



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

WRIT PETITION NO. 13121 OF 2023

1. Surabhi d/o Subhash Jamadar
Age 23 years, Occ. Student,

2. Shrinivas s/o Subhash Jamadar
Age – 21 years, Occ. Student,
Both r/o 100 Rohini Nagar
Vijapur Road, Solapur.

...Petitioners

VERSUS

1. The State Of Maharashtra
Through Its Secretary
Department of Tribal Development,
Mantralaya, Mumbai – 32.

2. The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Region, Aurangabad.
Through its Member Secretary.

...Respondents

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Advocate for Petitioners : Mr. Jadhav Vivek U.
AGP for Respondents/State : Mr. N.D. Batule

...

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

DATE : 20 AUGUST 2024

PER COURT :

. The petitioners are challenging the order of invalidation of the respondent no.2/Scrutiny Committee, refusing to validate their 'Koli Mahadev' scheduled tribe certificates.

2. We have heard both the sides finally.

3. The learned advocate for the petitioners adverts our attention to the genealogy and would submit that there are validities in the family including that of their father – Subhash. The earliest in point of time, is the validity of second degree paternal uncle - Vijaykumar Tipanna Jamadar issued in the year 2006 and it was issued by following due process of law. A vigilance inquiry was conducted. A record of 1350 Fasli (1940 A.D.), wherein petitioners' father was described as 'Koli Mahadev', was verified during the vigilance inquiry. Based on that the Committee held him entitled to have a certificate of validity. The present vigilance Officer and the Committee are unable to verify his record still in view of the fact that it was already verified during the vigilance inquiry conducted in the matter of Vijaykumar, Committee could not have discarded such pre-constitutional favourable record. He would submit that the pre-constitutional record would outweigh the subsequent contrary entries, even if the Committee is of the view now that those would be relevant. He would submit that in the light of exigency, the petitioners are ready to run the risk of facing consequences contemplated by **Shweta Balaji Isankar Vs. The State of Maharashtra and Others**, in Writ Petition No.5611/2018 and are ready to accept the certificate of validity subject to usual conditions.

4. Learned AGP would submit that Vijaykumar was issued with certificate of validity based on the validity possessed by one Swapna Shripatrao Jamadar. However the genealogy furnished by him in this matter doesn't tally with the genealogy prepared during the present

vigilance inquiry on the instructions of petitioner's father. He would submit that petitioner's father had expressly stated that his grandfather was having no brother. Learned AGP would further submit that the vigilance Officer had been to the office of Tahasildar, soliciting the record to verify the birth entry of 1350 Fasli. However the record was not available and it could not be verified. Even the Committee could not verify it and the matter may be remanded.

5. Learned AGP would lastly submit that the Committee has recorded enough reasons to demonstrate as to how Vijaykumar could obtain the certificate of validity by practicing fraud and has decided to reopen his validity.

6. We have considered the rival submissions and perused the original files with the Committee in respect of the petitioners as well as Vijaykumar.

7. It is apparent that in the matter of Vijaykumar, a vigilance inquiry was conducted, a detailed report was submitted, even 1350 Fasli birth record from the Tahsil Office, Omerga, was duly verified as indicated in the vigilance report, even if the present Committee and the vigilance Officer are unable to do so. We do not have anything to discard the vigilance report submitted at the time of Vijaykumar's proposal. Pertinently the then Committee even referred to it in the order passed in his matter to substantiate its decision to grant validity.

8. True it is that Vijaykumar was also relying upon the validity certificate of Swapna, but there is room to believe that she was not related to him by blood in the light of variance between the genealogy furnished by him in his own matter and the one prepared by the vigilance Officer in the present matter on the basis of the information furnished by petitioner's father.

9. However, conspicuously Swapna's validity was not the only ground on which Vijaykumar was held entitled to have a certificate of validity. As is mentioned earlier even 1350 Fasli birth record was duly verified by the vigilance Officer and accepted by the then Committee.

10. Though the Committee has made certain observations, touching the validity of Vijaykumar to draw inference of he having practised fraud, we do not think it appropriate to record any observation in that respect since it would be a matter directly and substantially in issue in the matter to be reopened by the Committee. The fact remains that, there is no dispute about the petitioners being blood relatives of Vijaykumar. The Committee has also proceeded on that basis, while passing the impugned order. So long as his validity his not revoked by following due process of law, the petitioners being blood relatives would be entitled to derive the benefit.

11. The Committee could not have refused to extend the benefit of Vijaykumar's validity to the petitioners irrespective of its decision to undertake the process of reconsidering the validity.

12. Be that as it may, since there is a oldest record of 1350 Fasli substantiating the petitioners' claim, any subsequent contrary record of the latter period would be irrelevant in the light of decision in the matter of **Anand Versus Committee for Scrutiny and Verification of Tribe Claims and Others**, reported in (2012) 1 SCC 113.

13. The writ petition is partly allowed. The impugned order dated 06.09.2023 is quashed and set aside. The Committee shall issue certificates of validity of Koli Mahadev scheduled tribe to the petitioners immediately. The validities shall be subject to the final outcome of the matters which the Committee has decided to re-open.

14. The petitioners shall not be entitled to claim equity.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]