

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12108 OF 2023

- 1] Mahesh S/o Janardhan Bhotkar
- 2] Sagar S/o Anilkumar Bhotkar
- 3] Rahul S/o Janardhan Bhotkar
- 4] Sandesh S/o Anilkumar Bhotkar .. Petitioner

Versus

- 1] The State of Maharashtra,
Through Secretary, Higher and Technical Education
Mantralaya, Mumbai
- 2] The Commissioner and Competent Authority,
State Common Entrance Test Cell,
Maharashtra State, Mumbai
- 3] The Scheduled Tribe Certificate
Scrutiny Committee
Through its Joint Commissioner,
Sambhajinagar (Aurangabad) .. Respondents

...
Advocate for petitioners : Mr. Suresh M. Kulkarni
AGP for the respondent – State : Mr. S.G. Sangale
...

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

DATE : 29 SEPTEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

Heard both the sides finally in view of the urgency inasmuch the petitioners are seeking admission in the current admission process. The petitioners claim to be belonging to 'Koli Malhar' scheduled tribe. By the impugned order, respondent - scrutiny

committee has confiscated and cancelled their certificates of Koli Malhar scheduled tribe.

2. The learned advocate for the petitioners refers to the genealogy and submits that there are number of validities in the family some of which have been granted pursuant to the orders of this Court. The petitioners are ready to have the conditional validities depending upon the final outcome of the matters of the validity holders which the committee has decided to re-open. He would submit that though the committee has passed separate orders in respect of petitioners nos. 1 and 2 and in respect of the other two petitioners together with few others, the impugned orders are passed on the same date and for the same reasons there being no dispute about the genealogy and the fact that they are blood relatives *inter se*, common petition has been filed.

3. Learned advocate submits that apart from the availability of the consistent record wherein the petitioners and their blood relations have been described as Koli Malhar, ignoring such consistent and enormous record, the committee has resorted to some contrary entries wherein the relations have been described as Koli, Hindu Koli, Hindu Koli Malhar, to discard the claim. He would submit that even the committee has also resorted to affinity test when its efficacy has been expressly commented upon by the Supreme Court in the matters of ***Anand Dhananjay Nalawade Vs. State of Maharashtra; 2014 (4)***

Mh.L.J. 77 and Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC

326. He would submit that since this Court has granted certificates of validity to the blood relatives, since it is not the case of the committee that those certificates were granted without following due process. They are entitled to have certificates of validity. The petitioners are ready to run the risk of facing the consequences as contemplated in ***Shweta Balaji Isankar Vs. State of Maharashtra and others (writ petition no. 6320 of 2017)***.

4. The learned AGP supports the order and submits that the committee has meticulously considered the inconsistent record it could trace. It also found manipulation. The validity holders had obtained certificates of validity concealing the contrary record. The committee has therefore decided to undertake fresh scrutiny and notices are to be issued for revoking the certificates of validity on the ground of fraud.

5. Having considered the rival submissions and having perused the papers, it would suffice for the purpose to observe at the outset that there could be no dispute about the fact that there are numerous validities in the family of all the petitioners. Apart from the validities mentioned in the impugned order, even Ghanshyam Janardhan Bhotkar and Janardhan Gangaram Bhotkar have been granted certificates of validity. Even if the committee has now decided

to undertake a review in respect of all the validity holders, till the time the certificates of validity are not confiscated and cancelled by resorting to procedure in accordance with law, the petitioners cannot be denied the benefit more so when they are ready to run the risk of facing the consequences as contemplated in the matter of ***Shweta Balaji Isankar*** (supra) and the impugned order does not mention that the certificates of validity were issued without following due procedure.

6. We do not intend to make any comment on the aspect of powers of the committee to undertake a review and the facts which according to the committee constitute fraud or misrepresentation. We are doing so for two reasons; firstly the validity holders are not before us and we do not intend to cause any prejudice to them by making observations in this matter behind their back and secondly, any observation made by us could have a bearing on the matters which the committee has decided to re-open.

7. Since the contrary entries and the alleged manipulated record resorted to by the committee to refute the claims would be a matter which will be commented upon and re-scrutinized in the matters to be reopened, as indicated herein-above, it would not be appropriate for us to make any comment upon the sustainability of the views expressed by the committee regarding their genuineness or otherwise.

8. In the result, the following order :-

I) The writ petition is partly allowed.

II) The impugned judgment and order dated 28.09.2023 is quashed and set aside.

III) The respondent-Scrutiny Committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Koli Malhar' scheduled tribe in the prescribed format without adding anything.

IV) The validities shall be subject to the final outcome of the matters which the committee has decided to re-open.

V) The petitioners shall not be entitled to claim equities.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/