

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

WRIT PETITION NO.2552 OF 2019

Balaji s/o. Gunaji Chitale

Age : 46 years, Occu : Service,

R/o. Tuppa, Tq. Nanded,

Dist. Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Dy. Director (R),
Aurangabad

.. Respondents

...
AND

WRIT PETITION NO.1943 OF 2018

Ujwala d/o. Raghunathrao Chitale

Age : 51 years, Occu : Household,

R/o. c/o. R.N. Chitale,

House No. 1-6-76, Vidya Nagar,

Nanded, Tq. & Dist. Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Dist. Aurangabad, Through its Joint Director,
CIDCO, Aurangabad

.. Respondents

AND

WRIT PETITION NO.2549 OF 2019

Balaji s/o. Satwaji Chitale

Age : 41 years, Occu : Service,

R/o. Tuppa, Tq. Nanded,

Dist. Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Dy. Director (R),
Aurangabad

.. Respondents

...
AND

WRIT PETITION NO.2550 OF 2019

Jaishri D/o. Venkatrao Chitale

Age : 32 years, Occu : Service,

R/o. Tuppa, Tq. Nanded,

Dist. Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Dy. Director (R),
Aurangabad

.. Respondents

...

AND

WRIT PETITION NO.2551 OF 2019

Rupali D/o. Balaji Chitale
Age : 26 years, Occu : Service,
R/o. Tuppa, Tq. Nanded,
Dist. Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Dy. Director (R),
Aurangabad

.. Respondents

...
AND

WRIT PETITION NO.2723 OF 2019

Gangadhar s/o. Govindrao Chitale
Age : 50 years, Occu : Service,
as a Research Assistant,
R/o. Tuppa, Tq and Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Dist. Aurangabad, Through its Joint Director,
CIDCO, Aurangabad

.. Respondents

...
AND

WRIT PETITION NO.2724 OF 2019

Sunita Govindrao Chitale
Age : 46 years, Occu : Service
as an Assistant Teacher,
R/o. Baba Nagar, Nanded
Tq. and Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.

2. The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Dist. Aurangabad, Through its Joint Director,
CIDCO, Aurangabad

.. Respondents

...

Mr. R.N. Dhorde, Senior Counsel h/f. Mr. Sunil M. Vibhute,
Advocate for the petitioner in W.P. Nos.2552 of 2019,
2549 of 2019, 2550 of 2019, 2551 of 2019.

Mr. Chandrakant R. Thorat , Advocate for petitioner in
W.P. Nos.1943 of 2019, 2723 of 2019, 2724 of 2019.

Mr. S.B. Yawalkar, AGP for Respondent – State.

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 29.08.2022
PRONOUNCED ON : 08.09.2022**

JUDGMENT (PER SANDEEP V. MARNE, J.) :

1. Caste Scrutiny Committee, Aurangabad was tasked upon
to decide the claims of Rushali Balaji Chitale and Akshay Balaji

Chitale in respect of 'Mannerwarlu' Tribe. The Committee proceeded to invalidate the tribe claims of Rushali and Akshay vide judgment and order dated 19.10.2018. Rushali and Akshay had relied upon validity certificates issued in favour of several of their relatives, including their father. Rejection of tribe claims of Rushali and Akshay has triggered issuance of Show Cause Notices to their relatives, including their father, for cancellation of their respective validity certificates. Such Show Cause Notices have been subject matter of challenge before us in the present petitions.

2. Since the issue involved in all the writ petitions is common, we have discussed the facts in Writ Petition No.2552 of 2019 filed by Balaji Gunaji Chitale, who is father of Rushali and Akshay.

3. Balaji (hereinafter referred to as 'the Petitioner') has challenged Show Cause Notice dated 26.11.2018 issued by Scheduled Tribe Certificate Verification Committee, Aurangabad conveying him that a suspicion has been raised in respect of the validity certificate dated 16.08.2008 issued to him. Another communication dated 05.02.2019 is sent to him conveying him detailed reasons for issuance of the Show Cause Notice and asking him to show cause as to why his validity certificate should not be cancelled.

4. The case of the petitioner, in nutshell, is as under :

Tahsildar, Nanded issued Tribe Certificate dated 15.07.1995 in favour of the petitioner certifying that he belongs to 'Mannerwarlu' Scheduled Tribe. His niece, Jaishri Venkatrao Chitale, had applied for validity certificate and in her case, the Vigilance Report had pointed out overwritings in school records of her father and real uncle. The Scrutiny Committee passed judgment and order dated 07.11.2007 in the case of Jaishri upholding her caste claim and issued validity certificate of 'Mannerwarlu' Scheduled Tribe. Thereafter, he was issued validity certificate vide judgment and order dated 16.03.2008 of 'Mannerwarlu' Scheduled Tribe relying *inter alia* on the validity certificate issued in favour of Jaishri.

5. Petitioner's children Rushali and Akshay were also issued Certificate of Mannerwarlu Scheduled Tribe on 19.06.2009. The Vigilance Report submitted in validity proceedings of Rushali and Akshay, *inter alia* pointed out that there were overwritings in the school records of the petitioner wherein "lu" was added in different handwriting and ink. The Committee, therefore, proceeded to invalidate the claims of Rushali and Akshay by judgment and order dated 19.10.2011 alleging suppression of facts. On account of invalidation of the caste claims of his children Rushali and Akshay,

the petitioner is issued the impugned Show Cause Notice for cancellation the Validity Certificate issued in his favour.

6. Mr. R.N. Dhorde, learned senior advocate appearing for the petitioner has submitted that the impugned Show Cause Notice is not maintainable as the Committee cannot review its own decision in absence of any statutory power. Alternatively, he submits that there is no allegation of fraud in the entire Show Cause Notice and therefore, even if the power of review is assumed to be available, there is no material for issuance of the impugned Show Cause Notice.

7. To buttress his contention that there is no fraud or misrepresentation on the part of the petitioner, Mr. Dhorde has taken us through various orders passed by this Court with regard to issuance of Validity Certificates in the case of Ujwala Rangnath Chitale and Sanjay Rangnath Chitale, which were relied upon while issuing petitioner's validity certificate. We shall refer to the said proceedings little latter. He has also taken us through the order passed by the Scrutiny Committee while issuing Validity Certificate in favour of Jaishri Venkatrao Chitale, who again is paternal relative of the petitioner. Furthermore, he has submitted that the entire material that is now sought to be alleged in the impugned Show Cause Notice was considered by the Committee while issuing Validity Certificate in

favour of Jaishri. He thus submitted that there is absolutely no material on record to even raise a doubt of fraud or misrepresentation for issuance of the impugned Show Cause Notice.

8. In support of his contentions, Mr. Dhorde has relied upon following Judgments :

- (i) **Laxmi R. Karhadkar V/s. Resident Deputy Collector Mumbai and Others, 2003 (1) ALL MR 715.**
- (ii) **Ganesh Murlidhar Shirskar Vs. The State of Maharashtra and Others, Writ Petition No.5079 of 2008 decided on 26.08.2008.**
- (iii) **Narshi Thakershi Patel and others Vs. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273.**
- (iv) **Apoorva Nichale V/s. Divisional Caste Certificate Scrutiny Committee, 2010 (6) Mh.L.J. 403.**
- (v) **Anil Bandawar V/s. Divisional Caste Certificate Scrutiny Committee, 2021 (5) Mh.L.J. 345.**
- (vi) **Vishnu Rajaram Thakur V/s. State of Maharashtra and another. Writ Petition No.647 of 2022 decided on 09.03.2022.**
- (vii) **J. Chitra V/s. District Collector, Civil Appeal No.5160 of 2010 decided on 02.09.2021.**

9. Per contra, Mr. Yawalkar, learned Additional Government Pleader has raised a preliminary objection about maintainability of the present petition. He submits that what is challenged in the present petition is a mere show cause notice calling upon the petitioner to submit his reply. On account of the petitioner having already filed reply to the Show Cause Notice, he urges before us that the Committee should be allowed to take a final decision in the

matter rather than interdicting the proceedings at this stage. He thus submits that the petition is premature and should be dismissed by relegating the petitioner before the Scrutiny Committee.

10. He relies upon the Judgments of the Supreme Court in **Divisional Forest Officers & Ors Vs. M. Ramalinga Reddy (2007) 9 SCC 286** and **Union of India and another Vs. Kunisetty Satyanarayana, 2007 AIR SCW 607** to buttress his contention that mere Show Cause Notice cannot be challenged before Courts. He also relies upon Order of this Court in **Saiprasad Yadavrao Mundlod Vs. State of Maharashtra, Writ Petition No. 5222 of 2022 decided on 15-06-2022** wherein Petition filed challenging show cause notice issued by Scrutiny Committee was not entertained by this Court. Mr. Yawalkar further submits that there has been gross misrepresentation on the part of the petitioner in obtaining the Validity Certificate and that misrepresentation also amounts to fraud. He submits that on account of such misrepresentation, the Committee is empowered to issue Show Cause Notice. He submits that existence or otherwise of fraud would be something which would be inquired into by the Committee and that the same need not be alleged in the show cause notice itself.

11. He relies upon the provisions of Section 3, 7 and 10 of

Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation of Issuance And Verification Of) Caste Certificate Act, 2000 (hereinafter in short 'Act of 2000') to contend that since issuance of validity certificate puts holders thereof into privileged class, this Court should permit the Scrutiny Committee to examine the correctness of the validity certificate rather than preventing it from doing so. He submits that the purpose of issuance of show cause notice, being in larger public interest, this Court should permit the Committee to decide the show cause notice.

12. In support of his contentions, Mr. Yawalkar relies upon following Judgments :

- (i) **Rushikesh Bharat Garud Vs. The State of Maharashtra and others, Civil Appeal No.7442 of 2021 decided on 10.12.2021.**
- (ii) **Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others, (2017) 8 SCC 670**
- (iii) **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Ors, Civil Appeal No.5308 of 2008 decided on 29.08.2008**
- (iv) **Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd., Civil Appeal No.1334 with 1737 of 1995 decided on 09.08.1996**
- (v) **S.P. Chengalvaraya Naidu (Dead) by L.Rs. Vs. Jagannath (Dead) by L.Rs. And Ors., Civil appeal No.994 of 1972 decided on 27.10.1993.**
- (vi) **Behari Kunj Sahkari Avas Samiti Vs. State of U.P. and Ors., Civil**

Appeal No.1795 of 2000 decided on 25.07.2008.

- (vii) **Gagadhar s/o. Poshetti Mamod Vs. The Scheduled Tribe Caste Certificate Verification Committee, Aurangabad, Writ Petition No.5447 of 2007 decided on 31.01.2008.**
- (viii) **Chandrakant Tulshiram Padalwar Vs. The State of Maharashtra & Others, Writ Petition No.2653 of 2006 decided on 19.06.2008.**
- (ix) **Jyoti Sheshrao Mupde Vs. State of Maharashtra and Ors., Writ Petition No.1954 of 2009 decided on 22.08.2012.**
- (x) **Devendra Gurunath Khedgikar Vs. Scheduled Tribe Certificate Scrutiny Committee, Pune, Writ Petition No.3739 of 2008 decided on 12.02.2009**

13. Rival contentions of the parties now fall for our consideration.

14. We would first deal with the submission of Mr. Yawalkar that this Court cannot determine the validity of show cause notice and the Scrutiny Committee must be allowed to decide the same. To support his contention, Mr. Yawalkar has relied upon the decision of the Apex Court in **Kunisetty Satyanarayana** (supra). However, in that case the issue was with regard to challenge to the memorandum of charge-sheet in a disciplinary inquiry. The said decision is clearly distinguishable. The power of the disciplinary authority to initiate disciplinary proceedings in respect of misconduct is vast and is not restricted. The disciplinary authority has statutory powers to initiate disciplinary proceedings in respect of any misconduct, minor or major

and therefore, the Courts cannot interfere in a mere decision to initiate the disciplinary proceedings. As against this, the Scrutiny Committee has not been conferred with statutory powers to review its orders. The only possible exception is where fraud is alleged in procuring the validity certificate. This Court is, therefore, justified in determining whether a case of fraud is even *prima facie* made out in the show cause notice or not.

15. In **M. Ramalinga Reddy** (supra), the issue was about show cause notice issued for deletion of name from select list and the case involved peculiar facts where the Respondent therein was appointed as a result of interim order of the High Court without any offer of appointment and the Writ Petition was subsequently dismissed. The show cause notice was therefore issued for deletion of name from select list resulting in loss of job. The Supreme Court came to the conclusion that the appointment of Respondent therein itself was erroneous and in the light of these facts it was held that Petition questioning show cause notice was not maintainable. The decision is thus clearly distinguishable.

16. In **Saiprasad Yadavrao Mundlod Vs. State of Maharashtra** (supra), this Court though did not entertain Petition challenging show cause notice issued by Scrutiny Committee, the facts of the case

are not discussed in the order. Therefore it cannot be ascertained whether the notice was given alleging fraud or not. Also, in several cases, some of which have been referred by us in latter portion of this judgment, this Court has entertained petitions challenging the show cause notices issued for cancellation of validity certificates. Therefore, we reject the contention of Mr. Yawalkar that the petition is premature.

17. Having repelled the objection about maintainability of the Petition, we now proceed to determine whether the Scrutiny Committee is justified in issuing the impugned show cause notice. The law with regard to the jurisdiction of the Scrutiny Committee to issue show cause notice for cancellation of validity certificate is now well settled. Undeniably, power of review has not been conferred upon the Scrutiny Committee under the provisions of Act of 2000. Therefore, ordinarily the Scrutiny Committee cannot exercise the power of review.

18. In **Patel Narshi Thakershi** (supra) the Apex Court held that the power to review is not an inherent power and it must be conferred by law either specifically or by necessary implication. In para - 4 it is held as under:

“4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government’s order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was liable to be set aside.”

19. In so far as the power of review being exercised by the Scrutiny Committee is concerned, this Court has held in **Laxmi R. Karhadkar** (supra) that once the Scrutiny Committee has scrutinized the case of caste claim and granted Caste Validity Certificate, it has no power of reviewing its decision. The principle of absence of inherent power of review in an authority came to be reiterated. The Court held in para - 8 as under:

“8. For the foregoing reasons, in our opinion, this petition deserves to be allowed, and is, accordingly, allowed. It is held that the Order dated October 7, 2002 will not be treated as order cancelling the

certificate issued in favour of the petitioner. The Scrutiny Committee, however, is directed to consider the validity of the certificate in the light of allegations and averments, and will take an appropriate decision after affording an opportunity of hearing to the petitioner, as also to the objectors. Such decision shall be taken by the Committee as expeditiously as possible, preferably within three months from today.”

20. Again in **Ganesh Murlidhar Shirskar** (supra) this Court reiterated the law on exercise of power of review by the Scrutiny Committee and held in para - 5 as under:

“5. Law is now well settled that the power of review must be expressly conferred. It is only in the case of procedural review that the Supreme Court has held that it is inherent in every court or Tribunal. However, powers of substantive review must be expressly conferred.

. What the Committee is seeking to exercise its power at substantive review. Such power of review has not been conferred on the Committee under the Maharashtra Scheduled Castes, Scheduled Tribes, Other Backward Classes and Special Backward Classes (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. Once there is no power of review, it would not be open to the Committee to review the order passed earlier by competent Tribunal. Apart from that we note in this case that earlier the Committee has given decision in 1992. The new exercise is sought to be done sometime in the year 2007-2008. The entire exercise is therefore without jurisdiction. The inquiry sought to be conducted will have to be quashed and set aside.”

21. Even though the Scrutiny Committee does not have inherent power to review its decision, in case of a fraud being

practiced on it, the Committee can always recall its order. This principle is recognized in the decision of this Court in **Jyoti Sheshrao Mupde** (supra), wherein it is held that whenever an order obtained by playing fraud or by suppressing the material facts or misrepresenting the facts, the Scrutiny Committee shall have the power to reconsider its order. The view is reiterated in another decision of this Court in **Rajeshwar Baburao Bone Vs. State of Maharashtra and Anr.**, Writ Petition No.5160 of 2012 decided on 17.12.2012.

22. In the case of **J. Chitra** (supra), the Apex Court has decided the issue of validity of show cause notice for cancellation of the validity certificate. Reiterating the scope of power of review / reopening available to the Committee, the Court held in para 8 of the Judgment as under:

“8. In the instant case, an inquiry was conducted by the District Level Vigilance Committee which has upheld the community certificate in favour of the Appellant. The decision of the District Level Vigilance Committee in the year 1999 has not been challenged in any forum. The recognition of the community certificate issued in favour of the Appellant by the District Vigilance Committee having become final, the State Level Scrutiny Committee did not have jurisdiction to reopen the matter and remand for fresh consideration by the District Level Vigilance Committee. The guidelines issued by G.O. 108 dated 12.09.2007 do not permit the State Level Scrutiny Committee to reopen cases which have become final.

The purpose of verification of caste certificates by Scrutiny Committees is to avoid false and bogus claims. Repeated inquiries for verification of caste certificates would be detrimental to the members of Scheduled Castes and Scheduled Tribes. **Reopening of inquiry into caste certificates can be only in case they are vitiated by fraud or when they were issued without proper inquiry.”**

(emphasis supplied)

23. Having discussed the law on the scope of review available with the Scrutiny Committee, we now proceed to determine, whether there exists any valid ground for the Scrutiny Committee to issue the impugned show cause notice. As held in various decisions, show cause notice for cancellation of validity certificate can only be issued in the event the validity certificate being obtained by practicing fraud, misrepresentation or suppression of facts.

24. We have gone through the impugned show cause notice as well as the subsequent communication dated 05.02.2019 conveying detailed reasons for issuance of the show cause notice. Perusal of both show that there is no allegation of any fraud being practiced in procuring the certificate of validity. What is essentially alleged is that the provisions of Rule 26.4 of Secondary School Code were misused for correcting entry relating to caste in the school records of the petitioner. On the basis of this allegation, an inference

is raised that the then Scrutiny Committee was misled by him to get the validity certificate.

25. At the outset, we have no hesitation in holding that the contents of the show cause notice or the communication dated 05.02.2019 do not make out any case of fraud, misrepresentation or suppression of material facts. We have already held that existence of fraud, misrepresentation or suppression is *sine qua none* for issuance of show cause notice for cancellation of validity certificate. In absence of either of the three, proceedings for cancellation of validity certificate cannot be initiated.

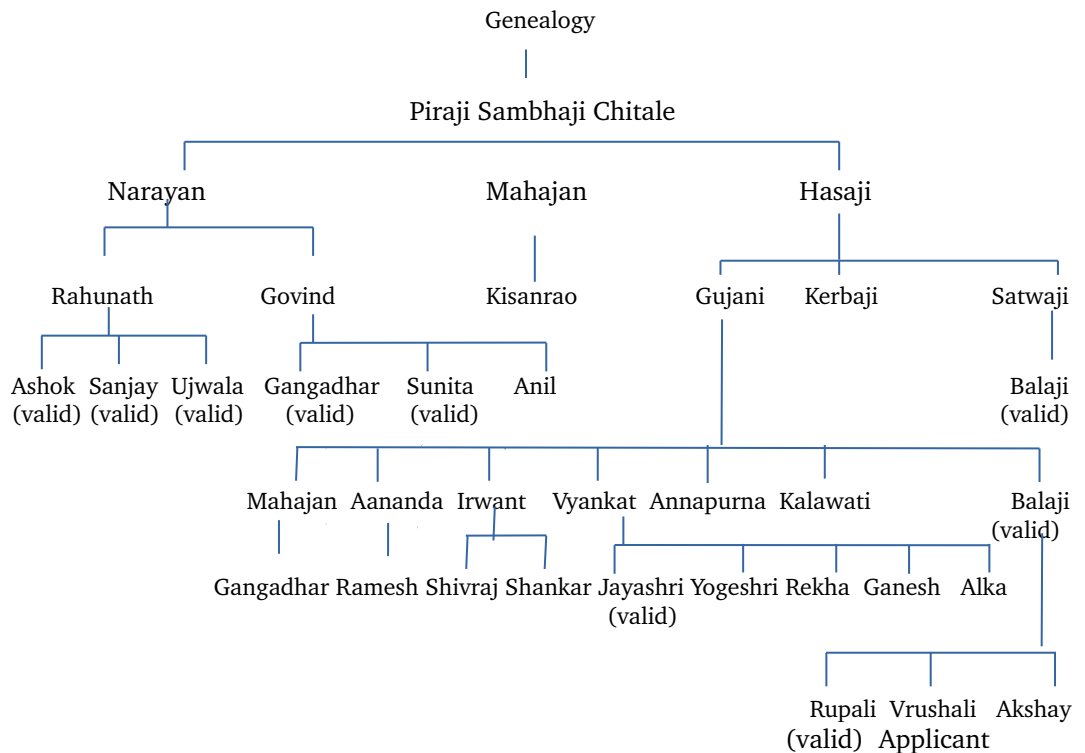
26. Mr. Yawalkar has attempted to impress upon us that what is issued is merely a show cause notice for instituting an enquiry and therefore, it is not necessary that finding of fraud, misrepresentation or suppression must be included in the show cause notice itself. Mr. Yawalkar submits that upon completion of inquiry in the matter if the material exists, the Scrutiny Committee will record appropriate finding on fraud, misrepresentation or suppression. He, therefore, submits that the Scrutiny Committee cannot be prevented at this juncture from determining whether there exists fraud, misrepresentation or suppression.

27. We are not in agreement with the said submissions of Mr. Yawalkar. Unless the Committee arrives at a *prima facie* conclusion that fraud, misrepresentation or suppression exists, it cannot issue any show cause notice for cancellation of validity certificate. Such a show cause notice cannot be routinely issued as the Committee does not have power of review. Therefore, it was mandatory for the Scrutiny Committee to first record a *prima facie* finding that the validity certificate was obtained by practicing fraud, misrepresentation or by gross suppression of material facts. If these elements are absent, the Scrutiny Committee is powerless for initiating any action for cancellation of validity certificate.

28. We have already held that the show cause notice does not contain any *prima facie* finding to the effect that the validity certificate was procured by practicing fraud, misrepresentation or by suppressing material facts. On this ground alone, the impugned show cause notice deserves to be set aside. We would have been justified in setting aside the impugned show cause notice on this ground itself. However, since Mr. Yawalkar has made an attempt to impress upon us that allegation of misrepresentation, though specifically absent in the notice, the same can be gathered from contents thereof and that such misrepresentation would amount to fraud, we embarked upon an

enquiry into the proceedings regarding to issuance of validity certificates to the petitioner and his paternal relatives, Jaishri, Ujwala and Sanjay.

The genealogy of the family is as under:



29. As held hereinabove, the Validity Certificate was issued to the petitioner *inter alia* based upon the validity certificate issued to Jaishri, who is his niece. We have gone through the order of the Scrutiny Committee dated 07.11.2007, by which Jaishri was issued the Validity Certificate. We observe that while issuing the Validity Certificate to Jaishri, the aspect of overwriting in the school records of the petitioner was specifically highlighted and taken note of by the Committee as under:

“In the enquiry report vigilance cell pointed out that, in the school record of applicant’s father caste recorded as “Manervarlu in other ink in the column of Language and in the school record of applicant’s real uncle caste basically recorded as “Manurwar” and after overwriting it changed as “Mannervarlu”, the committee called for the say of the applicant on the enquiry report vide committee’s notice dated 29/03/2007. The applicant’s father has submitted say on the enquiry report vide his letter dated 16/08/2007 & stated that her grandfather was illiterate due to illiteracy of her grandfather caste of her uncle basically recorded as “Munurwar” he say that he belongs to “Mannervarlu” Scheduled Tribe. In supporting of his say he has submitted the validity certificates of her cousin uncle Shri Gangadhar Govindrao Chitale valid on 31/05/2006, her cousin aunt Kum. Sunita Govindrao Chitale on 08/03/2006 and her cousin aunt Kum. Ujawala Raghunath Chitale valid on 16/07/2004. The say of the applicant has accepted by the committee.”

30. The Committee, however, proceeded to issue validity certificate to Jaishri *inter alia* considering the validity certificates issued to Ujawala and Sanjay, who are her cousin aunt and uncle respectively.

31. Since the validity certificates issued to Ujawala and Sanjay formed the basis for issuance of Validity Certificate to Jaishri, we have gone through those proceedings as well. Initially, the tribe claims of Ujawala and Sanjay were rejected by the Scrutiny Committee on the ground that the caste claim of their father was unauthorisedly altered

from 'Mannarwar' to 'Mannervarlu' by the Education Officer without being empowered to do so. The decision of the Scrutiny Committee was challenged in Writ Petition No.616 of 1986. This Court set aside the order of the Scrutiny Committee holding that the Education Officer was empowered to correct entry in school records under the provisions of the Secondary School Code. The case was, therefore, remanded to the Scrutiny Committee to decide the caste claim by taking into account the order passed by the Education Officer correcting the caste in school record from 'Mannarwar' to 'Mannervarlu'.

32. The caste claims of Ujwala and Sanjay were once again rejected by the Scrutiny Committee. They again approached this Court by filing Writ Petition No.1627 of 1990 and the decision of rejection was once again set aside by this Court holding that too much importance was given to the aspect of change of entries in the school records. The matter was once again remanded to the Committee for fresh inquiry. This time, the Scrutiny Committee was pleased to uphold the caste claims of Ujwala and Sanjay by its order dated 24.06.2004. After carefully going through the said order dated 24.06.2004, we find that the objection of alteration of entry in school record of their father was specifically taken into account by the

Committee by observing as under:

“In this case of 1. Shri Sanjay Ragnath Chitale and 2. Ku. Ujwala Raghunath Chitale they have submitted the school leaving certificate, caste certificate, an extract of school general & admission register as well as validity certificate of himself and herself and their relatives, which shows that as per record the applicant’s father school record mentioned no caste column but the primary school record of the applicant’s father is not made available till the date of order. The applicant’s School record mentioned caste as “Munurwar” but with due permission of appropriate authority i.e. is the Education Officer, there is a change of entry in 1981 when they were studying in that school as “Mannervarlu” as prescribed in Secondary school code and the Hon’ble High Court in it’s observation specifically directed in para no.3 “Undue reliance is placed only on one circumstance, leaving aside the other circumstances unconsidered, it being change of entries in regard to the tribe of the applicant’s in the school record under the orders of the education officer. No other documents and material placed on record has, at all been considered, leave aside in proper perspective.”

33. Perusal of the proceedings relating to issuance of validity certificates to Jaishri, Ujwala and Sanjay show that the aspect of alteration of caste entries in the school records and authority of Education Officer to do so has duly been taken into account by the respective Committees. Most importantly, the validity certificates in the case of Ujwala and Sanjay have been issued in pursuance of orders passed by this Court, which have attained finality. We are, therefore, unable to comprehend as to how the Scrutiny Committee

has arrived at a conclusion that the petitioner has misled the Committee. The *prima facie* finding of misuse of the provisions of Rule 26.4 of the Secondary School Code cannot be sustained in the light of this Court's finding in its decision in Writ Petition No.616 of 1986 and 495 of 1987 in the case of Ujwala and Sanjay that the Education officer has the necessary power to correct the caste entries.

34. Thus, even though we were not supposed to go into the merits of the show cause notice, we have briefly examined the correctness of allegations made in the show cause notice only with a view to satisfy us as to whether even a suspicion of fraud can be raised. Having gone through the entire material on record, we have no hesitation in holding that apart from absence of allegation of fraud, misrepresentation or suppression in the show cause notice, there actually exists no such fraud, misrepresentation or suppression.

35. In this regard, reliance of Mr. Dhorde on the decisions of this Court in **Anil Bandawar** (supra) and **Vishnu Rajaram Thakur** (supra) is apposite. In para - 7 of **Anil Bandawar** (supra) it is held as under:

“7. We may note that neither in the show cause notice nor in the impugned order cancelling the Caste

Validity Certificate issued to the petitioner is there any reference made to “fraud” being practiced by the petitioner while obtaining the Caste Validity Certificate. It is however sought to be urged by the Scrutiny Committee that it exercised such power on the premise that the petitioner while seeking verification of his caste claim had not referred to the old revenue records of 1920-24 and hence the same amounted to playing fraud. It may be stated that it was the Scrutiny Committee which was satisfied with the documents relied upon by the petitioner when he had sought verification of his caste claim. The Scrutiny Committee did not deem it fit to obtain a report of the Vigilance Cell and instead proceeded to issue a Caste Validity Certificate to the petitioner. Such power of dispensing with an inquiry by the Vigilance Cell is vested with the Scrutiny Committee by virtue of Rule 17 (6) of the Rules of 2012. The premise on which the Caste Validity Certificate issued to the petitioner has been cancelled is that the petitioner failed to bring before the Scrutiny Committee the old revenue records of 1920-24. In our view such alleged act of the petitioner failing to bring before the Scrutiny Committee the old revenue records can hardly amount to playing fraud while seeking the Caste Validity Certificate. In this regard useful reference may be made to the observations in *Shri Krishnan Vs. Kurukshetra University, Kurukshetra*, AIR 1976 SC 376 wherein the Honourable Supreme Court observed that it is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It would neither be a case of *suggestio falsi* or *supressio veri*. In other words, it was open for the Scrutiny Committee while verifying the Caste Certificate of the petitioner to have conducted an inquiry by the Vigilance Cell. The Scrutiny Committee however did not deem it necessary to have such inquiry conducted by the Vigilance Cell. The Scrutiny Committee was thus in a position to discover the old revenue records of 1920-24 by exercise of due diligence which could have been done by holding an inquiry by the Vigilance Cell. It however did not choose to do so and thus it would not

be legally permissible now for the Scrutiny Committee to urge that by not referring to old revenue records of 1920-24 the petitioner was guilty of practicing fraud. As stated above though the aspect of fraud was neither mentioned by the Scrutiny Committee in its show cause notice nor referred to in the impugned order we have dealt with said aspect as the impugned order was sought to be supported on that count before this Court.”

36. Reliance on various decisions by Mr. Yawalkar on the issue of fraud has now become academic in view of the finding recorded by us that there is no allegation of fraud in the show cause notice as well as there exists no such fraud. In **S.P. Chengalvaraya Naidu** (supra), **Satyam Fibres (India) Pvt. Ltd.** (supra) and **Behari Kunj Sahkari Avas Samiti** (supra) relied upon by Mr. Yawalkar, it has been repeatedly held that judgment or decree obtained by playing fraud on the Court is a nullity and *non est* in the eyes of law. There can be no dispute about this proposition. However, the said decisions are of no avail to Mr. Yawalkar in view of fact that the Scrutiny Committee itself has not recorded even a *prima facie* finding of fraud. Equally inapplicable are the decisions in **Chairman and Managing Director, Food Corporation of India and Others** (supra) and **Raju Ramsing Vasave** (supra) relied upon by Mr. Yawalkar laying down the principle that benefits obtained on the basis of invalid caste claims must be withdrawn. We do not wish to burden this judgment by discussing and distinguishing various other decisions of this Court

relied upon by Mr. Yawalkar in view of the position that the show cause notice itself does not record even a *prima facie* finding of fraud, misrepresentation or suppression.

37. In the result, we find that the Scrutiny Committee has committed a jurisdictional error in issuing the impugned show cause notice to the petitioner. In absence of finding of fraud, misrepresentation or gross suppression of material facts, the Scrutiny Committee did not have jurisdiction to issue impugned show cause notice. Consequently, the impugned show cause notice deserves to be quashed and set aside.

38. Since issue involved in the case of Balaji is common in other Writ Petitions as well, the show cause notices impugned in all the Writ Petitions deserve to be quashed and set aside.

39. Consequently, we allow all the Writ Petitions by setting aside the show cause notices impugned therein. There shall be no orders as to costs.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)