

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO.11083 OF 2019

PRAGATI APPA NANDEDKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.A.S.Golegaonkar, Advocate for the petitioner.
Mr.P.S.Patil, AGP for respondent Nos. 1 to 3 and 5.
Mr.S.B.Pulkundwar, Advocate for respondent No.4.

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

DATE : FEBRUARY 8, 2023

PER COURT :

1. The petitioner has put forth prayer clause B, C, D and E as under :-

"B. The impugned order dated 14.08.2019 of respondent No.2 Scrutiny Committee may kindly be set aside and declare that petitioner belongs to Mannervarlu Scheduled Tribe and also direct respondent No.2 - Scrutiny Committee to issue validity certificate in favour of the petitioner, by issuing appropriate writ, order or direction as the case may be.

c. To restrain respondent No.4 - University and respondent No.5 Medical College from taking any adverse action against petitioner, on the basis of impugned order of Committee - as like cancellation of her

admission to MBBS Degree Course, from ST category, or restraining her from pursuing studies of the said course or withholding her result of examination of the said course - and also direct them to allow petitioner to pursue and complete the studies of said MBBS Course from respondent No.5 - Medical College, by issuing appropriate writ, order or direction as the case may be.

D. To restrain respondent Nos. 1, 3, 4 and 5 from taking any adverse action against petitioner, including any action under Maharashtra Act No.23 of 2001 and rules of 2003 framed thereunder, by issuing appropriate writ, order or direction as the case may be.

E. To restrain respondent No.4 - University and respondent No.5 - Medical College from taking any adverse action against petitioner, on the basis of impugned order of Committee - as like cancellation of her admission to MBBS Degree Course, from ST category, or restraining her from pursuing studies of the said course or withholding her result of examination/s of the said course - and also direct them to allow petitioner to pursue and complete the studies of said MBBS course from respondent No.5 - Medical College, pending hearing and final disposal of this writ petition."

2. By the first order passed by this Court on 09.09.2019, though the impugned order was not stayed, it was directed that the petitioner's admission would not be cancelled only on the ground of invalidation of her claim of belonging to the Mannervarlu ST. By a subsequent order dated 06.03.2020, it was directed to declare the results of the 3rd year

2nd semester and to complete the internship.

3. On 11.06.2021, this Court passed the following order :-

"1. The caste claim of the petitioner is invalidated in the year 2019.

2. The learned Advocate for the petitioner submits that the petitioner has completed her M.B.B.S. Course and also completed internship. The petitioner is eligible to appear for Post Graduate course and also complete her bond period. Learned Advocate for the petitioner submits that in case of real sister of the petitioner, the principal Seat at Bombay has allowed conditional validity.

3. Permitting the petitioner to appear for the examination for the P.G.Course and seek benefit of reservation would not be appropriate. The petitioner cannot be allowed to take the benefit of reservation for P.G.Course after invalidation of her caste claim.

4. However, as the bond period is to be compulsorily completed, we allow the petitioner to complete the bond period and for that purpose, the necessary documents be issued. However, we make it clear that the petitioner would not be entitled to take benefit of reservation for the P.G. course until further orders of this Court."

4. The petitioner has moved a Civil Application No.214/2023 praying for the degree certificate to be released. After hearing the learned Advocates, we had passed the following order on 20.01.2023 :-

"1. Considering the order passed by the Hon'ble Supreme Court

dated 31.01.2022 in petition for Special Leave to Appeal (Civil) No.866-867/2022 filed by Maharashtra University of Health Sciences Vs.Madhavi Ramrao Thakur and others, the learned Advocate for the petitioner submits that he would not pray for issuance of a degree certificate today. Let the writ petition be heard in the light of the fact that the impugned judgment of the Committee dated 14.08.2019, has already been quashed and set aside by this Court at the Principal Seat (Coram : N.W.Sambre and G.S.Kulkarni, JJ.) vide order dated 22.08.2019 passed in WP No.9219/2019 filed by the biological sister of the present petitioner, namely Kum.Prajakta.

2. In view of the above, this application is disposed off.

3. At the request of the learned Advocate Mr.Pulkundwar, list this petition for disposal on 08.02.2023."

5. In WP No.9219/2019, which was heard by this Court at the Principal Seat, the order dated 14.08.2019 rejecting the tribe claim of Prajakta d/o Appa Nandedkar, was set aside in the light of the fact that her father Appa Sitaram Nandedkar was granted validity certificate on 12.01.2011. It was concluded in the said order that as the file of Prajakta's father Appa Nandedkar was re-opened by the Committee, Prajakta would suffer the consequences if her father's claim is turned down in the re-opened case. Prajakta is the elder biological sister of the present petitioner Pragati d/o Appa Nandedkar.

6. The learned AGP, on behalf of the Committee has strongly opposed this petition contending that though Prajakta has been granted validity certificate by this Court, the Committee can look into whether any fraud or trick or mischievous act was committed by Appa Nandedkar. If the claim of Appa is invalidated, Prajakta as well as Pragati would have to suffer same consequences. It is further stated that Appa has been issued with a show cause notice directing him to submit his written explanation. However, Appa has still not tendered his written explanation.

7. Shri Golegaonkar, the learned Advocate representing Appa, clearly submits that Appa would tender a written explanation to the show cause notice, which would reach the Committee on or before 28.02.2023. For the said reason, he submits that the claim of his daughter Pragati, need not be kept pending in this court and he urges this Court, on the assurance that Appa would fully co-operate with the Committee, that Pragati's case be decided today as she would be seeking admission to the PG medical course.

8. In view of the above circumstances, we have considered this

petition finally at admission stage.

9. Since it is undisputed that the father of the present petitioner Pragati and her biological sister Prajakta, is facing the re-opened case, the view taken by this Court (Coram : S.C.Dharmadhikari and Smt.B.H.Dangre, JJ.) in **Shweta Balaji Isankar Vs.State of Maharashtra and others, in WP No.5611 of 2018, dated 27.07.2018**, would be applicable to this case. For the sake of clarity, we are reproducing paragraph Nos. 2 to 4 and the conclusion in paragraph no.8, in Shweta's case (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."

10. The learned AGP points out that Appa Nandedkar and Dipak Sahebrao Nandedkar, who are blood relatives from the paternal side, are facing re-opened cases. Keeping this development in focus, we find that the Law laid down by this Court in **Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and Ors.** reported in 2010 (6) Mh.L.J. 401 would apply to this case. When the father of the petitioner has been granted validity by the Committee and her sister has been granted validity by the High Court, we do not find any reason to keep the claim of the present petitioner pending, of course making it subject to the outcome in the case of Appa or Dipak.

11. In view of the above, this petition is partly allowed. The impugned order dated 14.08.2019 stands quashed and set aside. The Committee would issue Mannernvarlu ST validity certificate to the

petitioner on 14.02.2023, keeping in view that the present petitioner would be seeking PG admission. Needless to state, in the event the claim of Appa or Dipak is invalidated in the re-opened cases, the consequences which they would suffer, would also befall upon the present petitioner Pragati and also on her biological sister Prajakta, in the light of paragraph No.8 of the judgment dated 22.08.2019 delivered in the case of Prajakta.

12. In view of the above, the degree certificate of the petitioner would be released by the University and all original documents would be released by the concerned college, within 5 days from today.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)