



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2091 OF 2017
WITH CA/13231/2023 IN WP/2091/2017

Krushnaprasad s/o Bhanudas Gore,
Age 20 years, Occ. Student,
R/o. Mahsul Colony, Behind B&C Colony,
Ausa Road, Latur, Tq. & Dist. Latur.

... Petitioner

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2) The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Aurangabad Division, Aruangabad.
- 3) The Sub-Divisional Magistrate,
Latur.
- 4) The Maharashtra University of
Health Sciences, Nashik,
Through its Registrar.
- 5) The Dean,
Government Medical College,
Latur.

... Respondents.

...
Advocate for Petitioner : Ms. P.S. Talekar i/b Talekar and Associates.
A.G.P. for Respondent Nos. 1 to 3 & 5 : Mr. M.M. Nerlikar
Advocate for Respondent No. 4 : Mr. S.B. Pulkundwar

...
WITH
WRIT PETITION NO. 770 OF 2018

Shradha d/o Bhanudas Gore,
Age 32 years, Occ. Nil,
R/o. C/o. Shri. S.N. Kaware,
Flat No. A-302, Sai Saraswati,
Saraswati Colony, Old Ausa Road,

Latur, Tq. & Dist. Latur.

... **Petitioner****VERSUS**

- 1) The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya Mumbai-32.
- 2) The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division,
Aurangabad.
- 3) The Tahsildar and Executive Magistrate,
Latur.
- 4) The Deputy Secretary,
General Administration Department,
Mantralaya, Mumbai.

... **Respondents**

...
Advocate for Petitioner : Ms. P.S. Talekar i/b Talekar and Associates.
A.G.P. for Respondent Nos. 1 to 4 : Mr. M.M. Nerlikar

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

**RESERVED ON : 07.12.2023
PRONOUNCED ON : 13.12.2023**

JUDGMENT : (PER : MANGESH S. PATIL, J.)

These are the petitions by the siblings invoking the powers of this Court under Article 226 of the Constitution of India in putting up a challenge to the separate orders of the respondents-scrutiny committee constituted under Maharashtra Act XXIII of 2001, thereby confiscating and cancelling their 'Koli Mahadev' scheduled tribe certificates. The petitioners are siblings and though their claims have been considered by the committee separately and disposed of by separate orders, the evidence considered by the committee being common, at the joint request of both the sides, both these matters are heard together and are being disposed of by this common

judgment to avoid rigmarole.

2. Rule. Rule is made returnable forthwith.

3. Learned advocate Ms. Talekar for the petitioners would submit that the petitioners' real sister Pooja possesses a certificate of validity which was issued after conducting due process of law. A vigilance enquiry was conducted. The record of the Court of Judicial Magistrate Udgir, which the present committee has refused to rely upon, was also considered by scrutiny committee which decided Pooja's claim. A successor committee could not have taken a different view by resorting to a fresh scrutiny of same piece of evidence.

4. Ms. Talekar would further submit that even one Priyanka Jayprakash Gore, a distant cousin from the paternal side, also possesses a certificate of validity, based on which Pooja was granted certificate of validity and still the present committee has refused to extend the benefit of even Priyanka's validity to the petitioners. The learned advocate would submit that even if the committee has now formed an opinion that Priyanka is not related to the petitioners and that even Pooja had obtained certificate of validity by resorting to concealment of material fact, till the time the certificate of validity of Pooja is not confiscated and cancelled, by undertaking independent scrutiny and a full fledged hearing, the petitioners could not have been denied the benefit of having certificates of validity which could have been issued subject to the decision to be taken in the matter of Pooja, which is the course being followed by this Court consistently.

5. Ms. Talekar would then submit that the committee has appreciated the evidence in pick and choose manner and its approach is arbitrary. Favourable record has been ignored and only contrary record has been resorted to, to disbelieve the petitioners.

6. Ms. Talekar would then submit that the committee has also given

weightage to the fact that the petitioner Shradha's claim was earlier rejected as a ground to discard validity of Pooja stating that the fact was not disclosed by Pooja. The committee overlooked the fact that she had challenged that order before this Court in Writ Petition No. 4468/2015 and by the order dated 30.04.2015 her petition was allowed and the matter was remitted back to the scrutiny committee for decision afresh by extending opportunity to her. Ms. Talekar would submit that when Shradha's case was remanded to the scrutiny committee even before the impugned orders were passed, it could not have based its inference on the fact that Pooja had not disclosed the order of invalidation. Ms. Talekar, would, therefore, submit that the decision of the committee is perverse and arbitrary and the petitioners may be directed to be issued with certificates of validity.

7. Per contra, the learned A.G.P. Mr. Nerlikar would submit that this is yet another instance demonstrating as to how a family which does not belong to Koli Mahadev scheduled tribe has been able to put up a claim for deriving the benefits which are only available to tribals. He would submit that though it is a fact that the petitioners' sister Pooja possesses a certificate of validity, he would submit that she was successful in getting it by concealing the material contradictory evidence which was having greater probative value. She had also falsely claimed that validity holder Priyanka was her cousin when the genealogy furnished by Priyanka in her own matter was inconsistent with the genealogy that was furnished by Pooja and even relied upon by the petitioners.

8. The learned A.G.P. would then submit that Pooja was granted certificate of validity labouring under the circumstances which constitute fraud and the committee has decided to undertake a fresh scrutiny of her validity. She was issued certificate of validity based on the validity of Priyanka who was not related to her and one Kaware Sanjiv Nagorao who was stated to be related to Pooja and the petitioners, not from the paternal side. The certificate of validity was issued to her without assigning cogent

and convincing reasons by a committee headed by one Mr. V.S. Patil whose functioning was found by the State Government to be dubious and it had decided to undertake scrutiny of the orders passed by that committee.

9. The learned A.G.P. would then submit that Pooja had produced the certified copies of the record of the Court of Judicial Magistrate, Udgir. The committee had considered it as well. He would submit that the record of Udgir Court being relied upon by the petitioners was rightly refused to be relied upon by the committees even in petitioners matters. It has assigned cogent reasons for refusing to treat that record as genuine. In the matter of Kum. Balika Dagdu Patakrao Vs. The State of Maharashtra and others (Writ Petition No. 4297/2007) by passing an order in Civil Application by 4943/2010 this Court had directed an enquiry to be conducted into similar record in the form of certified copy issued to few other individuals and had ordered inquiry in respect of the record of 1356 *Fasli* (1946 A.D.). The Principal District Judge was directed to conduct an enquiry and it was found that those certified copies were not genuine. This Court in number of matters has consistently refused to rely upon similar certified copies issued by Udgir Court of 1356 *Fasli* (1946 A.D.). Even an action was initiated against the court staff. In view of such peculiar state of affairs, the petitioners could not have been extended benefit of the record of Udgir Court relied upon by them.

10. The learned A.G.P. would submit that in the light of decision in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023(2) Mh.L.J.785***, merely because the petitioners' real sister Pooja was issued with certificate of validity, the petitioners are not entitled to derive the benefit *ipso facto*.

11. Lastly, the learned A.G.P. would submit that the committee has considered the other evidence in proper perspective. Though the petitioners have been relying upon several favourable entries either in the school record

or the birth and death registers, the committee has been able to trace older contrary entries wherein the petitioners' father, uncle and paternal aunt were described as 'Koli' and not 'Koli Mahadev'. The former is a 'Special Backward Class' whereas the latter is a 'tribe'. Older evidence carries greater probative value and no fault is committed by the committee in basing its decision on the older contrary record rather than the recent favourable one.

12. The rival submissions now fall for our consideration. We have carefully gone through the record and particularly the original files, not only of the petitioners but also of their sister Pooja and one Rupendra Vyankatrao Gore.

13. Indeed, in the normal course, the petitioners' real sister Pooja being holder of a certificate of validity, irrespective of the observations of the committee about she having obtained certificate of validity by resorting to concealment of contrary record and misrepresentation, we would have considered the aspect of issuing certificates of validity to both these petitioners subject to the final outcome of the matter of Pooja, which the committee has now decided to reopen. Whether the committee indeed has any such power and jurisdiction is a matter which we do not intend to go into. That could be a subject matter which would be directly and substantially in issue if and when her case is reopened by the committee. We are only concerned with the fact that the petitioners are seeking to derive the benefit of Pooja's validity. Obviously, it is imperative for this Court to follow the ratio laid down by the Supreme Court in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*** and particularly the observations in paragraph no. 22 to 25 and more importantly para no. 22, which reads as under :

“22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to

be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of Kumari Madhuri Patil, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.”

In the light of these observations, it becomes necessary for this Court to ascertain as to if the petitioners can be extended benefit of Pooja's validity.

14. True it is that vigilance enquiry was undertaken before granting certificate of validity to Pooja. The record reveals that even the certified copy of the Udgir Court was a part of the vigilance enquiry.

15. In number of matters this Court had an occasion to consider a similar record purportedly issued by the Court of Judicial Magistrate Udgir of 1356 *Fasli* (1946 A.D.) but had found it to be forged one, pursuant to the enquiry conducted by the Principal District Judge, Latur on the directions of this Court in the matter of Kum. Balika Dagdu Patakras (supra). No exception can be taken to the observations of the committee in the impugned orders that this was one of the pieces of evidence relied upon by the committee which held Pooja to be entitled to have a certificate of validity, in spite of the record being forged one.

16. The other pieces of evidence which were relied upon by the committee which granted validity to Pooja were the certificates of validity of one Priyanka Jayprakash Gore and Kaware Sanjiv Nagorao. The original file of the committee in Pooja's matter contains affidavit dated 22.02.2011 purportedly sworn by Priyanka. Whereas it was noticed by the committee that in fact one Rupendra Vyankatrao Gore who happens to be the real uncle of Priyanka had stated that they were residents of Hingoli district whereas the petitioners' family is from Latur and there was no evidence to demonstrate that Pooja was related to Priyanka in any manner, still Pooja was allowed to rely upon her validity. Having gone through the file of Rupendra made available to us, it does appear that he is native of Hingoli district. Obviously, by virtue of Section 8 of Maharashtra Act XXIII, the burden has been on the petitioners to substantiate their claims. The committee, has observed in the impugned orders that there was no

relationship between Priyanka and the present petitioners, as a reason for refusing to extend benefit of Pooja's validity since she had relied upon it. Not even an attempt has been made by the petitioners to demonstrate before us that indeed the observations of the committee are factually incorrect.

17. Similar is the fact situation in respect of the observations of the committee in pointing out that a forged Udgir Court record was relied upon by Pooja, however, no attempt has been made by the petitioners in this regard to demonstrate as to how this observation is not sustainable.

18. The third piece of evidence relied upon by the committee which granted validity to Pooja was a certificate of validity possessed by Sanjay. The order passed in that matter clearly shows that Sanjay was her aunt's son, meaning thereby that he was not related to Pooja by blood from the paternal side.

19. Taking into account the fact that Pooja was held entitled to have a certificate, primarily based on three pieces of evidence which could not have been relied upon by the then committee being inadmissible, it cannot be said that she was granted certificate of validity by following due process and for plausible reasons. Udgir court record was forged one, validity holder Priyanka was not related to her whereas, validity holder Sanjay was the son of aunt and was not related to her by blood. Consequently, applying the parameters laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)***, no fault can be found with the observation and conclusion of the committee in the impugned orders refusing to extend the benefit of Pooja's validity to the petitioners.

20. Keeping aside the aforementioned circumstance if one examines the impugned orders and the evidence before the committees, it is apparent that the favourable record wherein the petitioners and their family members were described as 'Koli Mahadev' are of recent period, of 1970 onwards. Whereas, the contrary school record of petitioners' father of 1964, the

petitioners' real paternal uncle of 1957 and even father's school record of 1971 described them to be 'Koli'. In fact, the school record of Zilla Parishad Central Primary School Gangapur Tq. & District Latur of petitioners' father Bhanudas wherein he was admitted on 05.06.1964 was noticed to have been manipulated by inserting word 'Mahadev' at a later point of time.

21. The learned advocate Ms. Talekar would vehemently submit that the committee has not independently undertaken and examined the school register to verify this fact and has simply drawn the inference on the basis of the observations of the vigilance officer which it could not have. When even the subsequent school record of petitioners' father Bhanudas of 1971 of Shri. Marwadi Rajasthan Vidyalaya Latur, a photo copy of which register is available in the original file clearly demonstrates that in the caste column he was described as 'Koli', the inference drawn by the committee, based on the observations in the vigilance report, cannot be said to be perverse or arbitrary. More importantly, in spite of the fact that this was a clear observation in the vigilance report, for the reasons best known to the petitioner Shradha no reply was filed to this vigilance report and even Krushnaprasad failed to file any reply to the vigilance enquiry report.

22. In addition to some contrary entries which were expressly discussed herein above, in the matter of Shradha, contrary school record of petitioners' paternal aunt Kanchan Yashwantrao Gore of 1965 wherein her caste was described as 'Koli', was revealed during the similar enquiry in the matter of Krushnaprasad. He has failed to explain such contrary entries. The fact that in the school record of his father Bhanudas word 'Mahadev' was written in different handwriting and ink was not specifically denied by him in the reply and he merely objected that no such inference could be drawn. If Section 8 of the Act casts burden on the claimants to lead cogent evidence to substantiate the caste or tribe claims, such evasive denial would not be sufficient. The petitioners themselves could have attempted to bring on record the photo copies of the school register if they were to demonstrate

that the inference of the vigilance officer and the one drawn by the committee are perverse in castigating this school record of petitioners' father as manipulated.

23. Ms. Talekar made an attempt to salvage some ground in this regard by referring to the decision of a division bench at Nagpur in the matter of **Asra Fatema d/o Zakir Ali Ahmed Vs. State of Maharashtra in Writ Petition No. 920/2021 decided on 13.10.2022** and particularly a similar circumstance wherein there were allegations about manipulation in the school record. It is pointed out that the alleged manipulation could not have been treated as proved.

24. We have carefully gone through the decision and it reveals that the fact situation in the matter was conspicuously different in material particulars. There was allegation of interpolation in the school register of grandfather of petitioner therein who was not alive. The scrutiny committee recorded statement of the headmaster who was not the author of the document. The author of the document was not examined, and relying upon the decision in the matter of ***Sayanna Vs. State of Maharashtra and ors. (2009) 10 SCC 268***, the allegations regarding interpolation were discarded. More importantly, the police inspector who had undertaken vigilance enquiry had also not recorded any opinion about the alleged interpolation. This is not a fact situation in the matter in hand. There is a specific observation in the vigilance reports in the matters of both the petitioners about word 'Mahadev' having been added in a different ink and handwriting in the caste column of the school register of petitioners' father Bhanudas, who is not stated to be no more. Besides, as observed herein above Shradha has failed to file any response to the vigilance report whereas petitioner Krushnaprasad has not disputed the fact that the entry is in a different ink, rather has given an evasive reply by saying that mere difference in ink could not be sufficient to draw the inference. Therefore, the petitioners are not entitled to derive any benefit from the decision in the

matter of **Asra Fatema d/o Zakir Ali Ahmed (supra)**.

25. In nutshell, the observations and the conclusions of the committee are clearly based on plausible appreciation of the evidence before it and in exercise of limited powers under Article 226, this Court cannot substitute its views.

26. There is no merit in both the petitions and those are liable to be dismissed.

27. The Writ Petitions are dismissed.

28. Rule is discharged.

29. Pending Civil Application is disposed of.

(NEERAJ P. DHOTE, J.)

(MANGESH S. PATIL, J.)

mkd/-