

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

Writ Petition No. 4981 / 2024

Ishvari d/o Nandkishor Rambhade,
Age : Minor, Occu. Student,
Under the Guardians of the father
Nandkishor s/o Dattatray Rambhade
Age : 44 years, Occu. Agril.,
R/o. Pandhara Village, Kinwat Tehsil,
Tq. and Dist. Nanded.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. Competent Authority/Taluka Executive Magistrate,
Kinwat, Tq. Kinwat, Dist. Nanded.
3. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad Division,
Aurangabad.
Through its Joint Commissioner.

...Respondents

WITH

Writ Petition No. 4995 / 2024

Trupti d/o Nandkishor Rambhade,
Age : Minor, Occu. Student,
Under the Guardians of the father
Nandkishor s/o Dattatray Rambhade
Age : 44 years, Occu. Agril.,
R/o. Pandhara Village, Kinwat Tehsil,
Tq. and Dist. Nanded.

...Petitioner

Versus

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

2. Competent Authority/Taluka Executive Magistrate,
Kinwat, Tq. Kinwat, Dist. Nanded.
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Scrutiny Committee, Aurangabad Division,
Aurangabad.
Through its Joint Commissioner.

...Respondents

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Advocate for the Petitioner : Mr. Sagar S. Phatale a/w
Mr. A.B. Kharosekar
AGP for Respondents/State : Mr. Ruchir S. Wani

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**
DATE : 21 JUNE 2024

ORAL JUDGMENT [PER : SHAILESH P. BRAHME, J.] :

. Rule. Rule is made returnable forthwith. Heard these matters finally at the admission stage.

2. Both the petitioners are siblings and aspirants of scheduled tribe certificate of 'Halba-19'. They were unsuccessful before competent authority/respondent no.2. Being aggrieved, they preferred appeal before the Scrutiny Committee which was dismissed by common judgment and order dated 10.10.2022. We therefore propose to decide both the petitions together.

3. Petitioner had applied for scheduled tribe certificate

of Halba and produced documents to corroborate their claim. By independent orders dated 29.09.2022, respondent no.2/competent authority rejected their applications holding that there was no cogent evidence to support caste claim, discarding tribe certificate, old record of 1936 and other documentary evidence. Being aggrieved both the sisters preferred appeals to the respondent no.3/Scrutiny Committee under Section 5(1) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003.

4. By common judgment dated 10.10.2022, respondent no.3/Scrutiny Committee dismissed the appeals confirming the findings recorded by the trial authority. Learned Counsels for the petitioners submit that there was strong prima facie evidence in the form of caste certificate of Sanjay Mukundrao Rambhade, fasli record of 1936, school record, revenue record affidavits, panchanama etc. It is further submitted that appellate authority committed perversity in discarding documents in the modi script which is of 1936. It is further submitted that both the authorities committed error of jurisdiction in conducted inquiry threadbare by resorting to affinity test and the report of vigilance officer.

5. Petitioner's claim is supported by revenue record of 1936 which is in modi script indicating caste of Mukunda as halba. The document has been discarded by unsustainable reason. It enures to the benefit of the petitioners, being pre-independence entry. Besides that we find school record, revenue record and affidavits to support caste claim of the petitioners. The genealogy has not been disputed. The relationship of the person mentioned in the document with the petitioner has also not been disputed. We are of the considered view that there is adequate material on record to issue tribe certificate to the petitioners.

6. An affinity test has been resorted to. When there is sufficient material to support the claim of the petitioner, affinity test should not have been resorted to. It is not a litmus test. Tribe certificates to be issued to the petitioners would be further subjected to the verification by the Scrutiny Committee in future. We find that by conducting an inquiry threadbare at this stage is an error of jurisdiction committed by both the authorities. We are fortified in our view in a settled legal position laid down in the matter of **Anand Dhananjay Nalawade Vs. State of Maharashtra and Others.**

7. We find that impugned orders in both the matters are unsustainable. We pass following orders :

O R D E R

- i Both the writ petitions are allowed.
- ii The order dated 29.09.2022 passed by respondent no.2/authority in both petitions as well as common judgment and order dated 10.10.2022 passed by the appellate authority are quashed and set aside.
- iii The respondent no.2 shall issue tribe certificates of tribe halba-19 to both the petitioners forthwith.
- iv Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE