



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 WRIT PETITION NO. 8395 OF 2024

- 1) Rushikesh s/o Dhananjay Tapse
Age 25 years, Occ. Student.
- 2) Rutuja d/o Dhananjay Tapse,
Age 22 years, Occ. Student
Both r/o. Jawalban Tq. Kaij,
Dist. Beed. ... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Department of Tribal Development,
Mantralaya, Mumbai-32,
Through its Secretary.
- 2) The Scheduled Tribe Certificate Scrutiny
Committee, Chhatrapati Sambhajinagar,
Through its Member Secretary ... **Respondents**

...
Advocate for Petitioners : Mr. Vivekand U. Jadhav
A.G.P. for Respondents/State : Mr. N.D. Batule

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

DATE : **19.08.2024**

PER COURT :

The petitioners are challenging the order of respondent no 2-scrutiny committee, refusing to validate their 'Koli Mahadev' scheduled tribe certificates.

2. We have heard both sides finally, with consent.
3. The learned advocate for the petitioner would take us through the

genealogy and would submit that the petitioners' father Dhananjay was granted certificate of validity by a reasoned order preceded by a vigilance enquiry and even he could get through the affinity test successfully. Even if the committee now has formed an opinion about he having practised fraud on the then committee in obtaining the certificate of validity, it would be a long drawn process. The petitioners cannot be made to wait till that process reaches finality. They are ready to run the risk and face the consequences as mentioned in the matter of ***Shweta Balaji Isankar Vs. State of Maharashtra and others*** (writ petition no. 6320 of 2017), and the petitioners may be directed to be issued with certificates of validity.

4. The learned advocate would further submit that even 'Hindu' entries mentioned in the impugned order have been treated as contrary entries, which the committee legally could not have done since 'Hindu' is not a caste but a religion. He would further submit that even reliance of the committee on the census is contrary to law. The committee merely because the petitioners relations were described in by surname 'Koli' has entertained a doubt, which it could not have. The old school record of petitioners' grandfather Haridas Nana Koli was duly verified by the then committee and issued validity to their father.

5. The learned A.G.P would oppose the petition. He would submit that the petitioners' father was granted a certificate of validity by an order passed by a committee headed by one Mr. V.S. Patil, whose functioning was dubious. The State Government has even decided to undertake reverification of the proposals decided by the committee headed by him. The petitioners cannot be allowed to take benefit of the order in the matter of their father.

6. The learned A.G.P would submit that the petitioners' father was relying upon the validity certificate possessed by a person who was not related to him by blood from paternal side.

7. We have considered the rival submissions and perused the record. We

have also been made available the original file of the committee in the matter of petitioners' father Dhananjay. It does appear that the school record of Haridas Nana Tapse, petitioners' grandfather, stated to have been admitted to the school on 29.12.1953, was considered by the then committee while granting him validity. However, surprisingly, the petitioners are not seeking to place reliance on it in their own matter. That extract was not produced before the committee albeit reply to the vigilance enquiry report, they sought to indirectly demonstrate that the very same school record was considered by the committee before granting certificate of validity to their father. This conduct of the petitioners indeed creates a doubt about their claim.

8. However, a careful perusal of the file of petitioners' father Dhananjay would demonstrate that a vigilance enquiry was conducted. A detailed report was submitted. It was accepted by the then scrutiny committee while passing the final order.

9. Though it is now being demonstrated that the then committee was headed by one Mr. V.S. Patil, and some comments are being made regarding the performance of the then committee, it is not that the committee had no power or jurisdiction to decide the claim. Till the time the order passed in the matter of petitioners' father holds the field, the father would continue to possess a certificate of validity. Similarly, even if the present committee, now, for the reasons mentioned in the impugned order, has decided to undertake reverification of validity granted to the father of the petitioners, it would be a long drawn process, requiring a notice to be issued to him and undertaking due process of law, to reach finality. The petitioners cannot be made to wait at the cost of their career, more so when they are ready to run the consequences contemplated in *Shweta Balaji Isankar (supra)*.

10. Pertinently, the vigilance enquiry conducted at the time of petitioners' father *inter alia* discloses that he could successfully get through the affinity

test. Even if the affinity test is not a substantive proof and is not a litmus test, if the committee which decided that matter was to ignore the documentary evidence, the affinity test would have been decisive.

11. Considering the aforementioned state of affairs, the impugned order, refusing to grant validity certificates to the petitioners is not sustainable in law.

12. The writ petition is partly allowed. The impugned order is quashed and set aside. The respondent no.2-committee shall immediately issue tribe validity certificates to the petitioners as belonging to '*Koli Mahadev*' 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 reopen.

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

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-