



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6373 OF 2024

- 1] Kapil Ashok Akulwar
Age : 31 years, Occu. Student
R/o. Deglur, Tq. Deglur, Dist. Nanded
- 2] Swati Ashok Akulwar,
Age : 26 years, Occu. Student,
R/o. Deglur, Tq. Deglur, Dist. Nanded .. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Tribal Department,
Mantralaya, Mumbai – 32.
- 2] The Scheduled Tribe Certificate Scrutiny
Committee, Kinvat,
Head Quarter, Aurangabad
Through its Deputy Director (R) .. Respondents

**WITH
WRIT PETITION NO. 6374 OF 2024**

- 1] Puja Ramesh Akulwar
Age : 31 years, Occu. Student,
R/o. Deglur, Tq. Deglur, Dist. Nanded
- 2] Nandkumar Ramesh Akulwar,
Age : 29 years, Occu. Student,
R/o. Deglur, Tq. Deglur, Dist. Nanded .. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Tribal Development,
Mantralaya, Mumbai – 32.
- 2] The Scheduled Tribe Certificate Scrutiny
Committee, Kinvat,
Head Quarter, Aurangabad
Through its Deputy Director (R) .. Respondents

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Advocate for petitioners in both WPs : Mr. P.V. Jadhavar
AGP for the respondents no. 1 and 2 : Mr. K.N. Lokhande (WP/6373/2024)
AGP for the respondents no. 1 and 2 : Mr. K.S. Patil (WP/6374/2024)
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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 26 JULY 2024

ORDER (MANGESH S. PATIL, J.) :

The petitioners are challenging the common order of invalidation and directing confiscation and cancellation of their 'Mannarvarlu' scheduled tribe certificates.

2. At the joint request of the parties, in view of the urgency, we have heard both the sides finally at the stage of admission.

3. The learned advocate for the petitioners would submit that petitioners' real sister - Jyoti possesses a certificate of validity and they cannot be deprived of deriving its benefit irrespective of the fact that the committee has decided to undertake re-enquiry into her validity by resorting to review. He would submit that the petitioners are ready to run the risk of facing the consequences as contemplated in ***Shweta Balaji Isankar Vs. State of Maharashtra and others (writ petition no. 6320 of 2017)*** and they may be granted the certificates of validity subject to the final outcome of Jyoti's matter which the committee has decided to re-open.

4. The learned advocate would submit that in fact, in the light of the decision of this Court in the matter of ***Hrushikesh Garud Vs. State of Maharashtra; (2022) 1 SCC 207 and Rajesh Umbarje and others Vs. State of Maharashtra (writ petition no. 5364 of 2023)***, the committee has no power to review its order.

5. Independently, the learned advocate would submit that there are abundant entries in the school, birth and the revenue record showing the petitioners' relation as 'Mannervarlu'. Few isolated and stray contrary entries cannot be allowed to outweigh such abundant favourable record. The committee has taken a pedantic view. Its observations are perverse and arbitrary. It has applied area restriction and even has resorted to affinity test which it could not have legally done and the impugned judgment and order be quashed and set aside.

6. Per contra, the learned AGP would submit that the decision of the committee is plausible one. It has demonstrated as to how there are several contrary entries of the blood relations wherein they have been described as Munurvar, Munurkapu and Phulmali. Even there is record to demonstrate that some of the favourable entries are in fact a result of some manipulation wherein either the original entry has been replaced or manipulated. After conducting such

threadbare scrutiny, the committee has taken a plausible view about petitioners having failed to substantiate their claims.

7. The learned AGP would further submit that petitioners' sister - Jyoti had obtained the certificate of validity by resorting to fraud. She was not granted the certificate of validity by due process of law. There was no reasoned order. She had concealed the fact that claim of her paternal uncle Balaji Marotirao Akulwar was invalidated by the then committee on 15-05-2000. She had also concealed several contrary entries which the committee has been able to reveal by resorting to vigilance enquiry as mentioned in the impugned order. Even Balaji Marotirao Akulwar himself had resorted to fraud. In spite of earlier invalidation, he had obtained fresh tribe certificate and concealing earlier decision of invalidation which had reached finality up to the High Court, could get his second certificate validated. Thus, he would submit that since petitioners' sister - Jyoti had resorted to suppression of material facts, benefit of her validity has been rightly declined to be extended to them. Even the petitioners themselves ought to have but did not disclose invalidation of Balaji Marotirao Akulwar while filling in form 'F' as a part of the proposals.

8. The learned AGP would submit that in similar set of facts and circumstances in the matter of ***Chaitnya D/o. Sanjay Palekar*** (writ petition no. 8531 of 2022, by order dated 24-07-2023) this Court has

refused to extend the benefit of the validities obtained by fraud and had dismissed the petition.

9. We have considered the rival submissions and perused the record of even the original files are made available to us in the matters of petitioner - Kapil, Swati and that of Balaji Marotirao Akulwar.

10. It is trite, as has been submitted by the learned AGP, fraud vitiates every solemn act. However, the common thread and reasoning resorted to by the committee attributes such fraud to Balaji Marotirao Akulwar and Jyoti who are not before us. We will have to be cautious and conscious of the fact that any observations made by us *qua* the inference drawn by the committee in the impugned orders regarding fraud perpetrated by them, could have a potential of having some bearing in their matters which the committee has decided to re-open. We, therefore, feel it appropriate that it is better left for the committee to ponder upon and decide the issue which cannot be without extending an opportunity to both of them, to contest the issue. Needless to state that they will have to be served with show cause notices and, thereafter heard. Any decision going against them would further be susceptible to a challenge under Article 226 of the Constitution of India read with section 7(2) of the Maharashtra Act No. XXIII of 2001. It would certainly be a long drawn process. The petitioners who are aspiring to make careers by undertaking education, cannot be made to wait for the

final conclusion in the matters of the validity holders which are or to be re-opened.

11. True it that in the matter of ***Chaitnya Sanjay Palekar*** (supra), we had undertaken scrutiny in respect of a similar fraud practised by the validity holders being relied on by the petitioner - Chaitnya. However, it is important to note that in that matter, petitioner - Chaitnya's father and his paternal uncle whose validities he was banking upon, had obtained certificates of validities by practising fraud. They had faced invalidities in earlier time in the year 1987 and 1989 respectively. Suppressing such earlier invalidation both of them obtained fresh tribe certificates and could get those validated without disclosing earlier invalidation. Since according to us, it was a patent fraud practised by the validity holders, we had refused to extend its benefit to petitioner - Chaitnya.

12. In the matter in hand, so far as the alleged fraud perpetrated by one Balaji, going by the genealogy reproduced by the committee in the impugned order, though *prima facie*, he seems to be related to the petitioner by blood, he is a distant relative. One Linganna Akulwar is the common ancestor having son Balanna. The petitioners and Jyoti are the great grandchildren of Balanna and Balaji Maroti is the grandson of Balanna.

13. We are merely pointing this out to demonstrate that enquiry will have to be resorted, to demonstrate that Jyoti who is the real sister / cousin of these petitioners, was aware about such earlier invalidation faced by Baljai Marotirao Akulwar. As of now, there is nothing before us to demonstrate that she had knowledge about such earlier invalidation but had intentionally concealed it. Therefore, for the time being, even before the allegation regarding Jyoti having practised fraud do not reach finality, the petitioners cannot be deprived of deriving the benefit of her validity, more so, when they are ready to face the consequences as laid down in the matter of **Shweta Balaji Isankar** (supra).

14. As far as the statement regarding power of the scrutiny committee to resort to review in the light of decisions of this Court in the matters of **Hrushikesh Garud** and **Rajesh Umbarje** (supra), wherein it has been held that the committee has no such power, in our considered view, the issue need not be addressed herein. As it is, it would be a subject matter to be considered and decided in an appropriate proceeding.

15. As regards the parameters to be applied in the light of observations of the Supreme Court in paragraph no. 22 of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326**, Jyoti was

granted certificate of validity by undertaking a vigilance enquiry and by a reasoned order. Sufficiency or otherwise of the reasons is not the parameter laid down by ***Maharashtra Adiwasi Thakur Jamat*** (supra).

16. In the circumstances, the petitioners deserve to be issued with certificates of validity conditionally.

17. Writ petitions are allowed partly.

18. Impugned judgment and orders are quashed and set aside.

19. The respondent - committee shall immediately issue tribe validity certificates to the petitioner as belonging to 'Mannervarlu' scheduled tribe in the prescribed format without adding anything. The validities shall be subject to the final outcome of the matters which the committee has decided to re-open.

20. The petitioners shall not be entitled to claim equities.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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