

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10132 OF 2023 IN
REVIEW APPLICATION (ST.) NO. 34073 OF 2022 IN
WRIT PETITION NO. 9267 OF 2021

1] Priyanka Balaji Wadikar

2] Saurav Balaji Wadikar

.. Applicants

Versus

The State of Maharashtra and others

.. Respondents

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Shri R.N. Dhorde, Senior Advocate i/b. Mr. A.N. Sabnis, Advocate
for the applicants

AGP for the respondent – State : Mr. S.G. Sangale
Advocate for respondent no. 4 : Mr. A.S. Bayas

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

DATE : 17 AUGUST 2023

ORDER (MANGESH S. PATIL, J.) :

The applicants are seeking review of the order passed by this Court in their writ petition no. 9267 of 2021 dated 18-08-2022 whereby the challenge put up by them to the order passed by the respondent – scrutiny committee constituted under section 6 of the Maharashtra Act no. XXIII of 2001, thereby confiscating and cancelling their tribe certificate of Koli Mahadev scheduled tribe, was dismissed.

2. Though there is some delay and the application has been pressed seeking its condonation, we have heard both the sides finally in the matter of review itself.

3. The delay is condoned.

4. The learned senior advocate Mr. Dhorde for the applicants would submit that the petitioners' father Balaji has been issued with a validity certificate in the year 2006. While deciding the petitioners' claims, the committee for the reasons mentioned therein, expressed its intention to reconsider the matter of Balaji when it has no power to undertake review which could be only by virtue of a statutory provision as laid down in the matters of ***Nareshkumar and others V. Government (NCT of Delhi); (2019) 9 S.C.C. 416.***

5. He would submit that by undertaking a fresh scrutiny as if it was a matter of Balaji himself, the committee has endeavoured to demonstrate its intention to re-open his validity. There were no sufficient and cogent reasons. Under the guise of examining the petitioners' claims instead of extending benefit of Balaji's validity, the committee had behind Balaji's back made comments about the circumstances under which validity was granted to him.

6. Mr. Dhorde would further submit that since this Court was called upon to and was required to make comments in respect of the observations made by the committee as to why it was not ready to extend the benefit of Balaji's validity to petitioners, the observations of this Court regarding he having obtained the certificate of validity in the peculiar circumstances and holding that the decision of the committee

not to extend the benefit of validity to the petitioners, would seal the fate of Balaji's matter which the committee has re-opened.

7. He would submit that the alleged manipulation of entries in the school record of the relatives Triveni and Sarubai were already pointed out in the vigilance report which was conducted in respect of Balaji. Therefore, that could not have been the ground for the present committee to reject the petitioners' claims.

8. He would then submit that even the so-called adverse entries relied upon by the present committee were brought to the notice of the then committee which granted validity certificate to Balaji. He would submit that the decision rendered by this Court suffers from a formal defect and error which enables the petitioners to seek review.

9. He would then also place reliance on the decisions in the matters of ***Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee no. 1 and others; 2010 (6) Mh.L.J. 401, Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326, Sayyana V/s. State of Maharashtra and others; (2009) 10 SCC 268*** and ***J. Chitra V/s. District Collector and Chairman, State Level Vigilance Committee, Tamil Nadu and others (Civil Appeal No. 5160 of 2010 decided on 02-09-2021),***

10. The learned AGP strongly opposes the application. He submits that the petitioners have not pointed out precisely the formal defect or error on the face of record. While passing the order under review, this Court had carefully considered the material on the record and had simply demonstrated as to how the view taken by the committee was justified. He would submit that merely because father is a validity holder, the petitioners cannot claim certificate of validity if it can be demonstrated that the father had obtained the certificate either without following the process of law or fraudulently. He would submit that the committee has inherent right to undertake a review if it is of the view that Balaji had obtained the certificate of validity by practising fraud or by resorting to misrepresentation.

11. We have carefully considered the rival submissions and perused the papers.

12. Needless to state that the petitioners are seeking the extraordinary relief of review which power is circumscribed by the legal parameters. This Court cannot be expected to sit in appeal and examine the correctness or otherwise of the order passed by the previous Bench to which one of us (Mangesh S. Patil, J.) was a party.

13. It is to be noted that the committee had refused to grant the benefit of the certificate of validity of their father – Balaji to the

petitioners. In the process it had given sufficient reasons which according to it constituted fraud.

14. We do not intend to make any comment on the aspect of the powers of the committee to undertake a review and the facts which according to the committee constitute fraud or misrepresentation. We are doing so for two reasons; firstly Balaji is not before us and we do not intend to cause any prejudice to him by making observations in this matter behind his back, and secondly, any observation made by us could have a bearing on the matter of Balaji which the committee has decided to re-open.

15. We are only concerned with the view taken by this Court in the order under review. We found that the decision of the committee not to extend the benefit of Balaji's validity to the petitioner was fully justified for the specific reasons quoted by us in paragraphs no. 13 to 17 of the order under review. A bare perusal of these observations would clearly indicate that this Court had found that the school record of as many as 15 paternal side relatives of the petitioners were having contrary entries of the caste as 'Koli'. Validity certificates issued to three maternal side relatives were forming the basis for granting validity to petitioners' father - Balaji. It was also noticed that entries as 'Koli Mahadev' in the school record of the paternal side relatives were, in fact, the manipulated entries.

16. If this Court has merely found that the decision of the committee refusing to extend the benefit of Balaji's validity to the petitioner was justified, we cannot comprehend as to how and why the petitioners are concerned with our observations when Balaji himself has no grievance.

17. The above observations, in our considered view, were sufficient to justify the conclusion that the decision of the committee was not perverse which observation was necessary if the writ petition was to be dismissed.

18. Needless to state, as is observed hereinabove, that the petitioners' father - Balaji is not before us. He was not before us when the petitioners' petition was being decided. Obviously, our observations and conclusions cannot operate against him more so when the committee has now re-opened his matter and he would be getting an opportunity to participate and make out his own case.

19. The endeavour of Mr. Dhorde to demonstrate as to how there was no fraud and as to how the committee has no power to undertake a review, in our considered view, are the arguments which would hold good in Balaji's own matter and not in the present matter wherein his children are aggrieved by the order of this Court whereby their writ petition challenging the order of the committee has been dismissed.

20. In substance, no particulars and no formal defect or error apparent on the face of record can be made out from the application. In-fact, the application is drafted as if the order under review is subjected to some challenge in appeal which cannot be the parameter for undertaking a review.

21. It is pertinent to note that in-fact, the order under review was subjected to challenge before the Supreme Court in Special Leave to Appeal (C) no. 19909 of 2022. However, it was withdrawn with a permission to file a review before this Court. If such is the state-of-affairs, when the petitioners had already availed of that opportunity of putting up a substantial challenge to the order under review, it was imperative for them to have been able to make out the grounds for undertaking a review. However, they have miserably failed to satisfy us regarding the existence of the grounds for review.

22. The application is rejected.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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