

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4160 OF 2019

Sangita d/o Surykant Rautwad

Petitioner

Versus

The State of Maharashtra & another

Respondents

Mr.B.R.Kedar, advocate for the petitioner.
Mrs.M.A.Deshpande, AGP for Respondents.

**CORAM : PRASANNA B. VARALE AND
NITIN W. SAMBRE, JJ.**

DATE : 01st April, 2019.

P.C. :

The petitioner claims to be belonging to “Mannerwarlu”, a Scheduled Tribe and holds validity certificate. Learned Counsel for the petitioner submits that on July 23, 2018, January 21, 2019 and February 14, 2019, petitioner has received notices issued by the Respondent-Committee calling upon her to explain as to why the validity certificate, issued to the petitioner, shall not be cancelled as the same appears to be based upon certain suspicious circumstances.

2 The submission of learned Counsel Mr.Kedar is, the powers under the Maharashtra Scheduled Castes, Scheduled Tribes, Other Backward Classes and Special Backward Classes (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, does not contemplate review of the order passed by the Committee. The power to cancel the validity certificate, of course, can be exercised, provided if the Committee, *prima facie*, is of the opinion that there existed fraud practiced while securing validity

certificate. According to him, the Committee, in a prejudiced manner has issued aforesaid notices only for the sake of compliance of the statement made before the Division Bench in the matter of Sachin s/o Balajirao Rautwad Vs. State of Maharashtra & others (**W.P.No.7528 of 2018, decided on July 23, 2018**).

3 Shri Kedar would draw support from the judgment of Division Bench of this Court in the matter of Ganesh s/o Murlidhar Siraskar Vs. The State of Maharashtra & others (**W.P.No.5079 of 2008, decided on August 26, 2008**). He would draw support from paragraphs 5 and 6 of the said judgment, which read thus:

“Law is now well settled that the power of review must be expressly conferred. It is only in the case of procedural review that the Supreme Court has held that it is inherent in every Court or Tribunal. However, powers of substantive review must be expressly conferred.

What the Committee is seeking to exercise its power at substantive review. Such power of review has not been conferred on the Committee under the Maharashtra Scheduled Castes, Scheduled Tribes, Other Backward Classes and Special Backward Classes (Regulation of Issuance and Verification of Caste Certificate Act, 2000. Once there is no power of review, it would not be open to the Committee to review the order passed earlier by competent Tribunal. Apart from that we note in this case that earlier the Committee has given decision in 1992. The new exercise is sought to be done sometime in the year 2007-2008. The entire exercise is therefore without jurisdiction. The inquiry sought to be conducted will have to be quashed and set aside.

6 We however make it clear that the law is settled that any person obtains a certificate based on fraud can claim no equity or right as fraud vitiates every action. In these circumstances, if a petition is filed before this court and this court prima facie comes to the conclusion that the certificate was obtained by fraud and by suppressing material, it will be open to this court in the exercise of its extraordinary jurisdiction to issue directions. In the instant case, we are not considering such a petition before us. In the instant case, the petitioner holds a validity certificate and the Committee is seeking to reconsider the certificate based on the complaint.

4 According to Mr.Kedar, as such, the show cause notices issued to the petitioner need to be quashed and set aside, since it is not the case of the Respondent-Committee that the petitioner has practiced fraud while securing validity certificate.

5 The learned AGP supports the show cause notices issued by the Respondent-Committee and submits that it is open for the petitioner to agitate all available grounds including that of jurisdiction before the Committee; and sought dismissal of the petition.

6 Having appreciated the submissions made, what is noticed from the record is, that the Division Bench of this Court in Writ Petition No.7528 of 2018, in the matter of Sachin Rautwad, decided on July 23, 2018, at the Principal Seat, has already recorded the submission that, it will be open for the Committee to issue show cause notice to the petitioner as to why validity

certificate granted in his favour shall not be cancelled. The said view expressed by the Division Bench of this Court is based on the Division Bench judgment of this Court in the matter of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Scrutiny Committee No.1 and others**, reported in 2010 (6) MhLJ 401.

7 Apart from above, what is noticed in the present petition is that the petitioner has preferred writ petition against the show cause notices and the petitioner has already submitted his reply to the same raising challenge to the authority of the Committee to deal with the issue of cancellation of validity certificate.

8 Once the petitioner has already appeared before the Committee by filing her reply, having noticed that the petitioner has every right to establish her claim before the Committee, this Court has hardly noticed any specific reason which warrants interference in exercise of extraordinary jurisdiction.

9 Keeping the entire issue open before the Committee, the petition stands dismissed.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE