

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13135 OF 2022

Nayan Mahendra Jadhav Petitioner
Residing at A/101, Sai Pragati Sankul,
Near Pooja Nursing Home, Kongaon, Tal.
Bhiwandi, District Thane

Versus

- 1 State of Maharashtra
through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai - 400 032.
- 2 Scheduled Tribe Certificate Scrutiny
Committee, Nashik Division, Nashik
through its Member Secretary having its
office at 2nd Floor, Adivasi Vikas Bhavan
Old Agra Road, Nashik.
- 3 Competent Authority and Commissioner,.... Respondents
Government of Maharashtra State
Common Entrance Cell M. S., 8th Floor,
New Excelsior Building, A. K. Nayak Marg,
Fort, Mumbai 400 001

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Mr. R. K. Mendadkar a/w Ms. Komal Gaikwad for the Petitioner.

Mr. N. C. Walimbe, AGP for Respondent - State.

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**CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ.**

DATED : 11 October 2023

ORAL ORDER:

1. NOT ON BOARD. UPON MENTIONING TAKEN ON
PRODUCTION BOARD.
2. Rule. Rule made returnable forthwith. By consent of the

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parties, taken up for final hearing at admission stage.

3. Heard learned counsel for the petitioner and learned AGP for the respondent-State.

4. In this case, there is a Tribe Validity Certificate issued in favour of the father of the petitioner – Mahendra Dodha Jadhav, that he belongs to Mahadev Koli – Scheduled Tribe. The said validity was issued in the year 2007 but it has not been relied upon the Scrutiny Committee for the reason that the validity was issued without any verification of records and enquiry through the vigilance cell. The Scrutiny Committee has followed the observations of co-ordinate bench of this Court in the case of *Shri.Mangesh Nivrutti Kashid vs. The District Collector, Satara & Ors.*¹

5. In the said case of *Shri.Mangesh Nivrutti Kashid* (supra) it appears that the coordinate bench of this Court has taken a view that the report of the vigilance cell being a mandatory requirement of law, the validity certificate which is issued without any vigilance enquiry is not valid in the eyes of law and such validity certificate suffers from jurisdictional error, going to the root of the matter. We must say that much water has flown from under the bridge after the judgment in the said case

¹ Wp853 of 2012 dated 4.5.2012

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of ***Shri.Mangesh Nivrutti Kashid*** (supra), so much so that today the Apex Court has taken a view that vigilance enquiry is not mandatory and it is for the Scrutiny Committee to decide, in its discretion, if the vigilance enquiry report be called or not.

6. In the latest Judgment of ***Abhishek Mahendra Umbarje vs. State of Maharashtra, Through its Secretary and Others***², and in the case of ***Mah. Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and Others***³, the Apex Court has held that vigilance enquiry report would be necessary only when the Competent authority is not satisfied with the claim of the applicant and the evidence produced before it. It appears that the Scrutiny Committee has ignored the said judgments and requirements of law in rejecting validity granted to father of the petitioner.

7. The law regarding regarding probative value to be attached to validity granted to paternal relative is well settled. Right from the case of ***Apoorva Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1***⁴, it has been consistently held by this Court that any validity certificate granted to a

² 2022 SCC Online Bom 2858

³ 2023 SCC Online SC 326

⁴ 2010(6) MAH 2 J 402

paternal family member would constitute strong and reliable piece of evidence for a person to prove his claim regarding a particular caste or tribe unless the validity so granted to the blood relatives of such a person has been found to be obtained by playing fraud or misrepresentation of material fact or suppression of material fact. A similar view has been taken in ***Abhishek Mahendra Umbarje*** (supra) and also in the latest case decided by this Court in ***Tejashree Mangilal Dambale vs. The Scheduled Tribe Certificate Scrutiny Committee, Nashik***⁵.

8. On going through the impugned order, we find that the Scrutiny Committee has not taken a view that the validity certificate issued in favour of the father of the petitioner was based upon fraud, or misrepresentation of material fact or suppression of material fact played by him and therefore, there was no reason for it to reject validity of father of petitioner.

9. For the reasons stated above, we find that the impugned order is illegal and cannot stand the scrutiny of law. We find that the petitioner has reasonably established his claim as belonging to Koli Mahadev, Scheduled Tribe on the basis of the Tribe validity Certificate granted to his father.

⁵ Writ Petition No.10759 of 2023 of this Court decided on 14.9.2023.

10. Accordingly, we pass the following order;

- (i) Writ Petition is allowed.
- (ii) The impugned order dated 7 November 2022 is hereby quashed and set aside.
- (iii) Respondent No.2 is hereby directed to issue Tribe Validity Certificate to the petitioner indicating that the petitioner belongs to “Mahadev Koli Scheduled Tribe” within a period of two weeks from the date of this order.
- (iv) We further direct that, till the time the Tribe Validity Certificate is issued to the petitioner, this order of the Court shall be considered as provisional Tribe Validity Certificate for all purposes.

11. Writ Petition stands disposed of in the above terms. Rule made absolute. There shall be no order as to costs.

12. Parties to act upon the authenticated copy of this order.

(FIRDOSH P. POONIWALLA, J.)

(SUNIL B. SHUKRE, J.)

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