



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

WRIT PETITION NO. 7100 OF 2024

Rohit Bharat Sabale

.. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri Deepak D. Choudhari, Advocate for the Petitioner.

Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 1 and 2.

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

DATE : 09 SEPTEMBER 2024.

FINAL ORDER :

. The petitioner is challenging order of invalidation, whereby respondent/Scrutiny Committee has refused to validate his 'Koli Mahadev' scheduled tribe certificate. In view of urgency, we have heard the matter finally at the admission stage.

2. The learned advocate for the petitioner submits that petitioner's father possesses certificate of validity issued after following due process of law. Impugned order is common order in the matter of petitioner and his cousin. The real uncle of the petitioner similarly possesses a certificate of validity. He would submit that the Committee on its own has also referred the earlier validities of Rajendra Barikrao Sabale and Balasaheb Barku Sable. He would submit that in the matter of Balasaheb

Barku Sablae vigilance enquiry was conducted on 26 July 2002 and the then Committee by a speaking order held him entitled to have a certificate of validity on 07 September 2002.

3. The learned advocate submits that in view of the fact that the Committee has now formed an opinion about the validity holders having been practiced fraud and has decided to reopen their validities by issuing show cause notices, in order to save the career of the petitioner, petitioner is ready to run the risk of facing consequences as contemplated in the matter of **S Shweta Balaji Isankar Vs. The State of Maharashtra and others judgment dated 27 July 2018 in W. P. No. 5611 of 2018** and have a certificate of validity subject to final outcome of the matters which the Committee has decided to reopen in respect of petitioner's father and uncle Sharad.

4. Per contra, learned Additional Government Pleader opposes the petition. He would strenuously submit that a bare look at the impugned order would reveal that only contrary entries that too of a pre-constitutional period wherein petitioner's ancestors were described as Hindu Koli and even in the absence of a single favourable record the petitioner is claiming validation. He would submit that none of the validity holders could have obtained the validities since even they had failed to produce any compatible school record. In fact, one Rajend Barikrao Sable was first validity holder. There was no vigilance enquiry conducted in his matter. He would submit that

without even an iota of favourable record, the petitioner could not be even issued with certificate of validity with any condition. It is a matter of clear fraud and cannot be allowed to be perpetrated.

5. Having heard both the sides and having perused the record it does appear that there was common favourable record before the Committee. There were various validities in the family. Even if the pre-constitutional contrary record of Koli is traceable, it is a matter of record that the petitioner's father possesses certificate of validity. In fact the copy of the order passed in the matter of Balasaheb Sabale and original file of Balasaheb Sabale is made available to us, which clearly demonstrates that vigilance enquiry was conducted, *inter alia*, Rajendra's validity was reported to the Committee and though not elaborate but by a reasoned order he was held entitled to have a certificate of validity. As can be seen even the Committee had applied affinity test and was apparently satisfied. Same was the case in the matter of Sharad, who is real uncle of the petitioner.

6. Once it is seen that Balasaheb Sabale was issued with certificate of validity, the petitioner cannot be denied the validity, more so when he is ready to face the consequences as 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.**

7. As far as vigilance enquiry is concerned in the matter of

Sharad Sabale obviously it was not conducted. However, when in the light of Rule 12(2) of the Rules of 2003 framed under the Maharashtra Act No. XXIII of 2001 and in the light of observations of the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others reported in *2023 SCC Online SC 326*, when the vigilance enquiry is not mandatory and it is only if the Committee is not ready to accept the documents, with it can resort to the vigilance enquiry, absence of vigilance enquiry in the matter of Sharad *ipso facto* would not invalidate the order passed.

8. In view of above, keeping open the issue regarding sustainability of the validities possessed by Bharat and Sharad, which the Committee has decided to undertake scrutiny, the petitioner deserves to be issued with the certificate of validity conditionally. We, therefore, pass following order.

9. The writ petition is allowed partly. The impugned judgment and order is quashed and set aside. The Committee shall issue validity certificate to the petitioner of 'Koli Mahadev' scheduled tribe immediately in prescribed proforma. It shall be co-terminus with the validities in the family, which the Committee has decided to reopen. The petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME J.)

(MANGESH S. PATIL, J)

bsb / Sept. 24