

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

WRIT PETITION NO.2825 OF 2023

**MANISH AJAY TOTAWAR THROUGH POWER OF
ATTORNEY HOLDER AJAY VASANTRAO TOTAWAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND ANOTHER**

...

Advocate for the Petitioner : Shri Sunil M. Vibhute
AGP for the Respondents/State : Shri S.G. Karlekar

...

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

DATE :- 13th March, 2023

Per Court :-

1. The Petitioner is an eighteen years old student. He would be appearing for the NEET UG 2023 Examination and MH-CET 2023 Examination in May/June, 2023. He is aggrieved by the impugned order dated 17.02.2023 passed by the competent Committee rejecting his claim of belonging to “Mannervarlu”, Scheduled Tribe, category.

2. We have considered the strenuous submissions of the learned Advocate for the Petitioner and the learned AGP. With their assistance, we have gone through the record.

3. The learned AGP submits that there are several contradictory pieces of evidence and documents. Based on the same, the claim of the Petitioner has been invalidated. The impugned order is self explanatory and clearly explains as to why the claim has been rejected. The old entry pertaining to Vasantao Chimnaji Totawar dated 04.08.1950 is found to be a forged entry. Such conclusions have been drawn by the Committee on internal page 30 of the impugned judgment.

4. We find from the record that the biological sister of the Petitioner, Ms.Vedangi, has been granted the validity certificate under the orders of the High Court dated 19.07.2019 in Writ Petition No.8795/2019. By the same judgment dated 19.07.2019, the father of the Petitioner and Ms.Vedangi, namely, Ajay, was also granted the validity certificate by this Court in Writ Petition No.8787/2019. The Petitioner's father Ajay is the biological brother of Chetan, who has also received the validity certificate. Ajay's father Vasantao had two biological brothers, namely, Venkatrao and Arvind. The son of Venkatrao, namely, Nikhil, has been granted the validity certificate. Similarly, Ambika, daughter of Arvind, has been granted the validity certificate by the High Court.

5. The learned AGP submits that show cause notices have been issued to some of the validity holders. He submits that this petition, therefore, need not be entertained and no relief can be granted to the Petitioner.

6. In *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 has observed that merely issuing a show cause notice and reopening of the case of the validity holder, would not be enough to deprive the relief to the Petitioner. This Court has, therefore, held in paragraphs 2, 3, 4 and 8, in *Shweta Isankar* (supra), 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 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. In view of the above, we find that this petition can be entertained by virtue of the law laid down in *Shweta Isankar (supra)* and *Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010 (6) Mh.L.J. 401*. As such, **this Writ Petition is partly allowed.**

8. As the Petitioner is an eighteen years old student, who would be appearing for the entrance examinations in May/June, 2023, we direct the competent Committee to issue the validity certificate to the Petitioner of belonging to “Mannervarlu”, Scheduled Tribe category, on or before 30.04.2023.

9. Needless to state, if any of the validity holders on whom the Petitioner and her biological sister Ms.Vedangi have placed reliance upon, suffers invalidation after reopening of the cases, those consequences suffered by such candidates would also befall upon the Petitioner or his sister Ms.Vedangi or any such validity holder.