(2024) 07 BOM CK 0031

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition Nos. 3939, 1550, 1583, 1652, 2747, 2754 Of 2022

Sambhaji Dangal Wagh		APPELLANT
	Vs	
State Of Maharashtra And Others		RESPONDENT

Date of Decision: July 18, 2024

Acts Referred:

- Maharashtra Act No. XXIII Of 2001 - Section 7

Hon'ble Judges: Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench: Division Bench

Advocate: Sushant C. Yeramwar, Kalpalata Patil Bharaswadkar, Ajay S. Deshpande, N.N. Desale, D.S. Bagul

Final Decision: Allowed

Judgement

Mangesh S. Patil, J

1. Rule. Rule is made returnable forthwith. AGP waives service. We have heard both the sides finally at the stage of admission.

2. These are six different writ petitions which have been clubbed by the administrative order for being tried by the same Court, since all these

petitioners are stated to be blood relatives through paternal side and are impugning the judgments and orders passed in their respective matters by the

respondent Ã¢â‚¬" scheduled tribe certificate scrutiny committee (hereinafter Ã¢â‚¬Å“committeeÃ¢â‚¬) whereby, in a proceeding under section 7 of the

Maharashtra Act No. XXIII of 2001, their tribe certificates of Thakur scheduled tribe have been confiscated and cancelled.

3. Though the impugned judgments and orders are separate, all these petitioners being blood relatives and have been relying upon same genealogy and

evidence, at the joint request of the parties and in order to avoid rigmarole, we propose to decide these petitions by this common order.

4. The chquered history leading to these petitions may be summarized as under:-

(a) Petitioner Sambhaji Dangal Wagh was issued with a certificate of validity first in point of time amongst the entire family related by blood inter se

from the paternal side. Based on this validity, some of the blood relatives subsequently started getting the tribe certificates validated. SambhajiÃ¢â‚¬â„¢s

son Saniket Sambhaji Wagh had approached the committee for validation of his tribe certificate. The committee had rejected it. He approached this

Court in writ petition no. 8830 of 2019. By the order dated 24-09-2019, he was directed to be issued with a certificate of validity. However,

considering the stand that was being taken by the committee, it was expressly clarified that the certificate of validity of Saniket would be subject to the

decision that would be taken by the committee in the cases of the validity holders which the committee had decided to re-open.

(b) Petitioner Ã¢â‚¬" Kunal Bhagwan Wagh who is the first degree cousin of Saniket Sambhaji Wagh also submitted his proposal for validation. By the

judgment and order dated 24-12-2020, the committee directed a certificate of validity to be issued to him.

(c) Pursuant to the observations of this Court in the matter of Saniket, the committee issued notices to his father Sambhaji Dangal Wagh and two

other blood relatives; petitioner - Vijay Rajaram Wagh and one Smita Shantaram Wagh, who were possessing certificates of validity. They appeared

in the matter in response to the notice. By the judgment and order dated 06-01-2022, the committee recalled their certificates of validity inter alia

holding that they had obtained the certificates of validity by suppression of contrary record wherein their ancestors were described as ' ',

' ', ' ', ' '.

Ã, (d) Taking aid of the condition imposed by this Court while directing Saniket to be issued with certificate of validity, the committee issued show

cause notice to petitioner Ã¢â‚¬" Kunal dated 10-02-2022. He submitted reply and by the order impugned in KunalÃ¢â‚¬â„¢s petition dated 02-03-2022, the

committee recalled the certificate of validity issued to him and confiscated and cancelled it.

(e) Incidentally, by a separate common order in the matter of petitioners - Rohit Yuvraj Wagh, Varsha Yuvraj Wagh, Yuvraj Dangal Wagh and Ritesh

Shantaram Wagh, for the selfsame reasons, assigned by the committee in the matter of Sambhaji Dangal Wagh and others dated 06-01-2022, the

certificates of validity issued to even these four individuals were recalled, confiscated and cancelled.

(f) By way of these separate writ petitions, except Smita Shantaram Wagh who seems to have died, all these individuals are challenging the respective

orders passed by the committee confiscating their certificates of validity.

5. At the outset, it is necessary to note that some arguments were advanced before us touching the aspect of power of the scrutiny committee to

undertake the process for recalling of the certificates of validity issued at some earlier point of time.

6. It appears that co-ordinate division benches of this Court in the matters of Rakesh Bhimashankar Umbarje Vs. State of Maharashtra; 2023

SCC OnLine Bom 1013, Bharat Nagu Garud Vs. State of Maharashtra; 2023 SCC OnLine Bom 2597 and Anil Shivram Bandawar Vs.

District Caste Certificate Verification Committee and another (writ petition no. 8107 of 2019 dated 26-07-2021) have held in that the committee

not to have any such power.

7. It has been consistently laid down that since fraud vitiates everything, in the matters of fraud, the committee can undertake rescrutiny.

Consequently, in our considered view, independent of sustainability of the view of the scrutiny committee about the validity holders to have actually

practised fraud or otherwise, once committee having formed a view that indeed they had practised fraud, in our considered view, it was always open

for the committee to undertake enquiry into such allegations about fraud. One can safely rely upon the observationsÃ, ofÃ, theÃ, SupremeÃ, CourtÃ,

inÃ, theÃ, mattersÃ, ofÃ, Rajeshwar Baburao Bone Vs. State of Maharashtra and others (SLP (C) No. 10430 of 2014) and Raju Ramsing

Vasave V. Mahesh Deorao Bhivapurkar; (2008) 9 SCC 54.

8. Needless to state that fraud is a serious allegation, it is imperative that the person alleged to have resorted to fraud, must be demonstrated to have

intentionally or with knowledge suppressed the material fact, which is the stand of the committee in the matter in hand. Though the committee has

tried to demonstrate, by referring to certain entries of the blood relatives from the year 1928 on wards which according to it were the contrary entries

like, ' ', ' ', ' ', ' ', except a bald statement in all these impugned orders,

there is absolutely no material to demonstrate that all these petitioners were aware about these so-called contrary or inconsistent entries and they had

intentionally withheld those.

9. In our considered view, fraud being a drastic allegation resulting in very serious consequences, the allegations of fraud invariably have to be proved

strictly and not merely on the basis of preponderance of probabilities. Therefore, mere perception of the committee that some contrary entries were

suppressed by the petitioners in itself, would not be sufficient to prove the alleged fraud. Over and above, it was expected that it would demonstrate

that the petitioners were aware about all these contrary entries and still they had held those back with an oblique or deliberate intention.

10. Considering the fact that it is a matter of social status and the claimants would rely upon some record of older times, it is but natural that they

would be able to produce only some of the old records. Merely because they do not produce all the record / school record / birth record of all the

blood relatives, that in itself would not be sufficient to draw an inference about active suppression of the material fact. It will have to be, additionally,

demonstrable that such suppression was with active knowledge to avoid it being considered by the committee. This is where according to us, the

impugned orders fall short in demonstrating that whatever the so-called adverse record, the committee could lay its hand subsequently, was

intentionally held back by the petitioners.

11. Hypothetically, in a given case, it is just possible that a claimant may be able to discover some older record, older than the so-called contrary

record allegedly suppressed, which is in their favour, would it mean that he had intentionally held back the older favourable record. This is precisely

what we intend to demonstrate as has happened in the matter of petitioner Ã¢â‚¬" Kunal.

12. Kunal was granted certificate of validity after conducting a full-fledged enquiry, by order of the committee dated 24-12-2020. All these other

petitioners were granted validity prior thereto. A careful reading of the order of the then scrutiny committee would reveal that although he was relying

upon the validities of the rest of the petitioners, the committee had resorted to the vigilance enquiry. The vigilance officer had collected the school and

birth record of 12 individuals as reproduced in paragraph no. 7 of the judgment. At serial no. 1, it was school record of one Brijlal Mahadu describing

him to be cousin great grandfather of Kunal who was admitted in school on 01-01-1922 describing his caste in the school record as Ã¢â‚¬ËœThakurÃ¢â‚¬â„¢ ,

though there was birth record of one Uttam Mahadu Bhat Lalingkar who is KunalÃ¢â‚¬â„¢s great grandfather of 26-11-1928 describing him to be ' '.

The older record would carry greater probative value as per the decision in the matter of Anand Vs. Committee for Scrutiny and Verification of Tribe

Claims and others; (2012) 1 SCC 113. This older favourable entry having greater probative value had weighed with the committee while holding him

entitled to a certificate of validity.

13. Pertinently, this entry of Brijlal Mahadu, cousin great grandfather of Kunal dated 01-01-1922 which was collected by the vigilance officer while

undertaking vigilance enquiry in his matter was not available and considered by the committee while passing all these orders recalling the certificates

of validity of all these petitioners who are the blood relatives inter se. This we are demonstrating only for the purpose that if a blood relative at a later

point of time is able to discover a favourable entry which was not relied upon by the blood relatives who approached the committee seeking validation

of their tribe claims earlier, would it mean that in such circumstances the blood relatives could have intentionally done it so. It is quite clear that even a

favourable entry which was not available to them or they could not trace it, was not produced / relied upon by these other petitioners in their own

matters. This would buttress our observation that if they could not produce contrary record even they did not produce a favourable one also.

14. Interestingly, even while passing the impugned orders, the committee has conveniently avoided to make a reference to this school record of Brijlal

Mahadu. The impugned orders are based on the adverse entry of KunalÃ¢â‚¬â„¢s great grandfather - Uttam Mahadu Bhat Lalingkar of 26-11-1928

describing him as ' '. Obviously, this record being of subsequent period than the school record of Brijlal cousin great grandfather of 01-01-1922, the

latter would have greater probative value.

15. The committee has then relied upon contrary school record of petitioner Ã¢â‚¬" Yuvraj Dangal Wagh dated 06-06-1972 and Shivaji Dangal Wagh

dated 30-07-1973 describing them as ' ', ' '. We would only observe that as

compared to the earlier record which we have discussed herein-above, these two entries are of quite recent past and would carry less evidentiary

value.

16. The committee has then referred to contrary record of few individuals i.e. Narayan Bhika Thakur of 02-01-1912 describing him ' Ã,

' stated to be cousin father in law of SaniketÃ¢â‚¬â„¢s paternal aunt. It is surprising that the committee is referring to such record of a person who is

not related to the claimants by blood from the paternal side. Same is the case in respect of the other contrary entries referred to by the committee in

respect of Durgadas Barka Bhamre, Yashwant Barka Bhamre, Tryambak Fulchand Thakur and Jamsing Narayan Bhat. The committee itself in the

table has expressly described them to be related to these petitioners from marriage showing a relationship which ex facie is not through the paternal

side blood relatives.

17. The committee in the impugned orders has also referred to one more circumstance. It appears that some contrary entries of the school / birth

record as ' ', ' ( )' and ' ' of the period between 1888 to 1932 could be traced in the matter of

Yashwantrao Vasantrao Bagul with whom these petitioners and even Saniket in their respective replies, denied to have any relationship.

18. The committee has referred to a statement of YashwantraoÃ¢â‚¬â„¢s father Vasantrao Kisan Bagul recorded on 11-01-2018 in YashwantraoÃ¢â‚¬â„¢s

matter. It has reproduced relevant excerpts from that statement wherein Vasantrao has apparently stated that his family migrated from Varshi to

Laling and started residing with Uttam Mahadev Thakur (Wagh) stated to be his near relative. Conspicuously, the committee has referred to this

statement, to demonstrate that these petitioners are falsely denying any relationship with Vasantrao Kisan Bagul and Yashwantrao Vasantrao Bagul.

Accepting this statement of Vasantrao to be true, he has merely stated that Uttam Mahadev Thakur (Wagh) who was great grandfather of Saniket

was merely related to Vasantrao, without further describing anything to demonstrate that they were related by blood from the paternal side which is of

utmost importance. In any case, without demonstrating that these petitioners are related to Vasantrao Kisan Bagul by blood from paternal side, the

committee could not have relied upon this circumstance to justify its stand of the petitioners having intentionally suppressed the contradictory record of

the individuals from the family of Vasantrao Kisan Bagul.

19. Thus, as we have demonstrated herein-above, the circumstances which the committee has relied upon to justify its action of undertaking an

enquiry for recalling the certificates of validity issued to these petitioners, by no stretch of imagination could be said to be sufficient to prove fraud

attributable to these petitioners which alone could have enabled the committee to undertake the re-enquiry.

20. Coming back to the decision of the committee dated 24-12-2020 in the matter of petitioner Ã¢â‚¬" Kunal, independent vigilance enquiry was

conducted in his matter. His response was called for to the vigilance report and after hearing him, the committee had, for the detailed reasons,

validated his claim. Obviously, he was relying upon several validities in the family including that of other petitioners and petitioner Ã¢â‚¬" SambhajiÃ¢â‚¬â„¢s

son Saniket.

21. Even the committee referred to 13 decisions in different matters to justify its decision to grant certificates of validity to him. However,

conspicuously, as is pointed out earlier, even during that vigilance enquiry, the oldest record of Brijlal Mahadu dated 01-01-1922 as Ã¢â‚¬ËœThakurÃ¢â‚¬â„¢

was traced and was available to the scrutiny committee.

22. We are pointing out this to demonstrate that Kunal was granted certificate of validity by the then committee by the order dated 24-12-2020 after

conducting vigilance enquiry and after considering all the aspects and only additionally, he was also held entitled to derive the benefit of the validities in

the family. It was not that he was given certificate of validity by default, simply relying upon the earlier validities.

23. We are emphasizing this to demonstrate that the committee in its impugned order dated 02-03-2022 in the matter of Kunal, has not made any

attempt to demonstrate about he having practised fraud upon the committee while obtaining an order whereby the committee directed the certificate of

validity to be issued to him. If such was the state-of-affairs, the committee could not have legally undertaken any enquiry for recalling his certificate.

The only reason recorded by the committee for passing the impugned order recalling the certificate of validity of Kunal is that since Saniket who is son

of petitioner Ã¢â‚¬" Sambhaji, was directed to be issued with a certificate of validity subject to the final outcome of the matters which the committee had

decided to re-open, it was open for the committee to undertake an enquiry even for recalling the certificate of validity of Kunal. It would be hazardous

to interpret the order of this Court in the matter of Saniket in this manner. It will have to be read in the context of the scope of the powers of the

committee to undertake such re-enquiry.

24. The order cannot be understood to mean that irrespective of the fact whether there was any demonstrable fraud, the power and jurisdiction was

conferred upon the committee to re-open each and every validity. Even if the committee had decided to undertake an enquiry for recalling petitioner

Ã¢â‚¬" KunalÃ¢â‚¬â„¢s certificate of validity, it would have jurisdiction and power only if it was able to demonstrate about he having resorted to fraud while

obtaining the order of validation.

25. The impugned order do not even whisper anything about any fraud having been practised by him. As is pointed out earlier, though the committee

had granted benefit of the validity of blood relatives to Kunal, that was not the sole reason. The vigilance enquiry was conducted. Record of Brijlal

Mahadu of 01-01-1922 which was older than the alleged subsequent contrary record was revealed wherein he was described as Ã¢â‚¬ËœThakurÃ¢â‚¬â„¢ and

the validity was granted.

26. Even the contrary record of Uttam Mahadu Bhat of 26-11-1928 was examined and was expressly held to be of no value being an isolated contrary

entry, relying upon the decision of this Court in writ petition no. 8921 of 2019 decided on 24-07-2019, by reproducing paragraphs nos. 10 and 13

therein. It was also expressly observed that the contrary entries which were revealed in the vigilance enquiry were of the individuals who were not

related to Kunal by blood from paternal side. Therefore, when Kunal was held entitled to have certificate of validity for variety of reasons mentioned

herein-above, over and above the validities in the family, the committee had no power and jurisdiction to undertake an enquiry for recalling his

certificate that too without actively demonstrating any circumstance even bordering fraud.

27. The upshot, as far as petitioner Ã¢â‚¬" Kunal is concerned, the committee had no power and jurisdiction to undertake any re-enquiry into his validity.

As far as the other petitioners are concerned, the committee has miserably failed to demonstrate about they having practised fraud while obtaining the

certificates of validity and consequently, even in those matters, the committee had no power and jurisdiction to undertake re-enquiry.

28. All the petitions are allowed.

29. All the impugned judgments and orders are quashed and set aside.

30. Rule is made absolute.