

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

WRIT PETITION NO.13550 OF 2023

Amol s/o Iresh Annamwar ... **Petitioner**

Versus

1. State of Maharashtra
Tribal Development Department
through its Secretary,
Mantralaya, Mumbai – 400 001.
2. Scheduled Tribe Certificate
Scrutiny Committee, Kinwat
Office at Aurangabad
through its Member Secretary

... **Respondents**

...

Advocate for petitioner : Mr. M.S. Deshmukh i/b. Mr. Phatale Sagar S.
AGP for respondents/State : Mr. A.A. Jagatkar

...

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

DATE : 30.10.2023

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

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is challenging the order of the Scrutiny Committee passed under Section 7(2) of the Maharashtra Act XXIII of 2001 confiscating and cancelling his 'Mannervarlu' scheduled tribe certificate issued by the competent authority.

3. The learned advocate for the petitioner points out that only two entries have been considered by the Committee and by treating them to be adverse it has discarded the claim. He would point out that the first of such adverse entry is the school record of petitioner's second degree cousin Gangaram Vithalrao Annamwad of the year 1976, wherein, word "Mannervarlu" has been written by circling the original entry of 'Munurwar'. He points out that as the vigilance officer noted and even the Committee admits about such entry having been taken on the basis of the order passed by the Education Officer in all probability under the enabling powers under the Secondary School Code. It was not the fact that without there being any order the school register was manipulated. He would submit that this could not have been treated as an adverse entry.

4. He would then submit that the other adverse entry is in respect of petitioner's great great grandfather's mother in the Census Register of 1951, wherein, she was described as 'Munurwad'. He would advert our attention to Section 15 of the Census Act, 1948 providing that the entries in the register cannot be looked into and relied even as a piece of evidence under the Evidence Act. He would therefore submit that both the so called contrary entries are in fact not contrary entries. The rest of the entries being consistent there was no reason for the Committee to discard the claim.

5. In addition the learned advocate for the petitioner would

submit that the petitioner's distant nephew Sainath Gangaram Annamwad possesses a certificate of validity. Even Sainath's father Gangaram possesses a certificate of validity though the Committee now observes that they had obtained certificates of validity by resorting to some misrepresentation and concealment of adverse entries. Till the time the certificates of validity are not confiscated and cancelled, the petitioner cannot be denied to have the benefit.

6. Learned AGP submits that in the petitioner's matter validity holder Sainath has filed affidavit and has given a genealogy which is not compatible with the genealogy furnished by him in his own matter. He would therefore submit that the Committee ought to have considered this aspect but has ignored it and the matter be remanded to the Committee for a fresh consideration.

7. He would thereafter submit that the Committee has now decided to undertake review of the certificates of validity issued to Sainath and Gangaram and Gangaram's brother Madhav as well.

8. Having heard both the sides and having perused the papers, it is *ex facie* clear that the Committee has treated the two aforementioned entries as contrary entries which run counter to the claim of the petitioner. It is apparent that the school record of Gangaram Vitthal Annamwad, wherein, in the caste column word 'Munurwar' has been circled and word 'Mannervarlu' has been subsequently added, pursuant to the order of the Education Officer dated 18.09.1980 in all probability

passed under clause 26.1 of the Secondary School Code, 1977. If this is so, when the school register has been corrected pursuant to an order of the Education Officer, it could not have been legally treated by the Committee as entry running counter to the claim.

9. As regards the second entry in the Census Register of 1951, wherein, the mother of the petitioner's great great grandfather has been shown to be 'Munurwad', as has been pointed out, by virtue of Section 15 of the Census Act 1948, such entry in the Census Register is not admissible in evidence. If both these so called contrary entries are overlooked, as they need to be, there is nothing to disbelieve the petitioner's claim of belonging to 'Mannervarlu' scheduled tribe on the basis of consistent record.

10. As far as the observation of the Committee regarding existence of the circumstances which according to it constitute fraud and its decision to undertake a fresh scrutiny of the validity holders, since the validity holders are not before us, we refrain from making any observations as to if those circumstances indeed would constitute misrepresentation or concealment. Needless to state that the Committee will have to issue notices to the validity holders, solicit their response, undertake a scrutiny and arrive at a decision to substantiate its observation about they having obtained certificates of validity by resorting to fraud. Till the time, so long as the validity certificates are in force, the petitioner cannot be deprived of having their benefit.

11. As far as the impugned order is concerned the Committee has not even entertained a doubt about the genealogy particularly in respect of the petitioner being in the blood relation of the validity holders from the paternal side, *albeit*, the learned AGP is now entertaining that doubt.

12. Even if one intends to undertake that scrutiny in the light of the submission made by the learned AGP, at the most it can be said that the genealogy furnished by validity holder Sainath in his own file and the one furnished by him on affidavit in the petitioner's case do not look similar, however, it cannot be said that both are not compatible. In his own file Sainath has given a genealogy starting from the common ancestor Kashiram Satwaji Annamwad, where as in the genealogy in the petitioner's matter furnished by Sainath petitioner is shown to be the descendent of the real brother of that common ancestor Kashiram Satwaji Annamwad by name Irranna Satwaji Annamwad. There is nothing in the file of Sainath to demonstrate that Kashiram was the only child of his parents and had no sibling. If that is the case, in the absence of any observation by the Committee touching this aspect and doubting the blood relationship between the petitioner on the one hand and the validity holder on the other, the submission of the learned AGP is not tenable.

13. In the result the impugned order is perverse and arbitrary and not legally sustainable.

14. The writ petition is allowed partly. The impugned order is quashed and set aside. The Committee shall issue certificate of validity to the petitioner of “Mannervarlu” scheduled tribe immediately. Its validity shall be subject to the final outcome of the matters of the validity holders which the Committee has decided to reopen.

15. Petitioner shall not be entitled to claim equities.

16. The validity holders shall cooperate to the Committee if and when they are served with the show cause notices.

(NEERAJ P. DHOTE, J.)

(MANGESH S. PATIL, J.)