

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

WRIT PETITION NO. 12887 OF 2023

Manish s/o Gangadhar Kotalwar,
Age 18 years, Occ. Student,
R/o. Kundalwadi, Tq. Biloli,
Dist. Nanded. ... **Petitioner.**

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
 - 2) The Scheduled Tribe Certificate
Verification Committee Kinwat,
Headquarter Aurangabad. ... **Respondents**
- ...

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Advocate for the Petitioners : Mr. Yenegure Apparao Prakash
A.G.P. for the Respondents/State : Mr. A.S.Shinde

CORAM : **MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : **30.10.2023**

PER COURT :

The petitioners who are siblings are challenging the common order of the respondent-scrutiny committee constituted under the Maharashtra Act XXIII of 2001 whereby it has confiscated and cancelled their tribe certificates of 'Mannervarlu' scheduled tribe.

2. Considering the urgency, at the request of the parties we have heard both these matters finally at the stage of admission.

3. The learned advocate for the petitioners submits that there is consistent record showing the petitioners and their family members/blood relations wherein in the caste column of the school record as well as other documents they have been described as 'Mannervarlu'. The oldest entries are in respect of Gangadhar Mohan Kotlawar of 1981 and Gangadhar Moglaji Kotalwar who is the petitioner's father of 1982. He would submit that the committee has relied upon some contrary entries of the individuals who are not related to the petitioners by blood. The fact was expressly denied in the reply to the vigilance report and still the committee has treated that entry as a contrary entry to discard the claims.

4. The learned advocate would further submit that the petitioners have been relying upon the validity of blood relative in the family by name Mohan Narsimalu Kotalwar in the year 2011. The committee has decided to undertake a fresh scrutiny of his validity but till the time the validity certificate issued to him is not confiscated and cancelled, the petitioners cannot be denied the benefit.

5. The learned A.G.P supports the impugned order. He submits that

there is serious doubt about validity holder Mohan to be the blood relative of the petitioners. He would advert our attention to the genealogy.

6. We have considered the rival submissions and perused the papers.

7. There cannot be any dispute about the fact that the impugned order contains the list of school record, revenue record etc. of the blood relatives of the petitioners in paragraph No. 2 wherein right from 1981 the record has been consistently describing the petitioners and their blood relatives as 'Mannervarlu'.

8. The contrary entry relied upon by the committee is of one Nagnath K. Ramlu Kotlawar wherein in the school record of Zilla Parishad High School Kundalwadi Tq. Biloli of 1966 he was shown to be 'Manurvar' which entry even according to the committee has been manipulated and word 'Mannervarlu' has been added subsequently in a different ink by scratching the original entry of 'Manurvar'.

9. In reply to the vigilance report the petitioners had expressly denied about having any blood relationship with this individual Nagnath K. Ramlu Kotlawar. In spite of such specific denial which must have been looked into by the committee, the impugned order is conspicuously silent as to how the stand of the petitioners denying any relationship with this individual is not sustainable. Conversely, the committee has also not endeavoured to demonstrate as to how this individual is related to the petitioners by blood from the paternal side. The impugned order merely describes him to be the second degree cousin of the petitioners. Merely because a person by same name can be seen in the genealogy being relied upon by the petitioners, the committee could not have proceeded on the premise that there was no dispute about any blood relationship between the petitioners and Nagnath K. Ramlu Kotalwar.

10. If this alleged contrary entry is ignored, there was no other record

before the committee to disbelieve the petitioners' claim.

11. As far as the relationship between the petitioners and the validity holder Mohan Narsumalu Kotlawar is concerned, though the learned A.G.P. strenuously endeavoured to demonstrate that they are not related by blood and there is serious doubt about they being in the blood relationship, the committee in the impugned order has not observed anything, disputing the relationship. If it is a matter of quasi judicial nature, the learned A.G.P. cannot be allowed to support the order under challenge by referring to some circumstance or can make out a new ground which is not resorted to by the committee while passing the impugned order. When the committee has proceeded to examine sustainability of the petitioners claim on the basis of the certificate of validity possessed by Mohan without disputing his blood relationship with the petitioners, the submission of the learned A.G.P. now raising a doubt about it is not legally sustainable and cannot be entertained.

12. The committee has observed that Mohan was granted certificate of validity without undertaking any vigilance enquiry and without assigning any reason in the order, it was nothing but filling up of the blanks in a printed proforma. For this reason the committee has refused to grant benefit of Mohan's validity to the petitioners and has referred to the observations of the Supreme Court in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023(2) Mh.L.J.785*** and particularly the portion wherein it was observed that if it is established that the validity certificate was granted without holding proper enquiry or without reasons, the scrutiny committee cannot validate a caste certificate only on the basis of such certificate of validity of the blood relative.

13. It is pertinent to note that the Supreme Court in the very same matter has also observed that vigilance enquiry as contemplated under Rule 12 of the Rules of 2003 framed under the Maharashtra Act XXIII of 2001 can be

resorted to only if the committee entertains a doubt about sustainability of the claims on the basis of the documents produced in support thereof. Meaning thereby that if the committee does not entertain any doubt about the documents produced in support of a claim it may not resort to a vigilance enquiry. Therefore, the observation of the committee that since no vigilance enquiry was conducted before granting certificate of validity to Mohan it was not a proper enquiry, is not legally sustainable.

14. As far as quality of the order passed by the then scrutiny committee which has granted certificate of validity to Mohan is concerned, we have carefully gone through the original file of Mohan including the original order passed by the then committee. In our considered view, observation in the order under challenge that this order passed in the matter of Mohan was bereft of reasoning and material is factually unsustainable and is rather perverse. As can be seen from the order passed in the matter of Mohan, six documents including three validities were examined by the committee. It was observed that the documents were sufficient to substantiate the claim. The school record of cousin grandfather Rajenna Rajenna Kotlawar of 1951 was also relied upon. It was also noticed that the vigilance enquiry was conducted in the matters of the validity holders which Mohan was relying upon. Not only this, but even it was observed that though Mohan could not get through the affinity test, the aforementioned evidence was sufficient to grant him certificate validity. If such was the reasoning resorted to by the then scrutiny committee while validating the tribe certificate of Mohan, the observation of the present committee that he was granted certificate of validity without assigning reasons is, again, perverse and arbitrary.

15. Upshot of the above discussion, there are several favourable entries in the school record of the blood relations, the only contrary entry which forms basis for the impugned order is in respect of an individual with whom the petitioners have been expressly denying to have any relationship. The committee has not disputed petitioners relationship with the validity holder

Mohan who was granted certificate of validity by following due process of law and for sufficient reasons mentioned herein above. Even if the committee has now formed an opinion about Mohan having obtained certificate of validity by practising fraud and has decided to undertake a fresh scrutiny, till the time his certificate of validity is not confiscated and cancelled. The petitioners cannot be denied to have the benefit.

16. The Writ Petitions are partly allowed.

17. The impugned order is quashed and set aside. The respondent-scrutiny committee shall immediately issue certificates of validity to the petitioners of '*Mannervarlu*' scheduled tribe. Those shall be subject to the final outcome of the matters which the committee has decided to reopen.

18. The petitioners shall not be entitled to claim any equities.

19. Today being the last date the learned A.G.P shall immediately communicate this order to the committee so that the petitioners can secure the admission.

(NEERAJ P. DHOTE, J.)

(MANGESH S. PATIL, J.)

mkd/-