



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

WRIT PETITION NO. 5485 OF 2024

1. Shubham s/o Tatyrao Ghate,
Age : 14 Years, Occu. : Student,
2. Dnyaneshwar s/o Tatyrao Ghate,
Age : 16 years, Occu. : Student,

Since both are minors
through their father
Tatyrao s/o Shankarrao Ghate,
Age : 44 years, Occu. : Service,
R/o H. No. 198, Brahman Galli,
Naldurg, Tq. Tuljapur,
Dist. Osmanabad.

3. Gangadhar S/o Jitendra Ghate,
Age : 21 Years,
R/o As above.
4. Radhika Maroti Ghate,
Age : 32 Years, Occu. : Student,
R/o As above.

.. Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.
2. The Sub Divisional Officer,
Umarga, Dist. Osmanabad.
3. The Scheduled Tribe Certificate
Scrutiny Committee,
Through its Vice Chairman
Aurangabad.

.. Respondents

Shri K. P. Rodge, Advocate for the Petitioners.

Shri K. N. Lokhande, A.G.P. for the Respondent Nos. 1 to 3.

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

DATE : 12 JUNE 2024.

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With the consent of parties heard both sides finally at admission stage.

2. Petitioners are challenging common judgment and order dated 03.04.2024 passed by the respondent No. 3/Scrutiny Committee U/Sec. 5(1) of the Maharashtra Act No. XXIII of 2001 confirming distinct orders passed by the respondent No. 2/Sub Divisional Officer, Omerga dated 19.03.2020 refusing to issue tribe certificates to the petitioners. Petitioners are paternal side blood relatives *inter se* and claim to be belonging to “Koli Mahadev” (Scheduled Tribe).

3. Petitioners approached the respondent No. 2/Sub Divisional Officer, Omerga by filing separate applications seeking tribe certificates. They produced relevant documents in support of their claims. By distinct orders they were non suited on the ground that they failed to prove that they were residents of Naldurga on the deemed date. Being aggrieved by the orders rejecting their applications, separate appeals were preferred before the respondent No. 3. The respondent No. 3/Scrutiny Committee found that surname and ordinary place of residence

of the petitioners were incompatible with the tribe claims. No evidence was produced to show blood relation with the members of the genealogy. It is further held that no revenue record or other material of the period prior to 1950 was produced.

4. Learned counsel for the petitioners submits that both the authorities below have committed grave error of jurisdiction in not considering the caste validity certificate issued in favour of Tatyarao Shankarrao Ghate, who is father of petitioner Nos. 1 and 2 and paternal side blood relative of petitioner Nos. 3 and 4. It is perversity to overlook affidavit of Tatyarao Ghate produced in support of genealogy. It is further submitted that there was *prima facie* material to indicate that petitioners belong to 'Koli Mahadev' schedule tribe. A reliance is also placed on the **judgment dated 01 November 2017 rendered by this Court in the matter of Shubham Harikishan Sonkusre Vs. Sub Divisional Officer, Kinwat and another in Writ Petition No. 12479 of 2017.**

5. Per contra, learned Assistant Government Pleader supports both the impugned orders. He tenders on record original papers to show that both the authorities below have taken reasonable and plausible view.

6. We have considered rival submissions of the parties. We have also gone through the record produced by the learned A. G. P. We find that affidavit of Tatyarao Shankarrao Ghate depicting the genealogy, a photo copy of validity certificate of

Tatyarao Shankarrao Ghate and extracts of ration card were produced on record. It is also undisputed that validity holder Tatyarao Shankarrao Ghate is father of petitioner Nos. 1 and 2 and paternal side relative of petitioner Nos. 3 and 4.

7. We are surprised to notice that though caste validity certificate of Tatyarao Shankarrao Ghate is produced on record, both the authorities have not bothered to consider the same. The respondent No. 2/Sub Divisional Officer in very slipshod manner discarded the validity certificate, whereas the respondent No. 3/Scrutiny Committee has totally overlooked it. A clinching piece of evidence has been discarded by both the authorities below, which is grave error of jurisdiction and perversity. There is sufficient material on record for issuing tribe certificate to petitioners.

8. The respondent No. 3 is statutory appellate authority and expected to consider material placed before it. We have also noticed that affidavit of Tatyarao has also been overlooked. Affidavit and genealogy stated therein clearly indicates the blood relation of the petitioners with the members shown in genealogy. We express our displeasure for the manner in which the matter is dealt with by the respondent No. 3/Scrutiny Committee.

9. By this time, it is sufficiently settled and conveyed to the stakeholders including the respondent Nos. 2 and 3 that only a *prima facie* case needs to be made out for issuing tribe certificate to a claimant. An enquiry threadbare is not contemplated.

Reference can be made to the decision of this Court in the matter of Anand Dhananjay Nalawade Vs. State of Maharashtra reported in *2014(4) Mh.L.J 77* and the judgment referred by the petitioners in the matter of **Shubham Harikishan Sonkusre Vs. Sub Divisional Officer, Kinwat and another** (supra). Both impugned judgment and orders are liable to be quashed.

10. For the reasons stated above, we pass following order.

ORDER

- I. Rule is made absolute in terms of prayer clause 'B'.
- II. The respondent No. 2/Sub Divisional Officer, Omerga, Dist. Osmanabad shall issue tribe certificates to the petitioners as belonging to 'Koli Mahadev' (Scheduled Tribe) in prescribed format forthwith.
- III. There shall be no order as to costs.
- IV. Parties to act upon authenticated copy of this order.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/June 24