

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8477 OF 2022

Swapnil s/o Raosaheb Suryawanshi,
Age-32 years, Occu - Student,
R/o Shivrai, Taluka Vaijapur,
Dist.Aurangabad

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
Tribal Development Department.
Mantralaya, Mumbai - 32,

2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division,
Aurangabad, Through
it's Member Secretary

-- RESPONDENTS

**WITH
WRIT PETITION NO.7908 OF 2022**

Nandu s/o Baburao Suryawanshi,
Age-41 years, Occu - Service,
R/o Shivrai, Taluka Vaijapur,
District : Aurangabad

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
Tribal Development Department,
Mantralaya, Mumbai - 32,

2. The Scheduled Tribe Certificate
Scrutiny Committee,

Aurangabad division,
Aurangabad, through
it's Member Secretary,

3. The Commissioner of Police,
Office of the Commissioner
of Police, Aurangabad

-- RESPONDENTS

Mr.S.R.Barline, Advocate for the petitioners.
Mr.S.G.Karlekar, AGP for the respondents/State.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : JANUARY 5, 2023

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners, Swapnil Raosaheb Suryawanshi and Nandu Baburao Suryawanshi, have suffered invalidation of their claims of belonging to the Thakur S.T. category, vide the impugned order dated 12.04.2022 passed by respondent No.2 / Committee.

3. Having considered the strenuous submissions of the learned Advocates for the respective sides, we have gone through the petition

paper books and the record made available, with their assistance.

4. We turn to the family tree tendered by the petitioners in support of their claims before the Committee and we find as under :-

[a] The family tree refers to the petitioners' great grand father as Hari Raghunath Thakur (Suryawanshi). He had 2 sons Gangadhar Hari and Deorao Hari. Gangadhar had 2 sons Macchindra and Gorakhnath. Deorao Hari Thakur had 3 sons, Changdeo, Raosaheb and Baburao. Reference is made to the sons of Macchindra Gangadhar namely Bhausahab Macchindra and Devidas Macchindra. Both have been granted validity certificates. Further reference is made to Raosaheb Deorao who had 3 sons and one daughter. The daughter Gitanjali Raosaheb and her biological brother Bhagwat Raosaheb, are granted validity certificates.

5. The petitioner Swapnil Raosaheb is the biological brother of Bhagwat Raosaheb and Gitanjali Raosaheb. The petitioner Nandu is the son of Baburao Deorao who is the biological brother of Raosaheb Deorao. Gitanjali Raosaheb and her biological brother Bhagwat Raosaheb have been granted validity certificates. The petitioners' cases

are, therefore, covered by the Law laid down in **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 Nagpur [2010(6) Mh.L.J.401 : AIR 2010(6) Bom.R.21]**.

6. The learned AGP has strenuously canvassed that the files of Gitanjali, Bhagwat and Bhausahab Macchindra and his biological brother Devidas Macchindra, have been re-opened on the allegation that some of the entries of their ancestors indicate their caste to be "Maratha".

7. In the light of the above, we find that the Law laid down by this Court (Coram : S.C.Dharmadhikari and Smt.Bharati H.Dangre, JJ.), vide the judgment in **Shweta Balaji Isankar Vs.State of Maharashtra and others, in WP No.5611 of 2018, dated 27.07.2018**, would become squarely applicable. In paragraph Nos. 2 to 4, the Court has recorded 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. A similar argument has made before us today by the learned AGP with reference to the re-opening of the cases of those who have been granted validities, that form the basis of the claims of the petitioners. As regards such cases having been re-opened, this Court observed in paragraph No.8 in Shweta Balaji (supra) 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."

9. It is thus trite that if some of the validity holders have obtained

validity certificates by suppression of material facts or relevant pieces of evidence, the Committee, within the framework of Law, can resort to proceedings as are permissible. It does not call for any debate that fraud vitiates everything and if any of the validity holders are noticed to have played a fraud in acquiring the validity certificates, appropriate orders can be passed by the Committee. However, merely because notices are issued to the validity holders for re-opening their cases, cannot be a ground for denying validity certificates to the present petitioners on the presumption that the re-opening of the cases of those validity holders is bound to lead to rejection of their claims.

10. In view of the above, these petitions are partly allowed. The impugned order dated 12.04.2022 stands quashed and set aside. Consequentially, we conclude that the petitioner Swapnil Suryawanshi and the petitioner Nandu Baburao Suryawanshi / Thakur shall be granted validity certificates by the competent Committee within one month from today.

11. Needless to state, in the event, the validity certificates of any of the validity holders, on whom the petitioners have relied upon, are

recalled and their claims are invalidated, the consequences suffered by such candidates, would also befall upon these 2 petitioners and they would be liable to suffer similar consequences.

12. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)