

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

43 WRIT PETITION NO. 7895 OF 2022

SURAJ S/O BALAJI ISANKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for Petitioner : Mr. Chandrakant R. Thorat
AGP for Respondent Nos. 1, 2 and 5-State : Mr. A. R. Kale
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CORAM : RAVINDRA V. GHUGE AND
ARUN R. PEDNEKER, JJ.

DATED : 26 SEPTEMBER 2022

PER COURT :-

1. The petitioner is before this Court setting forth prayer clauses
“A” and “B” and “C” as under : -

“A. By issuing Writ of Certiorari or any other appropriate writ or direction in the like nature, be please to quash and set aside the Judgment and Order dated 05/07/2022, passed by the respondent No.5 Scheduled Tribe Certificate Scrutiny Committee, Kinwat Headquarter Aurangabad, Exhibit-A.

B. By issuing Writ of Mandamus or any other appropriate writ or direction in the like nature, be please to direct the respondent No.5 Scheduled Tribe Certificate Scrutiny Committee, Kinwat Headquarter Aurangabad to issue Tribe Validity Certificate in favour of the petitioner as belonging to “Mannervarlu” Scheduled Tribe.

C. Pending Hearing and till Final disposal of this Writ Petition, be pleased to be stay the execution, operation and implementation of the Judgment and Order dated 05/07/2022, passed by the respondent No.5 Scheduled Tribe Certificate Scrutiny Committee, Kinwat Headquarter Aurangabad.”

2. The petitioner completed his M.B.B.S. course and has appeared for the NEET–PG 2022 examination. He aspires to take up a PG course in Health Science. He has scored 459 marks out of 800 and if he belongs to the ST category, he would be eligible for selection. Reliance is placed on **Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee No.1, Nagpur and others [2010 (6) Mh.L.J. 401]**.

3. We have heard the learned Advocate for the petitioner and the learned AGP on behalf of respondent nos. 1, 2 and 5. Respondent nos. 3 and 4 are formal parties.

4. We have considered the family tree submitted by the petitioner before the competent committee along with an affidavit dated 19.04.2017. Vide the said family tree, it is apparent that the biological sister of the petitioner Miss Shweta, a real uncle Shri Govind Sambhaji Isankar and a grand cousin uncle Shri Ramdas Isankar, have been granted validity certificates. Shweta was granted validity

certificate by this Court at the Principal Seat (Coram : S.C. Dharmadhikari and Smt. Bharati H. Dangre, JJ.) vide order dated 27.07.2018 passed in **Writ Petition No. 5611 of 2018 (Shweta Balaji Isankar v. State of Maharashtra and others)**.

5. We have gone through the reasons assigned by the committee and we find that the major portion of the order reproduces reported judgments and several paragraphs of the said judgments having been quoted. What intrigues us is that the thrust of the committee is on the validity granted to the real uncle Govind Sambhaji Isankar, who is the biological brother of the father of the petitioner, namely Balaji Sambhaji Isankar. It is stated that the validity granted to Govind is vulnerable and a show cause notice has been issued with the intention of reopening the said case. This was the same reason which was cited 4 years ago before this Court at the Principal Seat in **Shweta's** case (supra). It was canvassed that Govind appears to have played a fraud and the fraud has been detected. This Court observed in paragraphs 3 and 4 in the case of **Shweta** (supra) as under : -

“3 On such a finding being rendered by the Committee, we called upon the learned AGP on the earlier two occasions to produce the record. We also indicated to the learned AGP as to how the certificate of validity is

denied to the petitioner though she has established her relationship with the said Govind and only on the ground that a show cause notice has been issued, but no proceedings in furtherance thereof came to be initiated till date. The learned AGP sought time to file an affidavit. Now, the Joint Commissioner, Schedule Tribe Scrutiny Committee, Aurangabad has filed an affidavit in reply. That is taken on record. The said affidavit admits that the certificate of validity has been issued to her real uncle and cousin uncle of the petitioner. The affidavit admits that the petitioner relies heavily on these two documents, but clarifies that there is a suppression detected from the original record of the certificate holder and that is how a show cause notice has been issued to Govind. The show cause notice could not be taken to its logical end on account of the huge pendency of cases before this Committee. In all, 7,000 matters were pending on the date when this Joint Commissioner took charge and he has reduced the pendency by 2500 cases being decided. In the circumstances, he says that appropriate orders and directions be issued by this Court.

4 We are not impressed by this explanation and the justification not to proceed against a person who has perpetrated a fraud on the public. If it is a serious allegation and which is termed as fraud, then, it should have been taken to its logical end. Mere issuance

of a show cause notice in the present case would not suffice for there are two certificates of validity relied upon. The only reason assigned in the impugned order to discard them, cannot be sustained. The justification in the above affidavit is also not enough to straightaway discard the certificates of validity issued in the family. It is conceded that other reasons assigned in the impugned order cannot be supported in law.”

[Emphasis supplied]

6. We respectfully agree with the view taken by this Court in **Shweta** (supra) to the extent of the observations set out in paragraphs 3 and 4. If a committee is of the view, which has to be founded only on the basis of the record and cannot be by way of an assumption or presumption, that Govind had played a fraud, then the committee should take the issue to a logical end and should conclude on the basis of the record as to how the fraud can be said to have been committed by Govind. If such a fraud is exposed, naturally the validity granted to Govind, subject to the law applicable, will have to be cancelled.

7. When **Shweta's** case was decided on 27.07.2018, the committee had cited the reason that Govind has committed a fraud and therefore, a show cause notice has been issued to him with regard to

the validity certificate issued to him earlier. This Court recorded in paragraph 4 that issuing a show cause notice would not impress the Court. Even after four years, the learned AGP submits today, on instructions taken from the committee, that beyond the issuance of notice to Govind, the case has not progressed.

8. In the above backdrop, this Court had observed in **Shweta** (supra) in paragraph 8 as under :-

“8. This order does not prevent the Committee from proceeding against Govind in accordance with law and needless to further clarify that in the event Govind’s claim is invalidated, all the consequences shall be taken by the petitioner as well.”

9. The learned AGP has made a strenuous effort to convince the Court that no relief should be granted to the present petitioner Suraj, who is the biological brother of Shweta. We are of the view that the committee is not able to comprehend as to what would be the effect of Shweta having been granted the validity certificate under the orders of this Court dated 27.07.2018, and the committee comes to a conclusion that Suraj does not belong to the same tribe to which Shweta belongs. This would create an anomaly since Shweta has been granted a validity certificate by this Court and Suraj, her biological

brother, is being held to be not belonging to the same Scheduled Tribe. Between two biological siblings, one belongs to a Scheduled Tribe and the other is said to be not belonging to the same tribe. This cannot be permitted.

10. Suraj is presently pursuing education. In the fact situation as recorded above, the balance of convenience as well as the record will have to be held in favour of Suraj since the committee has invalidated his claim solely on the ground that Govind's claim is doubtful. Govind has a validity certificate even today and the same is undisturbed. Issuance of a show cause notice may only open a proceeding with regard to Govind. However, his validity cannot be deemed to have been set aside only on the basis of the issuance of a show cause notice. In this backdrop, we deem it appropriate to follow the same course as was followed by this Court at the Principal Seat in the case of **Shweta** (supra).

11. As such, this petition is partly allowed. The impugned order of the scrutiny committee dated 05.07.2022 is quashed and set aside. The certificate of validity, with regard to the 'Mannervarlu' Scheduled Tribe claim of the petitioner, be issued to the petitioner on or before 15.10.2022.

12. Needless to state, this order would not be an impediment for the committee to proceed with the reopened case of Govind. In the event Govind's claim is invalidated, akin to the order passed on 27.07.2018 in the case of **Shweta** (supra), the effects flowing from the invalidity of Govind's claim will be applicable to Sweta and Suraj. All consequences would, therefore, befall upon Shweta and Suraj.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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