



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10830 OF 2024

Nikita Balasaheb Gunjegaonkar

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary
Tribal Department
Mantralaya, Mumbai - 32
2. The Scheduled Tribe Certificate
Scrutiny Committee Ch. Sambhajnagar Division
Ch. Sambhajnagar Tq. & Dist. Ch. Sambhajnagar
through its Deputy Director (R)

... RESPONDENTS

...
Advocate for petitioner : Mr. Jadhavar Pratap V.
AGP for respondents/State : Mr. S.P. Joshi
...

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

DATE : 04.10.2024

ORDER (MANGESH S. PATIL, J.) :

This is a petition under Article 226 of the Constitution of India read with Sub-Section 2 of Section 7 of the Maharashtra Act No.XXIII of 2001 against the order of the respondent No.2 dated 10.10.2023 refusing to validate petitioner's 'Mannervarlu' scheduled tribe certificate.

2. Admittedly, petitioner's cousin Tushar Munjaji Gunjegaonkar was issued with a certificate of validity by the then committee on 05.10.2011.

3. She is relying upon this validity and her learned advocate would submit that there being no dispute about blood relationship and he having been issued with certificate of validity by following due process of law as laid down in **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**, she is entitled to derive its benefit.

4. Learned advocate would submit that even if the Committee has now alleged that Tushar had obtained validity by practising fraud and has expressed its intention to resort to re-scrutiny, till the time it is not successful in recalling the validity certificate, the petitioner is entitled to derive the benefit and is even ready to run the risk of facing the consequences as laid down in **Shweta Balaji Isankar Vs. State of Maharashtra and Ors.;WP No.6320/2017**.

5. Per contra, the learned AGP would take us through the impugned judgment and would submit that the Committee had given elaborate reasons to draw an inference about Tushar having practised fraud. Several contrary entries of the blood relatives as 'Mali' 'Manner' 'Kolam' and 'Maratha' could be revealed during the vigilance inquiry. No satisfactory explanation was given by the petitioner and the petitioner cannot be allowed to draw any benefit of such dubious validity.

6. Learned AGP would submit that Tushar was issued with

certificate of validity without following due process of law. It was issued by a Committee headed by one Mr. V.S. Patil whose functioning was found by the Government to be wholly unacceptable and it decided to reopen all the validities issued during that regime and the petition be dismissed.

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

8. The parameters laid down in **Maharashtra Adiwasi Thakur Jamat** (supra) for a person to derive benefit of the earlier validities are as under :

- a) There is no dispute about the blood relationship between the two;
- b) It must have been issued by passing a reasoned order, and ;
- c) Due process of law should have been followed.

9. The Committee in the impugned judgment has not doubted Tushar being petitioner's relative by blood from the paternal side.

10. Tushar was issued with certificate of validity by conducting a vigilance inquiry and by passing a reasoned order. The present committee is not entitled to and even the submission of the learned AGP making an endeavour to demonstrate that on merits Tushar could not have been issued with a certificate of validity would be beyond the competence of the present committee which cannot sit in appeal over the order passed by the then committee, *albeit*, there has to be a reasoned order, as laid

down in **Maharashtra Adiwasi Thakur Jamat** (supra). Sufficiency or otherwise of the evidence is not a parameter laid down in **Maharashtra Adiwasi Thakur Jamat** (supra).

11. We are satisfied that Tushar was issued with certificate of validity by due process of law and all the parameters laid down in **Maharashtra Adiwasi Thakur Jamat** (supra) stand fulfilled.

12. Independently, the contrary record pointed out by the Committee to discard the petitioner's claim is for the period from year 1962. The vigilance report in the matter of Tushar would reveal that school record of his father Munja of 22.06.1961, wherein, he was described as 'Mannervarlu' is older than the contrary record being pointed out by the committee. Even if the petitioner has not relied upon that school record, once the committee had the occasion to go through the file of Tushar, relied upon by the petitioner, even the committee could have noticed this oldest favourable record and could have taken appropriate steps to verify this school entry. For the reasons best known to it it has avoided to do so. Resultantly, the oldest favourable record relied upon by the then committee in the matter of Tushar would have a greater probative value and would outweigh the subsequent contrary entries.

13. As far as the observation of the committee regarding the decision in the matter of Tushar was rendered by a committee headed by

Mr. V.S. Patil, and he had obtained it by practising fraud is a matter which can appropriately be gone into and decided in a separate proceeding. Tushar is not a party before us and we do not think it appropriate to scan the observations of the committee touching the aspect of fraud which could have a bearing on the decision to be arrived at by the committee in his matter which it has decided to reopen.

14. So far as the declaration allegedly made by the petitioner's blood relatives while executing the sale deeds, referred to in the impugned judgment, expressly stating that they were not belonging to any tribe, in our considered view, the stand of the committee cannot be sustained for the reason that apart from the fact that owning a land cannot be an anathema to claim that a person is belonging to some scheduled caste or scheduled tribe.

15. Besides, in view of the provisions of Section 36 and 36 (A) of the Maharashtra Land Revenue Code, 1966 a person tends to make a declaration of being not belonging to any scheduled tribe because of the prohibition for sale of the lands belonging to a tribal.

16. In the result, the petitioner is entitled to rely upon the validity of Tushar and to have a similar validity certificate subject to a condition superadded that her validation would be co-terminus with that of Tushar.

17. The writ petition is partly allowed. The impugned order dated 10.10.2023 passed by the respondent No.2/Scrutiny Committee is quashed and set aside. The Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Mannervarlu' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

18. The petitioner shall not claim equities.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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