

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3602 of 2021**

Saiprasad Sunil Gaikwad	Petitioner
Versus	
The State of Maharashtra and ors.	Respondents

Mr. R. K. Mendadkar along with Ms. Komal Gaikwad, Mr. Tanaji Jadhav and Ms. Priyanka Shah, advocate for the petitioner.
Ms. Ashwini A. Purav, AGP for respondent Nos.1 and 2.
Mr. S. S. Pakale and Mr. Santosh Parad i/b. Ms. Aruna Savla, advocate for respondent No.3 -MCGM.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 7th DECEMBER, 2021.

P.C. :

1. Heard Mr. Mendadkar, learned counsel appearing for the petitioner, Mrs. Purav, learned AGP for respondent Nos.1 and 2 and Mr. Pakale, learned counsel for respondent No.3-Corporation.

2. The order of the Scrutiny Committee dated 23rd March, 2021, is impugned in the present petition. The petitioner who was a student of Walchand Engineering College, Sangli, probably was admitted in the college as reserved category candidate. As such, the claim of the petitioner for validation was referred to Scrutiny Committee, Thane. The

petitioner claimed that he is belonging to “Thakar” Scheduled Tribe. In support of his claim, the petitioner submitted as many as 32 documents ranging from the year 1923 to year 2015. The Scrutiny Committee, by completing the procedural formalities such as referring the claim to the vigilance cell for verification and obtaining the report of the vigilance cell and then providing copy of the said report to the petitioner and after giving an opportunity of hearing to the petitioner, rejected the claim of the petitioner by the impugned order dated 23rd March, 2021. The rejection of the claim is on two grounds. Firstly, the petitioner failed in affinity test and secondly, the documents placed on record by the petitioner also failed to support the claim of the petitioner.

2. Learned AGP appearing for respondent No.2 made available the record of the Scrutiny Committee for perusal. The perusal of the order of the Committee as well as record reveals that in the process of submitting the vigilance cell report, the statements of the petitioner and his nearest relative viz. uncle – Madhusudan Suryakant Gaikwad were recorded. The petitioner also had submitted genealogical tree.

3. Mr. Mendadkar, learned counsel for the petitioner, submitted that apart from the validity certificate issued to the nearest relative of the petitioner viz. aunt – Sunita Suresh Gaikwad, the petitioner also placed on record three other validity certificates issued in favour of the nearest

relatives viz. Aishwarya Sudhakar Gaikwad, Madhura Bhaskar Gaikwad and Jyoti Bholenath Gaikwad. Mr. Mendadkar submitted that the claim of Aishwarya Sudhakar Gaikwad, Madhura Bhaskar Gaikwad and Jyoti Bholenath Gaikwad were initially invalidated. However, the rejection orders were challenged in this Court and this Court set-aside the orders of the Scrutiny Committee and allowed the petitions. Resultantly, the social status of these nearest relatives of the petitioner is approved and confirmed under the orders of this Court.

3. The petitioner also placed on record certain revenue entries in favour of the nearest relatives which are of the year 1923, 1950 and 1953 respectively. Insofar as the affinity test is considered, the observations of the Scrutiny Committee in the order is that vigilance cell report showed that there are certain entries referring contrast status and the petitioner was called upon to submit his say by providing a copy of the vigilance cell report. Though the Committee made an observation that the petitioner, in response to its communication, filed his written submissions on the vigilance cell report, the Committee neither referred to the submissions of the petitioner on the vigilance cell report nor recorded any reason so as to show that it has assessed the written submissions of the petitioner. The Committee has made a reference to the objection raised to the claim of the petitioner by one of the association. The petitioner, by raising an issue of locus, raised an objection for participation of the association in

the hearing before the Committee. The petitioner has submitted as many as 32 documents before the Committee. The oldest document of pre-independence era is an entry in the school register in respect of two relatives of the petitioner viz. great grandfathers Laxman and Manik. These are the entries of 1st February, 1923 and 9th February, 1923 respectively. Then there are other entries of the year 1934, 1927, 1940 in respect of the cousin grandfathers of the petitioner viz. Chandrakant Gopal Gaikwad, Janardhan Gopal Gaikwad, Shivaji Gopal Gaikwad and Mahadeo Gopal Gaikwad. Then there are other documents in the revenue record in relation to the great grandfathers of the petitioner viz. Maruti Bhagwan Dhondi and Janardhan Gopal Gaikwad of the year 1st March, 1923 and 19th July, 1923 respectively. There is also another document of year 1928 of the nearest relative viz. cousin grandfather of the petitioner viz. Pandit Baburao Gaikwad and then, there are other documents of post-independence era. Interestingly, the Committee while referring to these documents, placed heavy reliance on the entries showing status of the petitioner as 'Maratha'. A reference is made to three entries in favour of great grandfather of the petitioner, cousin grandfather of the petitioner and sister of great grandfather of the petitioner. As these entries referred to the social status of the petitioner's said relatives as "Maratha", the Committee observed that the said "Maratha" entry has more probative and evidential value. The Committee then referred to certain judgments and recorded the finding that the

documentary material placed on record is not supporting the claim of the petitioner. The exercise undertaken by the Committee is wholly unacceptable. The Committee only referred to three documents so as to reject the claim of the petitioner showing the social status as "Maratha". The Committee has not at all referred to other documents at least 15 in number and out of these documents, at least 9 documents are of pre-independence era showing social status of the petitioner as "Thakar". There is absolutely no reason assigned by the Committee as to why it could not find any reason to consider these documents which are supporting the claim of the petitioner. The observations of the Committee referring only to particular material and not even considering the documents which are in support of the claim of the petitioner, cannot be accepted as it certainly causes some prejudice to the petitioner. The Committee is expected to assess the material impartially and there must be subjective and objective satisfaction of the Committee on assessment of the documents. In the present case, the Committee seems to be predetermined and as such, referred only to contra material and refused to even consider the material which is in support of the petitioner. Other reason assigned is a suspicion raised by the Committee on validity certificate placed on record by the petitioner. This validity certificate is issued to one of the nearest relative of the petitioner viz. Sunita Suresh Gaikwad by Scrutiny Committee at Pune way back on 23rd August, 2001. Again interestingly enough, the Committee formed an opinion that Sunita

Suresh Gaikwad obtained the validity certificate by misleading the Committee and by suppression of facts. Then, the committee again interestingly, by referring to the order of this Court passed in writ petition No.1954 of 2009(Jyoti Sheshrao Mupade versus the State of Maharashtra and ors.) filed at Aurangabad Bench, submitted that the Committee possessed inherent power to cancel the validity certificate by giving an appropriate opportunity of hearing to the concerned validity holder. It is again very interesting to note that it was the prima facie opinion of the Committee that Sunita Suresh Gaikwad obtained the validity certificate by suppression of fact and misleading the Committee and hence the Committee observed that it would issue notice to Sunita Suresh Gaikwad and call upon her to submit her explanation. Merely, on opinion of the Committee for issuance of the notice to the validity certificate holder would not permit us to accept that the validity certificate was obtained by Sunita Suresh Gaikwad by playing mischief or by suppression of facts. Such observation can only be made by taking the process to its logical end. Here, the Committee has not even initiated process and it was only the observation of the Committee that it would issue notice to Sunita Suresh Gaikwad and call upon her to submit her explanation. Thus, on both counts, the rejection of the claim by the Committee is unsustainable. The Committee has not assessed the material in its proper perspective and there is reason for us to say that the order of the Committee only shows non-application of mind by the Committee.

4. Mrs. Purav, learned AGP, on instructions, submitted that respondent No.2 – Scrutiny Committee forwarded communication to Pune, Committee on 23rd March, 2021 and 29th April, 2021 to undertake the exercise of review of validity certificate granted in favour of Sunita Suresh Gaikwad. Thus, what emerges from the above referred fact is that till today, even notice is not issued to the validity certificate holder – Sunita Suresh Gaikwad.

5. Resultantly, we allow the petition partly. The order impugned in the petition is quashed and set-aside. The matter is remanded back to respondent No.2-Scrutiny Committee for its decision afresh. The Scrutiny Committee is directed to decide the claim of the petitioner afresh as expeditiously as possible and not later than eight weeks from the date of receipt of this order.

6. Mr. Mendadkar, learned counsel for the petitioner, submitted that recently the order of the Scrutiny Committee in the matter of nearest relative of the petitioner viz. Snehal Dilip Gaikwad was challenged in writ petition No.8152 of 2019 and by the judgment and order dated 6th August, 2019, this court allowed the said petition. Mr. Mendadkar is permitted to submit a copy of the said judgment and order passed by this Court to the Scrutiny Committee. The Scrutiny Committee may consider the said judgment and order while deciding the claim of the petitioner afresh.

7. Learned counsel for the petitioner submitted that the petitioner would appear before the Scrutiny Committee on 13th December, 2021. Thus, the issuance of notice to the petitioner is waived off.

8. We further state that in case, the claim of the petitioner is decided by the Scrutiny Committee in favour of the petitioner, the respondent No.3- Bombay Municipal Corporation, may consider the aspect of reinstatement of the petitioner in service as per the provisions of law as well as judgments of the Apex Court or of this Court on the relevant subject.

9. All contentions on merits are kept open.

10. The writ petition stands disposed of in above terms.

11. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)