

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.8139 OF 2020
WITH
CIVIL APPLICATION NO.2102 OF 2021
IN WP/8139/2020**

**PRACHI SANJU GAIKWAD
VERSUS
DIRECTOR OF TECHNICAL EDUCATION AND OTHERS**

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Advocate for the Petitioner : Shri Deshmukh Mahesh S.
AGP for Respondents 1 and 3 : Smt.M.A. Deshpande
Advocate for Respondent 2 : Shri M.D. Narwadkar

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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 06th December, 2021

Per Court :-

1. The petitioner has filed this petition upon being aggrieved by the invalidation of her tribe claim of belonging to “Thakur”, Scheduled Tribe, vide the impugned order dated 10.11.2020 passed by respondent No.3/ Competent Scrutiny Committee.

2. The petitioner has put forth prayer clauses A to E as under :-

“A) *Issue writ of certiorari and or any other*

appropriate writ, order or in the like nature, thereby quash and set aside impugned order, invalidating Tribe Claim being “Thakur”, Scheduled Tribe passed by the Respondent No.3- Scrutiny Committee, Aurangabad dated 10th November, 2020 (received on 28th November, 2020) (Annexure G).

- B) Hold and declare that the petitioner belongs to “Thakur”, Scheduled Tribe and consequently direct the Respondent No.3- Scrutiny Committee, Aurangabad to forthwith issue certificate of validity within stipulated period.*
- C) Grant stay to the effect, operation and implementation of impugned order, passed by the Respondent No.3- Scrutiny Committee, Aurangabad dated 10th November, 2020 (received on 28th November, 2020) (Annexure G), pending hearing and final disposal of instant petition.*
- D) By appropriate writ, order or direction in the like nature, direct the Respondent Nos.1 and 2 to admit the petitioner to Engineering Course from Scheduled Tribe category pursuant to her merit as referred in Score Card for MHT-CET issued by Respondent No.2 dated 30th November, 2020.*
- E) Issue an interim order thereby direct the Respondent Nos.1 and 2 to provisionally admit the petitioner from Scheduled Tribe category pursuant to her merit as referred in Score Card for MHT-CET 2020 Exam issued by Respondent No.2 dated 30th November, 2020 without issuing for Certificate of Validity, pending hearing and final disposal of instant petition.”*

3. We have considered the strenuous submissions of the learned counsel appearing for the respective sides.

4. The petitioner submits that by 03:00 PM on 07.12.2021 (tomorrow), she has to be equipped with a tribe validity certificate, failing which, her proposed admission with D.Y. Patil Institute of Technology, Pimpri, Pune, would not be processed.

5. The genealogy placed before the Committee by the petitioner is at page 26. It indicates that Nagoji Radhoji Gaikwad is the person from whom the genealogy flows. He is shown to have only one son Kondaji Nagoji Gaikwad, who had two sons, namely, Madhukar Kondaji and Bapu Kondaji. The son and daughter of Bapu Kondaji, namely, Dnyaneshwar Bapu and Rohini Bapu have been granted validity certificates. They are the first cousin brother and sister of the father of the petitioner Sanju Madhukar. The vigilance committee has noticed that one candidate, namely, Jitendra Kishor Gaikwad has been granted the validity certificate on 26.07.2004 and his great grandfather is said to be Tanha, which makes him the real brother of Nagoji Radhoji. His lineage is not shown in the genealogy tree.

6. The learned AGP strenuously submits that not only Jitendra Kishor, but even Dnyaneshwar Bapu and Rohini Bapu are believed to have obtained their validity certificates by playing

a fraud on the Committee. Even the father of the petitioner Sanju is believed to have played a fraud. Even Jitendra Kishor has been noticed to have committed fraud. Consequentially, the competent Committee has issued show cause notices to Jitendra Kishor, Dnyaneshwar Bapu, Rohini Bapu and Sanju Madhukar for reopening their files along with three more persons, who have also been granted validity certificates and belong to the same genealogy. By these notices, the competent Committee is reinvestigating to locate the fraud.

7. The dictation in this matter was concluded in the first session today. We had directed the provisional admission of the petitioner. However, after lunch, Shri Narwadkar, the learned advocate, mentioned this matter and by tendering an apology, submitted that he has just now realized that an order dated 06.09.2017 was passed by the Honourable Supreme Court in ***Dilip Vitthal Bambale and others vs. Vinitkumar Motiram Totlod and others in Civil Appeal Nos.11234-48 of 2017***, vide which the Honourable Supreme Court has set aside the order passed by the Aurangabad Bench granting provisional admission without insisting on a validity certificate. We, therefore, called upon the learned counsel for the respective sides to further address us and

thereafter, we dictated further portion in this order.

8. This Court, in the matter of *Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1, Nagpur, 2010 (6) Mh.L.J. 401 : AIR 2010 (6) BOM R 21*, has concluded that if the blood relatives found in the genealogy/ family tree, have been granted validity certificates and such certificates are relied upon for the sake of seeking validity, the committee should not insist on such a candidate to once again establish his rights for validity certificate.

9. In *Asad Javed Shah vs. The State of Maharashtra and others, Writ Petition No.5540/2015, Civil Appellate Jurisdiction, Principal Seat at Mumbai, decided on 06.02.2019*, the claim of the petitioner seeking validity of belonging to “Chhapparband-14”, Vimukta Jatis (V.J.) category was denied by the Committee. This Court considered the validity certificates of close blood relatives and relying on the decision delivered in *Apoorva Nichale (supra)*, the petitioner was granted the validity certificate since he fulfilled all the requirements for declaration of belonging to “Chhapparband” caste.

10. In *Aquib Javed Kadri vs. State of Maharashtra and others, Writ Petition No.8401/2016, Civil Appellate Jurisdiction*,

Principal Seat at Mumbai, decided on 21.07.2016, this Court had expressed its serious displeasure on the manner in which the Committee had casually discarded the validity certificates of close blood relatives despite the orders of this Court and the law laid down in ***Apoorva Nichale (supra)***. Similar is the conclusion of this Court in the matter of ***Siddheshwar s/o Ramkisan @ Ramkrushna More vs. Divisional Caste Certificate Scrutiny Committee No.2, Akola and another, 2015 (5) Mh.L.J. 100.***

11. Shri Narwadkar, the learned advocate, has placed before us the order passed by the Honourable Supreme Court (three Judges Bench) dated 06.09.2017 in Civil Appeal Nos.11234-48 of 2017 filed by ***Dilip Vitthal Bambale and others versus Vinitkumar Motiram Totlod (supra)*** wherein, the order passed by this Court (Aurangabad Bench) dated 12.07.2017 in Writ Petition No.8851/2017 granting provisional admissions without insisting on validity certificates, has been quashed and set aside. The order dated 06.09.2017 clearly indicates that the Honourable Supreme Court has disapproved of the High Court granting provisional admissions to the students without insisting on validity certificates.

12. The learned AGP has strenuously contended that the

Court should not ignore the show cause notices issued to Dnyaneshwar Bapu, Rohini Bapu and the father of the petitioner Sanju Madhukar along with three more persons, for reopening their files granting validity certificates, so as to investigate the fraud played by them.

13. We have no reason to brush aside the contention of the learned AGP. However, it cannot be ignored that such show cause notices were issued to these persons and their enquiries are yet to be completed. Their validity certificates are still intact. Presuming that the validity certificates are likely to be withdrawn, would be a far fetched contention since on such assumption, the admission of the petitioner would be jeopardized. When her father and two cousins from the paternal side have been granted the validity certificates, the law laid down in *Apoorva Vinay Nichale (supra)* would be applicable. Needless to state, if the validity certificate of Jitendra Kishor, on which Dnyaneshwar, Rohini and Sanju have relied upon, without disclosing his lineage from the alleged branch of Tanha, is recalled or cancelled, the petitioner would also be susceptible to the same treatment and her validity can then be cancelled as well.

14. In view of the above and considering the crystallized

law in ***Apoorva Vinay Nichale (supra)***, this Writ Petition is partly allowed with the following directions :-

(a) The impugned order dated 10.11.2020 is quashed and set aside.

(b) The petitioner would be granted the “Thakur”, Scheduled Tribe validity certificate by 02:00 PM of 07.12.2021 (tomorrow).

(c) The grant of validity certificate by this order shall be subject to the outcome of the fresh enquiry initiated in the case of Jitendra Kishor, Dnyaneshwar Bapu, Rohini Bapu and Sanju Madhukar and no equities would be created in favour of the petitioner by this order.

(d) Her probable admission in the Engineering Course in the D.Y. Patil Institute of Technology, Pimpri, Pune, would be subject to any adverse order, if suffered by the petitioner in the event of fresh enquiry being conducted in her case.

(e) In the event of any such adverse order being passed against the petitioner, the law laid down in ***Chairman and Managing Director, FCI and others vs. Jagdish Balaram Bahira and others, (2017) 8 SCC 670***, shall be squarely applicable.

15. The pending Civil Application does not survive and stands disposed off.

kps (S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)