

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

WRIT PETITION NO. 13706 OF 2018

Shivani D/o Pramod Pawar,
Age 18 years, Occ. Education,
R/o. Biroba Nagar, Karape Estate,
Rahuri, Tq. Rahuri, Dist.
Ahmednagar

... **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,
Nashik Division, Nashik,
Dist. Nashik.

3) Ahmednagar Jilha Maratha
Vidya Prasarak Samaj's New Law
College, Ahmednagar, Dist.
Ahmednagar

... **Respondents**

...

Advocate for the Petitioner : Mr. Deepak D. Chaudhari
A.G.P for the Respondent Nos. 1 & 2 : Mr. A. S. Shinde

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

DATE : **17.10.2023**

PER COURT :

Heard. Rule. Rule is made returnable forthwith. Learned A.G.P waives service for the respondent Nos. 1 and 2. At the joint request of the parties the matter is heard finally at the stage of admission.

2. By invoking the powers under Article 226 of the Constitution of India, the petitioner is challenging the order of the respondent No. 2 a scrutiny committee constituted under Section 6 of the Maharashtra Act XXIII of 2001, thereby confiscating and cancelling her 'Koli Mahadev' scheduled tribe certificate issued by the competent authority under Section 4 of that Act.
3. The learned advocate for the petitioner submits that the order of the committee is perverse and arbitrary. It has ignored the validities in the family being relied upon by the petitioner. Though the committee has alleged about the validity holders having obtained the certificates of validity by resorting to misrepresentation and suppression of vital facts, the committee has not observed that they were issued certificates of validity without following due process of law. The petitioner is entitled to derive the benefit of these validities possessed by Navnath Ramnath Pawar and Kaveri Vasant Pawar.
4. The learned advocate would further submit that the committee has not appreciated the evidence in the proper perspective and has illegally applied the affinity test.
5. The learned advocate would further submit that till the time the validity certificates are not confiscated and cancelled, the petitioner may be granted certificate of validity subject to the final outcome of those matters. She is ready to run the risk of facing the consequences as observed in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra and others (Writ Petition No. 6320 of 2017)**.
6. The learned A.G.P opposes the petition. He submits that the committee has taken a plausible view after examining the record. This Court cannot sit in appeal and cannot substitute its view by undertaking a fresh scrutiny.
7. Certainly, this Court has inherent limitation in exercising the powers

under Article 226 of the Constitution of India. However, admittedly, the petitioner's blood relations Kaveri Vasant Pawar and Navnath Ramnath Pawar possess certificate of validity, though the committee now alleges about they having obtained the certificates of validity by misrepresentation and concealment. The committee has not observed that they were granted certificates of validity without following due process of law which is the parameter laid down by the Supreme Court in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326*** . Therefore, till the time the committee does not undertake due process of law to take its inference regarding alleged fraud to its logical end, when there is no dispute about the validity holders being the blood relatives of the petitioner, she deserves to be granted a certificate of validity subject to the final outcome of the matters of the validity holders which the committee has decided to reopen.

8. Pertinently, the committee has observed that the school record of Vasant Bhaga Pawar who is the petitioner's cousin uncle was manipulated and the word '*Mahadev*' was added in the bracket after the entry 'Hindu Koli' of the year 1953. However, pertinently, a photo copy of this very school record was available before the committee which decided the matter of Kaveri Vasant Pawar and still she was granted certificate of validity. Kaveri is none other than daughter of Vasant Bhagaji. Now that the committee has decided to reopen even her case, it will have to undertake an independent scrutiny to justify its inference.

9. Since serious issue regarding fraud is raked up, 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.

10. Obviously, the attempt of the committee to resort to the affinity test is clearly contrary to the observations of the Supreme Court in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)***.

11. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The respondent-scrutiny committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Koli Mahadev' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to reopen.

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

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-