

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10547 OF 2023

- 1) Pooja d/o Baburao Sapkal,
Age 23 years, Occ. Student,
R/o. At post Sapkalwadi, Tq.
Sillod, Dist. Aurangabad.
 - 2) Tushar s/o Baburao Sapkal,
Age 19 years, Occ. Student,
R/o. At post Sapkalwadi, Tq.
Sillod, Dist. Aurangabad.
- ... **Petitioners.**

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya Mumbai.
 - 2) The Scheduled Tribe Certificate
Verification Committee Aurangabad,
Through its Member Secretary
Aurangabad.
- ... **Respondents.**

...

Advocate for the Petitioners : Mr. Boilwad Omgashad B.
A.G.P. for the Respondents/State : Mr. S.G. Sangale

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

DATE : **14.09.2023**

PER COURT :

The petitioners' claim of belonging to '*Koli Malhar*' scheduled tribe has been discarded by the respondent No. 2-scrutiny committee in a proceeding under Section 6 of the Maharashtra Act XXIII of 2001.

2. The learned advocate for the petitioners would submit that the committee has resorted to and relied upon several entries in the name of individuals who are not in blood relation with the petitioners. They had specifically denied such relationship in their reply filed to the vigilance report. The committee has ignored several validities in the blood relation. Even if there are few invalidities as well, since it is a matter of proof regarding the tribe claim, merely because some blood relations were unable to lead sufficient evidence and could not convince the committee about their claim, those invalidities would be individual centric and cannot bind the other blood relations. He would submit that the committee has not doubted the genealogy and the blood relations being relied upon by the petitioners particularly with the validity holders. If that is so, even if the committee has entertained a doubt about the alleged fraud having been practised by some of the validity holders in obtaining validity certificates, it would be a matter of independent scrutiny and the decision would be individual centric. If the petitioners are able to substantiate their case on the basis of cogent and convincing evidence, the approach of the committee in discarding their claim merely on the basis of the suspicion being entertained by the members of the committee is not legally sustainable.

3. The learned advocate for the petitioners submits that in the light of the fact that several conditional validities have been issued by virtue of the orders of this Court in the matters of blood relations, the petitioners are ready to run the risk and may be granted conditional validities. It can be made subject to the outcome of the matters being reconsidered by the committee in respect of the validity holders.

4. Per contra, the learned A.G.P. would strongly support the impugned order and would submit that the plausible appreciation and conclusion drawn by the committee cannot be interfered with in exercise of powers under Article 226 of the Constitution of India which are not analogous to the powers of an appellate authority. However, he fairly concedes that there

are several conditional validity holders in the blood relation which have been granted by orders of this Court from time to time.

5. We need not burden this order by examining the impugned order and every aspect of it for the precise reason that the petitioners are ready to run the risk of getting invalidated their claim if and when the matters which are under reconsideration of the scrutiny committee in respect of the validity holders reach to a logical conclusion. This is the course followed by different benches of this court from time to time whereby several blood relations from the paternal side of the petitioners have been granted conditional validities.

6. We, therefore, follow the same course.

7. The Writ Petition is partly allowed. The impugned order is quashed and set aside.

8. The committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Koli Malhar' scheduled tribe, which shall be subject to the decision to be taken by the committee in the reopened matters.

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

10. In case, the committee seeks review of the order passed by this Court on 22.04.1997 in Writ Petition No. 1665/1996 then the respondents are at liberty to take steps against the present petitioners.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-