



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6692 OF 2024

1. Atharva s/o Pandit Donkalwar
through father and natural guardian
Pandit s/o Narayan Donkalwar
 2. Parth s/o Vijay Donkalwar
through father and natural guardian
Vijay s/o Gangaram Donkalwar
 3. Priti d/o Vijay Donkalwar
- ... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Secretary,
Tribal Development Department
Mantralaya, Mumbai
 2. The Scheduled Tribe Certificate
Verification Committee Kinwat
Head Quarter at Chh. Sambhajinagar,
through its Dy. Director (R),
Dist. Chh. Sambhajinagar
- ... RESPONDENT

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Advocate for petitioners : Mr. S.M. Vibhute
Addl.G.P. for respondent/State : Mr. P.S. Patil

...

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

DATE : 18.07.2024

ORDER (PER : MANGESH S. PATIL, J.) :

By way of this petition under Article 226 of the Constitution of India read with Section 7 (2) of the Maharashtra Act XXIII of 2001 the petitioners are challenging the common judgment and order dated 25.06.2024 of the respondent – Scrutiny Committee refusing to validate

their 'Mannervarlu' tribe certificates.

2. Learned advocate for the petitioners adverts our attention to the genealogy furnished to the Committee on affidavit by the father of petitioner Atharva. He would submit that petitioner Atharva's father Pandit possesses certificate of validity. One Shivaji Kishtu Donkalwar was the first validity holder who was issued with a certificate of validity by the then Committee by following due process of law, way back in the year 2003. Subsequently, validities were issued to one Naresh Kishtu Donkalwar who is real brother of Shivaji Kishtu Donkalwar, one Shankar Lachmanna Donkalwar who is the real paternal uncle of Shivaji and Shankar's son Amol.

3. The rest of the two petitioners Parth and Priti are also related to Atharva by blood. Their father Vijay Donkalwar possesses certificate of validity. Their second degree paternal uncle Satish Rajinna Donkalwar and Vishal Rajinna Donkalwar have also been issued with certificates of validity.

4. He submits that there was consistent favourable record, wherein, the petitioners' blood relatives and forefathers were referred to as 'Mannervarlu'. There is only one 'Manulwar' one 'Kumbi' and one 'Telang' entry, however, such isolated contrary entries would not outweigh the voluminous favourable record. He would submit that when Shivaji was granted certificate of validity by following due process of law

and pursuant to a vigilance inquiry, the Committee could not have refused to extend its benefit by pointing out the subsequent invalidity of Satish Rajinna Donkalwar.

5. He would submit that no sound reasons have been assigned by the Committee not to extend the benefit of validity possessed by Shivaji. The petitioners are ready to run the risk of facing the consequences as contemplated in **Shweta Balaji Isankar Vs. State of Maharashtra and Ors.; WP No.6320/2017** and may be granted certificates of validity subject to the final outcome of the matters of the validity holders which the Committee has decided to reopen.

6. Learned AGP opposes the petition. He submits that Satish Rajinna Donkalwar has resorted to fraud. He had, at earlier point of time found not entitled to have a certificate of validity and his request for validation was expressly rejected on 30.10.2003. He obtained a fresh tribe certificate and concealing the fact of earlier invalidation, again applied for validation of second certificate and could get it validated. He would submit that the petitioners cannot be allowed to derive the benefit of such fraud and not even the conditional validity should be issued.

7. Learned AGP would then submit that the order in the matter of Shivaji Kishtu Donkalwar is not an order in the eye of law. A blank form has been used for preparing the order. He was extended benefit of a validity possessed by his maternal side cousin and in the light of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of**

Maharashtra and Ors.; 2023 SCC Online SC 326 the petitioners are not entitled to derive benefit of Shivaji's validity.

8. We have considered the rival submissions and perused the papers. As far as the record is concerned, as is mentioned by the Committee there appears to be some contrary school record in respect of some of the blood relatives, wherein, they have been described as 'Munurwar', 'Kumbi', 'Manulwar', 'Munnerwar', 'Telang', 'Munnerwar Bedaldar'. However, pertinently all these inconsistent record is of the period between 1960 and 1972. As against this, as reproduced in the order, there have been consistent favourable entries, the oldest being of 01.10.1953, wherein, the petitioners' grandfather Narayan Ramanna Donkalwar while admitting in the school was described as 'Mannervarlu'. The Committee has not expressly dealt with this oldest record which is a favourable one. As laid down in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.; (2012) 1 SCC 113**, the oldest entry would carry a greater probative value.

9. While dealing with this school record of 1953 of petitioners' grandfather, the Committee has observed that when during vigilance inquiry the officer visited the school it was informed that the school register was stolen and FIR was lodged to that effect. If at all, such was the state of affairs, it was imperative for the respondent – Scrutiny Committee to simultaneously ascertain as to whether the petitioner could have obtained a copy of the school leaving certificate. As can be seen the

school leaving certificate in respect of Narayan Ramanna Donkalwar was obtained on 13.10.1990. The FIR seems to have been lodged regarding loss/stealing of the school record on 01.01.2007. The Committee could have undertaken further inquiry bearing in mind the fact that the school leaving certificate produced by the petitioner was apparently obtained on 13.10.1990. No attempt seems to have been made by the Committee in ascertaining its genuineness. Without undertaking such scrutiny, refusing to consider it even without entertaining any doubt about the genuineness, in our considered view, decision of the Committee to discard this is perverse and arbitrary.

10. Interestingly, the Committee has observed that when the affidavits have been filed that the forefathers were illiterate there could not have been any school record to discard this school leaving certificate of Narayan. Again, the view is clearly arbitrary much less can logically substantiate the inference of the Committee that this school leaving certificate is false and fabricated.

11. Be that as it may, admittedly, Shivaji was granted certificate of validity in January 2003. The order of invalidation passed in the matter of Satish was of October 2003. Meaning thereby that Shivaji could not have been attributed with the allegation of concealing the invalidation of Satish which had occurred after Shivaji was granted certificate of validity. However, in an omnibus manner, the Committee has proceeded to take the same stand even in respect of Shivaji.

12. We have carefully gone through the original file made available to us in the matter of Shivaji Kishtu Donkalwar. It can be seen that it is only after undertaking a vigilance inquiry, recording statement of Shivaji's father Kishtu, by the speaking order, he was held entitled to have a certificate of validity. Considering the observations in **Maharashtra Adiwasi Thakur Jamat** (supra) particularly in paragraph No.22, sustainability of the order granting certificate of validity to a blood relative is not the parameter laid down therein. So long as the then committee has undertaken the due process of law and had found Shivaji entitled to have a certificate of validity, in our considered view, the petitioners being the blood relatives are entitled to derive the benefit of his validity. The Committee could not have legally refused to extend such benefit to petitioners.

13. Obviously, the Committee has now decided to undertake a fresh scrutiny of the matters of all the validity holders including Shivaji. Needless to state that it would be a long drawn process. Sustainability or otherwise of the committee's stand which according to it enables it to undertake a fresh scrutiny of all these validity holders cannot be commented upon in this process. The issue would be directly and substantially under consideration in those matters. These validity holders are also not before us, therefore, it would not be appropriate for this Court to comment upon the powers of the scrutiny committee to undertake a fresh inquiry. However, till the time the certificates of

validity issued to these validity holders are not recalled and cancelled, the petitioners cannot be made to wait losing precious years, more so when they are ready to run the risk of facing the consequences contemplated in **Shweta Balaji Isankar** (supra).

14. The writ petition is allowed partly. The impugned order is quashed and set aside. The committee shall immediately issue tribe validity certificate to the petitioners as belonging to '*Mannervarlu*' scheduled tribe, which shall be subject to the decision to be taken by the committee in the reopened matters.

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

[**SHAILESH P. BRAHME**]
JUDGE

[**MANGESH S. PATIL**]
JUDGE

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