



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14851 OF 2019

1] Shubham S/o Dhondiba Konkewar,
Age : 22 years, Occu : Student,
R/o. Karadkhed, Tq. Degloor,
Dist. Nanded

2] Prasad S/o Sanjay Konkewar,
Age : 18 years, Occu. Student,
R/o. Karadkhed, Tq. Degloor,
Dist. Nanded

.. Petitioners

Versus

1] The State of Maharashtra,
Through : Director of Medical Admn.,
Mumbai – 32.

2] Scrutiny Committee for Scheduled Tribes,
Through : Vice Chairman, Aurangabad
Through its Member Secretary, Aurangabad

3] Commissioner & Competent Auyhority
Maharashtra CET Cell, Govt. Of Mahaashtra,
8th Floor, New Exceeelsior Building,
A.K. Nayak Marg, Fort, Mumbai – 001
**[Respondent no. 3 Deleted as per Court's
Order dated 10-12-2019]**

.. Respondents

**WITH
WRIT PETITION NO. 3267 OF 2020**

1] Vaibhav S/o Madhavrao Konkewar,
Age : 20 years, Occu. Student,
R/o. Karadkhed, Tq. Degloor,
Dist. Nanded

2] Mayur S/o Madhavrao Konkewar,
Age : 18 years, Occu. Student,
R/o. Karadkhed, Tq. Degloor,
Dist. Nanded

.. Petitioners

Versus

- 1] The State of Maharashtra,
Through : Director of Medical Admn.,
Mumbai – 32
- 2] Scrutiny Committee for Scheduled Tribes,
Through Vice-Chairman, Aurangabad
Through its Member Secretary, Aurangabad
- 3] Commissioner & Competent Authority
Maharashtra CET Cell, Govt. of Maharashtra,
8th Floor, New Exceelsior Building,
A.K. Nayak Marg, Fort, Mumbai – 001
- 4] The Swami Ramanand Teerth Marathwada
University, Vishnupuri, Nanded
Through its – Registrar
- 5] S.G.G.S. Institute of Technology,
Vishnupuri, Nanded, Tq. & Dist. Nanded,
Through its – Director

.. Respondents

**WITH
WRIT PETITION NO. 12480 OF 2023**

Someshwar S/o Rukhmaji Konkewar,
Age : 51 years, Occu. Service,
R/o, Karadkhedwadi, Tq. Degloor,
Dist. Nanded

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai
- 2] The Scheduled Tribe Caste Certificate
Verification Committee Kinwat
Head Quarter at Aurangabad,
Through its Dy. Director (R),
Dist. Aurangabad
- 3] The Assistant Commissioner,
Social Welfare Nanded
Tq. & Dist. Nanded
- 4] The Secretary,
Balak Shikshan Prasarak Mandal,
Marwali Tanda, Tq. Naigaon (Kh).
Dist. Nanded

5] The Head Master,
Primary Ashram School,
Marwali Tanda, Tq. Naigaon (Kh),
Dist. Nanded

.. Respondents

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Advocate for petitioner (WP/ 14851/2019 and WP/3267/2020) : Mr. O.B. Boinwad
Advocate for petitioner (WP/12480/2023) : Mr. S.M. Vibhute
Addl.GP for the respondent – State : Mr. A.R. Kale
Advocate for respondent no. 3 (WP/3267/2020) : Mr. S.G. Karlekar
...

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

DATE : 05 AUGUST 2024

JUDGMENT (MANGESH S. PATIL, J.) :

Rule. Rule made returnable forthwith. By way of these separate writ petitions, the petitioners are taking exception to the judgment and orders of the scrutiny committee in a proceeding under section 7 of the Maharashtra Act No. XXIII of 2001, to validate their respective Koli Mahadev scheduled tribe certificates.

2. The impugned order is a common order in the matter of petitioners from writ petition no. 14851 of 2019 and writ petition no. 3267 of 2020, obviously, as the committee has not raised any dispute about they being related inter se by blood from the paternal side.

3. Though the petitioner in writ petition 12480 of 2019 is challenging the order in his matter, ex facie, even there is no dispute about the fact he is also related to the other petitioners by blood from the paternal side. Apart from the fact that in both the proceedings, the

petitioners as also the committee has been relying upon same set of evidence and since all these petitioners are seeking to derive the benefit of the validities possessed by the same individuals, with the consent of both sides, these matters have been taken up for decision simultaneously and are being disposed of by this common judgment and order, in order to avoid rigmarole, *albeit* there is slight difference in respect of the reasoning assigned in both the judgments.

4. The learned advocate for the petitioners would submit that there are several validities in the family. Though the committee has observed that these validity holders had obtained certificates of validity by resorting to fraud, the committee will have to substantiate such observations by undertaking a detail enquiry and by following due process of law, even if it is assumed that the committee has such power. They would submit that so long as these validities are not recalled by following due process of law, the petitioners cannot be deprived of deriving the benefit. They would also submit that the validities were issued to the validity holders by following due process of law and for adequate reasons and the benefit of having validity cannot be denied to the petitioners. The learned advocates would submit that the petitioners are ready to run the risk of facing the consequences contemplated in ***Shweta Balaji Isankar Vs. State of Maharashtra and others*** (writ petition no. 6320 of 2017) and may be granted conditional validities.

5. The learned AGP would strenuously submit that the committee has elaborately considered the record of the petitioner's blood relatives which is contrary to the petitioners' claim of 'Koli Mahadev'. Earlier 'Koli' was included in Other Backward Class (O.B.C.) and later on in Special Backward Class (S.B.C.). He would submit that even the committee could trace out manipulation in the school record. Fraud was practised on the committee by not disclosing such contrary record. The committee has every right and power to undertake fresh scrutiny of the validities granted to these validity holders. Notices have been issued to some of them and the petitioners cannot be allowed to derive benefit of the fraud perpetrated by their blood relatives.

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

7. As has been cursorily observed herein-above, there is no dispute raised by the committee in either of these judgments under challenge about the relationship of all these petitioners inter se as well as their relationship with the validity holders expressly mentioned in the impugned orders. It is, therefore, imperative for us to undertake a scrutiny as to if petitioners can be extended the benefit of such validities in the family, in light of the parameters laid down in

Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326.

8. There is no dispute about the fact that Bharat Kishanrao Konkewar was the first validity holder who was issued with a certificate of validity in the year 1998. The committee in both the impugned judgments has observed that Bharat had obtained validity concealing the contrary school record wherein the ancestors of the petitioners were admitted to the schools by expressly mentioning in the caste column of the school register that they were 'Koli' right from the year 1954 till the year 1984. In the matter of the other petitioners other than Someshwar, while undertaking independent scrutiny of validity of Bharat, it has enlisted such contrary entries and even for the selfsame reason, validities possessed by Madhav Rukhmaji Konkewar, Anil Sambhaji Konkewar and Maroti Rukhmaji Wadikar have been refused to be extended to the petitioners.

9. Needless to state that allegations of fraud is a pure question of fact which would require a detailed enquiry into the alleged circumstances which according to the committee, constitute fraud. It would be imperative that any such decision is taken by issuing notices to the validity holders and by undertaking due process of law. We do not feel it appropriate to record any observation in respect of these circumstances as we are conscious of the fact that the validity holders

are not before us. Any observation made by us could have a bearing on the enquiries which the committee has decided to undertake in respect of the validity holders. We, therefore, are of the considered view that it is better left for the committee to ponder upon the issue and to take it to the logical end.

10. Unlike what has been stated in ***Maharashtra Adiwasi Jamat*** (supra), the committee in the impugned orders has not made any observation and even the learned AGP could not objectively demonstrate before us that Bharat and subsequent validity holders were issued with certificates of validity without following due process and without assigning any reason. In the absence of which, the committee could not have refused to extend the benefit of these validities in the family to all these petitioners.

11. In this context, it is also necessary to note that one Niraj Maroti Wadikar (Konkewar) who is the first degree cousin of petitioners - Vaibhav and Mayur had also faced invalidation. His writ petition no. 86 of 2005 challenging the order of the scrutiny committee was dismissed by this Court. He preferred civil appeal no. 7127 of 2008 before the Supreme Court. By order dated 11-06-2010, the appeal was allowed, the matter was remanded back to the scrutiny committee. The committee thereafter validated his tribe certificate. It is important to note that while filing affidavit in form 'F' in tune with rule 11(2)(a) of the

rules framed under the Act, the petitioner - Vaibhav had expressly sought to place reliance on the validity issued to Niraj Maroti Wadikar. However, the impugned judgment passed in the matter of other four petitioners other than Someshwar, the committee has not undertaken any scrutiny in respect of Niraj's validity much less has not assigned any reason as to why his validity would not enure to the petitioners' benefit.

12. The learned AGP would submit that after the matter was remanded by the Supreme Court, the then committee had validated Neerj's tribe certificate, in all probability, relying upon the observations of the Supreme Court in paragraph no. 5 (unnumbered) of the order. On instructions, he would submit that since Niraj's file had gone missing, the committee could not make any observation in the impugned judgment and order but like other validity holders, even the committee intends to re-open his (Niraj) validity.

13. It is necessary to note that though the Supreme Court had observed that it was inconceivable to believe that when father and brother were issued with validity certificates, the appellant - Niraj could not be belonging to that caste. However, after paragraph no. 5, the order also reads that the learned counsel appearing for the respondent - State had vehemently opposed such observations which were recorded in the order by the Supreme Court in following words:

“ In the light of the certificates, issued in favour of the appellant's father and brother, describing them as belonging to Scheduled Tribe category : “Mahadev Koli”, it is inconceivable to believe that the appellant is not belonging to the said caste.

But learned counsel appearing on behalf of the respondents has vehemently opposed it and submitted that it would be in the fitness of things, if matter is remitted to The Committee for Scrutiny & Verification of Tribe Claim, Aurangabad, for fresh decision on merits in the light of the aforesaid documents and in accordance with law. We accordingly do so as the suggestion made by him is reasonable and appropriate.”

14. In the light of these observations, even if the committee had thought it fit to extend the benefit of the validities of his father and brother to Niraj, the submission of the learned AGP that the committee was influenced by the observations of the Supreme Court, does not hold any water, more so, when it is not the stand of the committee in the impugned orders on the same lines. The submission being advanced by the learned AGP is without any foundation, either in the impugned order or by way of any independent affidavit in reply. The fact remains that Niraj possesses a certificate of validity which has not been sought to be taken exception of by the committee, in the impugned orders and even if it has now decided to issue notice to him, till the time his validity subsists, the petitioners cannot be deprived of deriving the benefit when they are ready to face the consequences contemplated in **Shweta Balaji Isankar** (supra).

15. In light of the above, both the impugned orders are liable to be quashed and set aside and the petitioners deserve to be granted benefit of having certificates of validity.
16. Writ petitions are allowed partly.
17. Impugned orders are quashed and set aside.
18. The committee shall immediately issue certificates of validity to all these petitioners of 'Koli Mahadev' scheduled tribe.
19. The validities would be subject to the final outcome of the matters which the committee has decided to re-open, including that of Niraj.
20. The petitioners shall not be entitled to equities.
21. Rule is made absolute.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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