

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO.3215 OF 2020
WITH WP/3212/2020 WITH WP/3214/2020
WITH WP/3216/2020 WITH WP/3213/2020

ASHWINI RADHA KISHAN SHANKPAL THROUGH FATHER
RADHAKISHAN DEVIDAS SHANKPAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr. S.S. Phatale h/f. Yeramwar Sushant C.
AGP for Respondents/State : Mr. S.G. Karlekar
Advocate for R/3 in WP/3213/20: Mr. K.M. Suryawanshi
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CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.
DATE : 11th January, 2023

PC. :-

1. In all these five petitions, the petitioners claim to be belonging to a common family tree and are blood relatives. They rely upon eight validity certificates issued to the blood relatives in view of the law laid down in the case of **Apporva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010 (6) Mh. L.J. 401.**

2. We are considering these five cases in the light of **Apporva Vinay Nichale** (supra) and **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 with a clear observation that if any of the reopened cases of the validity holders leads to invalidation, the validities being granted to these petitioners today would be subjected to similar invalidation and the petitioners would suffer the same consequences. The petitioners are agreeable.

3. All these petitioners have suffered invalidation of their claim of belonging to Thakur Scheduled Tribe category by the common impugned order dated 29.01.2020. It is stated that the petitioner-Ashwini (in WP/3215/20) and petitioner-Vandana (in WP/3216/20), are the daughters of Radhakishan, granddaughters of Devidas. Eknath is their great grandfather. Eknath and Namdeo are biological brothers who are sons of Ganpath. Ganpath had two biological brothers – Yashwant and Laxman and their father was Gangaram. Petitioner-Gopal (in WP/3212/20) is the son of Janardhan, grandson of Tukaram and his great grandfather is Laxman. Tukaram had two biological brothers Yadavrao and Sukhdeo and one biological sister Prayagbai. Petitioner -Priyanka (in WP/3214/20) and petitioner-Amol (in WP/3213/20) are the children of Ghanshyam and their grandfather is Sukhdeo son of Laxman.

4. The validity holders in the paternal blood relatives are set out in the family tree. The petitioner-Gopal's biological sisters-Bhagyashri, Tejashri and Darpana, all being children of Janardhan, have been granted validity

certificates. The biological brother of Ghanshyam who is the father of petitioners – Priyanka and Amol, has a biological brother Rajesh who has been granted validity certificate. The biological brother of Radhakishan, father of petitioners - Ashwini and Vandana namely Gopal has been granted validity certificate. Two more validity holders are Avinash s/o Dattatraya, grandson of Bhaurao and great grandson of Yashwant. Another validity holder Kavita is the daughter of Ankush who is the biological brother of Dattatraya and son of Bhaurao. As such, the eight blood relatives from the paternal side have been granted validity certificates.

5. The learned AGP strenuously submits that Mahesh s/o Bhagwan, who is the biological brother of Janardhan (father of petitioner-Gopal and three validity holders namely - Bhagyashri, Tejashri and Darpana) who are daughters of Janardhan, has suffered invalidation. The invalidation of Mahesh was suppressed when the validity holders received their validity certificates. Another invalidation was suffered by Sharad s/o Ankush, grandson of Bhaurao and great grandson of Yashwant. He has filed a Writ Petition No.7596/2007 in this Court and it was transferred to the Principal Seat and numbered as W.P.NO.3605/2008. On 31.10.2012, an order is passed directing the Registry to take necessary steps for transferring the writ petition back to the Aurangabad Bench.

6. The learned AGP further submits that show cause notices to some of the validity holders were issued since the claim of Mahesh was invalidated and that was suppressed from the committee when their paternal blood relatives have sought validity certificates. He submits that the possibility that the suppression of invalidation of two blood relatives is likely to lead to the cancellation of the validity certificate issued to the blood relatives. He, therefore, submits that this Court may not grant validity certificate to any of these petitioners, notwithstanding the law laid down in the **Apporva Vinay Nichale** (supra) and **Shweta Balaji Isankar** (supra).

7. Having considered the submissions of the learned advocate for the respective sides as recorded herein-above, we have perused the view taken by this Court in **Apporva Vinay Nichale** (supra) and **Shweta Balaji Isankar** (supra). It is well settled that if a father or a biological brother or a paternal blood relative is granted a validity certificate, the claimant cannot be deemed to be belonging to any other category. If the father is Thakur or a paternal uncle or a biological brother or paternal blood relatives are Thakurs, the committee cannot conclude that the petitioner would not belong to the Thakur Scheduled Tribe. The only exception would be that if a fraud is exposed and the validity certificates granted to the validity holders are subsequently cancelled and their claims are invalidated. The claim of the petitioner would then also suffer the

same consequence. This is the view taken by this Court in **Shweta Balaji Isankar** (supra).

8. In **Shweta Balaji Isankar** (supra), this Court considered the legal position in paragraph nos. 2 to 4 and imposed a condition while granting validity certificate, in paragraph no. 8. It would be apposite to re-produce paragraph nos. 2 to 4 and 8 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 5 th December 2005 and another certificate of validity dated 5 th 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.*

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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."*

9. The contention of the learned AGP cannot be brushed aside when he submits that the claim of Mahesh s/o Bhagwan and Sharad s/o Ankush, who are from the same family tree from the paternal side, have been invalidated and none of these invalidities were considered while granting validity certificates to the eight paternal blood relatives. The non-disclosure of such invalidities is significant. There being no reference to such invalidities while granting validity to the first validity holder in the family, becomes crucial. In our view, the submissions of the learned AGP are well placed and need to be taken into account by the committee while reopening the cases of the validity holders since it is the contention of the learned AGP, on instructions, that there

is no reference to these two invalidations in the judgments of any of these validity holders.

10. We find that the above fact situation, on the one hand, should not result in truncating the claims of the petitioners who are taking education in professional colleges. On the other hand, these petitioners should not walk away with validity certificates despite the above fact situation. The equities could be balanced by placing reliance upon **Shweta Balaji Isankar** (supra). We, therefore, adopt the same approach as was taken by this Court in **Shweta Balaji Isankar** (supra).

11. In view of above, these petitions are partly allowed. The common impugned order dated 29.01.2020 is quashed and set aside. As petitioner-Ashwini (in WP/3215/20) requires a validity certificate until 5.00 p.m. today itself, we direct the committee to issue a Thakur Scheduled Tribe validity certificate to the petitioner - Ashwini, by 3.00 p.m. In so far as the other four petitioners are concerned, the validity certificates could be issued to them within fifteen days.

12. We make it clear that as these petitioners have relied upon the validities of eight paternal family members, invalidation of the claim of any validity holder after reopening of the case, in the light of the suppression of the

invalidation of Mahesh and Sharad, the consequences suffered by the said candidates would also be suffered by these five petitioners and they would attract the same consequences.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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