



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

**WRIT PETITION NO. 11994 OF 2023**

Vaishnavi Rameshrao Tarfewad .. Petitioner

**Versus**

The State of Maharashtra and another .. Respondents

Shri Sagar S. Phatale, Advocate for the Petitioner.

Shri R. S. Wani, A.G.P. for the Respondent Nos. 1 and 2.

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

**DATE : 31 JULY 2024.**

**FINAL ORDER (Per Shailesh P. Brahme, J.) :-**

. Heard both the sides finally at the admission stage considering exigency in the matter.

2. Petitioner is taking exception to the judgment and order dated 12.09.2023 passed by the respondent No. 2/Scrutiny Committee confiscating and invalidating her tribe certificate of 'Koli Mahadev' (Scheduled Tribe). Petitioner seeks to rely on validity certificate of Nagkanya, who is her first degree cousin. She also relies on school record of Shivraj and Shankar. The affinity test recorded in the matter of Nagkanya by the Research Officer supports the petitioner's claim.

3. The learned Assistant Government Pleader tenders on record original papers of the petitioner and validity holder

Nagkanya. He would submit that as per the pronouncement of the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others reported in *2023 SCC Online SC 326*, validity of Nagkanya is not reliable. There was no speaking order in the matter of Nagkanya. In her case validities of Vasant Iranna Sambhutwad and Surekha Sampatrao Jampawad were relied. They were not paternal side relatives. It is further submitted that school record of Shankar Gopalrao was found to be forged and without verifying its validity was issued to Nagkanya.

4. Learned A. G. P. would vehemently submit that there were contrary entries of Ramesh and Shivraj. The affinity test recorded in the matter of Nagkanya is sans logic as the enquiry as contemplated by para No. 25 of the judgment of the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others (supra) was not made. He seeks to rely on the orders passed by this Court dated 26.07.2024 in the matter of Yash Shrinivas Satelkar Vs. State of Maharashtra and others in Writ Petition No. 7720 of 2024, order dated 16.08.2017 in the matter of Shivaji Shankar Baikar Vs. State of Maharashtra and others in Writ Petition No. 9321 of 2016 and judgment dated 28.06.2023 in the matter of Prasad Laxmanrao Paratwad Vs. The State of Maharashtra and others in Writ Petition No. 653 of 2023.

5. We have considered rival submissions of the parties. We have also gone through the original papers. There is no dispute

about the genealogy and the relationship of the petitioner with the validity holder Nagkanya. In the matter of Nagkanya there was vigilance enquiry and school record of the paternal side relatives were verified including that of Shivraj and Shankar. No adverse remark was recorded against their school entries. Pertinently, the Research Officer opined that she withstood the affinity test. Record further reveals that by speaking order Committee had issued validity certificate to Nagkanya.

6. The learned A. G. P. has raised serious objection as regards the affinity test and the order of the Scrutiny Committee. We find that questionnaire was prepared which was answered by one of the relatives, Shivraj, during the vigilance enquiry. His statement was also recorded. The answers and the statement are perfectly in consonance with ratio of the Supreme Court in respect of anthropological and ethnological linkage as recorded in para 25 of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others (supra). We find no force in the submission of the learned A. G. P. in this regard.

7. Another reason to disapprove the submission of the learned A. G. P. is that Scrutiny Committee did not comment on the affinity test recorded in the matter of Nagkanya. It is not permissible to advance submissions which is not part of the impugned judgment and that too without verifying the original papers.

8. The learned A. G. P. has painstakingly pointed out scanned

coloured photographs of old entry of Shankar to show manipulation and to justify the finding recorded by the Scrutiny Committee. True it is that school record of entry No. 448 discloses name of Gajanan Ramrao Swami. In the vigilance enquiry the original record was reported to be transmitted to the High Court and was unavailable. Nagkanya was issued with the validity certificate on the basis of the school entries including entry of Shankar. It would not be appropriate to comment upon the validity certificate of Nagkanya, when she is not before the Court. The Committee may conduct reverification. Unless validity certificate of Nagkanya is revoked, the petitioner cannot be deprived of the same social status.

9. Though few contrary entries of the relatives of the petitioner and manipulation of the school record of Shivraj is pointed out, the self same record was considered while issuing validity certificate to Nagkanya. The petitioner cannot be deprived of validity at this stage.

10. We have also carefully gone through the genealogy from the original papers showing relationship of Nagkanya with Surekha Venkatrao Jampawad and Vasant Iranna Sambhutwad. Vasant and Surekha appear to be maternal side relatives of Nagkanya. Both of them have given genealogy on affidavit in the matter of Nagkanya. It is not that there is suppression in the genealogies. We do not find that there is any misrepresentation or fraud, rather, it is candid disclosure of relationship. It is again upto the Scrutiny Committee to consider the effect of validities of these

relatives while conducting reverification of Nagkanya.

11. The learned A. G. P. has referred to the judgment in the matter of **Prasad Laxmanrao Paratwad Vs. The State of Maharashtra and others** (supra) and more specifically paragraph No. 13 to criticize the cyclostyled nature of the order passed by the Committee in the matter of Nagkanya. Similarly orders in the matters of **Yash Shrinivas Satelkar Vs. State of Maharashtra and others** and **Shivaji Shankar Baikar Vs. State of Maharashtra and others** (supra) are also referred to. These judgments cited are distinguishable on facts. We cannot embark an enquiry into the validity of Nagkanya in the present proceeding. These orders are of no avail to the respondents. Impugned judgment and order is liable to be quashed and set aside. We, therefore, pass following order :

### **O R D E R**

- A) The writ petition is allowed partly.
- B) The impugned judgment and order dated 12.09.2023 passed by the respondent /Scrutiny Committee is quashed and set aside.
- C) The respondent/Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Koli Mahadev' scheduled tribe in the prescribed proforma.

- D) The validity certificate of the petitioner shall be subject to the outcome of the reverification to be undertaken by the Scrutiny Committee of the validity holder.
- E) The petitioner shall not be entitled to claim equities.

**[ SHAILESH P. BRAHME, J. ]      [ MANGESH S. PATIL, J. ]**

*bsb/July 24*