

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

WRIT PETITION NO. 13617 OF 2023

- 1) Shital Narayan Sapkal,
Age 27 years, Occ. Student,
r/o. Sapkalwadi, Sillod, Tq. Sillod,
District Aurangabad.
- 2) Sushant Narayan Sapkal,
Age 21 years, Occ. Student,
r/o. Sapkalwadi, Sillod, Tq. Sillod,
District Aurangabad.
- 3) Swati Narayan Sapkal,
Age 25 years, Occ. Student,
r/o. Sapkalwadi, Sillod, Tq. Sillod,
District Aurangabad.

... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Through it's Secretary,
Tribal Department,
Mantralaya, Mumbai-32.
- 2) The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad,
Through its Deputy Director (R).

... **Respondents**

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Advocate for the Petitioners : Mr. Jadhavar Pratap V.
A.G.P. for the Respondents/State : Mr. S.G. Sangale

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

DATE : **30.10.2023**

PER COURT :

The petitioners are siblings and challenging the common order of the scrutiny committee confiscating and cancelling their 'Koli Malhar' scheduled tribe certificates.

2. In view of the urgency, we have heard both the sides finally at the stage of admission.

3. At the outset it is necessary to note that the learned advocate for the petitioners tried to substantiate the claims by resorting to the validities of number of individuals and even the evidence collected during the vigilance undertaken while examining a similar claim of their cousin paternal uncle Ashok Laxman Sapkal, of the year 1948. On our query, the learned advocate fairly conceded that neither the genealogy he is relying upon and which he has produced in the present petition nor the school record of 1948 which was considered while granting certificate of validity to Ashok, was, in fact produced before the present committee. It is thus apparent that something which was not before the committee is now being pressed into service for the first time in the petition. We, therefore, clearly expressed that if the petitioners intend that even these circumstances that is the genealogy being relied upon by him now to demonstrate his relationship with the several validity holders and the school record of 1948 is to be looked into, the only option available to us would be to remand the matter to the scrutiny committee permitting the petitioners to lead additional evidence. We also expressed that we will otherwise be considering the petitioners' claim independently on the touchstone of the material that was available to the scrutiny committee while passing the impugned order. The learned advocate requests to consider the petitioners' claim on its own merits on the basis of the material discussed by the committee and submits that he would not seek remand and petition be decided independently.

4. Admittedly, the petitioners' cousin uncle Ashok has been granted certificate of validity by the then scrutiny committee but the present committee observes that it was issued labouring under the misrepresentation and the active concealment of the contrary entries. The present committee entertains an opinion about he having practised fraud and has decided to undertake a review.

5. 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 would be 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.

6. Since Ashok was granted certificate of validity by following due process of law, the petitioners cannot be denied to have its benefit particularly when it is not the stand of the committee in the impugned order that no due process of law was followed before granting certificate of validity to him. In the light of the observations in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023(2) Mh.L.J.785***, therefore, the petitioners are entitled to have certificates of validity subject to the final outcome of the matters which the committee has decided to reopen.

7. The submission of the learned advocate for the petitioners that the petitioners are 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)*** is rather innocuous and deserves to be accepted.

8. The Writ Petition is partly allowed.

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

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

11. 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/-