

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

WRIT PETITION NO.14199 of 2023

1. Ganesh Nagorao Tokarkari
Age : 19 years, Occu : Student,
R/o. Harnala Post Kangathi,
Tq. Biloli & Dist. Nanded
2. Gita Nagorao Tokarkari
Age : 21 years, Occu : Student,
R/o. Harnala Post Kangathi,
Tq. Biloli & Dist. Nanded
3. Sadhana Nagorao Tokarkari
Age : 24 years, Occu : Student,
R/o. Harnala Post Kangathi,
Tq. Biloli and Dist. Nanded .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Kinwat Division, Aurangabad
Through its Member Secretary
3. Sub-Divisional Officer,
Bhokar, Nanded .. Respondents

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Advocate for the petitioners : Mr. Madhur A. Golegaonkar
AGP for the Respondent / State : Mr. S. G. Sangale

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

DATED : NOVEMBER 07, 2023

ORDER :

. Not on Board. Mentioned. Taken on Board at the request of learned counsel for the petitioners.

2. Heard. Rule. Rule is made returnable forthwith. Learned AGP waives notice on behalf of the respondent / State. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioners, who are siblings *inter se*, are challenging the order of the respondent - scrutiny committee confiscating and cancelling their 'Koli Mahadev' scheduled tribe certificates issued by the respondent no.3 – competent authority.

4. The learned advocate for the petitioners submits that there was enough favourable school record of the blood relatives of the petitioners as discussed by the committee and it was verified by the Vigilance Officer. There were three contrary school record of the individuals with whom the petitioners had specifically denied to have any relationship, in their response to the vigilance report served to them. Besides, the petitioners' father was granted certificate of validity by following due process of law and after conducting vigilance enquiry. Even if the committee has now decided to reopen the validity of the father, till the time it is not confiscated and cancelled the petitioners

cannot be deprived of having the benefit.

5. Learned advocate for the petitioners further submits that the petitioners are ready to run the risk and the consequences as observed in the matter of **Shweta Balaji Isankar vs. State of Maharashtra, 2018 SCC OnLine Bom 10363**. The impugned order being perverse and arbitrary may be quashed and set aside. They may be issued conditional validity certificates.

6. The learned AGP submits that the committee has assigned a concrete reason after enquiry with the Headmaster of the school to substantiate its stand that the petitioners' father had produced the school record of his own father namely Gangaram Rajenna Tokarkari stated to have been admitted in the school on 01.07.1950 and found that in fact in the school register-1 and school register-2, the entries at Sr. No.80 are of different individuals and not that of Gangaram Rajenna Tokarkari. The Headmaster had also expressly informed about there being no entry in his school record of Gangaram Rajenna Tokarkari at any place in either of those registers. He would submit that it is a clear case of forgery and fraud. The committee has decided to undertake a fresh scrutiny and has issued a notice to the petitioners' father. He would, therefore, submit that benefit of this validity cannot be extended to the petitioners.

7. The learned AGP submits that all the favourable entries being relied upon by the petitioners and those relied upon by their father in his own case have been of recent origin, of 1978 onwards. They are weak pieces of evidence being objectively brought into existence. The petitioners had not produced cogent and convincing evidence and the observations of the committee are plausible and therefore, the petition be dismissed.

8. Admittedly, the petitioners' father possesses a certificate of validity. The committee has also issued a notice to show cause and the enquiry is going on. In the normal course, we could not have gone into the circumstances which compelled the committee to perceive that he (petitioners' father) had obtained certificate of validity by practising fraud. However, considering the peculiar facts and circumstances where the petitioners' father had himself produced the school record of his own father Gangaram of a particular school and the reply by the Headmaster of the school now before the Committee about not finding the entry of Gangaram is *ex facie* a matter which is nothing but a fraud.

9. The stand of the petitioners for whatever reason for not resorting to this piece of evidence which otherwise is favourable piece of evidence and which was relied upon by their father is incomprehensible. If it is a genuine record of their grandfather which is a favourable one

wherein he was described as 'Koli Mahadev', in the normal course the petitioners would have relied upon that piece of evidence.

10. Be that as it may, in the peculiar circumstances, we expressly asked the learned advocate for the petitioners as to if the matter is to be considered independently on its own merits without the fact of the certificate of validity possessed by the petitioners' father being taken into consideration, the learned advocate expressed his readiness to proceed to examine the petitioners' claim independently.

11. As can be seen, whatever evidence that was produced by the petitioners before the committee is favourable to them. The contrary record of three individuals collected during the vigilance enquiry is of 'Koli'. In response to the vigilance report, the petitioners have expressly denied about these individuals being from their blood relationship. The committee has not even considered this denial and has not taken pains to demonstrate as to how the stand of the petitioners is not sustainable on facts. It has also failed to demonstrate as to how these individuals are related to the petitioners. Conspicuously in the column wherein the relationship with the petitioners is to be mentioned, there is blank against all these three individuals' entries.

12. The upshot, the favourable record produced by the

petitioners, without there being any contrary record apparently supports the claim of the petitioners.

13. Conspicuously, in the vigilance enquiry conducted at the time of the petitioners' father, the then Vigilance Officer had expressly stated about he having successfully gone through the affinity test. We are alive to the law that affinity test is not decisive, however it would be a favourable circumstance.

14. In view of above, we proceed to pass the following order.

ORDER

- (i) The Writ Petition is partly allowed. The impugned order is quashed and set aside. The respondent – committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Koli Mahadev' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matter which the committee has decided to re-open.
- (ii) Learned AGP to communicate this order immediately to the concerned Committee.
- (iii) The petitioner shall not be entitled to claim equities.

15. Rule is made absolute in above terms.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE