

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 WRIT PETITION NO.14139 OF 2021

KUM. MANISHA D/O VISHWANATH ARBADWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. A. S. Golegaonkar, h/f Mr. M. A. Golegaonkar.
AGP for Respondent Nos.1 to 3 : Mr. S. G. Sangle.
Advocate for Respondent No.4 : Mr. Jayant R. Patil.

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 30th JANUARY, 2023.**

PER COURT :-

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

- “B] To quash and set aside the impugned decision/order of the respondent no.2 Committee dated 4/10/2021 (Exh.N) invalidating the tribe claim of the petitioner and to issue validity certificate to the petitioner belonging to Mannervarlu Scheduled Tribe Reserved Category as earliest and also direct the respondent no. 1 to 3 not to take any coercive action against the petitioner on the basis of impugned decision dated 4/10/2021, by issuing appropriate writ or order or directions in the like nature.
- C] To direct Respondent No. 4 and 5 to issue the BDS Degree Certificate, issue original documents which are submitted at the time of taking admission to 1st year BDS Degree Course as earliest by stipulating the period which this Honourable Court deems, by issuing appropriate writ, order or directions in the like nature.
- D] To grant stay to the impugned decision/order of the respondent no.2 Committee dated 4/10/2021 (Exh.N) and direct the respondent No. 1 to 3 not to take any adverse or criminal action on the basis of the impugned decision/order of the respondent no.2

Scrutiny Committee, pending hearing and final disposal of this Writ Petition.

- E] To direct Respondent No. 4 and 5 to issue the BDS Degree Certificate, issue original documents which are submitted at the time of taking admission to 1st year BDS Degree Course forthwith, pending hearing and final disposal of this Writ Petition.”

2. When the first order was passed by this court on 15.12.2021, it was directed that penal action would not be taken against the petitioner, who is a girl student.

3. We had heard this matter on 12.01.2023 and had passed the following order:-

“1. The petitioner would be facing the first round of selection for admission to a professional course, in the first week of February. 2 biological sisters and the father of the petitioner have been granted validity certificates. Out of this, one sister namely Pratiksha, has been granted validity certificate by the High Court in WP No.10496/2017.

2. The learned AGP desires to go through the record. By consent, stand over to 30.01.2023 in the disposal category.”

4. The learned A.G.P. submits on instructions and on perusal of the record/files of the two biological sisters of the petitioner and of her father, that none of the blood relatives of the petitioner on the paternal side have suffered invalidation of claim of belonging to Mannervarlu Scheduled Tribe category. The learned A.G.P. however, submits on instructions that notices for reopening of the cases have been issued to both the biological sisters of the petitioner as well to

her father. Therefore, two sisters viz. Priyanka and Pratiksha and the father of these three sisters viz. Vishwanath, will now be facing the reopening of their cases.

5. We have perused the order passed by this Court, dated 4.10.2017, in writ petition No. 10496 of 2017, filed by Pratiksha. In a short order, the petition was allowed and the impugned order was set aside by this Court and the committee was directed to issue a Scheduled Tribe validity certificate to Pratiksha. It was recorded in paragraph No.9 of the order that in case any show cause notice is issued against any of the relatives of the petitioner, the order of this Court dated 4.10.2017 would not be an impediment.

6. The learned A.G.P. strenuously submits that it would be a purposeless exercise to entertain this petition and grant a conditional validity to the present petitioner since, if the reopened cases lead to invalidation of the claim of any of the sisters or their father, the petitioner will also have to face the same consequences.

7. We find that this case is squarely covered by the judgment delivered by this Court (Coram : S. C. Dharmadhikari and Smt. Bharati H. Dangre, JJ.), at the Principal Seat, in **WP No.5611/2018 (Shweta Balaji Isankar Vs. State of Maharashtra and Others)**. Considering similar submissions on behalf of the committee, as are recorded herein-above, this Court concluded in **Shweta Balaji Isankar** (supra) in paragraph Nos. 2 to 4, 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 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. Finally, this Court concluded in ***Shweta Balaji Isankar*** (supra) 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.”

9. In view of the above and considering the law laid down by this Court in ***Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee, 2010 (6) Mh.L.J. 401***, this petition is partly allowed. The impugned order dated 04.10.2021 is quashed and set aside. Respondent No.2 committee is directed to issue a Mannervarlu Scheduled Tribe validity certificate to the petitioner, on or before 3.2.2023, since the petitioner would be facing post graduate admission process from 5th February, 2023.

10. The University/college would deliver the original documents and the degree certificate of the petitioner, on or before 3.2.2023.

11. Needless to state, in the event of invalidation of the claim of either Priyanka or Pratiksha or their father Vishwanath, in view of the reopening of their cases, the consequences of invalidation which would be suffered by any of these candidates, would also befall upon the petitioner and she would, therefore, be liable to be suffer the same consequences.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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