



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

WRIT PETITION NO. 11460 OF 2023

Swanand Marotirao Boinwad,
Age 26 years, Occ. Education,
R/o. Barbada, Tq. Naigaon,
Dist. Nanded.

... **Petitioner**

VERSUS

1) The 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. S.S. Phatale
A.G.P. for Respondents/State : Mrs. P. J. Bharad

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

DATE : 21.08.2024

ORDER : (MANGESH S. PATIL, J.)

The petitioner is challenging the judgment and order of respondent no. 2-committee, constituted under the Maharashtra Act XXIII of 2001, refusing to validate his 'Koli Mahadev' scheduled tribe certificate.

2. The learned advocate for the petitioner would submit that irrespective of the merits, regarding availability of sufficient evidence for validating petitioner's tribe certificate, the petitioner is entitled to derive the benefit of validity issued to his paternal uncle Balaji Narayan Boinwad, by the then committee in the year 2010. There is no dispute about petitioner being a

blood relative of Balaji. Balaji was issued with certificate of validity by following due process of law. A vigilance inquiry was conducted. Even the committee recorded the observations that he could go through the affinity test successfully and a reasoned order was passed. The learned advocate would submit that since the petitioner is in urgent need of certificate of validity, he may be directed to be issued with a certificate of validity subject to reverification of Balaji's matter as is observed by the committee. He is 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).

3. Per contra, the learned A.G.P would submit that apart from the contrary record, Balaji was issued with certificate of validity relying upon the validity of one Pralhad Shankar Boinwad, who was not related to him by blood. The validity was obtained by concealing the contrary record, and therefore, apart from the fact that in the light of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326*, the petitioner is not entitled to derive the benefit of Balaji's validity, the committee has the power to revisit Balaji's validity, since he had obtained it by practising fraud. He would submit that the petitioner cannot be allowed to derive the benefit of fraud practised by his uncle and the petition be dismissed.

4. We have considered the rival submissions and perused the papers. In light of stand being taken by the petitioner of having a certificate of validity conditionally, without independently undertaking scrutiny of his claim on the basis of the documents, we propose to examine whether in the light of parameters laid down in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*, he is entitled to derive the benefit of Balaji's validity.

5. We have been made available the original file of the scrutiny

committee in the matter of Balaji Narayan Boinwad. As is evident, a vigilance enquiry was conducted. A report was submitted. Hearing was conducted and by a reasoned order his tribe certificate was validated. There is no dispute that Balaji is the petitioner's paternal uncle. These being the parameters laid down in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)***, irrespective of any other observation of the committee, the petitioner is entitled to derive the benefit of Balaji's validity.

6. Needless to state that since committee has now formed an opinion about Balaji having practised fraud and it has power to undertake reconsideration of the validity issued to him on the ground that he had practised fraud, till the time his validity is not recalled, the petitioner cannot be denied its benefit.

7. True it is that the committee is justified in entertaining a doubt in respect of blood relationship between Balaji and one Pralhad Shankar Boinwad, inasmuch as, there is variance in the genealogy given by Pralhad on affidavit in the matter of Balaji, and the one given by him in his own matter. However, a bare look at the order of the committee in the matter of Balaji would demonstrate that though he was relying upon validity of Pralhad, that was not the only ground on which the then committee had based its decision to grant him validity. It had conducted vigilance enquiry, referred to and relied upon some documents and even made observation that it was satisfied with the replies given by Balaji to the questions which were put to him to ascertain his affinity with 'Koli Mahadev' scheduled tribe. If such is the state of affairs, even if Balaji had tried to derive the benefit of Pralhad's validity and assuming that there was no blood relationship between them *inter se*, the committee having based its decision to grant him validity after considering number of factors, the petitioner is entitled to derive benefit of Balaji's validity.

8. The impugned judgment demonstrates that the committee has also

formed an opinion that Balaji had obtained certificate of validity without disclosing, apart from contrary entries, invalidation of one Baliram Gangaram Boinwad, stated to be and referred to by the committee as his cousin grandfather. The learned advocate for the petitioner submits that the petitioner is strongly denying the individual being his blood relative. Suffice for the purpose to observe that it is a matter to be considered by the committee if and when it undertakes the process of recalling Balaji's validity and we need not undertake that scrutiny in the present matter. In view of above, the impugned order is liable to be quashed and set aside and the petitioner deserves to be granted a certificate of validity.

9. The writ petition is allowed partly. The impugned order is quashed and set aside. The respondent no. 2-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 reopen.

10. The petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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