

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

WRIT PETITION NO. 10734 OF 2023

Pratiksha d/o Namdev Padale,
Age 25 years, Occ. Education,
R/o. Sawangi, Tq. Bhokardan,
Dist. Jalna

... **Petitioner**

VERSUS

- 1) The State of Maharashtra
Through Secretary,
Department of Tribal Development,
Mantralaya Mumbai-32.

- 2) Scheduled Tribes Certificate
Scrutiny Committee,
Through its Member Secretary,
Aurangabad.

... **Respondents**

...

Advocate for the Petitioners : Mr. Choudhari Deepak D. & Ramesh B. More
A.G.P. for the Respondents/State : Mr. A.A. Jagatkar

AND

WRIT PETITION NO. 10735 OF 2023

- 1) Harshal s/o Namdev Padale,
Age 21 years, Occ. Education,
R/o. Sawangi, Tq. Bhokardan,
District Jalna.

- 2) Rameshwar s/o Bhagwan Padale,
Age 32 years, R/o. As above.

... **Petitioners**

VERSUS

- 1) The State of Maharashtra
Through Secretary,
Department of Tribal Development,
Mantralaya Mumbai-32.

- 2) Scheduled Tribes Certificate
Scrutiny Committee,
Through its Member Secretary,
Aurangabad.

... **Respondents**

Advocate for the Petitioners : Mr. Choudhari Deepak D.
A.G.P. for the Respondents/State : Mr. A.A. Jagatkar

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

DATE : **01.09.2023**

PER COURT :

By way of these petitions under Article 226 of the Constitution of India, the petitioners are challenging the respective orders passed in their matters by the respondent-scrutiny committee thereby confiscating and cancelling their certificates of '*Koli Malhar*' scheduled tribe by resorting to Section 7(1) of the Maharashtra Act XXIII of 2001.

2. Though the impugned orders are separate, admittedly, the petitioner from Writ Petition No. 10734/2023 and the petitioner No. 1 from Writ Petition No. 10735/2023 are real sisters. They have been relying upon the validity issued to their father Namdeo and the petitioner No. 2 from Writ Petition No. 10735/2023 is their first degree cousin, there being no dispute about the genealogy, the self same favourable as well as contrary entries having been considered by the scrutiny committee in passing the impugned orders, we propose to decide both these matters by this common order to avoid rigmarole.

3. The learned advocate for the petitioners would submit that Namdeo was granted certificate of validity after following due process of law. Even a vigilance was conducted and therefore the petitioners are entitled to take advantage of his validity. He would submit that apart from Namdeo one Kavita Bhagwan Padale who is the real sister of petitioner Rameshwar has also been granted certificate of validity. Their one more cousin Kautik Narayan Padale was also issued a certificate of validity in the year 2007. Since all these decisions were taken after following due process of law, the petitioners are entitled to have a certificates of validity.

4. The learned A.G.P would oppose the petitions. He would submit that the validity holders had obtained the certificates by concealing the contrary record which could be traced during the present vigilance enquiry. It is a case of fraud and the committee is entitled to undertake fresh scrutiny of the matters of the validity holders. He would submit that the decision in the matter of Kavita was taken by a committee whose composition was not legally correct since one of the members Mr. B.V. Shirurkar was not eligible to be a member of the committee. He would then submit that Namdeo had obtained certificate of validity from a committee headed by one Mr. V.S. Patil and the functioning of that committee was dubious and the Government has decided to undertake reconsideration of the certificates issued by that committee.

5. We have considered the rival submissions and perused the papers. There is no dispute about the genealogy. There is also no dispute about the fact that petitioner Pratiksha and Harshal's father Namdeo is the holder of certificate of validity. Petitioner Rameshwar's real sister Kavita is also a validity holder. Their cousin Kautik Narayan Padale is also a validity holder. The committee is now harbouring a view that all these certificates were obtained by resorting to misrepresentation and concealment and has decided to reopen those enquiries, the certificates having been obtained by practising fraud.

6. 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 in issue 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.

7. As regards the observation of the Committee regarding composition of the then Committee which granted validities to Kavita Bhagwan and Kautik Narayan, 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 this ground will not be sustainable.

8. There is no dispute about the fact that the petitioner Rameshwar's real sister Kavita has been granted validity by the Committee by following due process of law. The Committee has now sought to take exception to that order by observing that the conduct of the then Committee members was dubious. It was headed by one Mr. V.S. Patil. 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.

9. Till the time the certificates of validity issued to the petitioners blood relations are not confiscated and cancelled by following due process of law, in our considered view, the petitioners cannot be deprived of the benefit of having a validity.

10. In the circumstances, the impugned order is clearly perverse and arbitrary and is liable to be quashed and set aside.

11. The Writ Petitions are partly allowed.
12. The impugned orders dated 18.08.2023 and 23.08.2023 passed by the respondent No. 2-scrutiny committee, are quashed and set aside.
13. 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 matters which it intends to reopen in respect of the validity holders.
14. The certificates of validity shall be issued in the prescribed format without incorporating other conditions/additions.
15. The petitioners shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-