

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

WRIT PETITION NO. 11824 OF 2022

Arya d/o Ranjit Thakur,
Age-18 years, Occu: Education,
R/o. Mantha, Tq. Mantha,
Dist. Jalna,
Presently residing at
Choudhari Nagar, 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 &
Competent Authority.

... **Respondents**

...
Mr. S. S. Phatale, h/f Mr. Mahesh S. Deshmukh, Advocate for the
petitioner.
Mr. S. G. Sangle, AGP for the 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, 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. The petitioner claims to be the biological cousin sister of Rajat Girish Thakur, who has been granted conditional validity under the order of this Court dated 15th November, 2022 delivered in Writ Petition No.11114 of 2022. The said petitioner Rajat is the great-grandson of Namdeo Omaji, whose three sons were Vitthal, Pandurang and Prakash. The paternal grandfather of Rajat, was Vitthal. The paternal-grandfather of the present petitioner Arya is Prakash, who is the biological brother of Vitthal and Pandurang. There are 12 validity holders in the family tree, including Rajat. Three validities are granted under the orders of the High Court. Even the father of the present petitioner, Ranjit son of Prakash, is a validity holder and the father of Rajat, Girish son of Vitthal, also has a validity.

3. 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 1.11.2022 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 1.11.2022) 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 Resp. 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.”

4. 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 12 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 her claim before the Committee. The list of 12 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. 3 amongst these 12 validity holders had initially suffered rejection. They approached the High Court and by judgments, they have been bestowed with the validity certificates.

5. 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 anomaly 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.

6. 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 with the intention of re-opening their cases. The learned AGP further submits that:-

- a) The petitioner has placed reliance on the validity certificates issued to the persons from paternal side. The petitioner has relied upon the conditional validity granted to Gouri Chandrashekhar Thakur in Writ Petition Mo. 9007/2018, who is cousin sister of the petitioner. So also the petitioner has relied upon the conditional validity granted to Rajat s/o Girish Thakur by this Honourable High Court.
- b) The first of the validity granted in the entire family is of Girish Vitthalrao Thakur on 07.04.2001 and thereafter other validities, on which the petitioner has placed reliance, have been granted on the basis of validity dated 07.04.2001.
- c) All the validities were obtained by the validity holders

by suppressing entries of Rajput in respect of Varsha Vitthalrao Thakur and entry Maratha in respect of Vidya Vitthalrao Thakur.

- d) The validity holders Ranjit Prakash Thakur, Akshay Prafulla Thakur, Chandrashekhar Prakash Thakur and Sangita Pandurang Thakur were issued by the committee whose composition was not in accordance with the Rules, 2003 and does not hold any legal status. The issue of composition of committee was dealt by the Honourable Court in W.P.No. 8202/2010 and 9413/2010.
- e) The other validities of Sangita Pandurang Thakur, Balaji Pandurang Thakur, Ranjit Prakash Thakur, Chandrashekhar Prakash Thakur, Akshay Prafulla Thakur were not subjected to vigilance inquiry and, as such, do not have any evidentiary value in breach of the Court's guidelines laid down in the matter of Madhuri Patil. The validities relied upon, do not disclose reasons.
- f) The validities relied upon by the petitioner are reopened and as same were obtained by suppressing entries of validity holder Vidya Vitthalrao and Varsha

Vitthalrao Thakur.

- g) The petitioner has failed to lead evidence as regards the migration from the specified area to the place of residence and further had failed the affinity test.

7. In view of the above, for the present, as there is no invalidation amongst any of the paternal family members and since there are 12 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 Isankar 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 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 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.”

[Emphasis supplied]

8. In view of the peculiar facts as above and considering that there are 12 validity holders amongst the paternal blood relatives that we are adopting the same view that was adopted by this Court in Shweta (supra).

9. 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."

10. In view of the above, this petition is partly allowed. The impugned order dated 27th October, 2022, which is a common order passed in the case of the present petitioner Arya, as well as Rajat, whose writ petition is allowed by judgment dated 15th November, 2022, is quashed and set aside.

11. 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 by the Committee and consequences that would follow from the re-opened cases, would befall upon the present petitioner.

12. We direct the Committee at Aurangabad, to issue a certificate of validity of belonging to the “Thakur Scheduled Tribe”, to the petitioner, by 05:00 pm today since the petitioner has to tender the validity certificate to the Medical College at Kudal, District Sindhudurg upto 05:30 pm, tomorrow.

13. We appreciate the gesture of the learned AGP, who agrees to intimate the Committee at Aurangabad that this order has been passed in the open Court and is to be acted upon.

14. Rule is made partly absolute.

nga [SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE J.]