



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10697 OF 2024

Hanmant S/o Vithal Bainwad
Age : 23 years, Occu : Education
R/o Chinchala Patti Umri, Tq. Umri,
Dist. Nanded

.. Petitioner

Versus

1] The State of Maharashtra
Tribal Development Department,
Through its Secretary,
Mantralaya, Mumbai – 400 001

2] Scheduled Tribe Certificate
Scrutiny Committee, Kinwat
Office at Aurangabad,
through its Member Secretary

.. Respondents

AND

WRIT PETITION NO. 10708 OF 2024

Rohan S/o Datta Bainwad
Age : 17 years, Occu : Education,
Through natural Guardian i.e.
Father Datta S/o Anandarao Bainwad,
Age : 40 years, Occu : Agri.,
R/o Chinchala Patti Umri,
Tq. Umri, Dist. Nanded

.. Petitioner

Versus

1] The State of Maharashtra,
Tribal Development Department,
Through its Secretary,
Mantralaya, Mumbai – 400 001

2] Scheduled Tribe Certificate
Scrutiny Committee, Kinwat,
Office at Aurangabad
through its Member Secretary

.. Respondents

...

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

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

DATE : 03 OCTOBER 2024

ORDER (MANGESH S. PATIL, J.) :

The petitioners are taking exception to the judgments and orders dated 06-09-2024 and 05-09-2024, respectively, passed by respondent no. 2 – scrutiny committee, refusing to validate their ‘Mannervarlu’ scheduled tribe certificates.

2. We have heard both the sides finally at the stage of admission.

3. Learned advocate for the petitioners would refer to the genealogy at page no. 24 and would submit that though the orders are separate, the petitioners are first degree cousins *inter se* and are relying upon the same genealogy and also the same validities of the persons stated to be blood relatives, namely, Vitthal Maroti Bainwad and Vijaylakshmi Vyankati Bainwad. He would submit that Vitthal is the first validity holder who had obtained validity in the year 2006, whereas Vijaylakshmi had obtained the validity in the year 2007. Even if the committee has now attributed them of resorting to fraud while obtaining the validity, till the time it is able to resort to appropriate proceeding and is successful in recalling the validities, the petitioners are entitled to derive their benefit.

4. In addition, he would submit that though the committee has entertained some doubt about petitioners' relationship with these two validity holders, no separate issue was framed by the committee. There is no reference even to the stand of the petitioners in their reply to the vigilance enquiry report, especially adverting the attention of the committee to the revenue record. He would submit that had the committee meticulously perused the revenue record, it would have realized that though there is some incompatibility in the genealogies as reproduced in the impugned judgments and orders, the ancestors of the validity holders as well as these petitioners were sharing the same land survey no. 85. The successors had inherited it, which would not have been possible unless at some point of time, the land was owned and possessed by some distant common ancestor. Without adverting to the revenue record, inference has been drawn based on surmises and conjectures, entertaining a doubt about the blood relationship.

5. Learned advocate would further point out that even a common vigilance enquiry was conducted in the matter of petitioner's father and the validity holder - Vitthal Maroti Bainwad. The impugned judgment does not even discuss, as to why if the two were not related to each other by blood, a common vigilance enquiry was necessitated and resorted to. He would, therefore, submit that the committee ought

to have extended benefit of the validities of Vitthal Maroti Bainwad and Vijayalakshmi Vyankati Bainwad, to the petitioners.

6. Learned AGP would strongly support the impugned judgments and orders. He would advert our attention to the original files of both the validity holders – Vitthal Maroti Bainwad and Vijayalakshmi Vyankati Bainwad and would endeavour to demonstrate as to how the committee has taken a plausible view by entertaining a doubt about the blood relationship of these petitioners with the validity holders. Incompatibility of the genealogies furnished by the petitioners and one relied upon by Vijayalakshmi while deciding her proposal is writ large and no exception can be taken to the inference of the committee.

7. Apart therefrom, the learned AGP would further submit that the committee has also demonstrated as to how there was incompatible record of petitioners' great grandfather Lakshman Lalu Munarvad wherein in the revenue record - 7/12 extract, he was described as 'Munarvad' and in the *Khasra Pahani Patrak*, the original entry of 'Munervar' was found to be manipulated by adding letter 'lu'. The committee has also referred to three other contrary records in the form of school record of petitioners' grandfather – Ananda Mohanaji Bainwad describing him as 'Munurvar' and father's paternal aunt – Gaurabai Mohanaji wherein she was described as 'Munarvad'. In the

light of such incompatible school record, the committee was justified in discarding the petitioners' claims.

8. We have considered the rival submissions and perused the papers including the original files of validity holders - Vitthal Maroti Bainwad and Vijaylakshmi Vyankati Bainwad.

9. True it is that by virtue of rule 11 of the rules framed under the Maharashtra Act No. XXIII of 2001, if a claimant seeks to rely upon validities of the blood relatives in the family, he is supposed to file their affidavits. However, in our considered view, this rule can only be interpreted as a directory one and not mandatory. When the law requires a fact to be proved, more so, where it is to be proved on the basis of preponderance of probabilities, there cannot be a strict law as to the manner in which it can be proved. Failure of the claimant seeking validation of the caste or tribe certificate, to substantiate it by filing affidavit of the validity holder, he is relying upon, cannot *ipso facto* make the claim false. There could be many reasons due to which he is unable to do so. If the blood relative is not co-operating and coming forward, would it mean that the claimant does not belong to a particular caste or tribe. Bearing in mind this principle, the observations of the committee, referring to the absence of any affidavit by validity holders - Vitthal Maroti Bainwad and Vijaylakshmi Vyankati Bainwad, would not be sustainable *per se*.

10. True it is that the impugned judgments also refer to and demonstrate incompatibility in the genealogies furnished by Vijayalakshmi in her own claim and the one relied upon by petitioner – Hanmant. However, simultaneously, it is pertinent to note that validity holder - Vitthal Maroti Bainwad had submitted the reply to the vigilance report conducted in his matter on 21-12-2021, expressly mentioning and admitting that one Ananda Mohanaji Bainwad was his third degree cousin who is apparently none other than the grandfather of petitioner – Hanmant. Though he was denying the contrary school record recovered during vigilance enquiry of a person with the same name – Ananda Mohanaji Bainwad. He had stated that the contrary record is not that of his third degree cousin with the same name and in-fact, he was illiterate. This would *prima facie* demonstrate that the contrary school record being relied upon by the committee in the impugned judgments, of Ananda Mohanaji Bainwad was sought to be pressed into service while discarding claim of Vitthal Maroti Bainwad who had subsequently challenged that decision in writ petition no. 2008 of 2022, and by the judgment and order dated 10-02-2022, this Court had held him entitled to have a certificate of validity.

11. Further, the revenue record annexed to the petition *prima facie* demonstrates that various sub-divisions of same land survey no. 85 stand in the name of father of the validity holder - Vitthal Maroti

Bainwad and Vijaylakshmi Vyankati Bainwad as also the petitioners' ancestors. In the normal course, persons would inherit the same land from same common ancestor resulting in sub-division. The fact that the persons from all the three branches of validity holders - Vitthal Maroti Bainwad, Vijaylakshmi Vyankati Bainwad and the present petitioners have succeeded to the same land survey no. 85, could possibly be demonstrative of there being a common ancestor, may be from some distant generation. Neither the petitioners seem to have sought to rely upon it to substantiate the blood relationship or even the committee has not carefully considered this aspect.

12. It is in this context, we are of the considered view that when this is not an adversarial litigation, it would be appropriate that the matter is remanded to the scrutiny committee, to enable the petitioners to substantiate their claims by leading additional evidence and even the committee would be able to objectively scrutinize and decide the issue regarding blood relationship of the petitioners with the validity holders, by taking note of the afore-mentioned facts and circumstances.

13. Writ petitions are allowed partly.

14. The impugned judgments and orders are quashed and set aside.

15. The claims are remitted back to the respondent no. 2 – scrutiny committee for decision afresh, in accordance with law, by extending opportunity to the petitioners to substantiate their claims by leading additional evidence and if necessary, by resorting to further vigilance enquiry.

16. The petitioners shall appear before the committee on 11-10-2024.

17. The committee shall thereafter decide the proposals afresh as early as possible and in any case within 16 weeks.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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