

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

WRIT PETITION NO.4092 OF 2022

Ram Sanjay Salunke
VERSUS
The State Of Maharashtra And Another

AND
WRIT PETITION NO.4093 OF 2022

Rani Sanjay Salunke
VERSUS
The State Of Maharashtra And Another

AND
WRIT PETITION NO.4094 OF 2022

Manisha Appasaheb Salunke
VERSUS
The State Of Maharashtra And Another

AND
WRIT PETITION NO.4095 OF 2022

Mangesh Appasaheb Salunke
VERSUS
The State Of Maharashtra And Others

AND
WRIT PETITION NO.4096 OF 2022

Dhanshree Sham Salunke
VERSUS
The State Of Maharashtra And Another

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Advocate for the Petitioners : Shri Yeramwar Sushant C.
AGP for Respondents 1, 2 and 4/State : Shri S.G. Sangle
Advocate for Respondent 3 in WP 4095/22 : Shri A.S. Bayas
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**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 18th January, 2023

Per Court :-

1. By the common impugned judgment dated 28.01.2022 delivered in all these five cases, the claims of these petitioners of belonging to “Thakur”, Scheduled Tribe, have been invalidated.

2. The first two petitioners, namely, Ram Sanjay and Rani Sanjay, are siblings. The third and fourth petitioners, namely, Manisha Appasaheb and Mangesh Appasaheb, are also siblings. The fifth petitioner, namely, Dhanshree Sham is the cousin brother of these two pairs of siblings.

3. We have considered the strenuous submissions of the learned advocate for the petitioners and the learned AGP. We would be adverting to the extensive submissions made by the learned AGP hereinafter.

4. We have perused the family tree put forth by these petitioners. Their great-great grandfather was Krushnaji Salunke. This entire family tree flows from the son of Krushnaji Salunke i.e. Laxman Krushnaji. Laxman had two sons, namely, Panditrao and Kisanrao. Panditrao had three sons, namely, Appasaheb, Sanjay and Sham. Kisanrao had two sons, namely, Dilip and Raju.

5. The first petitioner (Ram) is the son of Sanjay Panditrao. The second petitioner (Rani) is the daughter of Sanjay Panditrao. The third petitioner (Manisha) is the daughter of Appasaheb Panditrao. The fourth petitioner (Mangesh) is the son of Appasaheb Panditrao. The fifth petitioner (Dhanashree) is the daughter of Sham Panditrao. The brother of Dhanashree, namely, Shubham Sham has been granted validity certificate by the judgment of this Court dated 02.03.2021 delivered in Writ Petition No.6718/2020 (***Shubham Sham Salunke vs. the State of Maharashtra and others***). The father of Shubham, namely, Sham Panditrao has also been granted the validity certificate by the Committee. Appasaheb, who is the father of Mangesh and Manisha before us, has been granted the validity certificate by the Committee. It is, therefore, canvassed that the law laid down

by this Court in *Apoorva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010 (6) Mh.L.J. 401*, is applicable to all these cases.

6. The learned AGP has strenuously opposed this petition on the following grounds :-

(a) Kisanrao Laxman Salunke carried an entry of “Maratha” caste as per the school record dated 09.09.1959.

(b) The sister of Kisanrao, namely, Ashabai Laxman Salunke, has school entry dated 06.07.1970 indicating her tribe as “Thakar”.

(c) Appasaheb s/o Panditrao and the grandson of Laxman, also carries the entry “Thakar”.

(d) When the cousin grandfather of these petitioners belonged to “Maratha” caste, which is open category, further entries of “Thakar”, which later on got converted into “Thakur”, render the entire claims of these petitioners, suspicious.

(e) Notices dated 04.03.2020 have been issued by the Scrutiny Committee to Appasaheb Panditrao and Sham Panditrao, who were granted validity certificates by the Scrutiny Committee and on the basis of which, Shubham s/o Sham got the validity certificate from this Court.

7. When we called upon the learned AGP as to whether, the notices dated 04.03.2020 have been served upon Appasaheb and Sham, he submits, on instructions, that after issuance of notices for reopening of their cases, things have not progressed in the cases of Appasaheb and Sham since they did not appear before the Committee.

8. We have perused the judgment of this Court dated 02.03.2021 delivered in ***Shubham Sham Salunke (supra)***. To the extent of the entry “Maratha” caste in respect of Kisanrao Salunke, no specific findings have been rendered by this Court in Shubham’s case (supra). To be specific, we are reproducing subparagraph below paragraph 10 in the case of Shubham (supra) as under :-

“10.

....
Moreover, entry of “Thakar” in grandfather’s old register and entry as “Maratha” in cousin grandfather’s school record while taking the admission in the school on 09.09.1959, was the subject matter while issuing the caste validity certificate in favour of petitioner’s uncle and therefore, it can not be said to be suppression of the fact from the committee. Therefore, we do not agree with the observations made by the committee in this regard. Except these two entries all old entries in the documents are consistent with the tribe

claim of the petitioner.”

9. In view of the above, the learned advocate for the petitioners would not be right in canvassing that the issue of “Maratha” has been considered and has been put to rest by the verdict of the High Court in the case of Shubham (supra). This Court has only disagreed with the findings of the Committee in the case of Shubham (supra) and the issue of the entry “Maratha” caste, has not been adjudicated upon. The Committee will, therefore, have the scope to look into the cases of Appasaheb and Sham in the backdrop of it’s prima facie conclusion that both these candidates had suppressed the entry of “Maratha” in the record of their cousin grandfather Kisanrao Laxman.

10. The learned AGP has vehemently canvassed that none of these petitioners should be granted the validity certificate in the light of reopening of cases of Appasaheb and Sham.

11. The answer to the contention of the learned AGP, at this stage, lies in the judgment delivered by this Court 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, wherein, a similar contention on behalf of the Committee

was recorded in paragraphs 2, 3 and 4, which read 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.”*

Pursuant to the above discussion, the Court granted a conditional validity to Shweta Isankar (supra) by observing in paragraph 8 as under :-

- “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.”*

12. Since the learned AGP strenuously canvassed that these petitioners should not be granted conditional validity certificates until the cases of Appasaheb and Sham are decided post reopening of their cases, the learned advocate for the petitioners submits, on instructions, that the petitioners are agreeable to face reopening of their cases in the event Appasaheb or Sham or any other validity holder from the family tree, suffers invalidation post reopening of their cases in the light of the entry “Maratha” found amongst one of the blood relatives. If their cases are reopened, they would wholeheartedly participate in the said proceedings.

13. In view of the above, these Writ Petitions are partly allowed. The common impugned judgment dated 28.01.2022 is quashed and set aside. We direct the Scrutiny Committee to issue “Thakur”, Scheduled Tribe validity certificate to the petitioner (Mangesh), who is in urgent need of the certificate, by 05:00 PM on 20.01.2023. Rest of the petitioners can be issued with such validity certificates on or before 15.02.2023.

14. Since the Scrutiny Committee has entered into correspondence with Appasaheb and Sham on their last known

addresses and any change in the addresses has not been communicated to the Committee in writing by these two candidates, the Committee will be at liberty to enter into correspondence with these two candidates on their last recorded addresses with the Committee.

15. So also, Dhanashree d/o Sham and Mangesh s/o Appasaheb submit on behalf of their fathers that Appasaheb and Sham, if have not received notices dated 04.03.2020, would collect the notices from the Committee at Aurangabad on 23.01.2023 in between 11:00 AM to 01:00 PM and wholeheartedly cooperate in the said proceedings.

16. The learned AGP makes a statement, on instructions, that the reopened cases of Appasaheb and Sham would be concluded by following the due procedure laid down in law, on or before 31.05.2023.

kps

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)