

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 11366 OF 2022

Shruti D/o Sayanna Gudlawar,
Age. 20 years, Occu. Education,
R/o. Kundalwadi, Tq. Biloli,
Dist. Nanded.

... **Petitioner**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Caste Certificate
Verification Committee Kinwat,
Through its Dy. Director (R),
At. Aurangabad.
3. The Commissioner & Competent Authority,
Commissionerate of Common Entrance Test Cell,
Government of Maharashtra,
8th Floor, New Excelsior Building,
A. K. Naik Marg, Fort, Mumbai.

... **Respondents**

...
Mr. Sunil M. Vibhute, Advocate for Petitioner.
Mr. S. K. Tambe, AGP for Respondent/State.

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 28th November, 2022.

ORAL JUDGMENT: (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses 'B', 'C' and 'D' as under:-

- "B) The impugned Judgment and order dated 29/09/2022 passed by the respondent no. 2 committee, invalidating the Tribe Claim of the petitioner of Mannervarlu Schedule Tribe, may kindly be quashed and set aside and respondent No. 2 committee may kindly be directed to issue Tribe Validity Certificate of Mannervarlu Tribe to the petitioner.
- C) Pending hearing and final disposal of this petition, the impugned and order dated 29/09/2022 passed by the respondent no. 2 committee, invalidating the Tribe Claim of the petitioner of Mannervarlu Schedule Tribe, may kindly be stayed.
- D) The respondent no. 3 may kindly be directed to consider the petitioner from Schedule Tribe category in entire admission process of NEET-UG-2022 without insisting for Tribe Validity Certificate of the petitioner, subject to the adjudication of Tribe Claim of the petitioner by this Hon'ble Court in this petition."

3. After considering the exhaustive submissions of the learned advocate for the petitioner and the vehement objections of the learned AGP, we find from the record and this aspect is undisputed, that the claim of the petitioner has been invalidated by the scrutiny committee only on the ground that the “students admission register of the Zilla Parishad High School in Kundalwadi, District Nanded” has a doubtful entry in respect of Laxman Saidanna Gudlawar, wherein his caste / tribe is shown as “Mannerwarlu”. Laxman Saidanna is the biological cousin grandfather of the petitioner. The petitioner’s father is Sayanna Potanna Gudlawar. Her grandfather is Potanna Saidanna Gudlawar. Laxman is the biological brother of the petitioner’s grandfather Potanna. Laxman did not seek validity since he is not well educated and never took any employment. However, Gangadhar Saidanna (elder amongst the two brothers by same name Gangadhar Saidanna), was granted a validity certificate. Dattatray son of Gangadhar is also granted a validity certificate. The petitioner’s father Sayanna Potanna has been granted validity certificate.

4. The petitioner’s case revolves around the school entry of Laxman Saidanna. The matter reached this Court through Dattatray Gangadhar Gundlawar (Sic. Gudlawar) in Writ Petition No.2822 of

2006. By judgment dated 10th January, 2008, this Court (Coram: P. V. Hardas and S. P. Kukday, JJ.), saw the entry from the Zilla Parishad High School record. Instead of drawing a conclusion, the matter was referred to a handwriting expert and based on the report of the handwriting expert, the case of Dattatray Gangadhar was to be reconsidered.

5. The report of the handwriting expert Shri Sanjay Kathar, Assistant State Examiner of Documents, C.I.D., Aurangabad, Maharashtra State is placed before us. The opinion is dated 27th May, 2008 bearing No.AHW/63/2008 wherein it has been concluded that the word “ Mannervarlu ” (wrongly typed as “Munnervarlu” instead of “Mannervarlu”) reveals that the word “Mannervar” (wrongly typed as “Munnerwar”) and the letter “lu” are written at the same time by the same person. There is no comment upon whether the ink is different. Once the Assistant State Examiner of Documents, C.I.D., Aurangabad has tendered a report indicating that the disputed entry is plain and simple “Mannervarlu” and there is no suspicious interpolation, change in handwriting or change in ink, we do not have to look any further. Moreover, based on the said entry, Dattatray has been granted validity certificate. So also the father of the petitioner Sayanna has also been granted validity based on the validity issued to Dattatray.

6. The learned AGP submits, on instructions, that the cases of both Sayanna and Dattatray, including two validities granted in the brotherhood are being reopened by issuance of notices. The committee once again desires to refer the documents to the handwriting expert. We do not approve this, for the reason that it was under the order of the High Court that the matter was referred to the handwriting expert, who was the Assistant State Examiner of Documents, C.I.D., Aurangabad. This report, dated 27th May, 2008, has not been challenged by the committee or by the State. After more than 14 years, the said entry cannot be once again remitted to a handwriting expert for the reason that once it has been verified and the impression has been documented, there cannot be a second examination of the said document, unless either the committee or the State has challenged the report of the handwriting expert before the competent authority or the Court.

7. We find from the record that the case of the petitioner is invalidated only on the ground that the committee still finds the entry of Laxman Saidanna to be suspicious. In the absence of any challenge to the report of the State Examiner of Documents, it is not open to the authority to once again refer the document to a second

handwriting expert. Such exercise is endless. After 14 years of the report, the committee now desires to again refer the document to a second expert. If that finding is against the committee indicating there is no interpolation, it cannot be ruled out that in future another committee would refer the matter once again to an expert. An expert of the department cannot sit over the report of an earlier expert, unless the said report is challenged before the competent authority on the ground that the State Examiner of Documents has submitted a defective or erroneous report.

8. Since the petitioner's claim has been rejected on the solitary ground that the entry is suspicious, we do not find that the said reason could be sustained in the light of the above discussion. Though the Assistant State Examiner of Documents has verified the report, we have ourselves perused the colour scanned copy of the original entry of Laxman Saidanna's Zilla Parishad School under a magnifying glass, in the light of the submissions of the learned AGP. After reading the entry under a magnifying glass, we do not find any change in ink or in the handwriting, much less, any interpolation. The word "lu" does not appear to have been squeezed in between the word 'r' and the border line of Column No.5.

9. As such, this petition is allowed. The impugned order of the committee dated 29th September, 2022, is quashed and set aside. Taking into account the fact that the petitioner, who has been selected in the NEET-UG-2022 test and has been granted admission in the Government Medical College at Aurangabad, that we directed the committee to issue a validity certificate to the petitioner in terms of “Mannervarlu” Scheduled Tribe, by 05:00 pm today. The father of the petitioner would collect the said validity certificate by following the due procedure today at 05:00 pm at the office of the committee at Aurangabad. We have issued this direction keeping in view that the petitioner has to tender her validity certificate with the Government Medical College, Osmanabad by 05:30 pm tomorrow.

10. Parties to act in the light of the dictation of this judgment in open Court and need not wait for the judgment to be uploaded.

11. We appreciate the statement made by the learned AGP that he would immediately convey this order to the committee.

12. Since the committee has informed us that they are likely to reopen some cases, which are related to the petitioner, they are at

liberty to do so in the event of any other ground or any other document that may have surfaced or discovered, save and except, with respect to the entry of Laxman Saidanna.

13. Rule is made absolute in the above terms.

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[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE J.]