

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

WRIT PETITION NO.2372 OF 2022

**GAURAV GOVINDRAO GAJALWAD
VERSUS
THE STATE OF MAHARASHTRA THROUGH DIRECTOR
OF MEDICAL ADMN AND OTHERS**

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**Advocate for the Petitioner : Shri S.M Kulkarni a/w Shri
Boinwad Omgashad B.**

**AGP for Respondents 1 and 2/State : Shri S.G. Sangle
Advocate for Respondent 3 : Shri S.G. Karlekar i/by Shri A.R.
Kale**

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

DATE :- 10th January, 2023

Per Court :-

1. All the respondents have been served by the notice of this Court. Ad-interim protection was granted to the petitioner on 18.02.2022.

2. Considering that the petitioner has challenged the order dated 10.02.2022, which is the common judgment delivered by the Competent Scrutiny Committee, invalidating the claims of the petitioner (Gaurav) and his biological brother (Yogesh), of belonging to “Koli Mahadev”, Scheduled Tribe category, that we have considered the strenuous submissions of

the learned advocates for the respective sides. Since the claim of the petitioner was invalidated, he has deposited the entire fees of all four years of his MBBS graduation course.

3. The learned AGP has vehemently opposed this petition and supported the impugned order. It cannot be ignored that the impugned order, which is a common order in the case of the biological brother of the petitioner, namely, Yogesh and the petitioner himself, has been set aside by the order of this Court dated 18.02.2022 passed in Writ Petition No.2340/2022 filed by Yogesh Govindrao Gajalwad vs. The State of Maharashtra and others. Yogesh has been granted the validity certificate.

4. We find from the record that the petitioner's biological brother, namely, Vaibhav Govindrao Gajalwad was granted the validity certificate by this Court at the Principal Seat vide order dated 03.10.2017 in Writ Petition No.10430/2017. The paternal cousin brother, namely, Nitesh Venkatrao Gajalwad has also been granted the validity certificate under the order of this Court at the Principal Seat, dated 21.08.2019 in Writ Petition No.9176/2019. As noted above, Yogesh, who is the biological brother of the petitioner, has also been granted the validity certificate by this Court.

5. The issue, as per the learned AGP, turns upon the show cause notice dated 30.12.2022 issued to Vaibhav Govindrao Gajalwad, who has been granted the validity certificate by this Court. Since the issuance of the show cause notice to Vaibhav, things have not progressed. While granting protection to the present petitioner, he was directed to pay the entire fees of his medical course, which was obviously subject to the result of this petition, keeping in view that he was entitled to reimbursement since he belongs to the Scheduled Tribe category.

6. An answer to the vehement submissions of the learned AGP, lies in the view taken by this Court in the matter of ***Shweta Balaji Isankar vs. The State of Maharashtra and others***, Writ Petition No.5611/2018 decided on 27.07.2018 at the Principal Seat. This Court had drawn its conclusions in paragraphs 2 to 4 and has issued directions in paragraph 8, which are reproduced hereunder :-

“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 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 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 reasons assigned in the impugned order cannot be supported in law.”

“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.”*

7. Considering the above and in the light of the law laid down by this Court in ***Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010 (6) Mh.L.J. 401***, this Writ Petition is partly allowed as under :-

(a) Keeping in view that the impugned order dated 10.02.2022 has already been quashed and set aside to the extent of the petitioner's biological brother Yogesh, the same is quashed and set aside to the extent of the present petitioner, as well.

(b) The competent authority shall issue the validity certificate to the petitioner of belonging to “Koli Mahadev”, Scheduled Tribe, within 15 days from today.

(c) The petitioner would be entitled to approach the College for reimbursement of the tuition fees as the College would now be entitled for the reimbursement of such fees from the government in the light of the policy made applicable to the reserved categories.

(d) Needless to state, as Vaibhav has been issued with the show cause notice, in the event, Vaibhav or any other sibling of the petitioner, suffers reopening of their cases followed by invalidation, consequences suffered by such candidate would befall upon the present petitioner.

(e) Eventually, if the petitioner suffers such invalidation, subject to the result of the litigation, the petitioner would be liable to repay the entire tuition fees, if he suffers an adverse order in his litigation journey. If such an affidavit-undertaking is filed by the petitioner, the College should not hesitate to refund his fees.