



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13827 OF 2021
WITH
CIVIL APPLICATION NO.13104/2024
IN
WRIT PETITION NO.13827 OF 2021

Digambar s/o Ramdas Thakur

... PETITIONER

VERSUS

1. The State of Maharashtra,
Department of Tribal Development
Mantralaya, Mumbai – 32
through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division
Nandurbar thr. its Member Secretary
3. The Collector,
Office of the Collectorate
Dhule, Tq. & Dist. Dhule.

... RESPONDENTS

...
AND

WRIT PETITION NO.13831 OF 2021
WITH
CIVIL APPLICATION NO.13095/2024
IN
WRIT PETITION NO.13831 OF 2021

Monika d/o Digambar Thakur

... PETITIONER

VERSUS

1. The State of Maharashtra,
Department of Tribal Development
Mantralaya, Mumbai – 32
through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division
Nandurbar thr. its Member Secretary
3. The Senior Superintendent of Post
Offices, Pune City West Division,
Lokmanyagar PO Building,
Pune-411030, Tq & Dist. Pune.

... RESPONDENTS

...
 Advocate for the Petitioner/s : Mr. Sushant C. Yeramwar
 AGP for Respondent Nos.1 and 3 in WP/13827/2024:Ms. A.S. Deshpande
 AGP for Respondent Nos.1 and 2 in WP/13831/2024 : Mr. K.K. Naik
 ...

**CORAM : MANGESH S. PATIL &
 PRAFULLA S. KHUBALKAR, JJ.**

DATE : 06.12.2024

PER COURT:

Heard both the sides in the matters simultaneously, and finally, at the stage of the admission.

2. By way of these separate writ petitions, the petitioners who are father and daughter are challenging the common judgment and order of the respondent – Scrutiny Committee refusing to validate their ‘Thakur’ scheduled tribe certificates, in an inquiry under Section 7 of the Maharashtra Act No.XXIII of 2001.

3. Since it is a common judgment which is under challenge both the petitions are being disposed of by this common judgment.

4. Learned advocate Mr. Yeramwar submits that in fact the impugned judgment was a common judgment in respect of four individuals. Apart from these two petitioners, similar claims of their blood relatives Aparna Madhukar Thakur and Anshu Devidas Thakur were decided. Anshu had challenged the order in Writ Petition No.13853/2021. Since she was a student and was in urgent need of the decision, at her request the writ petition was taken up for final disposal at

the admission stage and by assigning elaborate reasons, the impugned judgment and order was quashed and set aside. She was held entitled to have a certificate of validity, which was made subject to the final outcome of the matter of petitioner Digambar. He submits that since the order under challenge is a common order, this Court cannot take a different view than what has been taken in Anshu's matter and for this reason alone, both the petitions deserve to be allowed.

5. Mr. Yeramwar would further submit that though it was a common judgment and order, to the extent of petitioner Digambar, in fact, the Committee had recalled his certificate of validity for alleged concealment of contrary record by him. He would submit that the impugned judgment to the extent it recalls his validity, the parameters would be different. The Committee has not been able to prove fraud. He would submit that in spite of recalling petitioner Digambar's validity, relying upon the observations of this Court in Anshu's matter, the committee has subsequently allowed the claims of many other blood relatives of the petitioners. Meaning thereby, inquiry into the alleged fraud practised by Digambar has been rendered academic. It being a matter of social status, when many of the blood relatives including the one under the same impugned common judgment and order to the extent of Anshu, have been held entitled to have certificates of validity, the petitioner Digambar cannot be treated differently.

6. Per contra, the learned AGPs would submit that they need to go through the original files in the matter of Digambar and should be granted time. On our insistence to demonstrate from the order under challenge as to the circumstances which according to the Committee constituted fraud practised by petitioner Digambar and the proof thereof, the learned AGPs would merely point out the observations in the judgment and order under challenge that contrary record of the blood relatives was concealed by him.

7. We then put a query to them as to how the fraud allegedly practised by Digambar, can be raked up in the teeth of the fact that it is a matter of proof of the tribe claim and Anshu was held entitled to have a certificate of validity on merits by this Court and even the Committee itself has recently, subscribing to the reasoning resorted to by this Court has validated Thakur scheduled tribe certificates of number of blood relatives of the petitioner Digambar. They were unable to assign any plausible explanation.

8. Be that as it may, we have considered the rival submissions and perused the papers.

9. At the outset, suffice to repeat that the impugned judgment and order is a common order in the matter of these petitioners, Anshu and one Aparna. Anshu's writ petition challenging the selfsame judgment and order has been allowed by this Court by elaborate order dated 28.08.2023 in Writ Petition No.13853/2021. As a judicial discipline this

Court will have to be consistent and cannot take a different view than what was taken in her matter by undertaking a separate scrutiny regarding sustainability of the selfsame judgment and order. For this reason alone, petitioner Monika succeeds.

10. So far as petitioner Digambar is concerned, his case stands on a somewhat different footing, inasmuch as, though the order is common, the committee has recalled his certificate of validity for alleged fraud or concealment of contrary record. Needless to state that parameters and the evidence required to prove fraud to enable recalling of the certificate of validity, would be drastically different than the evidence required for substantiating a caste/tribe claim. Though it is a common order, to the extent of other three individuals - petitioners Monika, Anshu and Aparna, they were to prove their individual tribe claims, whereas, petitioner Digambar was to defend his tribe validity certificate. Therefore, unlike Monika, merely because Anshu's petition was allowed, petitioner Digambar's petition cannot be allowed in the same manner but would require independent consideration and analysis.

11. In order to ascertain sustainability of the impugned judgment and order, as mentioned herein above, the learned AGP Ms. A.S. Deshpande in her matter was unable to point out from the impugned judgment any discussion or reference to any evidence to demonstrate and substantiate vague and omnibus observations in the impugned judgment about he having concealed contrary record. One cannot lose sight of the

fact that fraud is a serious allegation and has to be proved strictly and cannot be proved merely on the basis of preponderance of probabilities. Precisely for this reason, even if the committee was venturing into an inquiry for recalling his validity, it should have been on guard and aware about the trite principles in such matters requiring strict proof of the circumstances demonstrating fraud.

12. We are emboldened to state that the committee seems to be oblivious of such legal principles and has merely by finding that some contrary record was available, has reached a jumping conclusion that it was a concealment. The active concealment to constitute a fraud would require proof not only in respect of the contrary record but even the knowledge on the part of petitioner Digambar that the contrary record was in existence, with a further precursor, of hiding it with some ulterior motive. The link between finding of the contrary record would be complete to prove the allegations of fraud only if such active concealment could be demonstrate by cogent and convincing evidence. This is clearly lacking and does not find place in the order under challenge. Resultantly, the Committee even if assumed to have inherent powers to undertake reinquiry into the earlier validities on the ground of fraud, has been unable to demonstrate fraud.

13. Again, at the cost of repetition, even this inquiry into fraud now becomes academic and redundant for the simple reason that since these tribe claims are for getting a social status, members of the same

family, related by blood from the paternal side, cannot belong to different castes or tribes. When Anshu and now Monika have been found entitled to have certificates of validity and additionally when the Committee on its own, may be convinced with the reasoning of this Court assigned in the matter of Anshu, has subsequently granted certificates of validity to number of blood relatives, on the basis of the same set of evidence in respect of school record of the paternal side ancestors of the oldest period, that is of the years 1923, 1926 and 1928, that of Narendra Uttam Wankhede, Rakesh Narendra Wankhede, Bhupendra Narendra Wankhede and Swapnil Ashok Thakur, whose claims were validated by the Committee on 26.02.2024 and Purshottam Ratan Wankhede, Gaurang Purushottam Wankhede and Manthan Purshottam Wankhede, whose claims were decided on 19.07.2024.

14. In the light of the above, both the writ petitions deserve to be allowed.

15. The writ petitions are allowed. Impugned judgment and order is quashed and set aside even to the extent of petitioner Digambar and Monika. Digambar's certificate of validity stands restored. Committee shall immediately issue a certificate of validity to Monika.

16. Pending civil applications are disposed of.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)