

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8438 OF 2019**

Makarand Sayanna Shengulwar ..PETITIONER

Versus

The Schedule Tribe Certificate
Scrutiny Committee and Ors. ..RESPONDENTS

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Mr. Mahesh S. Deshmukh, Advocate for the
Petitioner.

Mr. P. S. Patil, AGP for Respondent No.1.

Mr. S. G. Chapalgaonkar, Advocate for Respondent
Nos.2 and 3.

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**CORAM : S. V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**

Closed for Orders on : 05.12.2019.

Order Pronounced on : 18 .12.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner assails the judgment of the Scrutiny Committee invalidating the caste claim of the petitioner as 'Mannervarlu', Scheduled Tribe.

2. Mr. Deshmukh, learned counsel for the petitioner submits that the caste certificate of the petitioner was referred to the Scrutiny Committee by the employer for verification. The real brother of the petitioner is issued with the validity certificate of 'Mannervarlu', Scheduled Tribe. The caste claim of the father of the petitioner namely Sayanna was referred to the Scrutiny Committee for validation. The Scrutiny Committee invalidated the same. The father of the petitioner filed writ petition before this Court.

This Court dismissed the writ petition. The father of the petitioner approached the Apex Court. The Apex Court allowed the Special Leave Petition filed by the father of the petitioner and directed the committee to issue validity certificate to the father of the petitioner. The judgment of the Apex Court delivered in the case of petitioner's father is reported in (2009) 10 SCC 238. The Apex Court considered the vigilance report and the case of the Committee of the word 'lu' subsequently added. After considering the findings of the Scrutiny Committee that 'lu' was interpolated, the Apex Court directed the Committee to issue validity certificate to the father of the petitioner. The Scrutiny Committee has taken a different view. On the basis of the same evidence, the Apex Court has allowed the appeal of the father of the petitioner. The learned counsel submits that observation of the Committee that in the school record of the father of the petitioner the caste is recorded as 'Manurwar' is incorrect. There are three to four persons of the same name wherein they are admitted under the different serial numbers in the register. The Headmaster also gave statement to that effect. The same is not considered in a proper manner.

3. Mr. Patil, learned A.G.P. submits that the validity certificate obtained by the father of the petitioner is based on fraud. As the judgment in the case of the father of the petitioner is based on fraud, the same cannot be binding precedent.

The fraud vitiates the judgment by the Court. The learned counsel refers to the following judgments to substantiate his contentions:

1. **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Others** reported in (2008) 9 Supreme Court Cases 54.

2. **T. Vijendradas and Another Vs. M. Subramanian and Others** reported in (2007) 8 Supreme Court Cases 751.

3. **S. P. Chengalvaraya Naidu (Dead) By Lrs. Vs. Jagannath (Dead) By Lrs. and Others** reported in (1994) 1 Supreme Court Cases 1.

4. **Civil Appeal No.5778/2015 in a case of Rajeshwar Baburao Bone Vs. The State of Maharashtra and Another.**

5. **Writ Petition No.1954/2009 in a case of Jyoti Sheshrao Mupde Vs. The State of Maharashtra and Ors.**

4. He further contends that the new information received in the vigilance was not before the Apex Court. The petitioner has failed in the affinity test also. There are contra entries on record. The entry at serial no.16, 16/134 in register no.1 shows the caste of the father of the petitioner recorded as 'Manurwar'. This aspect was not before the Committee and before the Apex Court at the time of considering the caste claim of the father of the petitioner.

5. We have considered the submissions canvassed by the learned counsel for the respective parties. We have also gone through the judgment and record.

6. There cannot be any dispute with the proposition that fraud vitiates every solemn act and order. If the vital evidence is ignored or there was suppression while granting validity to the near relatives of the petitioner, it is open to the Committee to arrive at different finding as is held by the Apex Court in a case of **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Others** (supra). The judgment obtained by playing fraud on the Court is nullity and nonest in the eye of law. Reference can be had to the judgments of the Apex Court in a case of **T. Vijendradas and Another Vs. M. Subramanian and Others** (supra) and **S. P. Chengalvaraya Naidu (Dead) By Lrs. Vs. Jagannath (Dead) By Lrs. and Others** (supra).

7. In the present case, the caste claim of the father of the petitioner was referred to the Scrutiny Committee. The Scrutiny Committee invalidated the caste certificate of the father of the petitioner of 'Mannervarlu', Scheduled Tribe. The father of the petitioner filed writ petition before this Court. This Court upheld the judgment of the Scrutiny Committee and dismissed the writ petition. The father of the petitioner filed Special Leave Appeal before the Apex Court. The Apex Court in a reported judgment in a case of **Sayanna Vs. State of Maharashtra and Others** (supra) allowed the Special Leave Appeal setting aside the judgment of the Scrutiny Committee and this Court and directed issuance of validity certificate to

the father of the petitioner. The father of the petitioner is thereafter issued with the validity certificate of 'Mannervarlu', Schedule Tribe. In the said judgment the Apex Court had considered the aspects of interpolation of word (lu) in the school register.

8. In the present case, the Committee has observed that in the register at serial no.16, 16/134 the name of the student is referred to as Sayanna Sayanna and the caste is recorded as 'Manurwar'. The said entry was not brought to the notice in the caste verification proceedings of the father of the petitioner.

9. In the present case, the statement of the Headmaster of school where the father of the petitioner had studied and was admitted is recorded. He has stated in his statement that the entry was appearing as 'Manurwar' and thereafter, it has been made 'Mannervarlu'. There are three registers. It has been stated by the petitioner that the date of birth of the father of the petitioner was 01.01.1951 and in the entry commensurate to the date of birth of the student namely Sayanna Sayanna the caste is recorded as 'Mannervarlu'. The interpolation in the school record of the father of the petitioner was subject matter of consideration before the Apex Court. After considering the same, the Apex Court has delivered the reported judgment in the case of

father of the petitioner. It will not be now open to reconsider the same.

10. The real brother of the petitioner namely Anup Sayanna has also been issued with the validity certificate by Committee.

11. The validity certificates are issued to the father of the petitioner and the real brother of the petitioner. Considering the aforesaid aspects of the matter, we do not find that it would be a case of fraud inter alia to uphold the judgment of the Scrutiny Committee in the light of the judgment of the Apex Court in the case of father of the petitioner.

12. In view of the above, the impugned judgment and order passed by the Committee is quashed and set aside. The Committee shall issue validity certificate to the petitioner of 'Mannervarlu', Schedule Tribe.

13. Writ Petition accordingly allowed. No costs.

(AVINASH G. GHAROTE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE