IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11114 OF 2022

Rajat Girish Thakur,
Age-18 years, Occu-Education,
R/o.Gangakhed, Tq.Gangakhed,
Dist.Parbhani,
Presently residing at
Choudhari, Jalna,
Tq. and Dist. Jalna -- PETITIONER

VERSUS

1. Schedule Tribe Certificate
   Scrutiny Committee,
   Aurangabad,
   Through it's Member Secretary,

2. State Common Entrance Test Cell,
   Maharashtra, Mumbai,
   8th Floor, New Excelsior,
   A.K.Nayak Marg, Fort,
   Mumbai, through it's Commissioner
   and Competent Authority -- RESPONDENTS

Mr.Mahesh S.Deshmukh, Advocate for the petitioner.
Mr.S.G.Karlekar, AGP for the respondent/State.
Mr.M.D.Narwadkar, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : NOVEMBER 15, 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, a student, is aggrieved by the order dated 27.10.2022 passed by the Committee vide which his claim of belonging to the "Thakur Scheduled Tribe", has been invalidated.

3. Notice was issued by the learned Vacation Court vide order dated 04.11.2022.

4. The petitioner has put forth prayer clauses (A) to (D) as under :-

"A. Issue writ of certiorari and/or any other appropriate writ, order or in the like nature, thereby quash and set aside impugned order dtd. 27.10.2022 and received on 01.11.2022 passed by respondent No.1 - Scrutiny Committee, Aurangabad invalidating Tribe Claim of petitioner being "Thakur", Scheduled Tribe.

B. Hold and declare that, the petitioner belongs to "Thakur" Scheduled Tribe and consequently direct the respondent No.1 - Scrutiny Committee, Aurangabad to forthwith issue certificate of validity in favour of petitioner within stipulated period.

C. Grant stay to the effect, operation and implementation of impugned

order dtd. 27.10.2022 and received on 01.11.2022) passed by respondent No.1 - Scrutiny Committee, Aurangabad, pending hearing and final disposal of the instant petition.

D. Issue an interim order thereby direct the respondent No.2 or anybody on its behalf to grant admission to the petitioner for Academic Year 2022-23 to Health Science Courses from Schedule Tribe Category in the college in State of Maharashtra without insisting for Caste Validity Certificate, pending hearing and final disposal of instant petition."

5. The petitioner has appeared for the NEET-UG 2022 examination and aspires to take up a course in Health Science on the basis of the "Thakur Scheduled Tribe". Undisputedly, there are 11 validity holders amongst the paternal blood relatives of the petitioner. We have perused the family tree, which is a part of the affidavit tendered by the petitioner in support of his claim before the Committee. The list of 11 validity holders includes the father of the petitioner, paternal aunt (father's sister), 4 paternal biological second cousin uncles, 3 paternal biological cousin aunts, 2 paternal biological cousin brothers and 1 paternal biological cousin sister. 2 amongst these 11 validity holders had initially suffered rejection. They approached the High Court and by judgments, they have been bestowed with the validity certificates.

6. Considering the Law laid down by the Hon'ble Supreme Court in **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and others [(2008) 9 SCC 54]** and **Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and Others [2010 (6) Mh.L.J. 401]**, we are of the view that an anamoly can not be created amongst the paternal blood relatives, unless there are certain circumstances which would indicate that the validity holders had succeeded by playing a fraud and the cases were reopened and subjected to a re-scrutiny.

7. The learned AGP submits on instructions from the Committee that certain blood relatives of the petitioner who are granted validities, are subjected to show cause notices to the holders with the intention of re-opening their cases.

8. In view of the above, for the present, as there is no invalidation amongst any of the paternal family members and since there are 11 validity holders in the family, we deem it appropriate to rely upon the law laid down by the Hon'ble Supreme Court in the case of **Raju Vasave**

(supra) which was followed by this Court in **Apoorva Nichale (supra)**. In identical set of facts, the learned Division Bench of this Court (Coram : S.C.Dharmadhikari and Smt.Bharati H.Dangre, JJ), at the Principal Seat, delivered an order dated 27.07.2018 in WP No.5611/2018 filed by **Shweta Balaji Vs. State of Maharashtra and Others**. This Court had recorded that the biological sister of Shweta and her real uncle Govind alongwith a grand cousin uncle Ramdas, had been granted validity certificates. It was, therefore, recorded in paragraph Nos. 3 and 4 in 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 suprression 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 directs 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."

9. In view of the peculiar facts as above and considering that there are 11 validity holders amongst the paternal blood relatives that we are adopting the said view that was adopted by this Court in Shweta (supra).

10. In so far as the strenuous contention of the learned AGP that notices have been issued by the Committee to some of the validity

holders and it cannot be ruled out that the cases may be re-opened for fresh scrutiny, we find that in Shweta (supra), this Court had considered similar submissions as regards validity holders having purportedly indulged in a fraud. When this Court decided the case of Shweta (supra), none of the validity holders had suffered final orders after re-opening of their cases. Since it was canvassed that the cases are being re-opened or have been re-opened, this Court observed in paragraph No.8 in Shweta (supra) 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."

11. In view of the above, this petition is partly allowed. The impugned order dated 27.10.2022 stands quashed and set aside. We direct the Committee to issue a certificate of validity of belonging to Thakur Scheduled Tribe, to the petitioner, within 15 days.

12. Needless to state, this order would not be an impediment for the Committee to reconsider any case as it may deem fit and proper and within the parameters of Law and in the event of any of the validity

holders, on whose validities, the petitioner has relied upon in this petition, suffer invalidation after re-opening of his/her case and his/her claim is then invalidated, the validity certificate being granted under this order, would be subject to fresh scrutiny and consequences that would follow from the re-opened cases, would befall upon the present petitioner.

13. Rule is made partly absolute.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)