

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 20755 OF 2019
WITH
WRIT PETITION NO. 7841 OF 2019

Aishwarya Chandrashekhar }	
Thakur }	Petitioner
versus	
State of Maharashtra }	
and Ors. }	Respondents

Mr.R.K.Mendadkar with Mr.C.K.Bhangoji for the
petitioner.

Mr.B.V.Samant-AGP for State.

Mr.Ajaykumar S. Sathe-Law Assistant-Nandurbar
Scrutiny Committee present.

CORAM :- S. C. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.

DATED :- JULY 22, 2019

P.C. :-

1. We have heard both sides.
2. The petitioner before this court is challenging an order passed by the Scheduled Tribe Certificate Scrutiny Committee at Nandurbar. By the order dated 18th July, 2019, the certificate of validity has been denied and the caste certificate of the petitioner has been confiscated. The petitioner does not dispute that the Headmaster of Kamlabai Shankarlal Kanya Shala and Late

Professor Ghaskadbi Junior College, Dhule forwarded the claim of the petitioner on 11th January, 2018. That was because the petitioner before us has been admitted to that institution. She claimed a seat reserved for Scheduled Tribe. Thereafter, the petitioner, in the National Eligibility-cum-Entrance Test (NEET), held in the month of May, 2018, has been successful. She has obtained 325 marks out of 720 marks i.e. aggregating to 76%. Her NEET rank is 226223, whereas her Scheduled Tribe category rank is 5180. That is how now she has been admitted, but provisionally in a medical college (respondent no.4). This was allotted to her by the third respondent itself. The petitioner had filed an earlier petition in this court (Writ Petition No.7841 of 2019) and on 16th July, 2019, we passed the following order:-

“1 Since it is stated by Mr.Mendadkar that provisional admission is granted to the petitioner, we direct the Respondent Nos.3 and 4 to cancel her provisional admission till 19th July, 2019 (5:00 p.m.). The respondent No.2 is directed to pass the orders on or before 19th July, 2019.

2 This order is passed on the statement made by Mr.Samant, learned AGP, that the cut-off date for the admission to the MBBS/ BDS Undergraduate Health Science Course is 19th July, 2019.

3 We post this matter on Monday, 22nd July, 2019. To be listed on the Urgent Admission Board.”

3. Today, when the fresh petition [Writ Petition (ST) No.20755 of 2019] was placed before us as also the old petition, we were informed that the certificate of validity is denied although the

father of the petitioner was issued such certificate of validity.

4. The argument of Mr.Mendadkar is that the certificate of validity is denied on flimsy untenable grounds. Firstly, the Scrutiny Committee does not realise that the certificate of validity issued to the aunt of the petitioner's father-Chandrashekhar Thakur has been issued after she has been successful in a writ petition filed in this court. As far as the father is concerned, the father was issued a certificate of validity, but the Scrutiny Committee at Pune, on 7th April, 1986 declared it as invalid. The father appeared before the Additional Commissioner, Tribal Development, Nashik as that was an appellate authority. That appeal was allowed (Appeal No.17 of 1986) on 31st August, 1987. However, the Department of Tribal Development, Government of Maharashtra, at that time, set up a second appellate authority, namely, the Commissioner of Revenue Division and the Additional Commissioner, Nashik cancelled the first appellate order. That is how Writ Petition No. 2017 of 1996 was filed by the petitioner's father, but when it was pending, he unfortunately expired. The heirs were brought on record and that writ petition was allowed. Relying on that order of this court, the father was issued a certificate of validity dated 12th February, 2004, but posthumously. There was another certificate of

validity, which was relied upon according to the Scrutiny Committee. However, the real position is that the petitioner relied upon the certificate of validity issued to one Suvarnalata Gulab Thakur. This Suvarnalata was the real aunt from the paternal side of the petitioner's father. Mr.Mendadkar says that on strange reasoning, this certificate of validity was discarded by the Scrutiny Committee.

5. Mr.Samant learned AGP, however, supports the impugned order. He would rely upon the observations in the case of the certificate of validity produced by the petitioner and of Suvarnalata Thakur. Mr.Samant submits that there was a fraud perpetrated on the Scrutiny Committee and that is why this certificate of validity was rightly discarded.

6. After having carefully perused the impugned order, we find that there was a certificate of validity issued to the petitioner's father. The petitioner before us had prosecuted the petition filed by her father as the heir of her father, together with her mother. That Writ Petition No.914 of 1988 was allowed by this court on 12th February, 2004 and the father was granted a certificate of validity. Thus, the father filed a petition in this court but died during the pendency of the writ petition and therefore, this court concluded that the certificate of validity had been illegally denied

to the petitioner's father. That is why this court, while allowing Writ Petition No.914 of 1988, directed issuance of certificate of validity to the petitioner's father-Chandrashekhar. To our mind, the validity certificate issued to the father of the petitioner has not been questioned on the ground of fraud or suppression of material facts. There is absolutely, therefore, no proof of misrepresentation of facts by Chandrashekhar Thakur, the father of the petitioner. If the father of the petitioner is a tribal and his daughter had prosecuted the dead father's petition, then, we do not see how the certificate of validity has been denied to the petitioner. This is not only a case of clear perversity, but we feel that now the Scrutiny Committee at Nandurbar proceeds with vengeance. Once a litigant comes to this court complaining about its inaction, then, he/she is punished or rewarded in the form of rejection or refusal of the validity certificate. The refusal is by a stereo type mechanical order. The first part of the reasoning invariably commences with reference to five districts, in which alone this tribe is found and nobody other than those residing in these five districts, according to the Scrutiny Committee, should be declared as tribal and particularly Thakur Scheduled Tribe. The second reasoning is that the person before the Scrutiny Committee has not been able to demonstrate that he/she is Hindu Thakur Scheduled Tribe. Thus, the claimant has failed in the

cultural affinity Test. The third reasoning is with reference to the documents relied upon, including the certificates of validity. There, by a process of comparison the old entries such as “Bhat”, “Maratha” are fished out and it is claimed that the claimant is suppressing these entries. By general reasoning, such claims are decided. The observations are sweeping. A cut-copy-paste method is adopted. The paragraphs after paragraphs of some other orders are typed without there being any connection with the issue and persons before the Scrutiny Committee.

7. This order is of that type and we proceed to quash and set aside the same. It is vitiated by total non application of mind and perversity. It ignores the certificate of validity issued to the petitioner’s father and that ignorance cannot be sustained for the simple reason that the certificate of validity has been issued to the petitioner’s father more than 15 years back and in the circumstances aforementioned. Hence, we quash and set aside the impugned order and direct that a certificate of validity shall be issued to the petitioner today itself before 4.00 p.m.

8. We further direct that the persons in-charge of admission and particularly the Cells created by the State Government shall act upon an authenticated copy of this order. The admission of the petitioner to stand regularized and if the Scrutiny Committee

in future proceeds to invalidate the claim of her father and cancels the certificate of validity, no equities can be claimed by the petitioner.

9. If the certificate of validity is not issued to the petitioner as directed above, all the three members of the Scrutiny Committee shall remain present before this court on 25th July, 2019 at 11.00 a.m.

10. With the aforesaid directions, both the writ petitions stand disposed of.

(SANDEEP K. SHINDE, J.)

(S.C.DHARMADHIKARI, J.)