

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

WRIT PETITION NO. 2868 OF 2020

Naresh Rajeshwar Bone

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. M. B. Karande, Advocate for the Petitioner.

Mr. S. G. Sangle, AGP for Respondents-State.

Mr. K. C. Sant, Advocate for Respondent No. 5.

WITH

WRIT PETITION NO. 6286 OF 2022

Naresh Rajeshwar Bone

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. A. N. Sabnis, Advocate h/f Mr. E. S. Murge, Advocate for the
Petitioner.

Mr. S. G. Sangle, AGP for Respondents-State.

Mr. K. C. Sant, Advocate for Respondent No. 3.

**CORAM : RAVINDRA V. GHUGE &
 ANIL L. PANSARE, JJ.**

DATED : 11th JULY, 2022.

PER COURT:-

1. In the first petition, the same petitioner Naresh Rajeshwar Bone
has put forth prayers clauses B, C and D as under :-

“B. By way of appropriate writ or order or direction in the like nature, the impugned judgment and order dated 30/06/2018 in proceeding no. LAT/EDN/4/2012, passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Aurangabad may kindly be quashed and set aside.

C. During pendency and final hearing of this writ petition, stay may kindly be granted to the effect and implementation of impugned judgment and order dated 30/06/2018 in proceeding no. LAT/EDN/4/2012, passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Aurangabad.

D. Pending hearing and final decision of this writ petition, the petitioner's education of M.B.B.S. with respondent no. 3 college may kindly be continued and protected.”

2. It is undisputed that this petition was directed against the invalidation of the claim of the petitioner of belonging to the Koli Mahadev, Scheduled Tribe category on the basis of which he had obtained admission in the Dr. Shankarrao Chavan Government Medical College, Vishnupuri, Nanded.

3. The dates and sequence of events, for the sake of clarity, are set out herein below :-

- a. The tribe claim of the biological uncle of the petitioner, namely Sharad Baburao Bone came to be invalidated by the competent committee on 20.10.2004.
- b. The father of the present petitioner, namely Rajeshwar and Sharad are biological brothers.
- c. On 02.12.2004, this Court dismissed writ petition No. 6937 of 2004 filed by Sharad and sustained the order of the scrutiny committee invalidating his claim.
- d. Sharad approached the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 5416 of 2005 which was dismissed on 10.05.2005.
- e. Thereafter, Rajeshwar applied for validation of his Koli Mahadev claim, on 07.11.2009.
- f. On 19.06.2010, the claim of Rajeshwar was validated/granted.
- g. Therefore, on 31.08.2010, Sharad moved an application for review of the order of invalidation, which was dismissed by the High Court.
- h. On 27.07.2011, the petitioner Naresh received a tribe certificate for the Koli Mahadev, Scheduled Tribe.
- i. On 24.02.2012, the scrutiny committee reopened the case of Rajeshwar, father of the present petitioner and invalidated his claim on the ground of suppression of the fact that his brother Sharad had suffered invalidation right up to the Hon'ble Supreme Court.

- j. Writ petition No. 5160 of 2012 filed by Rajeshwar, was dismissed by this Court vide order dated 17.12.2013.
- k. Rajeshwar approached the Hon'ble Supreme Court in Civil Appeal No. 5778 of 2015, which was dismissed by the Hon'ble Supreme Court on 29.07.2015, reported at 2015 AIR (SC) 3024, Rajeshwar Baburao Bone Vs. State of Maharashtra and another.
- l. The present petitioner Naresh cleared his MBBS examination held in the year 2017 and the results were declared and the passing certificate was issued on 04.04.2018, during the pendency of his validation claim.
- m. On 19.04.2018, this court disposed of Writ Petition No. 3147 of 2018 filed by the present petitioner Naresh directing the committee to decide his pending claim, early.
- n. By order dated 30.06.2018, the claim of the petitioner was invalidated keeping in view that the claims of his father - Rajeshwar Baburao Bone and uncle Sharad Baburao Bone, were invalidated up to the Hon'ble Supreme Court. He preferred W.P. Stamp No. 35163 of 2018.
- o. As Writ Petition No. 2868 of 2020 filed in the year 2018 (on stamp No. 35163 of 2018) was dismissed in default, this Court allowed Civil Application No. 8665 of 2019 by order dated 20.07.2019 and restored the petition.

p. By order dated 11.01.2020, this Court allowed Civil Application No. 1082 of 2020 and directed that the internship certificate be granted to the petitioner.

q. The petitioner Naresh was allotted a seat in Diploma of National Board Orthopedic Surgery equivalent to M.S., on 09.09.2020 from the General category.

4. The Petitioner filed W.P. No.6286 of 2022, with prayer clauses (B) and (C) as under:

(B) That, by issuing writ of Mandamus or any other appropriate writ order or direction in the like nature the Respondent No.3 may kindly be directed to issue Degree certificate of M.B.B.S. Medical course as early as possible within stipulated period to the petitioner.

(C) Pending hearing and final disposal of the this writ petition to direct the Respondent No.3 for issuance Degree certificate of M.B.B.S. Medical course as early as possible within stipulated period to the petitioner.

5. The learned advocate for the petitioner Shri Sabnis, has placed before us a compilation of judgments which are as under :

(I) Barkha Rajesh Manik Vs. State of Maharashtra and Ors. in Writ Petition No. 3464 of 2015 dated 28.02.2019.

(II) R. Vishwanatha Pillai Vs. State of Kerala and others reported in (2004) 2 Supreme Court Cases 105.

(III) Chairman and Managing Director Food Corporation of India and others Vs. Jagdish Balaram Bahira and others reported in 2017 AIR (SC) 3271.

6. Shri Sabnis, learned advocate has tendered his written notes of submissions dated 11.07.2022. We are reproducing the said submissions verbatim hereunder :

“1. The tribe claim of father of the petitioner was validated by the Scrutiny Committee vide its decision dated 19/06/2010. It has come on record that, even before validation the father of the petitioner has disclosed to the scrutiny committee that, he was not aware about invalidation of claim of his brother and that, he does not reside with his brother. This material aspect has been noted by the scrutiny committee in its order dated 24/02/2012 in paragraph No. 13. However, it has been disbelieved by the committee without any basis. This material factor does not seem to have been noted by the High Court or by the Supreme Court while considering the proceedings filed by the father of the petitioner.

2. Reopening of claim of father of the petitioner is a consequence of review application filed by uncle of the petitioner. Even though the fact of invalidation of Shri. Sharad Bone i.e. uncle of the petitioner was disclosed to the committee by father of the petitioner, the same did not affect the adjudication of claim of father of the petitioner which had been considered by the committee on merits and the claim had been validated on the

first occasion. Taking a completely opposite stand, the committee invalidated the claim of father of the petitioner being completely influenced by invalidation of uncle Shri. Sharad Bone. This material aspect which goes to the root of the matter does not seem to have been brought to the notice of the High Court or the Supreme Court as there is no discussion on this aspect.

3. As far as petitioner is concerned, the petitioner had filed his proposal for validation on 09/07/2012 and at the said time, the invalidation of father of the petitioner tribe claim was yet to have been confirmed as the Writ Petition No. 5160/2012 filed by the father of the petitioner was pending before the High Court since 11/04/2012.

4. The petitioner though secured admission to MBBS from reserved category, however, his tribe claim was kept pending by the scrutiny committee since the year 2012 and only under orders passed by the High Court in Writ Petition No. 3147/2018 on 19/04/2018, the committee was directed to decide the claim expeditiously and within stipulated period. Before the tribe claim could be decided the petitioner had already cleared MBBS.

5. Having regard to the fact of invalidation of the tribe claim of the petitioner, he had appeared for NEET-PG i.e. to secure admission for post graduation course from general category and has secured admission through NEET -2020 to the said course of orthopedic surgery from general category only. The petitioner had also paid fees as is chargeable to students appearing in general category during the course of his education with the University of Health Science i.e. during MBBS.

6. It needs to be appreciated that, an unfavourable caste decision in one matter cannot by itself affect and pre-empt a favourable order in the matter of another relation, if otherwise justified. The invalidation of a near relative could be termed as a

circumstance against the claim, however, the same cannot be treated as a conclusive circumstances either way. At the most such decisions can be used as guidelines or circumstances to be taken into consideration along with other evidence and the scrutiny committee has to apply its mind to the facts and circumstances and decide the cases individually in the light of every circumstance. In the present matter the scrutiny committee is completely swayed by the decisions in the matter of father and uncle of the petitioner. It is necessary to mention that, even if it is to be accepted that, father of the petitioner had played fraud, however the claim of the petitioner cannot be defeated by simply citing the said aspect and the claim of the petitioner ought to have been considered on merit independently. However, the entire decision of the scrutiny committee rests upon the invalidation of relatives of the petitioner.

7. The petitioner has taken admission in general category to post graduation course and is willing to file an undertaking that, he will not claim any benefits of Scheduled Tribe category. However, the degree earned by the petitioner needs to be protected. In similar circumstances, the Hon'ble High Court in the matter of Barkha Rajesh Manik Vs. the State of Maharashtra and others in Writ Petition No. 3464/2015 on 28/02/2019 observed that,

12.Now that the petitioner has completed the entire MBBS Course, and that larger interest of the public will not adversely affected, because in a challenge to the impugned order of the Scrutiny Committee, it is this Court which has allowed her to continue the studies in M.B.B.S. degree course, and also in view of the fact that, an undertaking in terms of the order dated 5th February, 2019 has duly been filed, no useful purpose would be served by depriving the petitioner the fruits

of her passing the final year examination of the M.B.B.S. Course. Let the degree certificate to be also issued to her.

In view of the matter, the undertaking of the petitioner is accepted. As the petitioner has passed in the final year M.B.B.S. examination, she is free to pursue her career further but without hereafter taking any benefit of the caste certificate that of Bava- Nomadic Tribe.

In the light of these observations by the High Court and as the petitioner is similarly placed has completed his M.B.B.S. prior to invalidation of his claim, his degree also deserves to be protected which would ultimately benefit the society at large.

8. Even though the judgment delivered by Supreme Court in the case of J. Agdish Balaram Bahira mandates that, no protection could be granted once invalidation is ordered, however, the Apex Court judgment in the matter of Milind, Swati and other cases including that of the basic judgment in the matter of R. Vishwanath Pillai has protected the education / services of the petitioners therein looking to the peculiar facts and circumstances of the said cases. The petitioner also deserves similar protection. The Maharashtra University of Health Sciences does not have jurisdiction, power or authority to withhold degree certificate from a candidate / student once he passes the said curriculum. The University has erroneously and illegally withheld the degree of the petitioner and as such the petition filed by the petitioner seeking directions from the University to issue degree certificate of M.B.B.S. medical course needs to be allowed in the interest of justice.”

7. In support of the above submissions, he relies on R. Vishwanatha Pillai and Vimal Ghosh (*supra*) and prays that the same protection

deserves to be granted to the present petitioner. It is vehemently canvassed that the conclusions drawn in the case of R. Vishwanatha Pillai (supra) have been approved by the Hon'ble Supreme Court in the case of Chairman and Managing Director Food Corporation of India and others Vs. Jagdish Balaram Bahira and others (supra) and, hence, the effect of paragraph No. 69.3 thereof would result in granting protection to the present petitioner and his degree certificate cannot be taken away.

8. We find it necessary to reproduce the conclusions drawn by the Hon'ble Supreme Court in paragraph No. 69 (69.1 to 69.11) in FCI (supra) which read as under :

“69. For these reasons, we hold and declare that :

69.1. The directions which were issued by the Constitution Bench of this Court in para 38 of the decision in Milind were in pursuance of the powers vested in this Court under Article 142 of the Constitution;

69.2. Since the decision of this Court in Madhuri Patil which was rendered on 2-9-1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for:

- (a) the issuance of caste certificates;
- (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;
- (c) the procedure for the conduct of investigation into the authenticity of the claim;
- (d) Cancellation and confiscation of the caste certificate where the

claim is found to be false or not genuine;

(e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and

(f) Prosecution for a criminal offence.

69.3. The decisions of this Court in *R. Vishwanatha Pillai* and in *Dattatray* which were rendered by Benches of three Judges laid down the principle of law that where a benefit is secured by an individual—such as an appointment to a post or admission to an educational institution—on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

69.4. The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;

69.5. By Maharashtra Act 23 of 2001 there is a legislative codification of the broad principles enunciated in *Madhuri Patil*. The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates [Sections 6(2) and 6(3)]; cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;

69.6. The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18-10-2001. Finality does not attach to a caste certificate (or to the claim to

receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

69.7. Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

69.8. The decisions in Kavita Solunke and Shalini of two learned Judges are overruled. Shalini insofar as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;

69.9. Mens rea is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

69.10. The judgment of the Full Bench of the Bombay High Court in Arun is manifestly erroneous and is overruled; and

69.11. Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the Court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act 23 of 2001 holds the field.”

9. It is, therefore, clear that the Hon'ble Supreme Court has clearly set out in paragraph No. 69.4, referring to the case of R. Vishwanatha Pillai (supra), that the exception to the doctrine of ‘appointment / admission being rendered void and non est’, is envisaged by exercising

powers under Article 142 of the Constitution of India to render complete justice. In our view, paragraph No. 69.4 clearly indicates that the exception in the case of R. Vishwanatha Pillai (Supra) was restricted to the facts of the said case and the Hon'ble Supreme Court has set out in the case of Chairman and Managing Director Food Corporation of India, (supra) that the said protection was an exception to the doctrine by exercising the powers under Article 142 of the Constitution of India.

10. In view of the above, we find that the learned counsel for the petitioner, conveniently did not read paragraph No. 69.4, to push forth a submission that, akin to the protection granted to R. Vishwanatha Pillai (supra), this Court should also protect the present petitioner. Such submission, to say the least, is not appreciable.

11. The Hon'ble Supreme court has recently delivered a judgment in in case of Vijay Kishanrao Kurundkar and Anr. Vs. State of Maharashtra and Ors. reported in 2020 AIR (SC) 3715, wherein the case of Chairman and Managing Director Food Corporation of India (supra) was referred to and the Hon'ble Supreme Court has concluded in paragraph Nos. 12 and 13 as under :

“12. The decision in Punjab National Bank must be read in light of these observations by the three Judge Bench of this Court in Food Corporation of India. It is trite law that an appointment secured on the basis of a fraudulent certificate is *void ab initio*. It is not open to the Government to circumvent the existing statutory mandate by indefinitely protecting the deceitful activities of such candidates through the use of circulars or resolutions.

13. We dispose of the appeal by setting aside the impugned judgment and order of the High Court. The second appellant shall, in terms of the statement which has been made in the affidavit filed on behalf of the State Government, be entitled to a deemed date of 30 June 2018 in respect of the post of the Executive Engineer. There shall be no order as to costs.”

12. It is, thus, apparent from the case of Vijay Kishanrao Kurundkar (supra) that it was trite that an appointment secured on the basis of a fraudulent certificate is *void ab initio* and this cannot be circumvented by the Government by protecting such deceitful activities of such candidates by issuing circulars or resolutions.

13. The learned counsel for the University and the learned AGP have vehemently contended that the present petitioner Naresh has not only attempted to play a fraud on the committee, but has also played a fraud on this Court. It is pointed out that Writ Petition No. 2868 of 2020, which was actually filed on 21.11.2018 pursuant to the invalidation of

the claim of the petitioner on 30.06.2018, was kept in a dormant state and was not circulated. Subsequently, the petition was dismissed on account of default. The same was then restored as recorded in the sequence of events herein above. With the said petition pending, the same petitioner Naresh approached this Court in another Writ Petition No. 6286 of 2022 and put forth prayer Clause B, reproduced hereinabove.

14. The learned counsel has, therefore, canvassed that, on the one hand, the petitioner kept the earlier writ petition filed in November 2018, in dormant state and on the other hand, moved the second petition for seeking an order of issuance of his degree certificate. The basis for seeking such relief was in the light of the Civil Application having been filed in the earlier petition and obtaining an order from this Court to the extent of issuance of the internship completion certificate.

15. In view of the above, we have no hesitation in concluding that we cannot take a different view than the view taken by (a) the scrutiny committee in the case of the petitioner, and (b) this Court and (c) the Hon'ble Supreme Court in the cases of the present petitioner's father Rajeshwar and his biological uncle Sharad. An anomaly cannot be created by accepting submissions of the present petitioner to grant him

a validity certificate, when the rejection of his father's claim and his biological uncle's claim have been sustained up to the Hon'ble Supreme Court.

16. In fact, in the case of the father of the petitioner, the Hon'ble Supreme Court has delivered a reasoned judgment, concluding that his father never belonged to the Koli Mahadev, Scheduled Tribe and hence, the order passed by the committee and the judgment delivered by this Court, did not warrant any interference. In paragraph No. 14 in *Rajeshwar Baburao Bone (supra)*, the Hon'ble Apex Court concluded that the benefit of the certificate would not be available to the *Rajeshwar* and he shall not be entitled to any benefit of reservation in future including the benefit of continuing in service.

17. Keeping in view the law laid down in the case of *Chairman and Managing Director FCI (supra)* and in the case of *Vijay Kishanrao Kurundkar and Anr. (supra)*, both the petitions filed by the present petitioner stand dismissed.

18. The learned AGP has placed before us a recent order passed by the Director of Medical Education and Research, Mumbai, addressed to the Dean of the *Vilasrao Deshmukh Government Medical College, Latur* whereby, in similar set of facts, while taking away the M.B.B.S. degree in the background of the cancellation of M.B.B.S. admission with

retrospective effect, cost of Rs. 10,00,000/- (Rs. Ten Lakhs only) have been imposed on the said candidate.

19. Since the above decision is by the State Government, we do not have any reason to make observations, save and except those which are set out in the foregoing paragraphs of this order wherein we have concluded that the petitioner has played a fraud on the committee, as well as on this Court.

(ANIL L. PANSARE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

P.S.B.