



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9649 OF 2024

1] Kum. Vaishnavi D/o Parmeshwar Walkulwad,
Age : 19 years, Occu : Education,
R/o – Chhatrapati Chow, Canal Road, Nanded
Nanded, Tq. and Dist. Nanded

2] Kum. Sakshi D/o Parmeshwar Walkulwad,
Age : 17 years, Occu : Education,
Under Guardianship of Mother
Smt. Meera Parmeshwar Walkulwad
Age – 38 years, Occu – Service
R/o – Chhatrapati Chow, Canal Road, Nanded
Nanded, Tq. and Dist. Nanded

.. Petitioners

Versus

1] The State of Maharashtra,
Through its Secretary,
Medical Education Department,
Mantralaya, Mumbai – 32.

2] The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Member Secretary,
Aurangabad

.. Respondents

AND
WRIT PETITION NO. 9614 OF 2024

Parmeshwar Yadavrao Walkulwad
(Deceased) Through Legal Representative
Wife Meera Parmeshwar Walkulwad,
Age : 39 years, Occu : Household,
R/o – At Post Kopara, Tq. Kinwat,
Dist. - Nanded

.. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.

- 2] The Scheduled Tribe Certificate
Verification Committee, Kinwat Head Quarter,
at Aurangabad,
Through its Member Secretary .. Respondents

...
Advocate for petitioners in both WPs : Mr. Omgashad B. Boinwad
AGP for the respondent – State : Mr. R.S. Wani
...

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

DATE : 09 SEPTEMBER 2024

JUDGMENT (MANGESH S. PATIL, J.) :

Rule. Rule made returnable forthwith. Learned AGP waives service for the respondents.

2. These are petitions under Article 226 of the Constitution of India. Considering the exigency, the matters are heard finally at the stage of admission and are being disposed of by this common judgment.

3. Petitioners – Vaishnavi and Sakshi are challenging the judgment and order of the respondent – scrutiny committee dated 07-06-2024 refusing to validate their ‘Koli Mahadev’ scheduled tribe certificates. They have been relying upon certificate of validity of their father – Parmeshwar Yadavrao Walkulawd. However, unfortunately, he is no more, having died on 14-08-2014. While the proceeding of Vaishnavi and Sakshi was still pending with the scrutiny committee, the committee issued show cause notice for recalling the validity of

Parmeshwar. Their claim was dismissed on the ground that he had obtained certificate of validity by practising fraud. Consequently, by order dated 24-06-2024 which is under challenge in writ petition no. 9614 of 2024 by his widow, who happens to be Vaishnavi and Sakshi's mother, the committee recalled the certificate of validity.

4. According to the learned advocate for the petitioners, there is a serious issue regarding power and jurisdiction of the respondent – committee to undertake review in the light of the division bench judgments of the co-ordinate benches in the matters of i) ***Rakesh Bhimashankar Umbarje and others Vs. State of Maharashtra and others; 2024 (1) Bom. C.R. 294***, ii) ***Bharat Nagu Garud Vs. State of Maharashtra and others; 2024 (1) Mh.L.J. 647*** and iii) ***Anil S/o Shivram Bandawar Vs. District Caste Certificate Verification Committee, Gadchiroli and another; 2021 (5) Mh.L.J. 345***. The Committee has even failed to follow the due process of law.

5. In spite of being made aware about the fact that Parmeshwar was not alive, notice was issued in his name and while in the process of scrutinizing claims of Vaishnavi and Sakshi, though the matter of recalling Parmeshwar's validity was closed for orders on 07-06-2024, in order to overcome the shortcomings, the committee issued show cause notice on 10-06-2024, principles of natural justice were not followed. Vaishnavi and Sakshi ought to have been issued

with notice and should have been allowed to even defend that proceeding together with their widowed mother.

6. The learned advocate, therefore, submits that no due process of law was followed while passing the order recalling Parmeshwar's validity behind his back. They would submit that if the committee was intending to recall the validity on the ground of fraud, the allegations were serious and Vaishnavi and Sakshi and their mother ought to have been extended an opportunity to contest that proceeding. The decision having been rendered without following due process of law and without observing the principles of natural justice, order in the matter of Parmeshwar is liable to be quashed and set aside.

7. The learned advocate for the petitioners would submit as a corollary, once the order of Parmeshwar is found to be *non est*, irrespective of the allegations of fraud, when he was issued with certificate of validity by following due process of law, when a vigilance enquiry was conducted, and by a reasoned order, he was entitled to have a certificate of validity, Vaishnavi and Sakshi deserve to be issued with certificates of validity, may be co-terminus with validity of their father – Parmeshwar. He would submit that they are 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).**

8. Learned AGP would submit that though a notice was issued in Parmeshwar's matter for recalling his validity in his name, his brother had caused appearance through an Advocate, and, therefore, it cannot be said that principles of natural justice were not followed. He would submit that the power and jurisdiction to recall the validities on the ground of fraud is inherent in the committee and so has been held in the matter of ***Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar; (2008) 9 SCC 54, Jyoti Sheshrao Mupde v State of Maharashtra and others (Writ Petition No. 1954/2009 decided on 22/08/2012)*** and ***Rajeshwar Baburao Bone Vs. State of Maharashtra and another; (2015) 14 SCC 497***. The committee has assigned cogent reasons to demonstrate how Parmeshwar was able to secure validity by resorting to fraud and no exception can be taken.

9. Learned AGP would also submit that except Parmeshwar's validity, Vaishnavi and Sakshi do not have any other independent and reliable evidence to substantiate their claims. Parmeshwar was not issued with certificate of validity by following due process of law and following the decision in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others;***

2023 SCC Online SC 326, they were not entitled to rely upon Parmeshwar's validity.

10. He would further point out that the favourable record of the petitioners was of recent origin. Contrary record of the older times could be revealed during the vigilance enquiry wherein petitioners' near blood relatives were described in the school record as 'Koli' which was earlier Other Backward Class and is currently Special Backward Class. He would also submit that manipulation was also revealed in the school record of petitioners' grandfather – Yadavrao Madhavrao Walkulwad. In his statement recorded on 29-06-2023, he himself had expressly denied to have undertaken any education in school at village Bothi, Taluka – Umri, District – Nanded.

11. Learned AGP would further submit that petitioners' father – Parmeshwar had executed a sale deed, expressly declaring that he was not belonging to any tribal community. Even these two girls could not clear the affinity test and the impugned judgment and order taking a plausible view, cannot be interfered with in exercise of powers under Article 226 of the Constitution of India.

12. We have considered the rival submissions and perused the papers.

13. Admittedly, Vaishnavi and Sakshi's father – Parmeshwar was issued with a certificate of validity by following due process of law, albeit, the committee is of a different view. The vigilance enquiry was conducted and by a reasoned order, he was held entitled to have a certificate of validity. Incidentally, the Vigilance Officer who submitted the report in Parmeshwar's matter had also pointed out four entries in the school record of the petitioners' blood relatives which were of the period between 1969 to 1983 wherein they were described as Koli which are indeed contrary entries to a claim of 'Koli Mahadev'. We are pointing out this fact to demonstrate that while passing the order, the then committee was made aware even about such contrary entries which the committee in the impugned order, seeks to place reliance to discard petitioners - Vaishnavi and Sakshi's claims. If in spite of such contrary entries, the then committee had taken a plausible view, it cannot be said that no due process of law was followed.

14. It is to be borne in mind that in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra), the Supreme Court has laid down parameters to be applied before extending benefit of the earlier validity to the subsequent claimants. It lays down that if there is no dispute about blood relationship between the claimants and the earlier validity holders and if they were granted certificates of validity by following due process of law by a speaking order, or a reasoned order,

then only the benefit can be extended. The endeavour of the committee to observe that the then committee seeking to take exception to Parmeshwar's validity on the ground that no due process of law was followed, but undertaking the scrutiny to demonstrate that the evidence before the then committee was deficient to substantiate the claim, would be like allowing successor committee to sit in appeal. That is not the purport of the parameters laid down in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra). When after vigilance enquiry and even going through the contrary record, the then committee was satisfied about his claim, the parameters laid down therein would stand fulfilled and till the time Parmeshwar's validity is not recalled by following due process of law, it would enure to the benefit of his daughters.

15. As can be seen from the order passed by the then committee, vigilance enquiry was conducted twice and apart from the validities of some relatives, may not be related by blood, but referring to positive evidence and specifically observing about he having successfully gone through the affinity test, he was held entitled to have a certificate of validity by a reasoned order. Vaishnavi and Sakshi, therefore, are entitled to derive benefit from their father's validity.

16. When admittedly, Parmeshwar has died, even if the committee intended to undertake re-scrutiny of his validity on the ground which according to it constitutes fraud, it ought to have followed due process of law. The committee in the order in Parmeshwar's matter has expressly observed that during the course of hearing of Vaishnavi and Sakshi's matter, it became aware about his death. But the order conspicuously omits to expressly state about they and their widowed mother were issued with show cause notices addressed to them and calling upon them to respond.

17. The exercise has been undertaken in surreptitious manner. It is clearly against the principles of natural justice going to the root of the order itself. It is not made clear even in the order as to why the show cause notices were not sought to be served to these two girls and their widowed mother. The whole exercise makes the proceeding *void*. As far as the power and jurisdiction of the committee to undertake review on the ground of fraud, admittedly, the issue is pending before the Supreme Court in the matter of ***State of Maharashtra and another Vs. Rakesh Bhimashankar Umbarje and others (SLP (C) No. 015099 / 2024)***. Though there are division bench judgments of three division benches of this Court in the matters of i) ***Rakesh Bhimashankar Umbarje and others*** ii) ***Bharat Nagu Garud Vs. State of Maharashtra and others*** and iii) ***Anil S/o***

Shivram Bandawar (referred supra), holding that it does not have such jurisdiction, we need not, for the time being, burden this judgment. The fact remains that Parmeshwar's validity has been recalled by the committee without following due process of law and consequently, that order being void *ab initio*, is liable to be quashed and set aside.

18. As a logical and legal corollary, Parmeshwar's validity would remain in force and Vaishnavi and Sakshi being his daughters, cannot be denied the benefit particularly when they are ready to run the risk of facing the consequences contemplated in Shweta.

19. In the result, the following order:

I) Both the writ petitions are allowed partly.

II) The impugned judgments and orders in both these petitions are quashed and set aside.

III) Since the petitioners from writ petition no. 9649 of 2024 are required to submit the certificates of validity to secure admission within stipulated period, the respondent no. 2 – Scrutiny Committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Koli Mahadev' Scheduled Tribe in the prescribed format.

IV) The validities shall be co-terminus with the validity of the earlier holders.

V) The petitioners shall not claim equities.

VI) The petition to the extent of deceased Parmeshwar is remanded back to the Scrutiny Committee for decision afresh, in the light of the above observations. The petitioner therein and even the petitioners in writ petition no. 9649 of 2024 shall appear before the Committee on 20 September 2024 and the Committee may thereafter, by extending them an opportunity to contest the matter, decide the matter afresh.

VII) The petitioners shall co-operate the Committee in that respect.

VIII) Learned AGP and the Law Officer of the Committee who are present, shall ensure that the decision is immediately communicated to the Committee.

20. Rule is made absolute accordingly.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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