



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

WRIT PETITION NO. 5940 OF 2024

Parth Tukaram Ghante

.. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri Sunil M. Vibhute, Advocate for the Petitioner.

Shri K. N. Lokhande, A.G.P. for the Respondent Nos. 1 and 2.

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

DATE : 03 JULY, 2024.

FINAL ORDER :

. Heard.

2. Petitioner is questioning legality and sustainability of the order passed by the respondent/Scrutiny Committee in an proceeding U/Sec. 07 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No. XXIII of 2001) refusing to validate his Koli Mahadev (Scheduled Tribe) certificate and directing its confiscation and cancellation.

3. Learned advocate for the petitioner would take us through

the papers and would submit that contrary entries relied upon by the present committee were already subjected to the scrutiny by the then committee which found the petitioner's father Tukaram entitled to have certificate of validity. He would submit that it was not open for the committee now to resort to the same contrary record to discard petitioner's claim.

4. Learned advocate would further submit that the impugned order refers to the affidavit of one Subhash Shankar Ghante filed in the matter of Tukaram to demonstrate that inspite of the fact that Subhash was not related to the petitioner or his father, still benefit of his validity was extended to the petitioner's father. Learned advocate for the petitioner submits that Subhash Shankar Ghante had filed another affidavit in Tukarm's matter, a copy of which is at Exhibit – F in the petition, which expressly mentions that Tukaram was son of his cousin paternal aunt. Inspite of that present committee has ignored this affidavit to reach a conclusion that petitioner's father had obtained certificate of validity by practising fraud.

5. Lastly, learned advocate would submit that in any case petitioner's father possesses certificate of validity, which is still valid and its benefit deserves to be extended to the petitioner. Petitioner is ready to face the consequences contemplated in the matter of **Shweta Balaji Isankar Vs. The State of Maharashtra and others** judgment dated 27 July 2018 in **W. P. No. 5611 of 2018**.

6. Learned Assistant Government Pleader would submit that affidavit now being relied upon by the petitioner (Exhibit – F) was not at all filed in Tukaram's matter. It was some other affidavit which has been spoken about and referred to in the impugned order. Even otherwise, stand in the affidavit is inconsistent with the affidavit that is available in Tukaram's file. Subhash had said that Tukaram is his second degree cousin, whereas now in the affidavit (Exhibit – F) he is saying that Tukaram is son of his cousin paternal aunt. In any case Subhash is not related to the petitioner by blood and still his father was able to derive benefit of that validity which is nothing but a fraud.

7. Learned A. G. P. would further advert our attention to the contrary school and revenue record referred to in the judgment to demonstrate that these are the contrary entries, wherein petitioner's blood relatives have been described as 'Koli' as against 'Koli Mahadev'. Even the revenue record is to the same effect. Taking into stock of all such contrary entries, the committee has rightly refused to extent benefit of validity possessed by the petitioner's father-Tukaram. The Committee is still to undertake re-scrutiny of Tukaram's validity.

8. As far as inconsistent affidavits of Subhash are concerned, it is a matter of fact that there is no dispute that he is not to be seen in the genealogy that was before the scrutiny committee.

For that matter even in the matter of Tukaram whose original file is made available to us, the genealogy does not indicate Subhash anywhere. Even if it is a matter of record that the then scrutiny committee had referred to Subhash as second degree cousin, may be on the basis of affidavit filed by him, one cannot comprehend as to why and how the Committee could straightway accept the statement in the affidavit without undertaking any enquiry if he could be really traced somewhere in the genealogy furnished by Tukaram. We are making these observations *prima facie* to demonstrate that the then scrutiny committee which had resorted to vigilance enquiry could have undertaken same scrutiny even to find out as to whether really Subhash was related to Tukaram by blood, more so when the genealogy before the scrutiny committee *ex facie* was not showing Subhash or his father. If this is the state of affairs, if the then scrutiny committee for the reasons best known to it had given some weightage to the validity possessed by Subhash, we have our own doubts as to if it would lie in the mouth of the present scrutiny committee to refer to this circumstance as indicating fraud having been practised by Tukaram. We do not intend to elaborate this any further.

9. So far as the contrary entries in the name of paternal aunts and other blood relatives are concerned, even apparently those were also traced in the vigilance enquiry conducted at the time of Tukaram, still the then committee overlooked those contrary entries and again we have our own doubts as to if in

such peculiar circumstances present committee could castigate the petitioner with fraud and still use the same contrary entries to discard the petitioner's case.

10. True it is that few other/additional contrary entries have also been traced during the current vigilance enquiry, however, in our considered view, till the time petitioner's father Tukaram possess certificate of validity, petitioner cannot be deprived of deriving the benefit. Obviously, if and when committee decides to reopen the matter of Tukaram, the petitioner would face the consequences as commented in the matter of **Shweta Balaji Isankar Vs. The State of Maharashtra and others** (supra).

11. Writ petition is partly allowed. Impugned order is quashed and set aside. The committee shall issue certificate of validity to the petitioner as belonging to 'Koli Mahadev' (Scheduled Tribe). This validity would be subject to final outcome of Tukaram's matter, which the committee has decided to reopen. The petitioner shall not be entitled to claim equity.

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

bsb/July 24