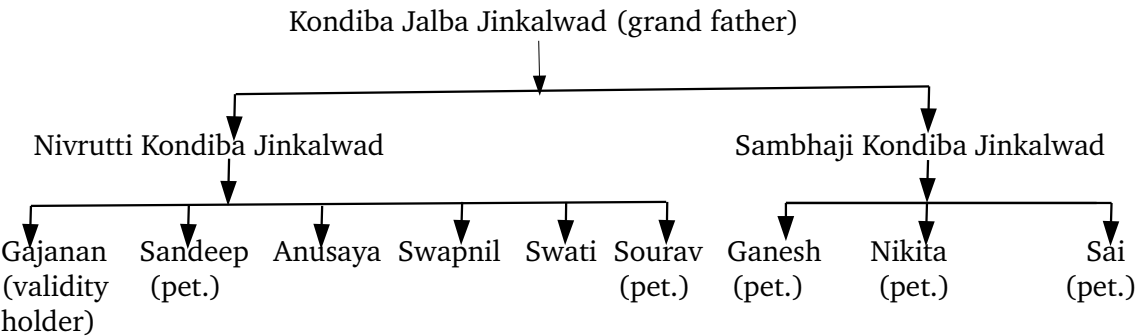
CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : **13.09.2023**

PER COURT :

By way of these separate petitions, the petitioners are challenging a common judgment and order passed in the matters of petitioners Nikita, Ganesh, Sandeep and Sourav, whereas petitioner Sai is challenging a similar order regarding invalidation passed in his matter separately.

2. In order to appreciate the arguments, it would be apposite to refer to the genealogy about which there is not a dispute.



Apparently, petitioner Sai is real brother of petitioners Ganesh and Nikita, whereas petitioner Sandeep and Sourav are real brothers *inter se* and are real cousins of the other petitioners.

3. The learned advocate for the petitioners would submit that petitioners Sandeep and Sourav's real brother Gajanan is the validity holder who was issued with a certificate of validity after conducting vigilance enquiry and by following due process of law. Even if the committee now entertains some

doubt and attributes Gajanan of having resorted to concealment and misrepresentation in respect of the record of their grand father Kondiba Jalba Jinkalwad, till the time the committee, as has been intended in the impugned order, does not resort to appropriate proceeding and does not confiscate and cancel his validity certificate, the petitioners cannot be deprived of deriving the benefit.

4. The learned advocate would then submit that there are consistent entries in the school record, Grampanchayat record and the revenue record of the petitioners' ancestors showing them to be 'Koli Mahadev'. Though the committee has referred to some contrary entries as 'Koli' of some individuals, it is a sheer error. The oldest record of Kondiba Jalba Jinkalwad who is the petitioners' grand father clearly mentions him to be 'Koli Mahadev'. Though this Court has independently called the school record and directed the Education Officer (Primary) to examine it and who has accordingly examined the school record of the Zilla Parishad school wherein Kondiba Jalba Jinkalwad is stated to have taken education, the report submitted by the Education Officer nowhere entertains any doubt about that entry though it has expressly mentioned about rampant manipulation in the school record. He would, therefore, submit that even the oldest entry of grand father Kondiba Jalba Jinkalwad being a favourable entry, the petitioners are entitled to derive the benefit.

5. Lastly, he would submit that the observation of the committee of resorting to area restriction and applying affinity test is clearly illegal and the petitioners be granted certificates of validity. They are ready to run the risk of facing the consequences as contemplated in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra and others (Writ Petition No. 6320 of 2017)**.

6. The learned A.G.P supports the orders of the scrutiny committee. He submits that several contrary entries were revealed wherein petitioners relations were shown to be 'Koli' which is an 'other backward class'. The

oldest entry of Jakal Rama Sakharam, petitioners' cousin grand father of 17.10.1949 is also 'Koli'. All the favourable entries are of the subsequent period. The old entry would carry greater probative value. The circumstances and the material has been rightly appreciated by the committee while discarding the petitioners' claim. He would submit that even the committee noticed manipulation particularly in respect of petitioners' grand father Kondiba wherein letter 'म' (M) has been added subsequently below the entry of 'Koli'. He would, therefore, submit that the observations and conclusions drawn by the committee are clearly based on the plausible appreciation of the material available to it which has rightly discarded the petitioners' claim.

7. The learned A.G.P. would also submit that the committee has given sufficient reasons as to why it was not ready to extend the benefit of the validity of Gajanan. He was granted certificate of validity by resorting to concealment. The committee has formed the opinion that he had obtained the certificate by practising fraud and has decided to reopen his case.

8. We have carefully considered the rival submissions and perused the papers.

9. At the outset it is necessary to observe that since this Court in its order dated 06.12.2021 had entertained a doubt about the entries made in the Zilla Parishad (Primary) School Mukhed Tq. Mukhed, Dist. Nanded, wherein the petitioners' grand father Kondiba is stated to have taken admission in the year 1953, this Court had directed the Education Officer to undertake an enquiry regarding the school record. Pursuant to that the Education Officer has submitted a report. The report is in detail and its sum and substance is to the effect that there are several manipulations in respect of many entries. It has given list of 27 such entries where it has been reported that there were overwriting and scratching in respect of the entries in the caste column. It has also been reported that in respect of 22 students their entries

have been inserted wherever the place was found and appeared to be bogus. It has also given the list of the entries of 12 persons wherein there is a manipulation in respect of the caste columns. Four entries were found to be duplicate and in respect of 15 students even there is scratching in the names of the students. It also reports that it has not been duly certified. The register which contain entries from 1953 to 1961 is in torn condition and therefore all the entries could not be scrutinized.

10. We had allowed both the sides to go through this report so that they can make their submissions. In spite of several entries having been examined, conspicuously, the entry in respect of petitioners' grand father Kondiba Jalba Jinkalwad regarding which the committee has entertained a doubt has not been stated to have been manipulated in any form or to have been inserted at a later point. This being the entry of 1953, the observations and the conclusions of the committee discarding it is clearly perverse and contrary.

11. It does appear that there is a school record of one Jakal Rama Sakharam stated to be the petitioners' cousin grand father of 17.10.1949 wherein in the caste column word 'Koli' is appearing. Similarly, there are few contrary entries of similar kind of later period. More importantly, though it is a part of the vigilance record which is responded to by the petitioners, they have not denied any relationship with him and even the committee has not discussed as to how it has reached to a conclusion that this Jakal Rama Sakharam is the petitioners' cousin grand father.

12. Be that as it may, there is a validity possessed by Gajanan who happens to be the petitioners brother/cousin. Even if the committee now castigates him about having obtained certificate of validity by resorting to fraud, it would be a subject matter of an independent scrutiny. He is not before us and we cannot make any observations which could have any bearing on his matter which the committee has now decided to reopen.

13. The petitioners are ready to run the risk of facing necessary consequences as contemplated in the matter of **Shweta Balaji Isankar (supra)** and if that is so, till the time Gajanan's validity is not confiscated and cancelled by resorting to due enquiry and on the other hand when he was granted certificate of validity by undertaking a full-fledged enquiry, in our considered view, the petitioners are entitled to derive the benefit of having the validities whose fate can be made dependent upon the decision to be taken by the committee in the matter of Gajanan.

14. The Writ Petitions are partly allowed.

15. The impugned orders are quashed and set aside. The respondent-scrutiny committee shall immediately issue certificates of validity to the petitioners of 'Koli Mahadav' scheduled tribe. Those certificates shall be subject to the final outcome of Gajanan's matter which the committee has decided to reopen.

16. The petitioners shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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