



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

Writ Petition No. 6284 OF 2024

1. Sanjay s/o Tumdu Magare
Age 57 years, Occu. Service,
2. Swapnil s/o Sanjay Magare
Age 25 years, Occu. Pre-service,
Both are R/o : Chilane, Tq. Sindkhede,
Dist. Dhule.

...Petitioners

Versus

1. Scheduled Tribe Certificate
Verification Committee, Dhule,
Through its Member Secretary.
2. Gramin Shikshan Sanstha's
English High School and Jr. College,
Majiwade Dist. Thane-400 601.
Through its Head Master.

...Respondents

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Mr. S.S. Phatale and Mr. V.S. Bholankar, Advocate for the
Petitioner.

Mr. P.S. Patil, Addl.GP for Respondent No.1/State.

Mr. G.J. Kore, Advocate for Respondent No.2.

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

DATE : 01 OCTOBER 2024

FINAL ORDER [Per: Shailesh P. Brahme, J.] :

. Heard both the sides finally considering exigency in the
matter.

2. This petition is directed against the judgment and order dated 23.03.2023 passed by the respondent/Scrutiny Committee, invalidating petitioners' tribe certificates of Tokre Koli scheduled tribe. The reliance is placed on validities of Kailas Tumbadu Magare, Snehal Kailas Magare and Vasant Vishram Magare.

3. Learned Counsel would submit that after following due procedure of law, the validities were issued which should not have been discarded by the Committee. It is further submitted that revenue record of Ragho Bhagwan of 1937 and school record of Ambar Totaram of 1942 having greater probative value, corroborate their claim. It is further submitted that the impugned judgment and order is unsustainable and liable to be quashed.

4. Learned AGP supports impugned judgment and order. The original papers are tendered on record. He would submit that Kailas was issued with validity certificate by Commissioner Nashik Division, Nashik vide judgment dated 11.04.1983 which is prior to the enforcement of the Maharashtra Act No.XXIII of 2001 and has lesser evidential value. The petitioners in the present matter failed in the affinity test. He would submit that there is incompatible school record since 1941 which was not taken into account while issuing validities to Snehal and Vasant. He would pray to dismiss the petition.

5. We have considered the rival submissions of the parties and have also gone through relevant papers from the original record.

6. Kailas is the first validity holder who is real brother of petitioner no.1. He was issued with validity certificate vide judgment and order dated 11.04.1983 by the Commissioner Nashik Division, Nashik in Miscellaneous Appeal No.34/1982. When he was issued validity certificate, Maharashtra Act No.XXIII of 2001 and Rules of 2003 were not in existence. However, the procedure for issuing validity certificate was regulated by the administrative instructions. By a reasoned order he was issued with a validity certificate. It does not become non est only because it was issued before enforcement of the Act. It is open for the Committee to undertake reverification if some fraud is noticed. The Committee has not preferred any review in the matter of Kailas.

7. Learned AGP tenders on record judgment in the matter of **Dharmendra Devram Patil Vs. Scheduled Tribes Caste Certificate Scrutiny Committee, Pune** and Others, 2003 SC OnLine Bom 606, to buttress his submission that if the caste claim is not adjudicated by the competent Scrutiny Committee, then the validity certificate cannot be accepted. We do not find any specific observation of the Court indicating that if the validity certificate was issued by the then Appellate Authority or by the

Committee before commencement of Maharashtra Act No. XXIII of 2001 or even before Madhuri Patil was decided then it would be non est.

8. Learned Counsel for the petitioners relies on the judgment in the matter of **Raju s/o Pundlikrao Burde Vs. Establishment Officer (III-B), Maharashtra State Electricity Board, Mumbai and Another**, 2003(4) Mh.L.J. 780. Our attention is invited to paragraph no.9 which is as follows :

“9. We have perused the scheme of the Act. The preamble reveals that the said Act is made for the purpose of providing a mechanism for regulation of issuance of verification of caste certificate to the person belonging to Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category and for matters connected therewith or incidental thereto. Prior to the coming in force of the Act No. XXIII of 2001, the subject of caste verification viz. issuance of caste certificate and their scrutiny was regulated by the scheme framed by the Apex Court in Madhuri Patil's case. Prior thereto, in the State of Maharashtra, Government had issued executive instructions and the issuance of caste certificate and its verification was regulated under the Government Resolutions by the Competent Authorities constituted under the said Government Resolution. It is an admitted position that the scheme in regard to issuance of caste certificates and their verification in the year 1982, was that there was a two tier system made to adjudicate the caste claim. In the first instance, it was the Director of Social Welfare, Pune who was to consider the caste claim and pass an appropriate order and the said order was subject to an appeal before the Divisional Commissioner. A full proof enquiry was contemplated under the Government Resolution, pursuant to which orders were passed by the authorities. The said orders were binding on the parties. Needless to mention that the orders passed by the authorities dealing with caste claim were quasi-judicial orders passed on the basis of evidence and material on record. People from the reserve category have sought employment and other benefits over years till a better mechanism was devised and put into effect in form of a scheme laid down in Madhuri Patil's case. The present Act is a step forward. Having regard to the scheme of the Act and reading of Section 4, Sub-section (2), in the light of the said scheme, we are of the view that the said provision does not invalidate the caste certificates issued by the Competent Officer and/or an Authority, who was then competent to issue such a certificate. We do not find any deviation in the basic idea of issuance of caste certificate and their scrutiny

at the hands of the caste scrutiny committee. Right since beginning the system has been that an authority after making a prima facie enquiry used to issue a caste certificate and, thereafter, the said caste certificate was sent for its verification and scrutiny to a responsible officer or authority, who was expected to make an independent enquiry and pronounce the caste status. Similar is the position which is reflected on reading of Section 4, Sub-section (2). A caste certificate is to be issued by competent authority and the caste certificate so issued is valid subject to verification and grant of validity certificate by the caste scrutiny committee. What has happened by passage of time is that one authority is replaced by other and one scrutiny committee is replaced by another scrutiny committee. To hold that the caste certificate issued or the decision rendered by the authorities, who were then competent, stands invalidated, would lead to absurdity besides multiplicity of litigation. Issues once concluded cannot be allowed to be reopened, otherwise the same would lead to unrest and turmoil. State of calm and repose would be replaced by uncertainty. All the reserve category candidates who have obtained caste certificates and caste validity certificates over years, from the Competent Authorities then validity constituted, would be subjected to a de novo enquiries which could terminate in issuing conflicting and inconsistent orders.”

9. We find merit in the submission of learned Counsel for the petitioners and we are fortified by law laid down in the above referred matter. We are of the considered view that the certificate of validity of Kailas would be applicable with full force to corroborate the tribe claim.

10. It reveals from record that there are mixed entries of the record of blood relatives of the petitioners. The oldest incompatible entry is of Tumdu Totaram Koli of 15.07.1941. As against that oldest supporting entry is of Ragho Bhagwan which is of 27.12.1937. Thereafter another entry of Ambar Totaram Magare of 15.07.1942 supports the tribe claim. The oldest record has a greater probative value. We are of considered view that petitioners have made out a case for issuing them validity certificates.

11. Learned Counsel for the petitioners has brought to our notice that Vasant Vishram Magare who is paternal side relative is issued with validity certificate recently on 02.02.2024. Unless the validities of Kailas, Snehal and Vasant are revoked, petitioners cannot be denied the same social status. If the Committee has proposed reverification then the incompatible record can be subjected to further scrutiny. It would not be appropriate to make the petitioners wait till final outcome of reverification. They are ready to face the consequences as contemplated in view of the judgment in the matter of **Shweta Balaji Isankar Vs. the State of Maharashtra and Others**, in Writ Petition No.5611/2018. They deserve to be issued with conditional validity certificates. We, therefore, pass following order :

ORDER

- a. The Writ Petition is allowed partly.
- b. The judgment and order dated 23.03.2023 passed by the Scrutiny Committee is quashed and set aside.
- c. The Scrutiny Committee shall issue tribe validity certificates of 'Tokre Koli' Scheduled Tribe to the petitioners forthwith. The same shall be subject to the outcome of review of order passed in Kailas's Matter
- d. The petitioners shall not be entitled to claim equities.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE