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wp 11350.22

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

WRIT PETITION NO. 11350 OF 2022

1. Abhijeet S/o Gangadhar Kanode,
Age: 25 years, Occu: Student

2. Gajanan S/o Gangadhar Kanode,
Age: 23 years, Occ: Student
Both R/o At Tadkalas,
Tq. Purna, District Parbhani.

.. **Petitioners**

Versus

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

2. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Aurangabad
through its Deputy Director,
Plot No.10, Near Saint Lawrence School,
Sector E-1, Cidco, Aurangabad,
Dist. Aurangabad..

3. State Common Entrance Test Cell,
Maharashtra State, Mumbai,
8th floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai – 400 001.

.. **Respondents**

...
Mr. V.D. Sapkal, Sr. Advocate i/b. Mr. M.B. Karande & S.T. Chalikwar
for the Petitioners.

Mr. S.G. Karlekar, AGP for the Respondent-State

...

**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

**RESERVED ON : 09.12.2022
PRONOUNCED ON : 28.02.2023**

JUDGMENT (Per: Sanjay A. Deshmukh, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. By this petition under Article 226 and 227 of the Constitution of India, the petitioners who are real brothers *inter se* are challenging the decision of the Caste Scrutiny Committee, Aurangabad dated 11.11.2022 whereby the petitioners validity claim for Koli Mahadeo Tribe was rejected vide proceeding nos. PBN/EDN/09/2015 & 4/513/EDU/122017/109084.
3. The petitioners are relying upon the tribe validity certificate issued in the name of their father - Gangadhar Kondiba Kanode dated 17.07.2010 which was based upon the tribe certificate received from Executive Magistrate, Gangakhed, District Parbhani dated 25.09.1991. Their father is working as a Teacher in the Zilla Parishad School, Parbhani.
4. The petitioners are also relying upon the tribe certificate issued in the name of their cousin brother - Kailas Bhagwatrao Kanode on 10.10.2011. The said certificate was issued by the Deputy Collector & District Supply Officer, Parbhani on 16.06.2007.
5. The petitioners further contended that on 30.04.2014, the scrutiny committee rejected the tribe claim of the petitioner no.1, therefore, he filed

Writ Petition No.9403 of 2014 in this Court. As per the directions of this Court he submitted a new proposal / application. It was directed by this Court to decide the tribe claim of the petitioner no.1 on or before 31.01.2016 but it was not decided up to 2021. Thereafter, petitioner no.1 filed Writ Petition No.1135 of 2021 seeking direction to decide the claim expeditiously and by order dated 20.01.2021, this Court directed the scrutiny committee to decide the validity claim of the petitioner no.1 within three months. Thereafter, the petitioner no.1 filed Writ Petition No.127281 of 2021 for issuing directions to the respondent no.3-committee to issue validity certificate of the petitioner. On 22.11.2021, this Court directed the scrutiny committee to decide the tribe claim of the petitioner no.1 by 05.12.2021. But to his dismay, it was not decided. Therefore, petitioner no.1 filed Contempt Petition No.681 of 2021 in Writ Petition No.127281 of 2021 and finally the respondent no.3 - scrutiny committee decided the claims of the petitioners' thereby rejecting it by order dated 08.12.2021.

6. The petitioners approached this Court for validation of their claim. The petitioners contended that they have submitted their proposal for validation of their tribe claim through proper channel i.e. through their colleges. After the submission of the proposal, the vigilance committee conducted an inquiry and reports were submitted. By order dated 21.12.2021

passed in Writ Petition No.14329/2021 [Coram: S.V. Gangapurwala & S.G. Dige, JJ.], the order of the scrutiny committee dated 08.12.2021 was quashed and set aside. The scrutiny committee was directed to reconsider the claim of the petitioners after considering all the documents relied by the petitioners filed on 03.09.2021, 29.11.2021² and the GR dated 30.10.2018 and by giving an opportunity of expeditious hearing, decide the claims of the petitioner on or before 30.05.2022.

7. The petitioners further contended that on 10.01.2022 the petitioner no.1 was present before the committee but no any further date was given to the petitioner no.1, additional vigilance inquiry was also not conducted, this way the committee disobeyed the directions of this Court and did not decide the claims before 30.05.2022. The scrutiny committee asked the petitioners to submit written submissions by letter dated 20.06.2022 and also directed them to remain present for hearing on 05.07.2022. The petitioners accordingly appeared and submitted their say and the documentary evidence on record. With this chequered history the tribe claim of the petitioners were rejected. Therefore, petitioners have filed this writ petition on the ground that the scrutiny committee failed to consider the evidence on record. The findings and the conclusion of the scrutiny committee is not correct and legal. On the contrary these are *mala fide*, arbitrary and without legal reasons. The scrutiny

committee also failed to consider that father and cousin brother of the petitioners are armed with tribe validity certificates. The petitioners have also assailed the vigilance inquiry report which was wrongly and illegally believed by the respondent-committee. The petitioners have lastly prayed for quashing and setting aside the impugned proceedings no. PBN/EDN/09/2015 & 4/513/EDU/122017/109084 and for directions to issue caste validity certificate of Koli Mahadeo in their name.

8. The respondents have refuted the claim of the petitioners. It is their contention that reasons and findings of the scrutiny committee are legal and correct. The report of the vigilance cell is independent and natural. There is no any reason for setting aside the decision of the scrutiny committee. It is lastly prayed to reject the petition.

9. During the arguments learned senior advocate Shri V.D. Sapkal i/b. Shri Mahesh Karande & S.T. Chalikwar argued that claims of the petitioners are based on solid evidence of validity certificates granted in favour of their father and cousin brother. Unless and until, their validity certificates are challenged and set aside by this Court, the scrutiny committee cannot come to the conclusion that petitioners are not entitled for such tribe certificates.

10. The written notes of arguments are submitted by both the sides.

11. The learned AGP for the State Shri Karlekar submitted that false and fabricated documents are submitted before the scrutiny committee and the said documents are shown to be filed illegally, therefore, reasons and findings of the committee are legal and correct and cannot be interfered with.

12. It is undisputed fact that father of the petitioners and their cousin brother Kailas Bhagwat Kanode got tribe validity certificate from the same committee on 10.10.2011. It is also not disputed that their tribe validity certificates are not cancelled or set aside. No notice is issued for re-opening of their validity proceedings by the scrutiny committee.

13. Learned senior advocate Shri Sapkal submitted that petitioners have submitted the tribe validity certificates of their father and cousin brother. The scrutiny committee has given more weightage to the vigilance report than these tribe validity certificates. He, therefore, assailed the report of the vigilance cell. He pointed out that first inquiry was conducted by the vigilance cell headed by PI-D.R. Pawar in respect of Manjiri Manoj Gurundwad. He scanned all the documents in this matter but name of the vigilance officer is not mentioned on it. The second inquiry was conducted in the matter of Yasmin Mohammed Rafiyoddin Siddiqui by the vigilance cell of PI- S.L. Singare. He submitted the report on 15.03.2021 but he did not mention that he collected

the record from the concerned college and scanned the said record. He pointed out that the fact of missing record, while proceeding to find the record is revealed by the written application dated 10.01.2012 having entries of the Police Station Itwara, Nanded. The reasons and findings of the scrutiny committee are not legal and correct and that the complaint was not given to the police station regarding missing documents.

14. The third inquiry was conducted by the vigilance cell officer PI-D.R. Pawar and he collected letter from the Headmaster of the concerned school dated 09.08.2021. Shri D.R. Pawar also mentioned that he did not receive the report from the concerned competent authority who issued tribe certificate to the petitioner. Learned advocate pointed out that alleged documents of school record were scanned in the year 2017 but its purpose was not shown. In respect of scanning of the record in the matter of Manjiri Manoj Gurundwar, the date of inquiry is not mentioned. Respondent no.2-committee also did not mention the name of the vigilance officer who collected record from the school. Thus, the findings of the committee after considering the submission of both the sides and considering the report of the vigilance officer, clearly reveals that the scrutiny committee has drawn an incorrect inference that vigilance report shows that certain documents were forged and fabricated by the petitioners and their blood relatives to show that they belong to Koli

Mahadev tribe. Thus, inference drawn by the committee is not legal and correct. Therefore, arguments of Shri Karlekar submitted on behalf of the scrutiny committee is not acceptable in this regard. His argument also cannot be accepted that tribe claim of the father of the petitioner was considered without considering the genuineness of the oldest document. Therefore, inference of fabrication of documents on the part of petitioners or their blood relatives cannot be drawn. Merely because Avinash Vishwanath Neralkar who is Clerk of the school signed that complaint and documents, it cannot be inferred that petitioners have managed and fabricated those documents.

15. As far as school extract of Gangadhar Appaji Kanode is concerned, merely because it is undated regarding entry at serial number 68 / school entry dated 16.06.1948 of Pratibha Niketan Primary School, it cannot be inferred that it is a false and fabricated document unless it is set aside by following due course. Therefore, inference of committee and reasons given by it are not legal and correct. There are number of validities in the family of the petitioners. Therefore, the petitioners are certainly entitled for the caste validity certificate as per the law laid down in **Kumari Madhuri Patil and Anr. V/s. Additional Commissioner, Tribal Development and Ors.; AIR 1995 SUPREME COURT 94** and in **Dayaram V/s. Sudhir Batham and Ors.; 2011 AIR SCW 6781.**

16. For the reasons discussed above, the argument of the learned AGP is not acceptable and the case law relied by him i.e. **Raju Ramsingh Vasave V/s. Mahesh Deorao Bhivapurkar and Ors.; (2008) 9 Supreme Court Cases 54** is not applicable to the case in hand as the facts are different.

17. In view of the above, the writ petition is allowed. The impugned decision of the scrutiny committee deserves to be set aside and hence it is set aside accordingly. The scrutiny committee is directed to issue the validity certificate in the name of the petitioners on or before 31st March, 2023.

18. Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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