

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

WRIT PETITION NO.13064 OF 2022

SRUSHTI BHANUDAS NILAWAD
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

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Advocate for Petitioner : Mr. S. M. Vibhute
AGP for Respondents/State: Mr. S. K. Tambe
Advocate for Respondent No.3: Mr. S. G. Karlekar

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

DATE : 20th December, 2022

PER COURT :

1. The petitioner is an 18 years old student, who has put forth prayer clauses – (A), (B), (C) & (D) as under:

“(A) This Writ Petition may kindly be allowed and petitioner may kindly be held and declare as belongs to Mannervarlu, Scheduled Tribe.

(B) The impugned order dated 12/12/2022 passed by the respondent no.2 committee, cancelling and confiscating the tribe certificate of the petitioner on technical ground of territorial jurisdiction of tribe certificate issuing authority, 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 order dated 12/12/2022 passed by the respondent no.2 committee, cancelling and confiscating the tribe certificate of the petitioner on technical ground of territorial jurisdiction of tribe certificate issuing authority, may kindly be stayed and respondent no.2 committee may kindly be directed to issue Tribe Validity Certificate of Mannervarlu Tribe to the petitioner.

(D) Th 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."

2. We have considered the submissions of the learned Advocate for the respective sides. The only issue that concerns us is that the petitioner produced her '*Mannervalue*' Scheduled Tribe certificate issued by the Sub-Divisional Officer, Aurangabad and the Committee, which held in favour of the petitioner on the other issues, has closed her proceedings by passing the following order:-

*"After considering all the documents and facts & in exercise of the power vested vide Maharashtra Act No.XXIII of 2001, the Caste Scrutiny Committee has come to the conclusion that the Caste Certificate of **Kum. Srushti Bhanudas Nilawad** in question is invalid for the 'aforesaid' reasons. Therefore, his Caste Certificate as belonging to **Mannervalue** Scheduled Tribe, issued by the Sub-Divisional Officer, Aurangabad Dist-Aurangabad vide RC No.39158 dtd. 21/03/2018 is hereby cancelled and confiscated without actually going into the merit of the tribe claimed by an applicant. The applicant is at liberty to approach the appropriate Caste Certificate issuing authority for a fresh Caste Certificate and then submit the same to the appropriate Caste Scrutiny Committee for verification."*

3. The petitioner has drawn our attention to the fact that 14 blood relatives from the paternal side were granted validity certificates by the competent Committees and 10 blood relatives from the paternal side were granted validity certificates under the orders of the High Court. We have perused the family tree, which was presented by the father of the petitioner, since she was a minor when she applied for validation. The biological brother of the petitioner - Shailesh and the

biological sister – Deepali have been granted validity certificates. Father of these three siblings Bhanudas s/o Baliram has been granted validity. His three biological brothers, namely, Vyankati Baliram, Maroti Baliram and Datta Baliram have been granted validity certificates. The four biological children of Vyankati Baliram, the three biological children of Maroti Baliram and three biological children of Datta Baliram have been granted validity certificates. Baliram had two biological brothers by name Balaji and Sayaji. The two sons of Balaji and one son of Sayaji have also been granted validity certificates. These are such validity certificates, which have been granted by the Committee and conditional validity certificates granted by the High Court to 10 amongst the family tree.

4. In the impugned order passed by the Committee, the Committee has relied upon the judgment of the learned Full Bench of this Court in Rajendra s/o Shivram Thakur Vs. State of Maharashtra & Ors. [Writ Petition No.4918/2012], wherein, the issue that was addressed to the Full Bench was answered as follows:

“60. In the result, we answer the referred issue as follows:-

Issue

Whether the caste certificate in respect of the applicant is issued by the proper competent authority and/or in proper formate as per the instructions given by the Government from time to time prior to implementation of Maharashtra Act No.XXIII/2001 ?

Answer – The candidate desirous of seeking a caste certificate shall have

to apply to the competent authority having jurisdiction over the area or place to which he/she or his/her father or grandfather originally belongs or was/is an ordinary residents or native of that place.

Except in cases where such applicants can produce tribe certificate issued in favour of their father or grandfather issued by competent authority of their original place of residence as on the date of presidential order, of their tribe.”

5. The learned Advocate for the petitioner frankly submits that the petitioner was given an exhaustive hearing on the merits of the matter. However, the petitioner had no idea at all that the Committee would come out with an order contending that as her ‘*Mannervalu*’ Scheduled Tribe certificate has been issued by the Sub-Divisional Officer, Aurangabad and not by Sub-Divisional Officer Kandhar, her certificate deserves to be cancelled and the same is confiscated.

6. We are of the view that the Committee would not have been required to come to this conclusion, if the petitioners had placed the ‘*Mannervarlu*’ Scheduled Tribe certificate of her father or grand father before the Committee, as both these certificates have been issued by the Sub-Divisional Officer, Kandhar. In the answer offered by the learned Full Bench reproduced above, the case of the petitioner would then have been covered by the last observation, whereby the learned Full Bench has held that in such a case, which is termed as a case of migration, if the candidate produced the certificate of the

father or the grandfather issued by the Competent Authority, which would establish the original place of residence as on the date of the presidential order, concerning their tribe, the case of such candidate can be cleared.

7. In view of the above, we could have passed an order of granting validity certificate to the petitioner in this petition. However, to put the record straight, we deem it appropriate to direct the petitioner to produce the '*Mannervarlu*' Scheduled Tribe certificate of her father or grand father issued by the Sub-Divisional Officer, Kandhar before the Committee and if such certificate is produced, the Committee would then pass an order accepting the claim of the petitioner and accordingly, issue a validity certificate.

8. In view of the above, for the sole reasons of the Committee having cancelled and confiscated the tribe certificate, that the impugned order dated 12.12.2022 is quashed and set aside with the following directions;

(a) The petitioner would produce the '*Mannervarlu*' Scheduled Tribe certificate of her father or grand father issued by the Sub-Divisional Officer/Tahsildar, Kandhar before the Committee by 5:00 pm on 22.12.2022.

(b) Since the petitioner is bound to submit the validity certificate by 6:00 pm on 24.12.2022, at the time of physically joining the BAMS College, anywhere in Maharashtra, we would request the Committee to pass an order as directed above by 5:00 pm on 23.12.2022 and immediately, issue a validity certificate to the petitioner. The petitioner would collect the said certificate at 5:00 pm on 23.12.2022 through her father.

9. Needless to state, in the event of any of the validity holder, on whom the petitioner has placed reliance, is subjected to re-opening of his file and such re-hearing leads to any invalidation of his/her claim, the consequences suffered by such candidate would also befall upon the petitioner, in view of the law laid down by this Court in Shweta Balaji Isankar Vs. State of Maharashtra & Ors., in Writ Petition No.5611/2018 decided by this Court [Coram: S. C. Dharmadhikari & Bharati H. Dangre JJ.], vide judgment dated 27.07.2018.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)