



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

WRIT PETITION NO. 14933 OF 2023

1. Sourav s/o Bhujangrao Pillewad

2. Swati d/o Bhujangrao Pillewad

...Petitioners

VERSUS

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

2. The Scheduled Tribe Certificate
Verification Committee, Kinwat,
Head Quarter at Aurangabad,
Through its Member Secretary.

...Respondents

...

Advocate for Petitioners : Mr. S.M.Kulkarni h/f
Mr. Boinwad Omgashad B.
AGP for Respondents/State : Mr. N.D. Batule

...

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

DATE : 14 AUGUST 2024

ORDER [Per Shailesh P. Brahme J.] :

. Heard both the sides considering urgency in the matter.

2. The petitioners are siblings and are aggrieved by the judgment and order dated 08.08.2023, confiscating and invalidating their tribe certificates of 'Koli Mahadev' scheduled tribe. They would rely on validity certificates of Bhujang, Gajanan and Yogesh. Besides that they would also rely on the old school record which was duly verified

during the vigilance of earlier validity holders.

3. Learned Counsel for the petitioners submits that the validity certificates were issued after following due process of law and would enure to the benefit of the petitioners. He would also submit that when selfsame record has already been scrutinized, unless the validity certificates are revoked, petitioners cannot be deprived of the validity certificates.

4. Per contra, learned AGP would place on record original papers of petitioners and validity holders – Yogesh and Bhujang. He would submit that the Scrutiny Committee is justified in rejecting the tribe claims of the petitioners considering incompatible and tampering of the school record. The Committee has rightly discarded validity certificates as they were obtained by suppressing material facts and earlier order of invalidation. It is further informed that the Committee has proposed to undertake re-verification of validity certificates issued to earlier validity holders.

5. We have considered the rival submissions of the parties. There is no dispute that both the petitioners are the children of one of the validity holders – Bhujang. Gajanan is the first validity holder in whose case, vigilance inquiry was conducted. A report prepared in his case reveals that old school entry of Ganpati of 1953 indicating caste Mahadev Koli, was duly verified. From the original papers, it transpires that he was issued with validity certificate in due course.

We have also gone through the papers of validity holder Bhujang. A vigilance inquiry was conducted in his matter. By a reasoned order, he was issued with validity certificate considering entry of Dhondiba of 1355 Fasli (1945 A.D.).

6. We find that the validity certificates of Gajanan and Bhujang were issued after following due procedure of law. As per law laid down in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.**, 2023 SCC Online SC 326, the validity certificates would enure to petitioners' benefit.

7. The old record of Dhondiba – 1945 and Ganpati - 1953 was already verified on earlier occasions and was found to be genuine. It has greater probative value and corroborates the petitioners' claim.

8. So far as the submission of learned AGP in respect of order of invalidation in the matter of Gangutai is concerned, we have already taken a view in the matter of **Bankam Balaji Maldode Vs. State of Maharashtra and Others**, in Writ Petition No.9047/2020, that order of invalidation would not be adverse one. Paragraph No.6 is as follows :

“6. It is a matter to be borne in mind that by virtue of Section 8 of the Maharashtra Act No.23 of 2001, the burden is on the claimant to establish his claim by leading cogent and convincing evidence. If he fails to do that obviously he is bound to lose the tribe certificate or caste certificate. That will not preclude other blood relations from putting up a claim and making an attempt to establish and discharge the burden. Hypothetically in given a case,

if one blood relation secures invalidity but other blood relative may succeed by leading cogent and convincing evidence in getting the validity certificate. Consequently, merely because there was an invalidity of Madhukar Maldode and Maheshkumkar Maldode which were allegedly not disclosed to the subsequent Committees which issued validity certificate to the other blood relatives it cannot be said and treated as an adverse one. Precisely for this reason, the observation and conclusion of the Committee that non-disclosure of the invalidities would go to the root of the subsequent validity certificate is clearly perverse and arbitrary conclusion.”

9. Learned AGP has also drawn our attention to the incompatible school record of Datta, Kisan and tampering of record of Dattaram. The committee has proposed re-verification. It would be up to the committee to undertake the scrutiny in respect of the record so as to determine whether there is a fraud or not. It would not be permissible for the High Court to embark any inquiry, regarding fraud without there being any concrete finding on that point, recorded in an appropriate proceeding conducted in accordance with law. The Committee has merely proposed to undertake it.

10. Petitioners are ready to run the risk as per the judgment rendered in the matter of **Shweta Balaji Isankar Vs. the State of Maharashtra and Others**, in Writ Petition No.5611/2018. They can be issued with validity certificates on certain conditions. We, therefore, pass following order :

ORDER

- (a) The writ petition is partly allowed.
- (b) The impugned judgment and order dated 08.08.2023 passed by the Scrutiny Committee is quashed and set aside.

- (c) The Scrutiny Committee shall immediately issue tribe validity certificates of 'Koli Mahadev' scheduled tribe to the petitioners. The same shall be subject to the final outcome of re-verification proposed by the Scrutiny Committee.
- (d) The petitioners shall not be entitled to claim equities.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]