

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO.8862 OF 2019

Mahesh s/o Devidas Marakwad

Age : 19 yrs, occ : education

R/o Hartal, Taluka Mukhed,

District Nanded.

At present N-11, A-121, G13/15,

Navjeevan Colony, HUDCO,

Aurangabad.

Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai.
2. The Scheduled Tribe Caste
Certificate Verification Committee
Aurangabad.
Through its Member Secretary,
Aurangabad.
3. The Commissioner and Competent
Authority, Commissionerate Common
Entrance Test Cell, Government of
Maharashtra, 8th Floor, New Excelsior
Building, A.K. Naik, Marg, Fort,
Mumbai.
4. The Principal,
MIT Academy of Engineering,
Alandi, Pune.
5. The Principal,
Vasantrao Naik Junior College,
Jalna Road, Aurangabad.

Respondents

WITH

923 WRIT PETITION NO.8859 OF 2019

Shubham s/o Shivaji Marakwad

Age : 21 yrs, occ : education

R/o Hartal, Taluka Mukhed,

District Nanded.

Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai.
2. The Scheduled Tribe Caste
Certificate Verification Committee
Aurangabad.
Through its Dy. Director ®,
Aurangabad.
3. The Principal,
Shri Guru Gobind Singji Engineering
College, Nanded, Dist.Nanded.

Respondents

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Mr. S.M. Vibhute, Advocate for the petitioner in both petitions.

Smt. G.L. Deshpande, A.G.P. for the State.

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**CORAM : SUNIL P. DESHMUKH &
ABHAY AHUJA, JJ.**

DATE : 15th January 2021.

ORDER :-

1. Aforesaid writ petitions are preferred against a common order passed by respondent no.2 – scrutiny committee dated 18.07.2019 rejecting the claim to be of “Mannervarlu” scheduled tribe by Shweta, Shubham and Mahesh.

2. A division bench of this court had an occasion to deal with aforesaid Shweta Shivaji Marakwad's case earlier in writ petition no. 8858 of 2019 against aforesaid order dated 18.07.2019 of the committee and had under its order dated 31.07.2019, directed the scrutiny committee to issue tribe validity certificate to the petitioner Shweta of being "Mannervarlu" scheduled tribe and the same had been made subject to decision of the committee that would be taken in the proceeding reopened of the validity holders relied on by the petitioner.

3. In the present writ petitions, one of the writ petitions is preferred by Shweta's real brother Shubham and other is preferred by cousin Mahesh whose paternal lineage with Shweta and Shubham has not been disputed and learned counsel during the course of submissions has pointed out that the committee has also treated the aforesaid three claimants to be from the same family.

4. Relevant extracts from the order dated 31.07.2019 in writ petition no. 8858 of 2019 are as under :

"2. The learned counsel for the petitioner submits that the father of the petitioner is issued with the validity certificate of Mannervarlu Scheduled Tribe. Five sons and daughters of the real uncle of the petitioner are issued with the validity certificates. The two sons of the real uncle of the petitioner are directed to be issued with the validity certificates by this Court at the Principal Seat at Bombay in Writ Petition No.

7482 of 2018 under order dated 3.07.2018 and by this bench in Writ Petition no. 12471 of 2018 under order dated 27.11.2018.

4. It is not disputed that Manoj s/o Balaji Marakwad is the petitioner's real paternal uncle's son, his claim was also invalidated. Said Manoj had filed Writ petition bearing No. 7482 of 2018 and under order dated 23.07.2018 the Principal Seat had allowed the said writ petition directing the committee to issue validity certificate to him with conditions.

5. The conditional validity is issued considering the interpolation noticed in the school record of Sopan Tukaram i.e. the father of the petitioner and that the show cause is also issued.

6. Considering the fact that the petitioners real paternal uncle's son is directed to be issued validity by the Principal Seat at Bombay in Writ Petition No. 7482 of 2018 under order dated 23.07.2018, so also the validity certificates as relied by the petitioner of his father and real paternal uncle's son and daughters, we pass the following order”.

5. In the present matters as well, learned Assistant Government Pleader, as had been the submissions in the case of Shweta, purports to contend that there are interpolations in record of the validity holders and the committee had considered the same and further purports to submit that the petitioner has failed affinity test.

6. Although this is being so submitted, fact remains that relationship of petitioner with the validity holders has not been disputed nor genealogy has been in dispute.

7. It would have to be considered that there is no denial of the factual position that as on the date, committee has not invalidated certificates issued to petitioner's paternal

relatives, *albeit*, it has been referred to that matter is under investigation and much progress has been made.

8. It is further to be noted that the courts have time and again referred to that ethnic linkage is not a litmus test and would hardly be determinative. A decision of the Supreme Court in the case of *“Anand V/s The Committee for Scrutiny Verification and Others”* reported in *(2012) 1 SCC 113*, may be taken into account for said purpose.

9. In the circumstances, it would be appropriate that we follow the course charted by various decision of division bench *viz.*, writ petition No. 5641 of 2020 (*Kum. Maseera Parvin d/o Mohd. Asfaque Shaikh and Another V/s the State of Maharashtra and Others*), writ petition No. 9056 of 2019 (*Ganesh s/o Sudhakar Bodhgire V/s The State of Maharashtra*) dated 21st August, 2019, and a judgment of the Supreme Court in the case of *“Raju Ramsing Vasave V/s Mahesh Deorao Bhivapurkar and Others”* reported in *(2008) 9 SCC 54*.

10. It has been referred to that if proceedings for cancellation of caste validity holders are answered against such certificate holders, it would be open for the committee to issue show cause notice to petitioner, as to why validity certificate granted to him should not be cancelled and keeping

it open for the committee to take those proceedings to its logical end. The decisions even refer to that certificate issued to the petitioner, would be subject to outcome of proceedings for cancellation of validity issued in favour of his blood relatives.

11. Having regard to decisions, facts and circumstances and forgoing discussion, it appears to be expedient to set aside the impugned order and direct issuance of validity certificate to petitioner, subject to decision in re-opened cases.

12. In the circumstances, impugned order dated 18th July, 2019 passed by respondent No. 2 Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is set aside. Respondent No. 2 Committee shall forthwith issue validity certificate to the petitioner as belonging to "*Mannervarlu*" scheduled tribe. The certificate would be subject to decision that would be taken by the committee in the proceeding stated to have been reopened of the validity holder relied upon on behalf of the petitioner. In case, said certificate is cancelled, then the petitioner may not be in a position to claim equities and it would be open for the committee, if the committee is of the view that validity certificate obtained by the validity holder is by playing fraud, then the committee

may resort to action against the petitioner as would be available in law.

13. Rule is made absolute accordingly. Writ petitions are disposed of.

14. Parties to act upon authenticated copy of this order.

(ABHAY AHUJA, J.)

(SUNIL P. DESHMUKH, J.)

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