



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

998 WRIT PETITION NO. 7161 OF 2024

AJAY GUNWANT MALU
VERSUS
THE STATE OF MAHARASHTRA THROUGH
ITS SECRETARY AND ANOTHER

...
Advocate for petitioner : Mr .S. M. Vibhute
AGP for the respondent – State : Mr. R.S. Wani
...

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

DATE : 01 AUGUST 2024

ORAL ORDER (MANGESH S.PATIL,J.) :

The petitioner is challenging the order of invalidation, refusing to recognize 'Koli Mahadev' scheduled tribe certificate.

2. We have heard both the sides and perused the record including that of one Subhash Ganpati Malu.

3. Learned advocate for the petitioner submits that though the petitioner had initially claimed to derive the benefit of the validity possessed by one Govind Kerba Malu and had submitted the genealogy, it was incorrect. A fresh genealogy was prepared by the vigilance officer which was subsequently produced by the petitioner along with his reply to the vigilance cell report. He would submit that though the petitioner could not have derived the benefit of the validity

of Govind Kerba Malu since he was not related to him by blood, the petitioner's cousin paternal uncle – Subhash Ganpati Malu and his daughter Shital possess certificates of validities. She was directed to be issued with certificate of validity by the order of this Court. Neither the vigilance officer nor the committee has disputed petitioner's relationship with Subhash and Shital. The petitioner is running the risk as contemplated in ***Shweta Balaji Isankar Vs. State of Maharashtra and others* (writ petition no. 6320 of 2017)** and he may be issued with a certificate of validity conditionally.

4. Learned AGP would strenuously oppose the petition. He would submit that the committee has made precise observations demonstrating as to how Govind was not related to the petitioner and had filed affidavits and an incorrect genealogy.

5. Learned AGP would also submit that affidavits of the validity holders - Subhash and Shital were not submitted under rule 11(2)(d)(iii) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 ("**Rules, 2003**"). He would also point out that Subhash himself had come out with a genealogy similar to which was presented by the present applicant - petitioner admittedly incorrect, showing Govind Kerba Malu as related to him (Subhash) based on which he had obtained certificates of

validity. He would submit that Shital was granted certificate of validity conditionally by this Court.

6. It is a matter of record admittedly the petitioner had filed a genealogy which even now is being admitted to be incorrect. However, simultaneously one cannot overlook the fact that the vigilance officer had prepared a genealogy by enquiring with the father of the petitioner. Petitioner, during the course of hearing, also submitted the same genealogy before the committee. The impugned order does not refer to and make comment in respect of such genealogy prepared by the vigilance officer and the one furnished by the petitioner. Rather, even in the vigilance report as also in the impugned order, Subhash has been described as cousin paternal uncle of petitioner.

7. Admittedly, Subhash possesses the validity certificate so does his daughter – Shital. The committee has refused to extend the benefit of their validities only on the ground that their affidavits were not filed as required by rule 11(2(d)(iii) of the Rules, 2003. Pertinently, the committee has not gone into and examined sustainability of Subhash's and Shital's validities. However, while granting certificate of validity to Shital, this Court had expressly made it co-terminus with the enquiry into Subhash's and Shital's matters which were decided to be re-opened.

8. In the absence of any dispute regarding petitioner's blood relationship with Subhash and Shital, even the petitioner deserves to be extended benefit of having a certificate of validity with similar conditions.

9. Absence of affidavit of the validity holder, as is contemplated in rule 11(2)(d)(iii) of the Rules, 2003, in our considered view, cannot be a ground to discard the claim irrespective of the fact that it uses the word 'shall'. If it is a matter of proving a fact, like claim regarding social status, a particular kind of proof cannot be insisted, more so, when the facts are to be proved on the basis of preponderance of probability.

10. The writ petition is allowed partly.

11. Impugned judgment and order is quashed and set aside.

12. 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 matters which the committee has decided to re-open.

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

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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