

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5001 OF 2018

Geeta Sambhaji Waghmode
Age 24 years, Occ. Student,
R/o. Irrigation Colony,
Near Datta Mandir, Omarga,
Dist. Osmanabad.

... **Petitioner**

VERSUS

1) The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya Mumbai.

2) The Scheduled Tribe,
Certificate Scrutiny Committee,
Aurangabad Division Aurangabad.

3) The Dean,
Dr. Vaishampayan Memorial Government
Medical College Solapur, Dist. Solapur.

... **Respondents**

...

Advocate for the Petitioner : Mr. P.V. Jadhavar.
A.G.P. for the respondents/State : Mr. A.A. Jagatkar

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

DATE : **27.09.2023**

PER COURT :

The petitioner is challenging the order of the respondent-scrutiny committee whereby her '*Koli Mahadev*' scheduled tribe certificate issued under Maharashtra Act XXIII of 2001 has been confiscated and cancelled.

2. We have heard both the sides finally at the stage of admission.

3. The learned advocate for the petitioner submits that there are several validities in the immediate family possessed by her two cousin sisters, five cousin brothers, a paternal uncle and even her brother Anant has been issued with a certificate of validity. Though the committee has now entertains a doubt in respect of the validities granted to these individuals, till the time their certificates of validity are not confiscated and cancelled by following due process of law, the petitioner cannot be deprived of the benefit.

4. The learned advocate submits that the petitioner is ready to run the risk of facing the consequences as contemplated in **Shweta Balaji Isankar Vs. State of Maharashtra and others (Writ Petition No. 6320 of 2017)** and should be granted a conditional validity.

5. The learned A.G.P supports the order but admits that the committee has not still being able to take any decision in the matters which it has decided to reopen in respect of the validity holders.

6. We have carefully considered the rival submissions and perused the papers. Even the impugned order refers to the list of nine individuals who are petitioner's blood relations from the paternal side who have been granted certificates of validity. The committee has endeavoured to demonstrate as to why it was not inclined to grant benefit of the validities possessed by these individuals by discussing the circumstances under which the certificates were granted. However, the fact remains that the committee has not made any observation that these certificates of validity were granted to these individuals without following due process of law. The whole endeavour of the committee is to demonstrate as to how the claimants therein were not entitled to have the certificates of validity. For some it has observed that they had obtained the certificates by resorting to fraud. Though the committee has not expressed its intention to undertake a fresh enquiry in respect of all these validity holders, even if it is so, till the time

the certificates of validity granted to these many blood relatives of the petitioner are not confiscated and cancelled, the petitioner cannot be denied the benefit when the certificates were granted to them by following due process of law, as observed in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326* , more so when the petitioner is ready to run the risk of facing the consequences as contemplated in *Shweta Balaji Isankar (supra)*. Whether the facts and circumstances which according to the committee constitute fraud is a matter which would be directly and substantially in issue in the matters of these validity holders if at all the committee undertakes that process. When those validity holders are not before us, it will not be appropriate for this Court to embark upon and undertake a scrutiny behind their back for recording the observation as to whether the inference drawn by the committee regarding fraud is sustainable or otherwise.

7. In Writ Petition No. 1239/2022 by the order dated 30.08.2023, we have directed a certificate of conditional validity to be issued to the petitioner's cousins Shrinivas Dhondiba Waghmode and Pradnya Dhondiba Waghmode.

8. The Writ Petition is partly allowed. The impugned judgment and order is quashed and set aside. The respondent-scrutiny committee shall immediately issue certificate of validity to the petitioner of 'Koli Mahadev' scheduled tribe. It shall be subject to the final outcome of the matters which the committee has decided to reopen.

9. The petitioner shall not be entitled to claim any equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-