

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

WRIT PETITION NO.10515 OF 2023

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| 1. Bhagyashri d/o Hirasing Dhirbassi | | |
| 2. Swapnil s/o Hirasing Dhirbassi | ... | PETITIONERS |

VERSUS

- | | | |
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| 1. The Scheduled Tribe Certificate,
Scrutiny Committee, Aurangabad
through its Member Secretary, | | |
| 2. State Common Entrance Cell,
Maharashtra State, Mumbai.
8 th Floor, New Excelsior Building
A.K. Naik Marg Fort, Mumbai, 400001 | ... | RESPONDENTS |

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Advocate for Petitioners : Mr. Mahes S. Deshmukh
A.G.P. for respondents : Mr. S.G. Sangale

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

DATE : 25.08.2023

ORDER (MANGESH S. PATIL, J.) :

The petitioners who are siblings are challenging the order of the respondent - Scrutiny Committee confiscating and cancelling their tribe certificates of 'Naikda' scheduled tribe under Section 7(1) of the Maharashtra Act XXIII of 2001.

2. Considering the exigency, with the consent of both the sides, the matter is heard finally at the stage of admission.

3. Before proceeding to consider the matter it would be appropriate to observe that admittedly the petitioners' father has been

issued with a certificate of validity of Naikda scheduled tribe. Their proposal was rejected by the Scrutiny Committee. That order was challenged by the petitioners in Writ Petition No.1736/2019. Some documents like extract of Death and Birth Register of one Shankar of 15.05.1949, Revenue Record i.e. Pahani Patrak in the name of Mansingh of 1349 Fasli (1949 AD) showing him to be Naikda and birth and death register extract of common ancestor Phattu showing caste Naikda of 24.11.1922 were produced in the writ petition. Considering the fact that those documents were not before the Committee when the petitioners' proposal was decided, by the order dated 23.07.2019 the matter was remanded back to the Scrutiny Committee for decision afresh with a direction to allow the petitioners to produce the aforementioned documents.

4. After remand a fresh vigilance was conducted to ascertain veracity or otherwise of the aforementioned three documents. A report was submitted. The petitioners filed reply and again the Committee discarded these additional documents and has passed the impugned order.

5. The learned advocate Mr. Deshmukh would submit that keeping aside all the disputed questions and the so called forged and bogus entries, admittedly, petitioners father Hirasingh Shankar Dhirbassi has been granted certificate of validity way back in the year 2007 and till the time it is not confiscated and cancelled by following due process of law. The petitioners cannot be deprived of deriving the benefit of the validity.

6. Mr. Deshmukh would submit that the Committee has discarded

the oldest record for flimsy reasons. The old revenue record in the form of Pahani Patrak of 1349 Fasli (1949 AD) describing petitioners' ancestors as Naikda could not have been discarded lightly. Even the birth and death register in respect of his great grandfather Mansingh Phattu Dhirbassi has been overlooked by the Committee for not sound reasons. In view of such old record which has undergone verification by the Scrutiny Committee afresh, the petitioners' claim stood duly substantiated.

7. Mr. Deshmukh would further submit that even at the time of vigilance inquiry conducted at the time of petitioners' father Hirasingsh, the report submitted by the vigilance officer expressly mentioned about having obtained a communication from the Tahsildar, Khamgaon about the extract in respect of birth of Shankar Mansingh who is the grandfather of the petitioners of 15.05.1949 was issued by his office. There was no overwriting or erasure. That record described Shankar to be Naikda. A Communication dated 15.09.2006 (page no.35) is also produced on record in the writ petition addressed by the Tahsildar to the Vigilance Officer. Ignoring the ratio laid down in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.; (2012) 1 SCC 113** the Committee has discarded the vital documents and reached a perverse and arbitrary conclusion.

8. Learned AGP would strongly oppose the petition. He would submit that it is a case of rank fraud practised by the family of the petitioners. Their father Hirasingsh has also resorted to fraud and has been

able to secure a certificate of validation. He would submit that it is highly improbable that this family of the petitioners could have migrated to so many places. Shankar's birth record is of Village Gerumatargaon Tq. Khamgaon District Buldhana, cousin great grandfather Chinga, Phattu's birth extract is of village Arni, District Yavatmal, whereas, the birth extract of Phattu Krishna being relied upon by the petitioners is of village Ramgaon Tq. Digras District Yavatmal. The land record of Chinga Phattu is of Latipur Tq. Bhokardan District Jalna. He would, therefore, submit that this very fact has weighed with the committee when it expressed a serious doubt about the petitioners' claim. He would submit that the vigilance inquiry demonstrated that record in respect of the Pahani Patrak of 1358 (1948 AD) of Bhokardan, wherein, the name of Phattu Krishna Naikda was found to be inserted later on. He would further point out that in respect of the birth and death register of Mansingh Phattu, the entry as Naikda has been inserted when there was no column provided for it. He would submit that considering all these aspects the Committee formed an opinion about petitioners' father having obtained validity by resorting to fraud and manipulation and has decided to invoke the inherent powers to undertake a fresh scrutiny.

9. We have carefully considered the rival submissions and perused the record. Since it is a matter of fraud, we do not intend to comment on the powers of the Committee to undertake such review or reopen the inquiries. Even if it has such a power, we do not intend to make any

observations touching the circumstances which according to the Committee constitute fraud, for two reasons. Since it is an issue which is directly and substantially under consideration of the Scrutiny Committee we cannot make any observation which could have some bearing on that inquiry. Secondly, the validity holders are not before us. Therefore, we also do not intend to cause any prejudice to them by making certain observations touching the alleged fraud. We leave it at that.

10. Even if some of the adverse record which according to the Committee is manipulated or forged is ignored, the birth and death register entry of 06.09.1950 in respect of petitioners great great grandfather Phattu Krishna Naikda describing him as Naikda could not have been ignored by the Committee merely on the basis of suspicion which it has entertained about this record having been obtained from Tq. Digras District Yavatmal when the ancestral place of the petitioners' family is Gerumatergaon Tq. Khamgaon District Bhuldhana. We do not find that merely on the basis of such a suspicion this record could have been discarded more so when it is a pre-presidential order entry.

11. Be that as it may, admittedly, petitioners' father possess a certificate of validity. It was issued after conducting a vigilance inquiry and apparently by following due process of law which in itself is sufficient for the petitioners to seek a similar certificate of validity obviously subject to usual conditions.

12. The writ petition is partly allowed. The impugned order is

quashed and set aside. The respondent - committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Naikda' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

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

14. All the validity holders from the petitioners family who have received the show cause notices, shall co-operate the committee in early decision of the re-opened matters.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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