

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9316 OF 2023

Sanjay Hanmant Kalyane ... **Petitioner**
Age 52 years, Occu: Service,
R/o Mukteshwar Madhyamik Vidyalaya,
Prakash Nagar, Latur Dist. Latur

VERSUS

1. The State of Maharashtra
Through its Secretary,
Revenue Department, Mantralaya,
Mumbai 32
2. The Collector, Tq. & Dist. Latur ... **Respondents**
3. The Sub Divisional Officer,
Ahmedpur, Tq. Ahmedpur, Dist. Latur
4. The Residential Deputy Collector, Latur
Tq. & Dist. Latur
5. Indubai Hanmantrao kalyane
Age 95 years, Occu: Household
R/o Vadwal (N) Tq. Chakur Dist. Latur

Mr. Tukaram M. Venjane, Advocate for the Petitioner
Mr. A. V. Deshmukh, AGP--APP for respondents-State
Mr. P. G. Rodge, Advocate for Respondent No.5

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRADE, JJ.
RESERVED ON : 23.08.2023
PRONOUNCED ON : 07.10.2023

JUDGMENT (Per Y. G. Khobragade, J.):

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. By the present Petition under Article 226 and 227 of the Constitution of India, the Petitioner has impugned the order dated 29.05.2023 passed by Respondent No.2-Collector, Latur.
3. Mr. Venjane, the learned counsel for the Petitioner has filed written notes of arguments. So also, he advanced oral submissions at length. He submits that the Petitioner is an adopted son of the freedom fighter Shri Hanmant Kalyane, who died on 27.07.2005. Respondent No.5 is the widow of the freedom fighter and adoptive mother of the Petitioner. He is the biological son of Dhodubai @ Bhagirathi Sudhakar Limbute, the married daughter of his adoptive parents i.e. real grandson of the freedom fighter- Hanmant Kalyane and Respondent No.5.
4. The learned counsel for the Petitioner further submits that, since his adoptive parents were not having a son, they adopted him after execution of a necessary adoption deed. After the adoption, his name is recorded in Educational and Government records. In the year 1986, the adoptive father Late Shri Hanmant Kalyane had nominated one Vishwanath Kashinath Kalyane, but his name was subsequently

cancelled by following the due process of law. Thereafter, the freedom fighter Hanmant Kalyane gave nomination in favour of the Petitioner on 04.12.1993, with the Respondent No. 2. Being adoptive son, the Petitioner took care of his adoptive mother-Respondent No.5, but subsequently, Mrs. Usha Rodge and Mrs. Asha Motipawale, the married daughters of his adoptive parents, instigated Respondent No.5 and took her away with an intention to grab the pension amount and property of Respondent No.5. Though the Petitioner tried to bring back his adoptive mother (Respondent No. 5), she did not come to the Petitioner, due to the misunderstanding created by both the married daughters. However, all of a sudden, on 29.10.2022 i.e. after a period of 30 years, Respondent No.5 filed an application before Respondent No.2 Collector, Latur and prayed for cancellation of adoption and nomination of the Petitioner on the ground that the Petitioner is threatening her and not maintaining her.

5. The learned counsel for the Petitioner vehemently canvassed that, Respondent No.5 wrongly alleged that, the Petitioner fraudulently executed an adoption deed and nomination in his favour and hence, she requested for cancellation of the same. Thereafter, Respondent No. 2 Collector, directed Respondent No. 3 Sub Divisional Officer, Ahmedpur on 03.01.2023 to inquire and submit a report in respect of the

allegation. Accordingly, on 30.01.2023, the Respondent No. 3 issued notice to the Petitioner. On 10.03.2023, the Petitioner submitted his written statement before Respondent No.3 stating therein that by following due procedure of law, the adoption deed and nomination were executed in his favour by his adoptive father/freedom fighter Hanmantrao Sambhaji Kalyane and nominated him on 04.12.1993 as per the provisions of GR's dated 12.10.1965 and 09.03.1981.

6. It is further canvassed that Asha Kalyane (Asha Motipawale), a married daughter of the freedom fighter, played fraud on the Government and secured a Government job though she was not having nomination from her father Hanmantrao Sambhaji Kalyane. Earlier his adoptive father had nominated one Vishwanath Kalyane, but subsequently that nomination was revoked. Therefore, the Petitioner requested for rejection of the application of Respondent No.5.

7. The learned counsel appearing for the Petitioner further canvassed that, on 02.05.2023, Respondent No.4-Residential Deputy Collector sent a notice addressing the Headmaster of Mukteshwar Secondary School, Latur, in which the Petitioner is working as Assistant Teacher and had directed the Petitioner to remain present before Respondent No.2 on 09.05.2023. In pursuance of the said notice, on 06.05.2023, the Petitioner was served with notice by the Headmaster of

the Mukteshwar Secondary School directing the Petitioner to remain present before Respondent No.2 for a hearing. Thereafter, on 08.05.2023, the Petitioner sent a letter by R.P.A.D., to Respondent No. 4 stating that he is admitted in Ekta Hospital, Latur for medical treatment. Hence, he is unable to attend the hearing on 09.05.2023. Thereafter, Respondent No. 2 passed the impugned order dated 29.05.2023 and cancelled the nomination of the Petitioner being a nominee of the freedom fighter Shri Hanmantrao Sambhaji Kalyane.

8. The learned counsel for the Petitioner further canvassed that Respondent No.5 had submitted an application before Respondent no.2 for cancellation of nomination of the Petitioner after a lapse of more than 29 years without giving any explanation for cancellation/ revocation of the nomination. So also, Respondent No.2 Collector passed the impugned order and revoked the nomination of the Petitioner without providing him any opportunity of being heard and revoked the nomination of the Petitioner. Therefore, the impugned order dated 29.05.2023 is illegal and bad in law. Hence, prayed to quash and set aside the same.

9. The learned Counsel appearing for the Petitioner further canvassed that, on 29.08.2022, 01.09.2022, 02.09.2022, 06.09.2022, 10.02.2023, the Petitioner had lodged complaints against Smt. Asha

Kalyane (Asha Motipawale), the married daughter of Respondent No.5, before the various Government authorities alleging about securing Government service as a Clerk in Panchayat Samiti, Chakur on the basis of a forged document and she was not nominated by her real father freedom fighter Late Shri Hanmant Kalyane. Further, Asha Kalyane (Smt. Asha Motipawale) suppressed earlier nomination given in favour of Vishwanath Kalyane in the year 1986, which was subsequently revoked. However, Respondent No.2 and the Revenue Authorities failed to take action against Mrs. Asha Motipawale. The married daughter of Respondent No. 5 instigated her mother Respondent No. 5 for cancelling the nomination of the Petitioner. Therefore, the application for revocation/cancellation was filed with ulterior motive. However, Respondent No. 2 failed to consider the same and passed the impugned order, which is illegal and bad in law.

10. The learned counsel for the Petitioner further canvassed that as per the Government's scheme, the freedom fighter has to nominate his blood relative or any person for Government Service with a view that the nominee of the freedom fighter shall nurture the freedom fighter and his widow. However, the report submitted by Respondent No.3 is contrary to the aim and object of the Scheme. Further, once a nomination is given by the freedom fighter, it cannot be revoked or

cancelled by Respondent no.2 without providing any opportunity of hearing to the nominee. However, Respondent No. 2 passed the impugned order dated 29.05.2023 canceling his nomination after 30 years, without an opportunity of being heard. Hence, he prayed for allowing this Petition.

11. Per contra, the learned Assistant Government Pleader canvassed that, Respondent No. 5, widow of the freedom fighter has alleged about preparation of false and fabricated document of adoption deed and nomination by the Petitioner. She never consented for adoption and nomination of the Petitioner. After the sad demise of her husband, the Petitioner who is allegedly nominated by her husband, sold her house by obtaining her thumb impression on blank stamp paper under the pretext of getting a Gas connection. Further, the Petitioner failed to nurture her and caused lot of troubles to her and, therefore, she does not want to continue with the nomination of the Petitioner. Therefore, Respondent No.2 issued notice to the Petitioner through Respondent No.3. Accordingly, Respondent No.3 served notice upon the Petitioner. In response to the service of notice, the Petitioner filed reply on 10.03.2023. Thereafter, on 29.05.2023, Respondent No. 2 Collector, Latur, passed the impugned order, after considering the application filed by the Respondent as well as the reply filed by the

Petitioner, holding that the object behind the scheme of granting the right to the widow of a freedom fighter for nominating a relative for appointment in government service, is with a view that the nominee would look after the widow of the freedom fighter in her old age. But as the said object was not fulfilled, she revoked the nomination of the Petitioner, which is self explanatory. Therefore, the learned AGP prayed for dismissal of the Petition.

12. Shri Krishna P. Rodge, the learned counsel appearing for Respondent No.5 vehemently canvassed that, the Petitioner is a son of the deceased daughter of Respondent No. 5. The Petitioner is a mischievous and dishonest person, who got his name recorded as nominee of her late husband with an intention to grab the landed property. The Petitioner took disadvantage of the illiteracy and old age of Respondent No.5 and on the basis of false and fabricated documents, the Petitioner posed as the adopted son of the freedom fighter Shri Hanmantrao Sambhaji Kalyane and sold her house. Therefore, Respondent No. 5 filed a proceeding before the Chief Executive Officer, Zilla Parishad Latur for revocation of Mutation entry with the Gram Panchayat record in respect of House No. 147 at village Wadwal Nagnath Tq. Chakur Dist. Latur. Thereafter, Respondent No.5 submitted

an application with Respondent No.2 and sought for revocation of nomination and adoption deed, if any, as the said documents were false.

13. The learned counsel for Respondent No. 5 further submits that, on the pretext of getting a Gas connection, the Petitioner had obtained thumb impression of Respondent No. 5 on a blank stamp paper and fraudulently transferred her House No. 147 situated at village Wadwal Nagnath Tq. Chakur Dist. Latur, firstly in his own name and got the mutation entry. Thereafter, he transferred the said house in the name of his real brother. Therefore, Respondent No. 5 filed a proceeding before the Chief Executive Officer Latur for cancellation of the said mutation entry. Accordingly, on 27-02-2023, the CEO, passed an order and canceled the mutation entry on the ground that, while recording the name of the Petitioner, a proper procedure was not adopted and no consent of Respondent No. 5 was obtained.

14. The learned counsel for Respondent No. 5 canvassed that, the Petitioner himself submitted his nomination posing himself as nominee of late Shri Hanmantrao Sambhaji Kalyane, freedom fighter with the Respondent No. 2 Collector, Latur and she never consented for adoption of the Petitioner or nomination by her husband. So also, the Petitioner does not maintain Respondent No. 5. Therefore, there is no necessity to continue the nomination of the Petitioner. Accordingly, Respondent No.

2 passed the impugned order and canceled the Petitioner's nomination, which is justifiable. Hence, prayed for dismissal of the Petition.

15. It is not in dispute that, Shri Hanmantrao Sambhaji Kalyane, the husband of Respondent No.5, was freedom fighter. He was honoured with Swantarya Sainik Sanmanpatra. He had participated in the Indian National Freedom struggle. The freedom fighter Hanmantrao Sambhaji Kalyane was not having any male child, but had four married daughters. However, his two married daughters have died and two married daughters namely Usha Rodge and Asha Motipawale are alive. Respondent No.5 is widow of freedom fighter Shri Hanmant Kalyane.

16. It is a matter of record that, Respondent No. 1 State Government issued Government Resolution dated 28.02.2014 and formulated a scheme for nomination by the freedom fighter, once in his life time. His widow is permitted a change in nomination once in her life time with a view that the nominee/relative will get Government service and he would look after the widow of the freedom fighter in her lifetime. Therefore, it is abundantly clear that, the freedom fighter or his widow have a legal right to cancel or revoke the nomination at any point of time in their life and no statutory or fundamental right is created in favour of the nominee to oppose revocation of nomination. Therefore, the submission canvassed on behalf of the Petitioner that no

opportunity of hearing was granted to the Petitioner prior to passing the impugned order, does not appear to be a sustainable argument.

17. Earlier, the State Government issued Government Resolutions dated 12.10.1965 and 09.03.1981 with a view that there would be proper nurturing and maintenance of an old aged freedom fighter and after death of such freedom fighter, his widow would be maintained properly by his legal heirs. As per the Government Scheme, widow of the freedom fighter has a right to nominate a close person or relative with a view to secure Government job with an intention that the said nominee or the legal heir/relative would take care of the widow of the freedom fighter. If the freedom fighter and his widow does not exist, in that event, the question of their nurturing does not remain. Therefore, it is crystal clear that, if the aim and object of the said scheme is not fulfilled or achieved, the nomination could be cancelled.

18. It is pertinent to note that in case of **Sachin Subhash Hundekari (Supra)**, the Coordinate Bench of this Court in, paragraph Nos. 5, 6 and 7 has observed as under:

5. It is an admitted fact that the Petitioner's grand-mother expired on 6.3.2005. Thereafter, the Petitioner received impugned order dated 7.6.2005 from the Collector, Solapur. We may quote the relevant portion of the same which reads thus:

"The inquiry of the application submitted by the aforesaid department has been made by Tahsildar, Pandharpur when it is found that widow of Freedom Fighter Smt. Indirabai Ramchandra Hundekar has expired on 6.3.2005. Taking into consideration, the provisions of Government letter No. EST/3491/Pra.Kra./489/E-7 dated 14.11.1996 in that regard the note of nomination letter given in your name by the widow of freedom fighter for granting service in Class-III and Class-IV post in Government services, cannot be acceded to. Your request in this regard has been disallowed and the application of the aforesaid date has been filed in record."

The learned Counsel for the Petitioner submitted that the above approach of the respondents is improper and hyper technical.

6. On going through the impugned order dated 7.6.2005 it is noticed that it makes a reference to the Government letter dated 14.11.1996 bearing letter No. EST-3491/PK-489/E-7. The said letter clearly states that right to nominate a person for appointment in Government service is by the freedom fighter and after his demise the right goes to his widow. The said right cannot be exercised by any other person except the widow of the freedom fighter. The letter further states that the object behind the scheme of granting the right to the widow of a freedom fighter for nominating a relative for appointment in government service is with a view that the nominee would look after the widow of the freedom fighter in her old age. If the wife of the freedom fighter is not alive, then obviously the issue of looking after the widow of the freedom fighter does not arise.

7. From the object behind the scheme, it is clear that the scheme was formulated with the object that the widow of the freedom fighter should be looked after in her lifetime. Therefore, in the absence of the freedom fighter, the widow was also allowed to nominate a relative for government service. However, when the freedom fighter or his wife are not alive, then there is no question of looking after the freedom fighter or his widow and in such case, once the widow dies, the nomination made by the widow of the freedom fighter would not survive."

19. In the case in hand, the Petitioner contended that, on 04.10.1993, Respondent No.5 and her husband-freedom fighter adopted him and nominated his name with the Collector for receiving the benefit. However, the Petitioner failed to produce the deed of adoption. It is not the case of the Petitioner or Respondent No. 5 that, the Petitioner has secured a Government job on the basis of the nomination given by Shri Hanmantrao Sambhaji Kalyane, freedom fighter. It is not in dispute that, Respondent No.5, being widow of the freedom fighter, is still receiving pensionary benefit under the scheme. The main grievance of Respondent No.5 is that, the Petitioner transferred the house constructed by her husband- freedom fighter, firstly in his own name and subsequently in the name of his real brother on the basis of false, fabricated nomination and deed of adoption and she has been thrown out of her own house. So also, the Petitioner is not maintaining her.

20. Needless to state that, during the course of hearing, the learned A. G. P., has produced xerox copies of bunch of papers viz., application dated 29.10.2022 submitted by Respondent No.5 for cancellation of nomination of the Petitioner, copy of notice dated 03.01.2023, Enquiry Report dated 28.03.2023 of the Respondent No.3 SDO, copy of Notice dated 03.04.2023 issued by Respondent No.4

directing the Petitioner to remain present before the Respondent No.2 on 17.04.2023 for hearing, copy of Panchnama, Service report dated 17.04.2023 submitted by Talathi, Wadwal (N), notice dated 25.04.2023 and 02.05.2023. The same are taken on record and collectively marked as 'X' for identification (16 pages).

21. On perusal of the above record, it prima facie appears that Respondent No.2 had directed the Respondent No.3 Sub Divisional officer to conduct an inquiry against the Petitioner in respect of allegations of Respondent No.5. Accordingly, Respondent No. 3 conducted an enquiry and submitted a report. As per the report, the Petitioner is grandson of Respondent No.5 i.e. son of deceased daughter of Respondent no.5. The Petitioner claims that he is adopted son of Respondent no.5, but the Petitioner failed to produce any deed of adoption. The Petitioner has not secured Government service on the basis of nomination of the freedom fighter. The Petitioner is working as an Assistant Teacher with Mukteshwar Secondary School, Prakash Nagar, Latur. Late Shri Hanmantrao Sambhajirao Kalyane, freedom fighter died on 27.07.2005. Smt. Usha Shankar Rodge is taking care and maintaining her mother (Respondent No.5). The Petitioner played fraud and tried to grab the house of Respondent No. 5.

22. Respondent No.5, widow of freedom fighter, submitted an application for cancellation of Petitioner's nomination. Accordingly, on 29.05.2023, Respondent No.2 passed the impugned order after giving an opportunity of hearing to the Petitioner and cancelled his nomination as per G.R. dated 28-02-2014. Therefore, we do not find that the impugned order suffers from any illegality.

23. Thus, in the above circumstances, **this Petition is dismissed.**
Rule discharged. No order as to cost.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan