

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12717 OF 2022

Rohit Suresh Apaswar,
Age : 19 Years, Occ. Student,
R/o. Deglur, Tq. Deglur,
Dist. Nanded.

...Petitioner

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
Tribal Department,
Mantralaya, Mumbai-32.

(Copy to be served on Government
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad)

2. The Scheduled Tribe Certificate Scrutiny
Committee, Kinvat,
Head Quarter, Aurangabad
Through its Deputy Director (R)

3. The Commissioner and
Competent Authority,
State CET Cell, Maharashtra State,
Mumbai.
(Controller of Medical Admission
Process).

...Respondents

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Mr. P.V. Jadhavar advocate for the petitioner
Mr. P.S. Patil, A.G.P. for respondent No. 1 and 2
Mr. S.G. Karlekar, advocate for respondent No. 3.

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 16th DECEMBER, 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 clause “B”, “C” and “D, as under:-

- “B) By way of an appropriate writ, order or direction in like nature may kindly quash and set aside the order dated 26/08/2022 (Exhibit E) passed by the scrutiny committee and issue validity certificate in favour of petitioner as belongs to Mannervalu scheduled Tribe.
- C) By way of an appropriate writ, order or direction in like nature against the respondent/ Admission Authority shall consider the petitioner admission in scheduled tribe reserve category.
- D) By way of an appropriate writ, order or direction in like nature the execution, operation and implementation of the impugned order dated 26/08/2022 (Exhibit E) passed by the respondent scrutiny committee may kindly be stayed and further issue direction against the respondent not to take any adverse against petitioner and considered admission of the petitioner.”

3. We have considered the strenuous submissions of the learned advocates for the respective sides.

4. The learned A.G.P. as well as the learned advocate representing respondent No.3 committee, submit that if there is contra evidence available and contra entries indicate that the name of

the any validity holder on whose validity the petitioner relies upon, is obtained by a fraud, the fraud will vitiate the validity granted to such validity holder. Reliance is placed on the judgment dated 6.12.2010, delivered by this Court in writ petition No. 8776 of 2010, filed by ***Muktai Gulab Deoraj vs. Scheduled Tribe Certificate Scrutiny Committee and another***. Shri Patil points out paragraph Nos. 5, 6, 7, 8 and 9 from Muktai (supra), which read as under:-

“5 It is, thus, clear from the judgment of the Apex Court that the entries in the school register preceding the Constitution furnish a great probative value to the declaration of status of the caste. From the record pertaining to the grant of validity in the case of petitioner’s father, it could be seen that the fact regarding entry pertaining to the school record of petitioner’s father depicting his caste as “Suryawanshi Koli B.C.” and that the fact regarding father of petitioner’s father i.e. petitioner’s grand father showing his caste as “Koli” in the Births & Deaths Register have been noticed by the Committee. However, it is noticed that the said Committee, in view of the judgment and order passed by this Court in Writ Petition No.2741 of 1991 in the case of Chhagan Sitaram Deoraj and the subsequent validity granted in favour of brother of petitioner’s father on the basis of said judgment, validated caste claim of petitioner’s father.

6 The Apex Court, in the case of **Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar & others**, reported in 2009 (1) Mh.L.J. 1, in paragraphs 20 and 21, has observed thus:

“20 One of the questions which has been raised before us is as to whether the offer of appointment made in favour of the respondent No.1 by the Maharashtra

Pollution Control Board dated 16-3-1998 is final so as to attract the direction contained in paragraph 38 of Milind (supra).

Where factual foundation arrived at by a committee authorised in this behalf concludes that a person is not a member of the Scheduled Tribe would remain operative unless set aside by a superior Court. The judgment of the High Court in favour of the respondent No.1 was rendered on a wrong premise. The claim of the respondents may be that he belonged to the Halba tribe but, therefor, no factual foundation was placed before the High Court. The High Court relied solely on its earlier decision to hold that Koshti would come within the purview of the Scheduled Tribe of Halba or Halbi. The decision was rendered in 1988. The records maintained by the school where the respondent studied were not placed before the High Court. Only when the Caste Scrutiny Committee, a statutory committee, proceeded to enquire into the matter, the truth came out.

We do not mean to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another Committee while examining the case of other members of the family at some details. If it is found that in granting a certificate in favour of a member of a family, vital evidences had been ignored, it would be open to the Committee to arrive at a different finding.

norms, a person must belong to a tribe before he can stake his claim to be a member of a notified Scheduled Tribe. When an advantage is obtained by a person in violation of the constitutional scheme, a constitutional fraud is committed.”

7 It can, thus, be seen that the Apex Court has clearly held that if it is found that in granting a certificate in favour of a member of a family, vital evidence has been ignored, it would be open to the Committee to arrive at a different finding. It has also been observed that to fulfill the constitutional norms, a person must belong to a tribe before he can stake his claim to be a member of a notified Scheduled Tribe.

8 Undisputedly, caste of the petitioner's father, in his school record, has been noted as “Suryawanshi Koli” on 06.06.1968. It is pertinent to note that the said entry is also post Constitutional. It can, further, be noted that insofar as the entry in the service book of petitioner's father is concerned, the same was also initially “Suryawanshi Koli” and subsequently it has been rectified as “Tokare Koli”. It is pertinent to note that the pre- Constitutional document i.e. entry regarding petitioner's father's father (grand father of the petitioner) in the Births & Deaths Register, has shown the caste as “Koli”. It is not in dispute that “Koli” and “Suryawanshi Koli”, both were recognised as the Other Backward Class in the State of Maharashtra. It appears that accordingly petitioner's father has entered into his school record the caste as “Suryawanshi Koli - *magas varga*” i.e. backward class. Not only that, but the entry pertaining to petitioner's father's real brother namely Vijay and Gopal have shown their caste in the school record as ‘*magasvargiya Koli*’ (backward class Koli). In the light of these entries, it is clear that the entire documentary evidence was clear to show that petitioner's father belonged to either “Koli” or “Suryawanshi Koli”, which were recognised as Other Backward

Class and did not belong to "Tokare Koli", a Scheduled Tribe.

9 We are not inclined to accept the contention raised by Shri M.S.Deshmukh, learned Counsel for the petitioner, that once the validity is granted to one member in the family, it should not be ignored unless it is found to be obtained by fraud or without Jurisdiction. If the Committee issued the validity certificate by ignoring the vital documentary evidence, we find that the said decision would be termed as irrational. inasmuch as, the Committee has ignored to take into consideration the vital piece of evidence. In that view of the matter, we find that it will squarely be permissible within the scope of judicial review, permissible for this Court under Article 226 of the Constitution of India. We have no hesitation in holding that the Committee had erred in granting a validity certificate in favour of petitioner's father ignoring the vital documentary evidence showing caste of petitioner's father as "Suryawanshi Koli" and petitioner's father's father's caste as "Koli". Various Division Benches of this Court in the cases:

- (1) **Hitendra Raghunath Mahale Vs. The State of Maharashtra & others** (Writ Petition No.2151 of 2007 decided on 5th December, 2009);
- (2) **Nikhil B. Deore Vs. State of Maharashtra & others,** (Writ Petition No.7410 of 2008 decided on 5th November, 2009);
- (3) **Jaywant Dilip Pawar Vs. State of Maharashtra & others,** (Writ Petition No.2152 of 2007 decided on 5th December, 2009);
- (4) **Deepika Subhash More Vs. State of Maharashtra & others** (Writ Petition No.1953 of 2007 decided on 22nd March, 2007);

- (5) **Milind Ramdas Sonavane Vs. State of Maharashtra & others** (Writ Petition No.1112 of 2007 decided on 5th April, 2007);
- (6) **Zartar Zakir Hussain Abdul Gani Vs. State of Maharashtra & others** (Writ Petition No.4835 of 2009 decided on 18th February, 2010);
- (7) **Kum. Seema S. Bhadekar Vs. State of Maharashtra & others**, (Writ Petition No.2175 of 2008 decided on 16th June, 2008);
- (8) **Bhavana Atmaram Suryawanshi Vs. State of Maharashtra & another** (Writ Petition No.5608 of 2008 decided on 23rd September, 2008);
- (9) **Prasad s/o Pralhad Ingle Vs. State of Maharashtra & another** (Writ Petition No.5705 of 2009 decided on 13th November, 2009);
- (10) **Baliram Babu Patil Vs. State of Maharashtra & others** (Writ Petition No.5707 of 2008 decided on 17th June, 2009);
- (11) **Pradeep Ramchandra Koli Vs. State of Maharashtra & others** (Writ Petition No.1256 of 2003 decided on 23rd July, 2010); and
- (12) **Mohd. Hussain s/o Shaikh Abdul Rahman Vs. State of Maharashtra & others** (Writ Petition No.2721 of 2007 decided on 22nd February, 2008);

have consistently taken a view that validity should not be granted to a candidate only on the ground that at an earlier

point of time, validity certificate has been granted to a family member of such a candidate and that the Committee is within its jurisdiction to consider the claim of a particular candidate on its own merits.”

5. It is undisputed that the grand father of the present petitioner Marotrao Chandraji has been granted a validity certificate. The father of the petitioner viz. Suresh Marotrao Apaswar was granted a validity certificate under the order of this Court dated 20.9.1994 delivered in writ petition No. 2979 of 1994, filed by Suresh Marotrao Apaswar. The biological aunt of the petitioner from the paternal side and the biological uncle Santosh Marotrao Apaswar, have been granted validity certificates by the committee. Keeping in view the law laid down by the learned Division Bench of this Court in ***Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee, 2010 (6) Mh.L.J. 401***, there cannot be an anomaly when the uncle, the aunt and the grand-father belong to Mannervarlu Scheduled Tribe.

6. The learned A.G.P. strenuously canvassed that the committee would be filing a review application in writ petition No. 2979 of 1994 which was decided by this Court vide judgment dated 20.09.1994, thereby granting validity to the father of the petitioner. It is contended that the review petition is still not filed.

7. In these circumstances, we deem it proper to place reliance

upon the view taken by this Court (Coram: S.C. Dharmadhikari and Smt. Bharti H. Dangre, JJ.) in **Shweta Balaji Isankar vs. State of Maharashtra and others**, in writ petition No. 5611 of 2018 decided on 27.7.2018. This Court held in paragraphs 2, 3 and 4, as under:-

"2. On the earlier occasion, we found that though the petitioner produced credible evidence in the form of certificates of validity issued to her real uncle Govind Sambhaji Isankar and which concededly has been issued way back on 5th December 2005 and another certificate of validity dated 5th September 2006 to his cousin uncle Ramdas Sambhaji Isankar the Committee finds that the certificate of validity issued to the real uncle Govind, is not free from suspicion. It is held by the Committee in the impugned order that a notice to show cause has been issued to said Govind on 14th September 2017, calling upon him to show cause as to why this certificate of validity should not be cancelled as its issuance is vitiated by fraud or suppression of material facts by the said Govind.

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 through 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 reason assigned in the impugned order cannot be supported in law.”

8. In view of the above, the impugned order dated 26.8.2022 is quashed and set aside. The petitioner be granted validity certificate of belonging to Mannervarlu Scheduled Tribe on 20.12.2022, keeping in view that the validity certificate is to be tendered by the petitioner in

his college on 21.12.2022.

9. Needless to state, we would follow the same course as was followed in ***Shweta Balaji Isankar (supra)***, (paragraph 8), by concluding that if for any reason the validity certificates issued to the petitioner's father, his biological brother Santosh, or biological sister Shobha, suffer reopening of the cases and their claims are invalidated, the consequences that would be faced by the said candidates would also befall upon the petitioner and the petitioner would then be liable to face the similar consequences.

10. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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