



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

939 WRIT PETITION NO. 10210 OF 2024

SANDEEP SHANKAR MUKKERWAR

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND ANOTHER**

...

Advocate for the Petitioner : Mr. Sunil Mahadevappa Vibhute

AGP for Respondents : Mr. S.R. Yadav-Lonikar

...

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

DATE : 19 SEPTEMBER 2024

PER COURT :

The petitioner is challenging the order of invalidation.

2. Issue notice for final disposal to the respondents.

Learned AGP waives service of notice for respondents.

3. Learned Advocate for the petitioner submits that the petitioner's second degree paternal uncle Sidram Gangadhar Mukkerwar possesses a certificate of validity. Since he was not cooperating, his affidavit could not be filed in the light of Rule 11 of the Rules, 2003 framed under the Maharashtra Act No. XXIII of 2001. However, his school record was referred to and relied upon by the petitioner and was even duly verified by the vigilance officer as is appearing in the vigilance report and in the impugned judgment.

4. Learned Advocate would point out that by moving specific application before the Committee on 03 September 2024.

It was brought to the notice of the Committee that while obtaining the tribe certificate, the petitioner had tendered Sidram's affidavit but due to family dispute he was not ready to file any affidavit. Since there is no dispute about Sidram being related to the petitioner by blood when such application was filed and even the record in the matter of Sidram was called by the Committee and inspected, Committee ought to have considered granting benefit to the petitioner of his validity. However, the Committee has clearly ignored it and not even has whispered anything in the entire judgment as to why the petitioner is not entitled to derive the benefit of Sidram's validity. He would, therefore, request for remanding the matter for a decision afresh with a specific direction to the Committee on the aforementioned lines.

5. Learned AGP would simply oppose the petition.

6. We have considered the rival submissions, perused the impugned judgment and order together with the copy of the application dated 03 September 2024 having acknowledgment of the Committee and the facts mentioned therein.

7. Merely because Sidram had not come forward and filed affidavit in tune with Rule 11 of the Act, Committee could not have ignored the stand of the petitioner, more so, when his school record was relied upon by the petitioner and was even verified by the Vigilance Officer and finds place in the vigilance report as well as in the impugned judgment and order. Even without there-being any such affidavit and non compliance of Rule 11, in our considered view, when it is a dispute regarding fact, the

Committee was duty bound to examine such a stand of the petitioner and ought to have considered whether he was entitled to rely upon Sidram's validity. The Committee has clearly ignored this aspect and has rather abdicated its duty.

8. If a fact is to be proved, it can be proved by various ways and means and the party cannot be restricted and expected to establish the fact only through a particular piece of evidence or mode of evidence. Even if the Committee was of the view that the petitioner is not entitled to derive the benefit of Sidram's validity, when it was his specific stand, it ought to have assigned some reasons in the impugned judgment for discarding his stand. This is clearly unbecoming of the Committee which is conferred with power to undertake scrutiny in respect of caste and tribe certificates.

9. In these circumstances the request of petitioner for remand is rather innocuous and can be readily accepted.

10. The petition is allowed partly. The impugned judgment and order is quashed and set aside. The petitioner shall appear before the Committee on 20 September 2024. The Committee shall consider Sidram's validity and shall pass a fresh order in the light of the above observations, as expeditiously as possible, and in any case on or before 27 September 2024.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]