

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

WRIT PETITION NO.1946 OF 2023

**MAHESH BABU GAJEWAD
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND ANOTHER**

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Advocate for the Petitioner : Shri Phatale Sagar S.
AGP for Respondents 1 and 2/State : Shri V.M. Kagne

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**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 20th February, 2023

Per Court :-

1. The petitioner is a 19 years old student, who would be appearing for his professional course admission examination from June, 2023 onward. He is aggrieved by the impugned order dated 20.10.2022, by which, his claim of belonging to “Koli Mahadev”, Scheduled Tribe category, has been invalidated.

2. We have considered the strenuous submissions of the learned advocate for the petitioner and the learned AGP, who has vehemently opposed this petition. With their assistance, we have gone through the petition paper book.

3. The petitioner’s father Babu Bali Gajewad and his biological brother Suresh Bali and biological sister Godavari

Bali, have been granted validity certificates by the committee. The petitioner's biological sister Mrugnayana suffered invalidation. She approached this Court in Writ Petition No.957/2019. By the judgment dated 03.07.2019, this Court allowed the claim of Mrugnayana and granted her a validity certificate. It would be apposite to reproduce paragraphs 2 to 8 from the judgment delivered in Mrugnayana (supra) as under :-

- “2. *Mr. Phatale, learned counsel for the petitioner submits that the father of the petitioner is issued with the validity certificate of Koli Mahadev, Scheduled Tribe in the year 2008. The real uncle of the petitioner Suresh is issued with the validity certificate of Koli Mahadev, Scheduled Tribe in the year 2007. The real paternal aunt of the petitioner namely Godavari is issued with the validity certificate of Koli Mahadev, Scheduled Tribe in the year 2012.*
3. *The learned counsel submits that the Birth and Death Register of the grandfather of the petitioner recorded the date of birth as 20.08.1952 and the caste at that time is recorded as Mahadev Koli. The learned counsel submits that the record of the father of the petitioner, the petitioner consistently records caste as Mahadev Koli. The said aspect has not been considered properly. One isolated entry is sought to be relied in respect of the entry of the grandfather of Koli. The learned counsel relies on the judgment of Apoorva D/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee and others reported in 2010(6) Mh.*

L. J. 401. The learned counsel further submits that affinity test is not the litmus test. It is only a corroborative piece of evidence. The Apex Court in case of Anand Vs. The Committee for Scrutiny and Verification of Tribe Claim and others reported in (2012) 1 SCC 113.

- 4. The learned A.G.P. submits that the validity in favour of the father, real uncle and real paternal aunt is issued, as the document recording caste as Koli of the grandfather of the petitioner was not produced, the same was suppressed. According to the learned counsel, the school record of the cousin uncle and the cousin aunt of the petitioner's records caste as Koli. The said aspect has been considered by the committee. The learned A.G.P. further submits that the petitioner could not prove the affinity test also. The committee has not committed any error while passing the impugned order.*
- 5. We have considered the submission, so also, we have gone through the judgment and record.*
- 6. It is a matter of record that the school record of the petitioner records caste as Koli Mahadev. The school record of the father of the petitioner Babu of the year 1980 records caste as Mahadevd Koli, so also, another school record of the year 1985 records caste as Mahadev Koli. The service book of the father of the petitioner records caste as Mahadev Koli. The school record of one uncle Suresh of the year 1982 records caste as Mahadev Koli. The school record of the year 1983 of paternal aunt Godavari records caste as Mahadev Koli. The Birth and Death Register of the grandfather of the petitioner wherein the date of birth is recorded as 20.08.1952 and in the said record the caste is recorded as Mahadev Koli. The committee has raised suspicion over the said*

document only on the ground that in Birth and Death Register the caste is normally not recorded, however in the said certificate produced there is a column of caste also. There appears to be one contra evidence in respect of his grandfather of the year 1948 wherein caste is shown to have been recorded as Koli as observed by the committee and in respect of cousin aunt and cousin uncle. The Birth and Death Register also records caste as Mahadev Koli. The school record of the father of the petitioner, the real uncle of the petitioner and the petitioner also records caste as Mahadev Koli.

- 7. The validities are issued to the father of the petitioner, the real paternal uncle and the real paternal aunt of the petitioner.*
- 8. Considering all the aforesaid aspects of the matter, the impugned order is quashed and set aside. The respondent / committee shall issue validity certificate to the petitioner of Koli Mahadev, Scheduled Tribe within a period of three (03) days. In case, the validation proceedings of the father, paternal uncle and paternal aunt are reopened and some adverse orders are passed, then the committee may also take further decision with regard to the validity issued to the petitioner.”*

4. The learned AGP submits, on instructions, that the cases of the petitioner's father Babu Bali and his biological brother Suresh Bali, have been reopened. Final hearing in the two matters will be held on 22.02.2023. He, therefore, prays that this matter may be adjourned. He further supports the impugned order by contending that there are certain adverse entries, which

are noticed, indicating some of the paternal relatives as belonging to only “Koli”, which falls in the Special Backward Category (SBC). The advantage of reservation for SBC is lesser than “Koli Mahadev”, Scheduled Tribe.

5. We find that the above contentions of the learned AGP have been considered by this Court (Coram : S.V. Gangapurwala and Mangesh S. Patil, JJ.) in the judgment dated 03.07.2019, delivered in the case of Mrugnayana (supra). It was held that, if eventually any reopened case leads to invalidation and such invalidation is sustained by the High Court, the relatives, who rely upon validity certificates of such candidates, would suffer similar consequences of invalidation flowing from the reopened cases.

6. A similar situation was dealt with by this Court at the Principal Seat in *Shweta Balaji Isankar vs. The State of Maharashtra and others*, Writ Petition No.5611/2018 decided on 27.07.2018, wherein, it was observed in paragraphs 2, 3, 4 and 8 as under:-

“2. On the earlier occasion, we found that though the petitioner produced credible evidence in the form of certificates of validity issued to her real uncle Govind Sambhaji Isankar and which concededly has been issued way back on 5th December 2005 and another certificate of validity dated 5th

September 2006 to his cousin uncle Ramdas Sambhaji Isankar, the Committee finds that the certificate of validity issued to the real uncle Govind, is not free from suspicion. It is held by the Committee in the impugned order that a notice to show cause has been issued to said Govind on 14th September 2017, calling upon him to show cause as to why this certificate of validity should not be cancelled as its issuance is vitiated by fraud or suppression of material facts by the said Govind.

3. *On such a finding being rendered by the Committee, we called upon the learned AGP on the earlier two occasions to produce the record. We also indicated to the learned AGP as to how the certificate of validity is denied to the petitioner though she has established her relationship with the said Govind and only on the ground that a show cause notice has been issued, but no proceedings in furtherance thereof came to be initiated till date. The learned AGP sought time to file an affidavit. Now, the Joint Commissioner, Schedule Tribe Scrutiny Committee, Aurangabad has filed an affidavit in reply. That is taken on record. The said affidavit admits that the certificate of validity has been issued to her real uncle and cousin uncle of the petitioner. The affidavit admits that the petitioner relies heavily on these two documents, but clarifies that there is a suppression detected from the original record of the certificate holder and that is how a show cause notice has been issued to Govind. The show cause notice could not be taken to its logical end on account of the huge pendency of cases before this Committee. In all, 7,000 matters were pending on the date when this Joint Commissioner took charge and he has reduced the pendency by 2500 cases being decided. In the circumstances, he says that appropriate orders and directions be issued by this Court.*
4. *We are not impressed by this explanation and the justification not to proceed against a person who has perpetrated a fraud on the public. If it is a serious allegation and which is termed as fraud,*

then, it should have been taken to its logical end. Mere issuance of a show cause notice in the present case would not suffice for there are two certificates of validity relied upon. The only reason assigned in the impugned order to discard them, cannot be sustained. The justification in the above affidavit is also not enough to straightaway discard the certificates of validity issued in the family. It is conceded that other reasons assigned in the impugned order cannot be supported in law.”

“8. This order does not prevent the Committee from proceeding against Govind in accordance with law and needless to further clarify that in the event Govind's claim is invalidated, all the consequences shall be taken by the petitioner as well.”

7. The issue of comparative hardships and balance of convenience is raised by the petitioner. The contention is that when there are six validity holders amongst paternal blood relatives and the cases of the paternal aunt Godavari and biological sister Mrugnayana, who were granted the validity certificates by the High Court, are not reopened, the petitioner cannot be kept in suspended animation. Even if the reopened cases lead to invalidation, that would not be the end of the litigation journey for these validity holders. Ultimately, this Court or the Honourable Supreme Court would render finality to the litigation. This may take years. This situation cannot run detrimental to the case of the petitioner.

8. In view of the above and in the light of the law laid down in *Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010 (6) Mh.L.J. 401* and *Shweta Balaji Isankar* (supra), we find that the impugned conclusions of the Committee cannot be sustained. As on date, not a single validity holder from the paternal side, has suffered invalidation.

9. As such, **this Writ Petition is partly allowed.** The impugned order is quashed and set aside. The petitioner would be granted the “Koli Mahadev”, Scheduled Tribe, validity certificate, on or before 31.03.2023.

10. Needless to state, if any of the paternal relatives of the petitioner, suffers invalidation in the reopened cases, subject to the decision of this Court in such matters, the said candidate as well as the present petitioner, would suffer the same consequences. If such invalidation orders are passed, the committee would be at liberty to reopen the case of the present petitioner.