



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

941 WRIT PETITION NO. 9238 OF 2024

1. SAHIL RAJESHKUMAR MERGEWAD
2. YOGESH RAJESHKUMAR MERGEWAD

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. Jadhavar Pratap V.
AGP for Respondent Nos. 1 & 2 : Mr. S.R. Yadav-Lonikar

...

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

DATE : 30 AUGUST 2024

PER COURT :

Heard both the sides finally at the stage of admission.

2. The petitioners are challenging the judgment and order of the respondent – Scrutiny Committee refusing to validate their ‘Mannervarlu’ scheduled tribe certificates.

3. Learned Advocate for the petitioners would take us through the genealogy and would submit that apart from the petitioner’s father Rajeshkumar, there are at least four other validities in the family, who are Rajeshkumar’s cousins. Those have been referred to in the impugned order. Mahesh was the first in point of time, who was held entitled to have a certificate of validity

on 17 March 2007. He was issued with a certificate of validity by following due process of law. A vigilance enquiry was conducted. The Scrutiny Committee has now decided to undertake re-scrutiny of the validity on a spacious plea of he having practised fraud. The Committee will have to undertake scrutiny by following due process of law. It would take time to reach the conclusion. The petitioners cannot be denied the benefit, till the time the Committee is able to recall the certificate of validity of Mahesh and incidentally, is able to recall all other validity certificates including that of Rajeshkumar.

4. Learned Advocate submits that the petitioners are ready to run the risk to face the consequences contemplated in *Shweta Balaji Isankar Versus State of Maharashtra and others*, in Writ Petition No. 5611/2018, and a conditional validity may be issued.

5. Per contra, learned AGP would submit that since fraud vitiates everything, Mahesh apparently had played fraud. The Committee has decided to reopen his validity. No reasoned order was passed. Benefit of certificates of validity possessed by the blood relatives who were not from the paternal side was extended

to him and the petitioners are not entitled to derive any benefit from such dubious record.

6. Learned AGP further submits that even this Committee could trace out that the family members resorted to manipulation in school record, which enables it now to draw any inference about fraud having been practised. He would submit that generations after generations, the petitioners' family has been taking advantage of reservation and this has to stop somewhere. At least in the present matter where there is apparent manipulation in the school record, the petitioners may not be extended the benefit of validities in the family.

7. We have considered rival submissions and perused the papers. Obviously, fraud is not a parameter which was in contemplation of Supreme Court while deciding *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Versus State of Maharashtra and others*, **2023 SCC Online SC 326**. One need not delve deep but suffice to observe that since fraud vitiates everything, the Committee may have formed such an opinion to undertake the process albeit the issue regarding Committee's power to undertake scrutiny is a subject matter which is pending

before the Supreme Court. Wherein the decision of the co-ordinate Division Bench (Principal Seat) in the matter of *Rajesh Bhimashankar Umbarje and others Versus The State of Maharashtra and another*, in Writ Petition No. 5364/2023 has been challenged.

8. Be that as it may, *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), does not contemplate a situation where the earlier validity holders had obtained certificates by practising fraud. The Committee may deal with that aspect independently.

9. Applying the parameters laid down in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), we have been made available the original file of Mahesh. Vigilance enquiry was conducted and by a reasoned order he was held entitled to have a certificate of validity. The endeavor of Committee, now in the present matters and that of the learned AGP to demonstrate that Mahesh was granted certificate of validity without there being sufficient and cogent material, cannot be countenanced. *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), only lays down a parameter that an earlier validity should have

been issued by following due process of law. It does not allow the present Committees to examine even sustainability of the orders on merits by undertaking a fresh scrutiny. When sufficiency or otherwise of the evidence cannot be gone into by a successor Committee, when Mahesh was granted validity by following due process of law, pursuant to a vigilance enquiry and by a reasoned order, there being no dispute about he being related to the petitioners by blood, the petitioners are entitled to have the benefit of the validity.

10. Writ Petition is allowed partly. The impugned judgment and order is quashed and set aside. The Scrutiny Committee shall immediately issue tribe validity certificates as belonging to 'Mannervarlu' scheduled tribe to the petitioners which shall be co-terminus with the validity certificates of the blood relatives.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]