

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11524 OF 2023

Omkar s/o Kishor Kawalikar,
Age 17 years, Occ. Student,
Since minor through its natural
guardian father
Mr. Kishor s/o Baburao Kawalikar,
Age 46 years, Occ. Service,
R/o. 9/214/3 LIC Colony, Ring Road,
Latur Tq. & Dist. Latur.

... **Petitioner**

VERSUS

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

2) The Scheduled Tribe Certificate
Scrutiny Committee, Kinwat,
Headquarter at Aurangabad.
Through its Member Secretary.

... **Respondents**

...

Advocate for the Petitioner : Mr. Jadhav Vivek U.
A.G.P. for the Respondent Nos. 1 & 2 : Mr. S.G. Sangale

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

DATE : **14.09.2023**

PER COURT :

The petitioner is challenging the order of the respondent-scrutiny committee invalidating his claim of 'Koli Mahadev' scheduled tribe.

2. We have heard both the sides since the petitioner is in urgent need of decision to secure his admission.

3. The learned advocate for the petitioner would submit that independent of the merit on the touchstone of the record which forms the basis for the committee to draw inference, the petitioner is 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)** but he should be granted certificate of validity which can be made subject to the final outcome of the matters of the validity holders whose benefit has not been extended to him by the committee because of variety of reasons and has decided to undertake a review of the orders in respect of the validity holders.

4. The learned advocate points out that the petitioner's real paternal uncle Suryakant was granted certificate of validity in the year 2005. Subsequently, petitioner's father Kishor, another paternal uncles Ganesh, Raju and Shivkant and three daughters of Suryakant have been granted certificates of validity. He would point out that though Ganesh's claim was invalidated by the committee on the ground that the committee was intending to recall the certificates of validity issued to Suryakant and Raju, the order was challenged before this Court in Writ Petition No 913/2005. By the order dated 20.03.2009 this Court had remanded the matter back to the scrutiny committee based on the statement being made on its behalf that the committee was intending to confiscate and cancel the validity certificates of Suryakant and Raju and had directed the committee to take a decision afresh. He would submit that subsequently, by a reasoned order dated 31.12.2009 Ganesh was granted certificate of validity. He would submit that till the committee has not reopened the matters of Suryakant and Raju much less for taking it to the logical end.

5. If this is so and when in the impugned order the committee has not made any observations about Suryakant having been issued with a certificate of validity without following due process of law and in accordance with the rules, the petitioner cannot be deprived of deriving the

benefit of his validity.

6. The learned A.G.P. would submit that the oldest record of the petitioner's grand father Babu Arjuna of pre-constitutional period mentions his caste as 'Koli'. Even there are several other contrary entries of similar kind of the petitioner's blood relations. The petitioner has not denied the relationship with Babu Arjuna and that being the oldest entry no fault can be found with the decision of the committee to discard the claim. Even the committee noticed some manipulations in the school record of petitioner's uncles Umakant and Ganesh. It has also pointed out that validities were obtained by Suryakant and other validity holders by resorting to fraud and the committee has decided to reopen it.

7. 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.

8. Once having noticed that the petitioner is ready to run the risk of facing the consequences of invalidation in the light of the decision in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra and others (Writ Petition No. 6320 of 2017)**, when there is no dispute about the fact that the petitioner's father and three paternal uncles possess certificates of validity, when it is not the case of the committee that no procedure as prescribed by law was followed while granting certificates of validity to them, following the decision in the matter of *Maharashtra Adiwasi Thakur Jamat*

Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326, the petitioner is entitled to have the certificate of validity which can be made subject to the final outcome of the matters which the committee has decided to reopen in respect of the validity holders.

9. The Writ Petition is partly allowed.

10. The impugned order is quashed and set aside. The respondent-scrutiny committee shall immediately issue certificate of validity to the petitioner of 'Koli Mahadev' scheduled tribe. It shall be subject to the final outcome of the matters which the committee has decided to reopen.

11. The petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-