



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6158 OF 2024

Sneha D/o Balaji Deshatwad
Age : 19 years, Occu : Education,
R/o. Ambulga Bk., Tq. Mukhed,
Dist. Nanded

.. Petitioner

Versus

The Scheduled Tribe Certificate
Scrutiny Committee, Kinwat,
Head quarters at Aurangabad
Through its Member Secretary

.. Respondent

...
Advocate for petitioner : Mr. Sagar S. Phatale
AGP for the respondent – State : Mr. D.R. Korde
...

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

DATE : 8 JULY 2024

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is challenging the judgment and order passed by respondent no. 2 – scrutiny committee under section 7 of the Maharashtra Act No. XXIII of 2001, refusing to validate her Mannervarlu scheduled tribe certificate and directing its confiscation and seizure.

3. Learned advocate for the petitioner submits that the impugned order is not sustainable in law. The committee has refused to extend benefit of the validities in the family particularly one possessed by her paternal uncle Vitthal Nivrutti. He would submit that even couple of contrary entries relied upon by the scrutiny committee to discard her claim could not have been referred to when the petitioner in her say filed in response to the vigilance enquiry report had expressly denied having any blood relationship with the two individuals. No endeavour has been made by the committee to discard this denial of the petitioner.

4. Per contra, learned AGP would support the order. He would submit that validity holder Vitthal who happens to be the paternal uncle of the petitioner had obtained validity certificate based on the validity possessed by one Maruti Iranna (मोठा) Deshatwad. He would submit that genealogy furnished by petitioner's uncle Vitthal is not compatible with the genealogy that was referred to and relied upon by Maruti. A bare look at the file of Maruti would substantiate this aspect. No fault can be found with the committee's conclusion. The order in the matter of Vitthal is not a reasoned order and its benefit could not be extended to the petitioner.

5. We have carefully considered the rival submissions and perused the papers.

6. At the outset, it is necessary to note that no dispute is raised either by the committee or by the learned AGP as far as the blood relationship between the petitioner and validity holder Vitthal Nivrutti Deshatwad. In fact, it has been expressly mentioned in paragraph no. 4 of the impugned judgment and order that Vitthal himself was prosecuting the enquiry before the scrutiny committee on behalf of the petitioner by remaining personally present. Consequently, even if it is assumed for the sake of argument that as is being tried to be made out by the scrutiny committee in the impugned judgment, it is entitled to resort to a fresh scrutiny of vitthal's validity on the grounds mentioned in the judgment, till the time the committee is unable to complete the enquiry and reach a conclusion about cancellation and confiscation of his certificate of validity, the petitioner cannot be deprived of deriving the benefit relying upon the decision in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326.***

7. This Court has been consistently taking such a stand in similar set of facts primarily bearing in mind the balance of convenience. If the petitioner is not to be allowed to derive the benefit of validity of Vitthal, hoping that the committee would expedite his

matter for reconsideration and would reach some conclusion against him which again would be susceptible to a further challenge by him if at all the committee revokes the certificate of validity. Conversely, if ultimately the committee is unable to confiscate and cancel the certificate of validity, the petitioner would have lost precious years of her life and opportunity to derive the benefit of reservation which cannot be compensated in monetary terms. It is, therefore, imperative that the petitioner is allowed to derive the benefit of validity of Vitthal which can certainly be made subject to the condition of finality of his matter which the committee proposes to reconsider.

8. Turning to the merits, the committee has referred to couple of contrary entries of one Irappa (Iranna) Sayaji Deshatwad which is a school record showing him to be admitted in school on 12-07-1971 describing him to be belonging to Munarwar and stated to be petitioner's cousin uncle. Similarly, it is also relying upon one sale deed executed by one Shankar Babu Deshatwad stated to be petitioner's cousin uncle in favour of Balaji Maroti Kantewad registered at serial no. 117 of 2011 wherein Shankar being executant, allegedly declared that he was not belonging to any tribal community. Pertinently, both these entries could be traced during the vigilance enquiry and find reference in the report. The petitioner had submitted a reply to this report, *inter alia* expressly denying any blood relationship with these

two individuals. If such is the emphatic stand of her, it was incumbent on the part of the committee to have discussed these aspects more minutely to ascertain if really these two individuals are related to the petitioner by blood or that her stand was a false one. No such exercise has been undertaken by the committee and it has proceeded to refer to and rely on both these contrary entries assuming these individuals to be related to the petitioner by blood. This approach of the committee is clearly perverse, arbitrary and capricious. There are no other contrary entries referred to by the committee.

9. As against this, apart from the validity of Vitthal, who in turn had relied upon the validity of Maruti and both of whom can be traced in the genealogy, there are several favourable entries wherein the blood relatives of the petitioner have been referred to in the school record as 'Mannervarlu', the genuineness of which has not been doubted by the committee.

10. As far as the endeavour of the learned AGP to demonstrate before us the alleged inconsistency between the genealogy furnished by Vitthal in his matter and the earlier validity holder Maruti in his own case, the entire impugned judgment and order does not refer to this circumstance. Consequently, since it is a matter of fact, without there being any reference to this circumstance in the impugned judgment and order, the learned AGP cannot be allowed to

make capital out of it. This is not a Court of appeal *albeit* by virtue of section 7(2) of the Maharashtra Act No. XXIII of 2001, the orders of the scrutiny committee can be challenged before this Court under Article 226 of the Constitution of India.

11. Be that as it may, the impugned order is clearly illegal and is liable to be quashed and set aside.

12. The writ petition is allowed partly.

13. The impugned order is quashed and set aside.

14. The committee shall issue certificate of validity to the petitioner of belonging to Mannervarlu scheduled tribe (Tribe Serial No. 27).

15. The validity of the petitioner's certificate would be subject to the final outcome of the matter of the validity holder which the committee has decided to re-open.

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

17. Rule is made absolute accordingly.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/