



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9249 OF 2024

1. POOJA D/O DIGAMBAR KONKEWAD
2. ARTI D/O SANTOSH KONKEWAD
3. RAHUL S/O SURYAKANT KONKEWAD

VERSUS

1. THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
2. SCHEDULED TRIBE CERT. VERIFICATION COMMITTEE, KINWAT
H.Q. AT AURANGABAD THR. ITS MEMBER SECRETARY

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Advocate for the Petitioner : Mr. O.B. Boinwad
AGP for Respondents: Mrs. P.J. Bharad

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

DATE : 29.08.2024

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for both the respondents. At the joint request of the parties, the matter is heard finally at the stage of admission considering the fact that the petitioners are seeking admissions through MHT-CET-2024 and NEET-UG-2024 in the current round.

2. The petitioners are cousins *inter se* and are challenging the common judgment and order of respondent No.2 – Scrutiny Committee in a proceeding under Section 7 of the Maharashtra Act No.XXIII of 2001, whereby, it has refused to recognize and validate their ‘Koli Mahadev’ scheduled tribe certificates.

3. The learned advocate for the petitioners submits that there is no dispute about the genealogy. He would submit that one Shivaji Shankar Konkewad is the first validity holder in the family who had obtained a certificate of validity as a sequel to the process undertaken by the then Committee on 09.07.2009. Even thereafter there are at least three more individuals having validities in the family those all have been scrutinized by the Committee in the order under challenge. He would submit that considering the exigency, the petitioners are ready to accept the certificates of validity even with some condition. They are ready to face the consequences in the light of **Shweta Balaji Isankar Vs. State of Maharashtra and Ors.,WP No.6320/2017**. Even if the Committee has now decided to reopen the validities, it would take time and the petitioners cannot be made to wait.

4. Per contra, the learned AGP would oppose the petition. He would submit that no exception can be taken to the inference drawn by the Committee about validity holders having resorted to fraud. The petitioners cannot be allowed to derive the benefit of fraud perpetrated by the blood relatives. The Committee has valid reasons to reopen the validities and the petition be dismissed.

5. The learned AGP would further submit that Shivaji was granted validity at first point of time relying upon the validities of the individuals who were not related to him by blood and even he had practised fraud by pointing out the individual Bharat Kishanrao

Konkewad who was the validity holder as his cousin and it cannot be said that he was granted certificate of validity by following due process of law and the petitioners cannot be extended its benefits.

6. We have considered the rival submissions and perused the papers. Since the petitioners are relying upon the validities in the family, obviously, in the light of observations in paragraph No.22 of the **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**, scrutiny will have to be undertaken to ascertain if the validity holders were issued with certificates of validity by following due process of law.

7. Bearing in mind the principles laid down in **Maharashtra Adiwasi Thakur Jamat** (supra), at the outset, it is necessary to note that there is no dispute about the petitioners being related to the four validity holders expressly mentioned while discussing issue No.2 formulated by the Committee in paragraph No.7. A careful perusal of the order reveals that though Committee has made certain observations in respect of validity holder Subhash Malhari Konkewad assigning specific reasons for it to refuse to extend benefit of his validity to the petitioners, the Committee has not undertaken any scrutiny in respect of the other three individuals including Shivaji Shankar Konkewad.

8. A photocopy of the original file of Shivaji has been made available to us which contains the documents to demonstrate that initially his claim was invalidated. He had challenged that decision in

Writ Petition No.4649/2007. By the judgment and order dated 25.09.2008 the writ petition was allowed. Committee's order was quashed and set aside and the matter was remanded for decision afresh. It is thereafter that, by a detailed order passed by the then Committee, Shivaji was held entitled to have a certificate of validation. It would demonstrate that he was issued certificate of validity by following due process of law.

9. True it is that in the course of hearing of the Writ Petition No.4649/2007 affidavit of one Bharat Kishanrao Konkewad was filed in support of Shivaji's claim since he was possessing a certificate of validity, by expressly describing him to be Shivaji's cousin and even the Committee while passing the order expressly referred to it. Going by the genealogy, one cannot find Bharat Kishanrao Konkewad.

10. However, the order passed in the matter of Shivaji demonstrates that apart from Bharat's validity, Shivaji had produced a sale deed of Deorao Hausaji Konkewad, his grandfather, of the year 1946. Since it was in 'Modi' script even its translation was placed on record and on that basis he was held entitled to have a certificate of validity. Therefore, it is not that he was granted validity simplicitor by referring to the validity of Bharat, though it is assumed that he was not related to Shivaji.

11. These being the parameters laid down in **Maharashtra Adiwasi Thakur Jamat** (supra), in our considered view, when Shivaji

possesses a certificate of validity issued pursuant to due process of law and by reasoned order and when the Committee has not even bothered to objectively examine the circumstances in which he was granted validity, the petitioners are entitled to have a certificates of validity coterminous with the validities in the family.

12. The writ petition is allowed partly. The impugned order is quashed and set aside. The committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Koli Mahadev-29' scheduled tribe, which shall be coterminous with the validities in the family.

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

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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