

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8979 OF 2018**

Shubham Sanjay Deshatwad  
R/at Lane No.3,  
Sai Nagar, Chandra Nagar,  
Ambegaon, Pune-411 046

**...Petitioner**

**V/s.**

1. State of Maharashtra  
Through the Secretary,  
Tribal Development Department  
Mantralaya, Mumbai- 400 032.
2. Scheduled Tribe Certificate Scrutiny  
Committee, Aurangabad Division  
Through its Member Secretary, having  
Its Office at Aurangabad.
3. Commissioner and Competent  
Authority, 8<sup>th</sup> Floor,  
New Excelsior Building,  
A.K. Nayak Marg, Fort, Mumbai-01
4. Vishwakarma Institution of Techonology  
Pune, having its address at 666, Upper  
Indira Nagar, Bibewwadi, Pune-411 037. **...Respondents**

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Mr.R.K. Mendadkar for the Petitioner.

Mr.S.B. Kalel, AGP for Respondent-State.

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**CORAM : S.C. DHARMADHIKARI &  
SMT.BHARATI H. DANGRE, JJ.**

**DATE : 10<sup>th</sup> AUGUST 2018.**

**JUDGMENT : (Per Smt.Bharati H. Dangre,J)**

1. Rule. Rule made returnable forthwith.

2. The petitioner, Shubham Sanjay Deshatwad is aggrieved by an order passed by the Respondent No.2, Scheduled Tribe Scrutiny Committee, Aurangabad, since the committee has rejected his claim as belonging to Mannervarlu, Scheduled Tribe and has confiscated Caste certificate issued to him by the Competent Authority on 14.12.2010, recognizing him as a Scheduled Tribe.

The petitioner had appeared for the CET examination conducted by the Commissioner and Competent Authority, Mumbai and is provisionally admitted in Vishwakarama Institute of Technology, Pune subject to production of caste validity certificate. In the first round of litigation, the petitioner had invoked the jurisdiction of this Court by filing Writ Petition No.8534 of 2018 and had sought directions to the Respondent No.2-committee to decide the matter on or before 08.08.2018, since last date for submission of the validity certificate was Scheduled as 10.08.2018. This Court by an order dated 06.08.2018 directed the committee to decide the claim of the petitioner before 08.08.2018 and that is how the committee proceeded with the claim of the petitioner expeditiously and passed an order on 08.08.2018 which is impugned in the

present Writ Petition.

3. In order to establish his claim as belonging to Mannervarlu, Scheduled Tribe, the petitioner relied upon three validity certificates issued in favour of his blood relatives. The first certificate is issued in favour of the father of the petitioner namely Sanjay Sayajirao Deshatwad and the said certificate is granted on 11.07.2006. Real uncle of the petitioner Shri.Vitthal Sayajirao Deshatwad is also granted validity on 29.05.2006 by the Caste Scrutiny Committee. Similarly, his son Vishal Vitthal Deshatwad who is cousin of the petitioner is also issued validity on 30.06.2018. The claim of the petitioner was based on the aforesaid certificates of validity and since the said persons are the blood relations of the petitioner, which he has demonstrated on the basis of the genealogical tree placed before the committee, he prayed for conferment of a similar status of being a Scheduled Tribe upon him. As per the genealogy Shri.Vitthal is the real brother of the petitioner's father Sanjay and both the father of the petitioner and the uncle have been granted validity. The petitioner would therefore submit that applying the principle as laid down in case of ***Apoorva D/o. Vinay Nichale V/s. Divsional Caste Certificate***

*Scrutiny Committee and Ors.*<sup>1</sup>, the petitioner is also entitled for conferment of validity since the said validity has been granted after following due procedure prescribed namely the conduct of vigilance inquiry etc. According to the petitioner his claim was referred to Vigilance Cell and he received a show cause notice from Respondent No.2 on 04.08.2018. The report in case of one Kum.Ashwini Vithalrao Deshatwad was relied upon by the committee in negating the claim of the petitioner and it is the case of the petitioner that the said report was never made available to him and what was made available is the Vigilance Cell report dated 26.07.2018 along with a show cause notice dated 04.08.2018. The petitioner was called for personal hearing on 08.08.2018 however, the grievance of the petitioner is that no hearing was afforded, though the petitioner waited in the office of the committee till late evening upto 4.00 p.m. and he was informed that the committee is likely to pass an order on the same day at 10.00 p.m., the petitioner was handed over a copy of the final order passed by the Scrutiny Committee, thereby rejecting the claim of the petitioner.

4. Perusal of the impugned order passed by the Respondent No.2-Committee would reveal that the petitioner has

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<sup>1</sup> (2010-6-MLJ-401)

staked his claim based on the three validity certificates granted in favour of the father, her real uncle and her cousin Vishal. The committee had made a reference to the Vigilance Cell Inquiry conducted in respect of Kum.Ashiwini V. Deshatwad and it is stated that some school extracts came to be examined during the Vigilance Inquiry conducted while examining her claim and at that time it was revealed that some of the school entries in respect of the uncle of the petitioner were interpolated and the word 'Mannervarlu' has been superimposed by adding the word 'र'. These entries are in form of the extract of the school admission register of Shri.Vithal Deshatwad and Vyankat Deshatwad and are of the year 1976 and 1981 respectively. It is alleged that the entry of caste is sought to be substituted and it is alleged that this was not brought to the notice of the Vigilance Cell by the Headmaster at the time of inquiring the claim of Kum.Ashiwani Vithalrao Deshatwad.

The petitioner has stated that Vigilance Report in respect of Kum.Ashiwani Vithalrao Deshatwad was not supplied to him and therefore he had no opportunity to deal with the same. However, the Vigilance Cell Report which was forwarded to the petitioner which is dated 26.07.2018 was responded to by the petitioner by submitting a reply. The perusal of the said report

would reveal that the caste of the blood relatives of the petitioner is clearly recorded as Mannervarlu and the earliest one is in respect of the uncle Vithal Sayaji Deshatwad, Suresh Sayaji Deshatwad and Vyankat Sayaji Deshatwad. According to the petitioner the documents relied upon by the Vigilance Cell to show that the caste in respect of the said relatives was initially recorded as 'Mannerwar' and subsequently modified to 'Mannervarlu' are not the blood relations of the petitioner and the committee had failed to establish the relationship of the said alleged relatives whose surname is 'Kalyanpad' and the committee has not established their relationship with the petitioner. Perusal of the Vigilance Cell report which is placed on record would fortify the submission of the petitioner and it can thus be seen that the relatives which are mentioned at Serial No.12 to 14 of the list which is a part of the Vigilance Cell Report record name of the persons and the relationship is described as "relative" where the case is recorded as Munarwar. One observation which the Vigilance Cell pertinently makes is in respect of an entry of Vithal Babarao Kalyanpad where the caste entry is interpolated but the Vigilance Cell has not conclusively established the relationship of Vithal Baburaoo Kalyanpad with that of the petitioner or his blood relatives.

In the teeth of the validity certificate issued in favour of

the father and uncle of the petitioner, the committee observes that Shri.Vithal Sayaji Deshatwad at the time of his scrutiny had concealed the entries in the school extract register and in absence of these entries being looked into, the claim of the Shri.Vithal Sayaji Deshatwad is liable to be reopened. Reliance is sought to be placed by the committee in case of Public Interest Litigation No.102 of 2013 decided by the Nagpur Bench and the committee places reliance on that portion of the judgment of the Division Bench which makes a reference to *Apoorva d/o Vinay Nichale* and *Shweta Ramlal Bhunawat* and has held that when the validity certificate is granted without following the procedure as prescribed by law, then merely because the validity is granted to the family members would not mandate the members of the committee to grant validity to other members of the family. This proposition of law is not in dispute however this was in respect of Mana, a recognised Scheduled Tribe where the certificates of validity were granted for making a reference to the order of the Hon'ble Apex Court without conducting any vigilance cell inquiry and in this background the observation was made by the Hon'ble Division Bench in PIL No.102 of 2013. However, in the present case the Vigilance Inquiry has been conducted in case of the father of the petitioner as well as the uncle of the petitioner and after following the said procedure the

validity certificate has been granted.

If any fraud is detected at any stage or if it is noticed that on account of some misrepresentation, the benefit is sought to be derived, in that contingency the certificate is liable to be revoked. However, the certificate issued in favour of the father of the petitioner and the uncle of the petitioner is holding the field for more than one decade. It is presumed that when the said certificate was granted the entire procedure prescribed for scrutinizing the caste claim has been followed and it is expected that all the necessary documents which the Vigilance Cell is required to look into have been infact perused and scrutinized. There is always a presumption of legality in favour of the statutory order and hence the validity conferred in favour of the father and uncle of the petitioner is presumed to be valid unless and until it is proved to be vitiated by misrepresentation or fraud. It is always open for the quasi judicial authority like the committee to rob the holders of the validity certificates of the said status if it is able to demonstrate that the process was abused, then it can revoke the said order. Based on this principle the committee has taken a decision to issue a show cause notice in favour of the validity holders. We do not want to deprive the committee of such power in case, if it arrives at a conclusion that a fraud has been played, then it is open for the

committee to exercise the same power under which the original order was passed and would deny the said certificate on the ground that it was obtained by fraud or by misrepresentation. However, at present since the validity is already conferred on the father and uncle of the petitioner and they have been declared belonging to Mannervarlu, Scheduled Tribe we do not intend to deprive the petitioner of the said benefit. It is however, open for the committee to proceed and conduct an inquiry in respect of the validity holder to whom the committee had issue show cause notices and the petitioners would then be bound by the outcome of such as enquiry.

5. As a result of the above discussion, we pass the following order:-

(i) The writ petition is allowed. Rule is made absolute in terms of prayer clauses (a) (b) and (c).

(ii) The impugned order passed by the Scrutiny Committee dated 8th August, 2018 is quashed and set aside.

(iii) Respondent nos. 3 and 4 are directed to consider the petitioner's case for admission to the respondent no. 4 college or if any tentative admission has been granted, the same shall stand confirmed subject to the

verification of the certificates of validity relied upon by the petitioner, namely, issued to her father, real uncle and first cousin brother. Respondent no. 3 shall proceed on the basis of this order for this certificate of validity to be issued would take some time.

(iv) The second respondent is directed to issue the caste validity certificate to the petitioner within 10 days from today.

6. The learned AGP to communicate this order to the competent authority forthwith.

7. Rule is discharged. No order as to costs.

**(SMT.BHARATI H. DANGRE, J.)**

**(S.C. DHARMADHIKARI,J.)**

Nilam  
Santosh  
Kamble

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Date: 2018.08.31  
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