

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

WRIT PETITION NO.11742 OF 2022

Shaikh Abdul Albarr Shaikh Mohd Waquioddin
Age: 19 years, Occu. Student,
R/o: Plot No.6, Galli No.10,
“Viqar Villa”, Peerburhan Nagar
Nanded

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Principal Secretary
Tribal Development Department
Mantralaya, Mumbai - 32
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Kinwat, Headquarter at Aurangabad
through its Member Secretary.
3. The Sub-Divisional Magistrate,
Nanded, Dist. Nanded

... **RESPONDENTS**

...
Advocate for Petitioner : Ms. Pradnya Talekar h/f. Talekar and Associates
AGP for respondent Nos.1 to 3 : Mr. S.G. Sangle

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

DATE : 06.07.2023

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for the respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is impugning the order passed by the respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee constituted under 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 Act, 2000 whereby it has refused to recognize him as belonging to “Takankar” Scheduled Tribe. We have heard the learned advocate Ms. Talekar and the learned AGP extensively.

3. Ms. Talekar would strenuously submit that the approach of the committee is incorrect. There are old entries of pre-presidential order specifically mentioning in the school record that petitioner’s ancestors were Takankar. No sufficient and cogent reasons are assigned by the committee to refute these entries. The committee has resorted to a convenient course to doubt these entries simply by mentioning that some of those entries are Muslim Takankar and others are Takankar and some are Musalman/Takankar. She would submit that there are two oldest entries of 1338 Fasli (1928 AD) of the cousin great grandfather Rajamiya Fakirumiya as Takankar and that of his own great grandfather Chunnumiya Shaikh Faku of 1335 Fasi (1925 AD). Merely because the subsequent entries at times also mentioned as Musalman Takankar, this could not have been a reason to discard the oldest entries. Committee has taken a convenient approach which is perverse and arbitrary.

4. Ms. Talekar would then submit that in any event, the petitioner’s father and paternal aunt have been issued with validity certificate way back on 12.08.2011. The Committee has refused to rely upon these on the ground that the certificates were issued by a committee headed by the then Assistant Commissioner. When the Government noticed

that several validity certificates were issued by that committee, a decision has been taken to undertake a fresh scrutiny of all those matters however, still the matter is at the same stage. These observations of the committee do not take the matter further since it has not independently resorted to ascertain as to what was the irregularity in the present matter of the validities issued to the petitioners father and paternal aunt. Merely because the committee and the Government entertain some doubt about the capacity or the conduct of the then committee it would not be sufficient to resort to and undertake a fresh scrutiny. Ms. Talekar would therefore submit that the petitioner is entitled to derive the benefit of validities issued to the father and paternal aunt.

5. Learned AGP Mr. Sangle strongly supports the judgment and order of the scrutiny committee. He would submit that in respect of a similar claim of an individual as belonging to Takankar scheduled tribe this Court in the matter of **Shaikh Imadoddin Wajidoddin Vs. The State of Maharashtra and Ors.**; (WP No.12770/2017 decided on 24.11.2017) also noticed that 'Takankar' can be found in 'Pardhi' tribe as also there are Takankars from Muslim Community which are included in special backward class by a separate notification of the year 2014. He would submit that this Court had remitted the matter back for reconsideration by the experts for the reasons quoted therein.

6. Mr. Sangle would then submit that the then scrutiny committee had not undertaken requisite inquiry while granting validity certificates to

the petitioner's father and paternal aunt. He would submit that in the light of the judgment in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.**; 2023 SCC Online SC 326 the scrutiny committee was entitled to overlook these validities having reached a conclusion that those were not issued in accordance with the law and Rules.

7. We have considered the rival submissions and perused the record. At the out set it is necessary to note that the petitioner's father and paternal aunt both have been issued validity certificates as belonging to 'Takankar' scheduled tribe. Irrespective of the doubt being entertained by the scrutiny committee as expressed in the impugned order about the legality of those two validity certificates, so long as those are not revoked or cancelled in the light of the observations in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra), in our considered view the petitioner cannot be denied the benefit rather it would be unjust to deny such benefit. The Supreme Court in the above matter in paragraph Nos.22 to 24 has observed that if there are validity certificates of the blood relations from the paternal side, benefit cannot be denied. Of course subject to the rider that the committee is entitled to undertake a scrutiny if the validity certificates being relied upon by the claimants have not been issued in accordance with the judgment in the matter of **Ku. Madhuri Patil and Anr. Vs. Additional Commissioner Tribal Development Thane and Ors.**; (1997) 5 SCC 437 and also the rules.

8. The impugned order is absolutely silent as to what is that irregularity or illegality committed by the then committee while granting validity certificate to the petitioner's father and paternal aunt. In the absence of which, we are bound to follow the mandate of law laid down in the matter of **Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and Ors.**; 2018 (6) Mh.L.J. 401 and even of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra).

9. Even if the respondent - scrutiny committee is now entertaining some doubt about the validity certificates, as of now no steps are being taken to undertake a fresh scrutiny. If that be so, it would be pragmatic for us to allow the petitioner to derive the benefit of the validity certificate of 'Takankar' scheduled tribe for time being, till those validity certificates are intact.

10. Again, it is indeed perverse and arbitrary for the scrutiny committee to only refer to the so called contrary entries by ignoring the oldest once which are in favour of the petitioner. When there is a school record of the year 1925 and 1928 in respect of the great grandfather and the brother of the great grandfather mentioning the caste as 'Takankar', merely because some of the subsequent entries of the blood relations in the school record mentioned as Muslim, Musalman or Musalman Takankar, the committee could not have drawn inference in such pick and choose manner rather the oldest entry will have a more probative value and here there are two.

11. The committee has then resorted to some statements made in the registered sale deeds wherein the petitioner's blood relations have declared that they did not belong to any tribe while executing the sale deeds for selling the lands.

12. In our considered view assuming that these sale deeds contain a statement that the executant/vendor does not belong to scheduled tribe, such a statement in the sale deed obviously must have been made to come out of the clutches of law which prohibit sale of land by a tribal without the permission of the Collector, no amount of declaration, may be in the registered sale deed, in our opinion can change the caste or the tribe which an individual gets by birth. It is not a matter which can be renounced. Therefore even this observation of the scrutiny committee that because of such declaration in the sale deeds the petitioner is not belonging to scheduled tribe is not sustainable being clearly perverse and arbitrary.

13. In the light of the above, we allow the writ petition partly, quash and set aside the impugned judgment and order and direct the scrutiny committee to issue tribe validity certificate to the petitioner of "Takankar" scheduled tribe as expeditiously as possible and in any case within two weeks. However, such validity would be subject to the out come of ultimate decision in the matter of validity holders which the committee intends to reopen.

14. The petitioner will not be entitled to claim any equity.

(SHAILESH P. BRAHME, J.)

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(MANGESH S. PATIL, J.)