

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8502 OF 2019

Deepak S/o Ramdas Myatrekar,
Age-49 years, Occu-Service,
R/o Agrasen Nagar, Jalna,
Tq. Jalna, Dist. Jalna

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai

2. The Scheduled Tribe Caste Certificate
Verification Committee Aurangabad,
Through its Dy.Director (R),
Aurangabad, Dist. Aurangabad

-- RESPONDENTS

**WITH
WRIT PETITION NO.13093 OF 2022**

Deepak S/o Ramdas Myatrekar,
Age-52as years, Occu-Service,
R/o Agrasen Nagar, Jalna,
Tq. Jalna, Dist. Jalna

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai,

2. The Scheduled Tribe Caste Certificate
Verification Committee, Aurangabad,

Through it's Dy.Director (R),
Aurangabad, Dist. Aurangabad

3. The Chief Executive Officer,
Zilla Parishad Jalna,
Dist.Jalna

4. The Chief Accounts and Finance
Officer, Zilla Parishad Jalna,
Dist. Jalna

-- RESPONDENTS

Mr.S.M.Vibhute, Advocate for the petitioner.
Mr.S.G.Karlekar, AGP for respondent Nos. 1 and 2.

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

DATE : JANUARY 5, 2023

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

1. Leave to delete respondent Nos. 3 and 4 / Zilla Parishad in WP No.13093/2022, being a formal party. Deletion be carried out forthwith.

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

3. We have considered the extensive submissions of the learned Advocates for the respective sides. Both the petitions are filed by Deepak for the reasons that we considered in this judgment.

4. It would be advantageous to refer to the sequence of events as under :-

[a] The Tahsildar, Jalna issued a Tribe Certificate to the petitioner dated 18.06.1987.

[b] The petitioner was temporarily appointed by the MSRTC on 28.01.1994, which forwarded his tribe claim for validation to the then Committee. In less than one year, the petitioner left the employment of MSRTC.

[c] On 12.02.1996, the Zilla Parishad, Jalna appointed the petitioner as a Junior Accountant on a post which was reserved for the ST category. Neither the Committee nor the MSRTC were aware of this development.

[d] Oblivious of the fate of the proposal sent by the MSRTC, the proposal for validation of the petitioner's claim was forwarded by the Zilla Parishad to the competent Committee.

[e] Since the certificate contained a spelling mistake of 'w' written in place of 'v' in "Mannervarlu", the Committee cancelled the certificate of the petitioner with liberty to acquire a properly spelled certificate in Form C, vide its order dated 19.01.2017.

[f] The petitioner received a fresh certificate with correct spelling in

Form 'C', on 07.08.2017 from the S.D.O. Jalna.

[g] On 16.08.2017, the said certificate was tendered to the competent Committee.

[h] The competent Committee delivered the impugned order dated 29.11.2022, invalidating the claim of the petitioner Deepak, concluding that, firstly, the petitioner's earlier claim was already rejected on 12.02.2003 and secondly, that his son Aadarsh suffered invalidation at the hands of the Committee vide order dated 10.12.2018.

[i] The claim of the petitioner's daughter namely Sejal was allowed by this Court vide order dated 04.10.2017 delivered at Bombay in WP No.10379/2019 filed by Sejal.

[j] The claim of the petitioner's son Aadarsh was accepted by this Court vide order dated 02.08.2019, delivered at Aurangabad in WP No.8825/2019.

[k] When the impugned order dated 29.11.2022 was passed by the Committee invalidating the claim of the petitioner, it was not brought to the notice of the committee that Sejal and Aadarsh had succeeded in the High Court. In fact, the Committee held in paragraph No.3 that Aadarsh has suffered invalidation and, therefore, the petitioner, as his father, had to suffer the same fate.

[1] Deepak has, therefore, filed the first petition to challenge the first invalidation, which was on account of the photostat copy of his tribe certificate. He has filed the second petition to challenge the second rejection.

5. As such, the first petition has been filed by the petitioner Deepak, since the Committee brought it on record in the proceedings of his son Aadarsh, on 06.07.2019 that the petitioner's claim was already rejected vide order dated 12.02.2003. The petitioner, therefore, approached the Committee on 08.07.2019, collected the documents and preferred the first writ petition before us.

6. The learned AGP, on the basis of the record, rightly submits that the first rejection of the petitioner's claim was on the basis of the photostat copy that was produced by the MSRTC for adjudication and after concluding that, no sufficient documentary evidence is produced by the petitioner in support of his claim. The petitioner appears to be unaware of the proceedings since he was not available on the address of the MSRTC when notices in the proceedings were issued to the him on the MSRTC address. Even, the rejection order would

indicate that it was forwarded in the name of the petitioner on the address of the MSRTC, Jalna workshop. Apparently, the petitioner was not in employment of the MSRTC after 1995.

7. In view of the above, the controversy in the matters before us is as under :-

[a] The first proceeding for validation was based on a photostat copy of the caste certificate, which rightly had to be rejected since an original certificate is necessary to the Committee to arrive at its conclusions. The notices of hearing, as is apparent from the order dated 12.02.2003, were served upon the MSRTC presuming that the petitioner is in the service of the MSRTC, when he had left such employment in 1995 and had joined the Zilla Parishad, Jalna in 1996.

[b] The second invalidation of the claim of the petitioner dated 29.11.2022, is on the basis that his earlier claim was invalidated and the Committee was oblivious of the fact that his son Aadarsh and daughter Shejal, had received validity certificates under the orders of the High Court.

8. The learned AGP strenuously opposed the second petition

by rightly submitting that the first petition can be ignored as it pertains to the rejection of the petitioner's claim on account of the certificate being a photostat copy. His contention is that the daughter of the petitioner had relied upon her paternal biological uncle namely Pawan Ramdas Myatrekar. Pawan is the biological brother of the present petitioner. His claim has been validated. However, the learned AGP hastens to add that the case of Pawan has now been re-opened. If Pawan's case leads to the invalidation of his claim, all validity holders, who have relied upon Pawan's validity so as to acquire validity certificates from the Committee or under the orders of the High Court, will have to suffer the same consequences.

9. We find that the effect of the re-opening of the validity holder's case on his blood relatives, has been considered by this Court (Coram : S.C.Dharmadhikari and Bharati H. Dangre, JJ), vide **judgment dated 27.07.2018 in WP No. 5611 of 2018, (Shweta Balaji Isankar Vs.State of Maharashtra and others)**. Paragraph Nos. 2 to 4 of the said judgment 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."

10. Considering the above in the case of Shweta Isankar (supra), this Court concluded in paragraph No.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."

11. In view of the above, we find that as the daughter and son of the petitioner have succeeded in the High Court and have been granted validity certificates and the biological brother of the petitioner

has also been granted a validity certificate, the Law laid down by this Court in Apoorva Nichale (supra) would be squarely applicable to the case of the petitioner.

12. The first petition bearing No.8502/2019 stands disposed off since we conclude that the rejection of a claim put forth on the basis of a photostat copy of the tribe certificate, is not to be interfered with and in such cases, the employee/applicant will have to be granted the liberty to tender the original certificate and seek a decision from the competent committee on his claim of belonging to a scheduled tribe. This has happened under fortuitous circumstances in the case of the petitioner, since he joined employment with Zilla Parishad and the Zilla Parishad, as an employer, forwarded his proposal on the basis of the same certificate dated 18.06.1987, in original form. Rule is discharged.

13. The second petition bearing number 13093/2022 is partly allowed in the light of the Law laid down in Apoorva Nichale (supra) and Shweta Balaji (supra). The impugned order of the committee is quashed and set aside. The Committee would issue a validity certificate to the petitioner within one month.

14. If Pawan, the biological brother of the petitioner, whose case has been re-opened, suffers invalidation, obviously, the petitioner as well as his son and daughter would suffer the same consequences in the light of the Law laid down in Shweta Balaji (supra), which was not cited before this Court in the case of Aadarsh, when this Court delivered an order dated 02.08.2019 in WP No.8825/2019.

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

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