



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9637 OF 2024

JAGDISH S/O. SUNIL FULEWAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

WITH
WRIT PETITION NO. 9946 OF 2024

ASHOK S/O. ANANDRAO FULEWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Deepak D. Choudhari
and Mr. Vijay G. Gangalwad
Addl. GP for Respondent/s – State : Mr. P.S. Patil

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.
DATE : 19.09.2024

PER COURT [*Shailesh P. Brahme, J.*] :

Heard both the sides finally considering exigency in the matter.

2. Petitioners in both the matters are blood relatives and they are relying on common record for staking claim to scheduled tribe 'Mannervarlu'. Their tribe certificates are invalidated by common judgment and order dated 19.08.2024 which is under challenge. Hence, both the petitions are being decided by this common order by referring to the paper book in Writ Petition No. 9637/2024.

3. Learned counsel for the petitioners submits that the petitioners are relying on the validity certificates of Sunil

Anandrao Fulewad, Anita Makaji Fulewad and Sadhana Makaji Fulewad which were issued by following due process of law. He would submit that during vigilance enquiry in the matter of Sunil, affinity test was positive and by a speaking order he was issued with a validity certificate. It is further submitted that reply filed by petitioners to the vigilance enquiry report denying relationship with the persons whose incompatible school record was pitted against them was not taken into account. It is further submitted that unless the validities issued earlier are revoked, petitioners cannot be denied benefits of validity certificates.

4. Learned AGP supports impugned judgment and order. He tenders on record original papers of the petitioners. He would submit that the Committee rightly discarded the validity certificates. He would vehemently submit that incompatible school record of Ananda Shankar – 26.04.1943, Shankar Makaji – 04.01.1939 is of pre-independence period. The school record of Makaji – 1961, Anil – 1975 is also older one which was not considered while issuing validity certificates in the family. It is further submitted that school entry of Shankar Makaji was found to be bogus and amounts to fraud.

5. We have considered rival submissions of the parties. We have also gone through a separate compilation tendered by the petitioner during the course of argument comprising of orders passed by the Scrutiny Committee in the matter of earlier validity holders.

6. The genealogy which is produced on the record has not been disputed by the respondents. Petitioner Jagdish is the son of earlier validity holder Sunil. Another petitioner Ashok is the

brother of Sunil. A vigilance enquiry was conducted in the matter of Sunil. The school record of Anandrao Shankar Fulewad of 07.07.1959 amongst other record was verified and found to be genuine. Sunil could get through the affinity test. He was issued with validity certificate by a speaking order. Besides, we find speaking orders of the Committee granting validity certificates to Anita and Sadhana. These validities corroborate the claim of the petitioners and should not have been discarded.

7. The petitioners had filed reply to vigilance report disputing the relationship with the persons namely Ananda Shankar, Sakharam Khobraji, Shankar Laxman, Bhimrao Nana, Nana Narayan, Fakira Kisan, Madhav Gynoba, Digambar Laxman and Shankar Makkaji. It has not been taken into account while rejecting the tribe claims.

8. The petitioners denied the relationship with the persons whose record was found to be incompatible including pre-independence record of Ananda Shankar 1943 and Shankar Makaji 1939. The revenue record of Fasli period which was reported to be bogus one, is not sufficient to infer fraud or dishonesty at this stage. It would be open for the Committee to conduct reverification of the record so as to determine if there was really a fraud or suppression of material fact. The successor Committee will have no jurisdiction to castigate the earlier validities unless those are not in consonance with law laid down by Supreme Court in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Versus State of Maharashtra and others*, **2023 SCC Online SC 326**, or there is fraud.

9. It reveals from record that school entry of Ananda Shankar disclosed his date of birth as 11.08.1936. The revenue record of Shankar Makaji disclosed his date of birth as 04.01.1941. Ananda is the son of Shankar. This belies both the entries which are reported to be indicating caste as 'Mannurwar', incompatible with the tribe claim. The Committee has overlooked this aspect of the matter also. We, therefore, find that impugned judgment and order is unsustainable.

10. The petitioners are ready to face the consequences as per *Shweta Balaji Isankar Versus State of Maharashtra and Others*, in Writ Petition No. 5611/2018. It is desirable to issue them tribe validity certificates. We, therefore, pass following order:

ORDER

- i. Writ Petitions are allowed partly.
- ii. The common judgment and order dated 19.08.2024 is quashed and set aside.
- iii. The respondent no. 2 – Scrutiny Committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Mannervarlu' scheduled tribe in the prescribed format which shall be subject to outcome of reverification of earlier validity holders proposed by the Scrutiny Committee.
- iv. The petitioners shall not claim any equities.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]