

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8703 OF 2019

RUTUJA BAJRANG GOLMALLU
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Jadhavar Pratap V.
Add.GP for Respondents: Mr. P. S. Patil

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CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, J.

DATE: 18th JULY, 2019

PER COURT:

1. The caste claim of the petitioner is invalidated, aggrieved thereby the present writ petition.

2. Mr. Jadhavar, the learned counsel submits that the father of the petitioner Bajrang is issued with the validity certificate of Mannervarlu, Scheduled Tribe. The real uncle of the petitioner namely Ramdas is issued with the validity certificate of Mannervarlu, Scheduled Tribe. Another real uncle of the petitioner namely Sunil Sopanrao is issued with the validity

certificate of Mannervarlu, Scheduled Tribe. The learned counsel submits that the school record of the petitioner, his father, his uncles records caste as Mannervarlu, Scheduled Tribe. The caste claim of the uncle of the petitioner namely Ramdas was invalidated by the committee, Ramdas filed writ petition bearing writ petition no. 306 of 1993. The writ petition is allowed by this Court under order dated January 31, 1994 setting aside the judgment of the scrutiny committee and directed the committee to issue validity certificate to the uncle of the petitioner. The learned counsel submits that at the time of granting validity in favour of the uncle of the petitioner namely Sunil vigilance was also conducted. According to the learned counsel, the theory of interpolation on the part of the respondent is erroneous. The learned counsel submits that no fraud has been committed when the father and two real uncles are issued with the validity certificate. The petitioner also deserves

to be issued with the validity certificate. The learned counsel for the petitioner relies on the judgment of this Court in case of Apporva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others reported in 2010 (6) Mh. L. J. 401.

3. Mr. Patil, the learned Additional Government Pleader further submits that in fact the earlier judgments of the committee and of this Court are obtained by playing fraud. In the vigilance conducted in the case of Sunil, the vigilance had recorded the manipulation in the entries, however the committee granted validity only because his brother was granted validity. The learned A.G.P. submits that fraud vitiates every solemn act and even the order of this Court. In the year 1993 - 1994 this Court did not have the assistance of vigilance being conducted. If the earlier validity is obtained by fraud, the same cannot enure to the benefit of the petitioner. This Court can look into the manipulated entries. The entries clearly

in the school record of the petitioner's father and uncle shows that the said entries are interpolated. The petitioner has also not proved the affinity.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. It is fact that the father of the petitioner and uncle Sunil have been issued with the validity certificate by the scrutiny committee. The committee had invalidated the claim of one uncle of the petitioner namely Ramdas. He had challenged the order before this Court in writ petition no. 306 of 1993. The Division Bench of this Court under judgment dated January 31, 1994 allowed the said writ petition holding that he belongs to Mannervarlu, Scheduled Tribe and directed the authority to issue the validity certificate to him. This Court observed as under -

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3. In addition, reliance is placed on the School Leaving Certificate of the three brothers of the petitioner namely Anil, Sunil

and Bajrang Golmallu. These are the School Certificates from Manavya Vikas Vidyalaya, Degloor and Shivaji Vidyalaya, Yeoti. There is no material on record that those three Certificates are shady in any way.

4. The reasoning of the caste scrutiny committee is difficult to stand. These documents are rejected as recent documents although, the relationship is not at all even suspected. It is observed that home enquiry is required to be conducted to ascertain the various base as to whether the candidate really belongs to the tribe to which he has claimed. Obviously, this would be behind the back of the petitioner for which he would not be answerable. The approach of the scrutiny committee is more than an approach of a suspect. Apart from the material that are the Certificates of the Police Patil, Degloor, Minister for State for Social Welfare and also of the President Mannervarlu Samaj Sudharak Manal. It is the basic principle of consanguinity that the two brother cannot belong to different caste. The scrutiny Committee has proceeded on a wrong by firstly holding that the petitioner, by reason of on old Certificate could be belonging to Mannervarlu and then finding unattackable evidence of his three brothers, his maternal cousin and his other two sisters are established to be belonging to Mannervarlu has chosen to conclude an impossibility. The Scrutiny Committee has proceeded on a basically erroneous proposition to controvert and disprove the factual position that are neatly established. This is an error in the reasoning by proceeding with an erroneous proposition."

6. There cannot be any dispute with the

proposition put forth by the learned A.G.P. that fraud vitiates every solemn act and the order. It needs to be observed that this Court had also considered the school leaving certificates of the real uncles of the petitioner and it considered that the same would prove that the petitioner therein namely Ramdas is belonging to Mannervarlu, Scheduled Tribe.

7. In view of that, we set aside the judgment of the committee and direct the committee to issue the validity certificate to the petitioner of Mannervarlu, Scheduled Tribe immediately. The validity certificate shall be subject to the decision that may be taken by the committee in case the validation proceedings in respect of the validity holders relied by the petitioner are reopened.

8. Writ Petition is disposed of accordingly. No costs.