



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7678 OF 2024

1. PRASHANT SANJAY SHELKE
2. AKASH SANJAY SHELKE
VERSUS

1. THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
2. THE SCHEDULED TRIBE CERT. SCRUTINY COMMITTEE, NASHIK-2
TQ. & DIST. NASHIK THR. ITS DY. DIRECTOR (R)

...
Advocate for the Petitioners : Mr. Jadhavar Pratap V.
AGP for Respondents: Mrs. S.S. Joshi
...

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

DATE : 29.08.2024

ORDER (MANGESH S. PATIL, J.) :

We have heard both the sides finally.

2. The petitioners who are siblings are challenging the common judgment and order, whereby, the scrutiny committee has refused to validate their 'Koli Mahadev' certificates in a proceeding under the Maharashtra Act No.XXIII of 2001.

3. After we started hearing the matter, we could notice that the Committee has referred to the contrary school and birth record of the petitioner's ancestors of pre-constitutional period, wherein, they were described as 'Koli'. Even it was pointed out that there is also a pre-

constitutional entry favourable to the petitioners. The first contrary entry is stated to be of 1930 in respect of birth record of one Saeed stated to be born to petitioner's great grandfather Gujaba Bhavdya. It was also pointed out that there was a school record of the year 1935 wherein petitioner's grandfather Pandurang Gujaba Shelke was admitted to the school describing him to be 'Mahadev Koli'.

4. Pertinently, the learned advocate for the petitioners pointed out that the Committee could have based a decision even on the basis of this favourable entry of the year 1935 particularly when the Committee had not doubted its genuineness. It has simply overlooked it.

5. The learned advocate for the petitioners' would further submit that according to the instructions received by him, petitioners' cousins have also been issued with certificates of validity, however, the Committee has not been cooperating them by divulging the record. He would submit that though there are exigencies the petitioners cannot run the risk and pray that the matter be remanded to the scrutiny committee for a fresh decision extending opportunity to the petitioners to lead additional evidence and even make an attempt to substantiate the claim on the basis of validities issued to petitioners' cousins.

6. The learned AGP would oppose the petition. He would submit that the oldest pre-constitutional record having the greater probative value of the year 1930 being contrary one, the favourable record of 1935 cannot be looked into. No error is committed by the

Committee in concluding about the petitioners' claim being false. Even the petitioners had failed in the affinity test.

7. We have considered the submissions and perused papers. It is to be borne in mind that the matter pertains to claim of the petitioners to a social status in order to derive the benefit of reservation, which is a constitutional right. It cannot be looked upon as an adversarial litigation. In the normal course, the matter cannot be remanded merely for asking, however, when it is a matter of this kind, since the order of invalidation would seal the fate of the petitioners, once for all, interest of justice would be met by extending them an opportunity to go back to the committee and attempt to discharge the burden cast upon them under section 8 of the Maharashtra Act No.XXIII of 2001. That would cause prejudice to none.

8. Besides, the petitioners have also gathered some information about the cousins having obtained certificates of validity, which fact will have to be expressly brought to the notice of the Committee being a relevant fact. We cannot deprive the petitioners of making that attempt as well.

9. The writ petition allowed partly. The impugned order is quashed and set aside. The matter is remanded back to respondent No.2 - Scrutiny Committee for decision fresh and in accordance with law by extending the petitioners an opportunity to lead additional evidence to substantiate their claims. The Committee may resort to a fresh vigilance

inquiry or additional one. The committee shall decide the proposal afresh, as expeditiously as possible and in any case within eight weeks. The petitioners shall appear before the committee on 06.09.2024.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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