



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 WRIT PETITION NO.10166 OF 2024

Vaishnavi d/o Ashok Raje

... PETITIONER

VERSUS

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

2. The Scheduled Tribe Caste Certificate
Verification Committee Kinwat
Head Quarter at Chh. Sambhaji Nagar
through its Dy. Director (R)
Dist. Chh. Sambhaji Nagar

... RESPONDENTS

...

AND

8 WRIT PETITION NO.7736 OF 2021

Rushikesh s/o Ashok Raje

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary
Medical Education and Drugs Department
Mantralaya, Mumbai
2. The Scheduled Tribe Caste Certificate
Verification Committee Aurangabad,
through its Dy. Director (R)
Aurangabad
3. The Director,
Directorate of Technical Education
Maharashtra State, Mumbai
4. The Director,
Vishwakarma Institute of Technology
666, upper Indira Nagar,
Bibwewadi Pune, Dist. Pune
5. The Principal,
Dayanand Science Junior College,
Latur, Dist. Latur

... RESPONDENTS

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Advocate for petitioner/s in both WPs : Mr. S.M. Vibhute
 A.G.P for respondent/State : Mr. R.S. Wani (in both WPs)
 Advocate for respondent No.4 : Mr. G.K. Naik Thigle (WP/7736/2021)
 Advocate for respondent No.5 : Mrs. Anjali Dube (WP/7736/2021)

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

DATE : **18.09.2024**

ORDER (MANGESH S. PATIL, J.) :

The petitioners who are siblings *inter se* are challenging separate orders passed by the respondent – Scrutiny Committee refusing to validate their ‘Koli Mahadev’ scheduled tribe certificates.

2. Since the petitioners are siblings, in order to avoid rigmarole, we are disposing of both these petitions by this common order.

3. The learned advocate for the petitioners would take us through the papers and would submit that the petitioners are relying upon a certificate of validity possessed by one Dipak Waman Potraje who is their distant paternal uncle to whom validity was issued on 06.04.2010 by following due process of law. A vigilance inquiry was conducted and by a reasoned order he was held entitled to have a certificate of validity. The Committee had not entertained any doubt about he being related to the petitioners by blood from the paternal side. Even if the Committee is now seeking to take exception to his validity and has made endeavour to demonstrate as to how he had obtained certificate of validity by concealing contrary record and by practising fraud by not disclosing

invalidation of the tribe certificate of petitioners' uncle Vijay by the then committee in the year 2002, till the time the Committee is able to undertake the due process of law and is able to recall his validity, the petitioners cannot be deprived of the status.

4. The learned advocate submits that the petitioners are ready to run the risk of facing the consequences resulting in recalling of Dipak's validity, in the light of observations in the matter of **Shweta Balaji Isankar Vs. State of Maharashtra and Ors.;WP No.6320/2017**.

5. Learned advocate Mr. Vibhute would further submit that pursuant to Rule 11 of the Rules of 2003 framed under the Maharashtra Act No.XXIII of 2001 validity holder Dipak had filed requisite affidavit giving the genealogy in the matters of both these petitioners.

6. The learned AGP would oppose both the petitions. They would take us through the original file of Dipak and more particularly the genealogy furnished by him in his own matter and particularly the statement of his father Waman Pandurang Potraje dated 11.02.2009 *inter alia* stating that name of his grandfather was Mukinda Vyankoba Potraje, however, while submitting affidavits in support of both these petitioners Dipak has given a genealogy showing that his great grandfather Mukinda's name is Mukinda Raje Koli. It is not mentioning Vyankoba being father of Mukinda. He would, therefore, submit that there is a serious doubt about petitioners being related to Dipak by blood from the paternal side.

7. The learned AGP would submit that Dipak was issued with a certificate of validity based on a similar certificate of an individual who was not related to him by blood from the paternal side, by name Mahesh Keshav Shanime. He would also submit that even a forged record of the Court of Judicial Magistrate, Udgir was relied upon by him of 1356 Fasli. Pursuant to the directions of this Court in the matter of **Kum. Balika Dagdu Patakras Vs. The State of Maharashtra and Ors.; (Writ Petition No.4297/2007)** the Principal District and Sessions Judge, Latur had conducted inquiry into the matter of similar certified copies purportedly of the same 1356 Fasli record. He had reported that all such certified copies were forged and fabricated and even a departmental inquiry was proposed against the record keeper and a criminal action was also proposed against an advocate and another person. He would, therefore, submit that since Dipak was granted validity even relying upon this forged record showing it to be of a pre-independence period, his validity would stand vitiated by fraud.

8. Lastly, learned AGP would submit that even composition of the Committee which granted validity to Dipak was not in accordance with law, inasmuch as, a research officer who could not have been but was a part of the Committee which upheld his claim.

9. We have considered the rival submissions and perused the papers.

10. At the outset, it is necessary to note that some of the

submissions of the learned AGP are apparently inconsistent with the stand being taken by the Committee while passing the impugned orders. Unlike what is being submitted, the Committee has not entertained any doubt about these petitioners being related to validity holder Dipak, by blood from the paternal side. Pertinently, the order in the matter of petitioner Rushikesh was passed on 08.02.2021, whereas, in the matter of Vaishnavi the impugned order was passed on 30.08.2024. We are pointing out this fact just to demonstrate that though the petitioners are siblings and have been relying upon validity of Dipak the successive committees while passing the impugned orders which are more than three years apart, have not been entertaining any doubt about he being related to the petitioners by blood. In view of such state of affairs, while exercising the power under Article 226 of the Constitution of India, the submission of the learned AGP to this extent being inconsistent with the stand of the Committee in the impugned judgments and orders, cannot be entertained.

11. The Committee is taking exception to the validity of Dipak for variety of reasons. The basic objection of the Committee is to the effect that he had practised fraud while obtaining the certificate of validity. Since fraud is a serious allegation which will have to be proved strictly, as proposed by the Committee, it will have to undertake due process of law to substantiate its perfunctory inference of fraud. It will have to issue a show cause notice which seems to have been issued to

him immediately after the impugned order was passed in the matter of petitioner - Rushikesh. However, the Committee has not taken it to the logical end by completing the process for last more than three years. If and when it is able to do that the logical consequences would follow as contemplated in **Shweta Balaji Isankar** (supra). The petitioners are ready to run that risk. They cannot be made to wait for the Committee to complete the process at the cost of their career.

12. The fact remains that Dipak possesses a certificate of validity and was so held by the then Committee by following due process of law. As can be seen from his file, a vigilance inquiry was conducted and by a reasoned order he was held entitled to have a certificate of validity. True it is that he had relied upon validity of a person who was not related to him by blood from the paternal side. However, it is not that the Committee had held him entitled to have a validity only on the ground of validity of that individual Mahesh Keshav Shanime. Certain other documents and circumstances were relied upon by the then Committee.

13. Similarly, though Dipak had relied upon the certified copy of the J.M.F.C. Court, Udgir regarding which there is a report of the Principal District Judge in a similar matter, again, it was merely one of the circumstances referred to by the Committee while passing the order in his matter. It was not the decisive piece of evidence *albeit* it was referred to while passing the order.

14. Similarly, as far as invalidation of petitioners' uncle Vijay,

allegedly not disclosed by Dipak, we have been consistently holding that the orders of invalidation would merely bind the claimant and cannot operate as a *res judicata* against the subsequent claimants, for, the former may not have been able to discharge the burden cast upon him under Section 8 of the Maharashtra Act No.XXIII of 2001 which the latter may be able to do. Therefore, assuming for the sake of arguments that invalidation of Vijay Raje was deliberately and intentionally concealed by Dipak, that cannot vitiate his validity.

15. So far as, the composition of the Committee which granted validity to Dipak, even we have been consistently taking a view that in the light of Rule 9 of the Rules of 2003, decision of a scrutiny committee shall be by majority. When the objection is only to the extent of one of the three members of the committee which held him entitled to have a validity, the eligibility of the third member would not vitiate the decision of the Committee much less would render his validity *non est*.

16. In the light of the above state of affairs, we are not undertaking any objective scrutiny regarding sustainability of both these orders in respect of the contrary record referred to by the Committee in the orders under challenge.

17. To repeat, Dipak was apparently issued with certificate of validity by following due process of law and the Committee has not entertained any doubt about he being related to the petitioners by blood. Consequently, following the decision in the matter of **Maharashtra**

Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326, the petitioners are entitled to have certificates of validity which would be co-terminus with validity of Dipak.

18. The writ petitions are partly allowed. The impugned orders are quashed and set aside.

19. The order is dictated in open Court in presence of The AGP as also the Law Officer, who shall immediately communicate the decision to the Committee and the petitioners be issued with the certificates of validity forthwith as belonging to 'Koli Mahadev' scheduled tribe. The validities shall be subject to the final outcome of the proceedings of the validity holders which the Committee has decided to re-open.

20. The petitioners shall not claim equities.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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