



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

WRIT PETITION NO. 13622 OF 2024

1. Sainath s/o. Tukaram Gudpalle,
Age 19 years, Occu. Student
2. Dinesh s/o. Tukaram Gudpalle,
Age 19 years, Occu. Student,
R/o. Chapoli, Tq.Chakur,
District Latur .. Petitioners

Versus

1. The State of Maharashtra
Department of Tribal Development
Mantralaya, Mumbai - 32
Through its Secretary
2. The Scheduled Tribe Certificate Scrutiny
Committee, Kinwat Office at Chhatrapati
Sambhajinagar, Chhatrapati Sambhajinagar
Through its Member Secretary .. Respondents

Mr. Vivekanand U. Jadhav, Advocate for the Petitioners;
Mr. A. S. Shinde, AGP for Respondents

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATE : 14-12-2024

ORAL JUDGMENT (PER: SHAILESH P. BRAHME) :-

1. Rule. Rule is made returnable forthwith. Heard both sides finally at the admission stage with consent, as there is exigency to the petitioners.

2. The petitioners are assailing the judgment and order passed by respondent No.2 - The Scheduled Tribe Certificate Scrutiny Committee, dated 10.12.2024, invalidating the tribe certificate of the petitioners.

3. The tribe claim is rejected by respondent No.2/committee discarding the validity of Balaji Kashinath Gudpalle and considering the incompatible school record of Dnyanoba (1968), Bayanabai (1961) and Tukaram (1978). It has also been observed by respondent No.2/committee that the revenue record of Sangappa and birth record of Shashikalabai is doubtful.

4. The petitioners are relying on the validity of Balaji Kashinath Gudpalle, school entries of Tukaram of 1978 and Balaji of 1961. Besides that, the revenue record of Sangappa of 1952 and birth record of Shashikalabai of 1958, are also pressed into service to support the tribe claim.

5. The learned counsel for the petitioners submits that Balaji was issued the validity certificate by following due procedure of law. Unless the same is revoked, the petitioners cannot be denied the validity. He further submits that there was no proper vigilance conducted in respect of record of Sangappa and Shashikalabai, and reply to the inquiry conducted by the vigilance committee was also not considered.

6. It is further submitted that after verifying the record in the case of Balaji, the validity certificate was issued. The petitioners are relying on selfsame record and additional record of Sangappa and Shashikalabai, which would corroborate the tribe claim. It is submitted that the report of the Headmaster in respect of the school entry of Shashikalabai was not the part of the vigilance report and, therefore, the same cannot be relied. He submits that the petitioners are ready to face the consequences as contemplated in the judgment of *Shweta Balaji Isankar vs. The State of Maharashtra and others, Writ Petition No.5611 of 2018*, and hence, they are entitled to receive conditional validities.

7. The learned A.G.P. supports impugned judgment and order. He tenders on record the original papers of the petitioners and earlier validity holder - Balaji. He submits that Balaji was issued with validity certificate by the committee headed by Mr. V. S. Patil and the conduct of Mr. V. S. Patil was already noticed on various occasions. Banking on the school record of Kashinath of 1952, the validity was issued, which turned out to be bogus in the present matter, in pursuance of the report of the Headmaster. He submits that the validity certificate of Balaji is rightly discarded by the committee as per Rules 3(a) and 3(d) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of Certificate) Rules, 2003 (for short, "Rules, 2003").

8. In case of Balaji, the committee has rightly observed that the reliance was placed on the validity certificate of Koli Ganesh Bhanudas and Gaganbone Santosh Venkatrao, who were maternal side relatives.

9. The learned A.G.P. submits that the additional evidence in the nature of revenue record of Sangappa and birth record of Shashikala is not reliable. There is no column of caste in the revenue record and the birth record is doubtful. It is submitted that in the birth extract, two names of Shashikala are figuring at Serial Nos.111 and 114. Besides that, in the genealogy, the petitioners have not shown Shashikala to be a daughter of Nivrutti. Therefore, the entry of Shashikala is doubtful. He further submits that it would be a fraud on the part of the petitioners to rely upon the old entry of Kashinath of 1952, Sangappa and Shashikala. When the documentary evidence is doubtful, the affinity test, needs to be relied upon. The finding regarding the area restriction, is also against the petitioners, which is the relevant consideration. He submits that the petition is liable to be dismissed as a plausible and reasonable view has been taken by the committee.

10. We have considered the rival submissions of the parties and gone through the relevant record.

11. There is no dispute in the relationship of the petitioners with the validity holder - Balaji. In case of Balaji, the vigilance inquiry

was conducted by the earlier committee and by a reasoned order, he was issued validity certificate by considering the school record of various paternal side relatives including his father Kashinath. It is a fact that the validity certificate of maternal side relatives were also considered, but there were other material also on record. Apparently, the validity certificate of Balaji was issued after following due procedure of law. The committee has already issued a show cause notice for reverification of his validity. Unless and until the caste validity granted to the blood relatives is recalled by following due procedure of law, at this juncture, the petitioners cannot be deprived of the validity certificate.

12. The learned A.G.P. pressed into services the report of the Headmaster dated 07.11.2024 in respect of the school entry of Kashinath. There is no reference of the report of the Headmaster in the vigilance report and no doubt was expressed in respect of the school entry of Kashinath. When the committee wanted to use the report in respect of any entry, that should have been disclosed to the petitioners in vigilance report, so that the petitioners' claim to get an opportunity to deal with the adverse remarks.

13. The learned A.G.P. relies on judgment in the case of *Saurabh s/o. Shivanna Goskulwar vs. The State of Maharashtra and others*, Writ Petition No.9173 of 2019, dated 01.10.2024, to buttress that the first validity certificate is tainted with bogus record and the

record was procured to usurp caste benefits. He relies on observations of paragraph Nos.11 to 13 in the matter of *Saurabh Goskulwar* (supra).

14. In the matter of Sourabh (supra), reliance was placed on Prachi. The order of the scrutiny committee in the case of Prachi shows that vigilance cell found out school record of Shivayya Nana of 22.06.1927 and Bankanna Shivayya of 28.06.1935 and a report was called for. It was reported by the vigilance officer vide letter dated 16.05.2008 that the above record was genuine. Precisely, being impressed by the pre-independence record having greater probative value, the Committee issued validity certificate to Prachi. During the vigilance, it was found that both entries were bogus.

15. In the present matter, no pre-constitutional entry has been relied on by the petitioners. Only entry of Kashinath of 1952, was gone into by the vigilance officer and found to be bogus. We have already recorded the report of Headmaster was not served upon the petitioners or it was not incorporated in the vigilance report. Therefore, merely because, there is some report in respect of Kashinath, the same would not operate against the petitioners. We are of the considered view that the judgment cited by the learned A.G.P., is of little assistance to the respondents.

16. We have gone through the revenue record of Sangappa and the school entry of Shashikalabai. In respect of revenue entry of Sangappa, though there is no caste column, 'Koli Mahadev' is mentioned in the cultivation column. Similarly, in respect of birth extract, we find that the entry at Serial No. 114 refers the name of "Shashikala", and father's name, "Nivrutti", against these names, caste 'Koli Mahadev' is mentioned. The birth extract further reveals that not only in respect of "Shashikala", but caste is mentioned across other entries also. We find that these two entries are corroborative and cannot be doubted, as contended by the learned A.G.P.

17. We are shown Rules 3(a) and 3(d) of the Rules, 2003 for challenging the validity certificate of Balaji. In case of Balaji, two validity certificates of maternal side are on record. No doubt, rules contemplate record validity on maternal and paternal side are reliable but merely because, relying on record of some of the maternal side relatives, Balaji is facing action of the committee, the validity cannot be discarded. It would be open to the committee, to arrive at a conclusion of any fraud in the matter or not. We have already observed that unless Balaji's validity is recalled, the validity of petitioners cannot be deprived at this juncture.

18. The submissions regarding area restriction and affinity test are unsustainable. The area restriction is removed and in that regard law is laid down in the case of – *Jaywant Dilip Pawar vs. State of Maharashtra and others, Civil Appeal No.2336 of 2011, dated 08.03.2017.*

19. The Hon'ble Supreme Court, in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others, 2023(2) Mh.L.J. 785*, has laid down that the affinity test is not a litmus test to decide a caste claim. In the case in hand, there are other entries and, therefore, affinity test is inconsequential.

20. For the above reasons, we are of the considered view that the impugned judgment and order is unsustainable. We find that the petitioners are entitled to receive validity certificate conditionally in view of the judgment of *Shweta Balaji Isankar* (supra). Hence, we pass the following order:-

ORDER

1. The writ petition is partly allowed.
2. The impugned judgment and order passed by respondent No.2/Scrutiny Committee, dated 10.12.2024, is quashed and set aside.

3. Respondent No.2/Scrutiny Committee shall issue the tribe certificate to the petitioners as belonging to “Koli Mahadev” scheduled tribe in prescribed proforma, forthwith. The same shall be subject to outcome of reverification, as proposed by respondent No.2.
4. The petitioners shall not be entitled to claim equities.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE

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