



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8637 OF 2024

Prachi D/o Sainath Shahu,
Age : 19 years, Occu. : Student,
R/o. At Bannali, Post. Yetala,
Tq. Dharmabad, Dist. Nanded

.. Petitioners

Versus

The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32 and another

.. Respondents

...
Advocate for petitioner : Mr. Chandrakant R. Thorat
AGP for the respondent – State : Mrs. P.J. Bharad
...

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

DATE : 27 AUGUST 2024

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

In a petition under Article 226 of the Constitution, read with sub section (2) of section 7 of the Maharashtra Act No. XXIII of 2001 (**Act**), whereby the petitioner is taking exception to the judgment and order of the respondent no. 2 - scrutiny committee constituted thereunder, refusing to validate her 'Mannervarlu' scheduled tribe certificate.

2. Considering the urgency, we have heard both the sides finally, at the stage of admission.

3. The learned advocate for the petitioner would take us through the genealogy and would submit that there is no dispute about the relationship between the petitioner and the validity holders inter se. One Nagesh Viresh is the first validity holder who had obtained the validity in the year 2001. It was issued pursuant to the vigilance enquiry and by a reasoned order. Based on that validity, several other family members have been issued with the certificates of validity. The petitioner is 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 is ready to accept the certificate of validity conditionally.

4. The learned advocate would further submit that even if the committee has now endeavoured to demonstrate that one Dharmapal Shahu, who happens to be the real paternal uncle of Nagesh Viresh had faced invalidation and it was concealed by Nagesh, the invalidity would only bind the individual claimant. That cannot be a judgment in *rem*. If Nagesh Viresh was able to convince the committee about the claim and was issued with certificate of validity, non-disclosure of Dharmapal's invalidation will not go the root of his validity.

5. The learned AGP would submit that the very fact that petitioner's real uncle Dharmapal had faced invalidation and Nagesh had concealed it by a sinister design, since fraud vitiates every act, the conduct of Dharmapal who had suffered earlier invalidation and managing to obtain a fresh tribe certificate and getting it validated would vitiate everything.

6. Learned AGP would further submit that the order in the matter of Nagesh Viresh was not a reasoned order and the petitioner is not entitled to derive its benefit in the light of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326.***

7. We have considered the rival submissions and perused the papers *albeit* the original file of Nagesh Viresh is not made available to us and its photocopy is made available, which at places, is not even legible.

8. Be that as it may, there cannot be a dispute about the fact that Dharmapal, who happens to be Nagesh's paternal uncle had faced invalidation in the year 1996 and ex facie indulged in forgery in

obtaining a fresh certificate and getting it validated in the year 2004. However, when admittedly, Nagesh Viresh was granted validity in the year 2001, he cannot be attributed with fraud. Dharmapal's validation happened at a later point of time. At the most, it can be said that Dharmapal's invalidation of 1996, could have been, but was not disclosed by Nagesh Viresh. Obviously, Nagesh Viresh is not before us and even if that is the perception of the committee attributing him of having practiced fraud, it would be a matter of threadbare scrutiny in an appropriate proceeding. Any observation made by us could have a bearing on that enquiry and we are consciously avoiding to do so. The fact remains that Nagesh Viresh cannot be attributed of using the fraudulent validation of Dharmapal.

9. As can be seen from the file of Nagesh Viresh, the vigilance enquiry was conducted and though the order was passed in the form of filling the blanks in a printed format, it could be possibly to save the time. We substantiate this inference on the basis of a specific statement appearing in the order which is also in a printed form and not handwritten one wherein the then committee had expressly observed by referring to the specific replies given by Nagesh Viresh during the

vigilance enquiry and even to the committee, to substantiate his claim for demonstrating his affinity towards 'Mannervarlu' tribe. This statement which is in a printed form, cannot be said to be without application of mind, merely because the order is otherwise in a printed format keeping the blank spaces, which have been subsequently filled in, by ink.

10. All these afore-mentioned circumstances are demonstrative of the fact that there being no dispute about the petitioner being related to Nagesh Viresh by blood, rather he had not sought to rely upon his validity but the committee, on its own, seems to have traced out the validity of Nagesh Viresh and few other blood relatives. Nagesh Viresh was held entitled to have a validity after conducting a vigilance enquiry and by a reasoned order including by applying the affinity test. Hence, in the light of paragraphs no. 22 and 25 of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra), the petitioner is entitled to rely upon the validity of Nagesh Viresh.

11. Admittedly, there are other blood relatives in the family, some of which have been referred to expressly in the order under

challenge, who possess certificates of validity; the petitioner cannot be singled out.

12. The writ petition is allowed partly.

13. The impugned order is quashed and set aside.

14. The respondent - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Mannervarlu' scheduled tribe in the prescribed format. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

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

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/