

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

WRIT PETITION No.3726 OF 2022

1. Saikiran Ramrao Totawar,
Age 25 years, Occu: Student,
R/o House No.1033, Totawar Galli,
Tq. Degloor, District Nanded.
Cell No.9763366321.
 2. Ajay Satyanarayan Totawar,
Age 27 years, Occu: Nil - Student,
R/o House No.1033, Totawar Galli,
Tq. Degloor, District Nanded.
Cell No.9403210719.
 3. Ambika Rajeshwar Totawar,
Age 19 years, Occu: Student,
R/o House No.1033, Totawar Galli,
Tq. Degloor, District Nanded.
Cell No.8485851690
- ... Petitioners**

Versus

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai - 400 032.
 2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad,
Through its Member Secretary.
 3. The Director,
Walchand College of Engineering,
(Govt. aided autonomous Institute),
Vishrambag, Dist. Sangli 416 415. M.S.
Email : wce@walchandsangli.ac.in
director@walchandsangli.ac.in.
- ... Respondents**

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Advocate for Petitioners : Mr. A. S. Deshpande.
AGP for Respondents-State : Mr. S. K. Tambe.

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**CORAM: R. D. DHANUKA, AND
S. G. MEHARE, JJ.**

**RESERVED ON : 30.03.2022
PRONOUNCED ON : 04.05.2022**

JUDGMENT : (Per S. G. Mehare, J.):-

1. Rule. Learned AGP waives service of notice for respondents Nos.1 and 2.
2. Rule is made returnable forthwith and by the consent of the parties heard finally.
3. By this writ petition under Article 226 of the Constitution of India, the petitioners seek a Writ of Certiorari to quash and set aside the impugned order dated 03.03.2022 passed by respondent No.2 Committee rejecting their tribe validity claim and a Writ of Mandamus directing respondent No.2 to issue tribe validity certificate of "Mannervarlu" – Scheduled Tribe in their favour.
4. Learned Counsel for the petitioners would argue that on 13.05.2008, the father of petitioner No.1 was granted the validity certificate. Their two uncles were also granted the caste validity certificates in 2008-09. In 2003-04, two real cousin uncles of the petitioners had also been granted the validity certificates. At least 25 validity certificates were issued

to the petitioners' families; still, respondent No.2 Committee has invalidated the petitioners' claim.

5. Learned Counsel for petitioners has vehemently argued that the powers to review have not been invested with the Scrutiny Committee to review its own order. However, it has undoubtedly, the powers to open the case only to the limited issue if the fraud has been played by the claimant while obtaining the caste/tribe validity. In the case at hand, respondent No.2 Scrutiny Committee has applied a pick and choose policy and referred only 14 validity certificates, including one of Pravin Ramlu Totawar, who is not in close relation with the family of the petitioners. The Committee has willfully omitted a reference to more than ten persons in the petitioners' families who have been granted validity certificates. The petitioners replied to the vigilance report extensively.

6. The petitioners are suffering in their respective career and education opportunities due to the non-granting of the validity certificates. Petitioner No.3 has been precluded from participating in the admission process after her 12th standard. Petitioner No.2 has to pay the entire tuition fee for B.Ed. Course. Petitioner No.1 could not participate in the selection

process for the post of Surveyor though applied, owing to the non-issuance of degree certificate of B. Tech. (Civil). Hence, this petition.

7. To bolster the arguments, learned Counsel for the petitioners placed reliance upon the decision of the Honourable Apex Court in the case of *Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar & ors., (2008) 9 Supreme Court Cases 54* and the decisions rendered by this Court in *Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1, Sadar, Nagpur & Ors., 2010 (6) AIR BOM R 21* and in the case of *Anil s/o Shivram Bandawar Vs. The District Caste Certificate Verification Committee & Anr. in Writ Petition No.8107 of 2019, dated 26.7.2021*. He has vehemently argued that the petitioners have a good case and the material placed before the Scrutiny Committee is sufficient to issue them validity certificates.

8. Mr. Deshpande, learned Counsel for the petitioners, has vehemently argued that the Committee failed in not considering the validity certificate in the wake of as many as 25 validity certificates being granted to the family members by the earlier Scrutiny Committee. The Scrutiny Committee has unfoundedly made the accusations against the petitioners that

the validity holders in the petitioners' family had furnished false information while obtaining validity certificates without substantiating the said accusations. There is absolutely no discussion on playing fraud and suppressing the facts while obtaining the certificates by the petitioners' relatives. The findings of respondent No.2 are vague. It has not discussed how the case of Sheshrao Mopale is applicable. The Committee has not addressed the fraud committed by the validity holders or how they suppressed the facts, fabricated the documents, and misled the Scrutiny Committee.

9. It is submitted that the Committee should have given due regard to the replies in response to the report of the vigilance cell and ought to have verified from the record as to the nature of so called fraud or misleading or fabrication etc., while refusing the benefit of the validity certificates issued to their close relations. The reasons assigned by the Scrutiny Committee are hypothetical and without any reasons. The Scrutiny Committee has no case since the validity granted to the close relatives has not been recalled till date. The blood relatives are entitled to the validity certificate until the validity certificate is in force. He also argued that the impugned order

is without application of mind and illegal. The impugned order is mechanical.

10. It is submitted that no powers to review are vested with the Committee but certainly has the power to open the cases only when forgery or fraud is suspected. No such fraud has been proved in the procurement of certificates of the family members of the petitioners. The Scrutiny Committee did not consider that similarity in the surname does not prove the relation. Out of 49 persons, 33 are not even petitioners' distant or blood relatives. The report obtained about seven persons of the revenue record are also not the blood relatives of the petitioners. The impugned judgment is illegal and liable to be set aside.

11. Per contra, the learned A.G.P. Shri. Tambe would submit that while granting the earlier certificates, the Committee did not call for a vigilance inquiry report in 1998. The Courts have granted the conditional orders. There is contra evidence. Witness Hanumant, has stated that the record was interpolated. The petitioners did not correct the entry in the name of Laxmibai by following the procedure laid down in the Secondary Schools Code. He has vehemently argued that the word "lu" was conveniently added in many cases to take

advantage of the reservation. Scrutiny Committee has correctly appreciated the evidence and passed a legal and valid order. He also relied on the case of *Rushikesh Bharat Garud Vs. The State of Maharashtra & Ors of the Principal Seat at Bombay, Writ Petition (St.) No.11536 of 2021, decided on 29.6.2021*. Learned AGP for the Scrutiny Committee has also argued that the Vigilance Cell has made an investigation in detail and discovered the contra entries. The evidence collected by the Vigilance Cell proved that the blood relatives of the petitioners had obtained the validity certificate suppressing the material facts and on the basis of the evidence of the maternal relatives. The fraud vitiates everything. Hence, they are not entitled to claim on the basis of such a caste validity certificate.

12. So far as the question of review is concerned, the law is settled that the power of review can be exercised only when the statute provides for the same. In the absence of any such provision in the concerned statute, the authority concerned cannot exercise such power of review. However, where the fraud is played with the court, the authority concerned has the power to call back its orders.

13. It is not in dispute that various validity certificates were issued to the blood relatives of the petitioners. The petitioners

have specifically denied the relations with the persons of whom the Vigilance Cell has collected the evidence or neither distant relatives nor blood relatives. The Committee has not commented a single word on the reply filed by the petitioners to the vigilance report. The reply definitely has some importance while determining the caste validity claim. The Committee itself has observed in paragraph No.II, while deciding issue No.1, that the large number of documents belonging to the applicants and their fathers and uncles, particularly the school record, shows the caste "Mannervarlu". However, it has recorded the findings that those documents are of the year between 1972 to 2020. No reasons have been assigned by the Scrutiny Committee while recording the finding that those entries have been entered in the school register only to obtain the caste validity except the bare words. The Scrutiny Committee did not assign any reason whether the relations with whom the petitioners have denied the relations is a correct statement.

14. So far as the interpolation of the caste in old record is concerned, the Scrutiny Committee has not referred the matter to the handwriting expert nor collected the evidence from the concerned school to find out who has committed such

interpolation. Therefore, the ratio of *Sayanna Vs State of Maharashtra and Others* case (S.C.) would apply in the case at hand. No doubt, a single fabricated entry may vitiate the whole claim of the petitioners. As far as the fraud is concerned, it is an act to fabricate the document or cheat the document that resists the doubt about its genuineness. The Scrutiny Committee has to verify the genuineness of the documents placed on record, and if any interpolation is doubted, then the Committee should call the expert opinion to confirm the doubt. Barely observing that the relatives of the petitioners have unauthorisedly interpolated or made the changes in the school record is insufficient. Allegations of fraud are severe and stigmatic. In bare words, the finding as to the fraud, if recorded, shall be discarded.

15. The Scrutiny Committee also discussed the 7/12 extract of the petitioners' families from the year 1954-55 as well as 1959-60. Noting the crops sown by the relatives, the Committee has recorded a strange finding that in the year 1954-55, the "Mannevarlu" community was deprived of basic amenities. However, looking at the entries in the above record, the applicant and his family being advanced agriculturists, have suppressed the information about their original caste.

How there can be a relation between advanced agriculturists and caste that too in an agricultural country like ours. The reasonings shows perversity. Hence, we discard such findings. Same way, the Scrutiny Committee has recorded the strange finding that in the 7/12 extract, there are no entries as per Section 36 and 36-A of the Maharashtra Land Revenue Code as the tribal occupier. Hence, it does not corroborate the petitioners' claim.

16. The Scrutiny Committee has recorded the illegal findings that though the school record of other persons collected is not of the blood relatives of the petitioners, they belong to their caste. In the absence of cogent evidence that those persons belong to the petitioners' caste and have some relationship with them, such a finding is inadmissible. It may be possible that those who have written their caste different from Mannervarlu caste do not mean that their mistake affects the right of the claimants.

17. So far as the resemblance in the surname is concerned, it is absolutely an illogical finding that those persons are either belonging to or do not belong to the caste of petitioners. Surname is undoubtedly not a criterion to determine the caste of a person. It is experienced that the similar surnames are in

different caste. In the absence of any cogent evidence, the Scrutiny Committee has also recorded an erroneous finding that the entry of the caste in the service books of petitioners' father and uncle is recorded by suppressing their original caste. In the absence of cogent and reliable evidence of fraud and suppression of facts, an authority appreciating the evidence can not abruptly record such serious findings. It is nothing but a conjuncture and surmises.

18. So far as the area restriction is concerned, the law is settled that it is not the ground to discard the caste claim.

19. In *Apoorva Vinay Nichale Vs Divisional Caste Scrutiny Committee No.1, Sadar, Nagpur and Others 2010(6) AIR BOM R 21*, the law is well settled that where a committee has given finding about the validity of caste of candidate, another committee ought not to refuse same status to blood relative who applies and mere different view on the same facts would not entitle the Committee dealing with subsequent caste claim to reject it.

20. We have gone through the record with the abled assistance of the learned Counsel for the petitioners as well as the learned AGP. The claim of the petitioners was based upon the earlier validity certificates granted by the competent

Scrutiny Committee. We do not find the findings or material before us that the Committee has rejected caste claim of any blood relatives on the ground of obtaining it on fraud and suppression of facts. The reasons assigned by the Caste Scrutiny Committee are against the settled principles of law and the principles of appreciating the evidence. We do not find any reason to substantiate the impugned order.

21. For the aforesaid reasons, we proceed to pass the following order :

ORDER

- (a) The impugned order passed by respondent No.2 dated 03.03.2022 is quashed and set aside.
- (b) Respondent No.2 is directed to issue "Mannervarlu" tribe caste certificate to the petitioners within a week from the receipt of this order.
- (c) Rule is made absolute in the above terms.
- (d) No orders as to costs.
- (e) Record and proceeding be returned to the learned A.G.P.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

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vmk/-