

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12246 OF 2023

Raghunath S/o Babarao Garud,
Age: 59 years, Occ: Pensioner,
R/o, Mali Galli, Parbhani,
Tq & Dist. Parbhani.

...PETITIONER

-VERSUS-

1. State of Maharashtra,
through Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
through its Member Secretary.
3. Sub Regional Transport Officer,
Parbhani, Dist. Parbhani.

...RESPONDENTS

...
Advocate for the Petitioner : Shri Sagar S. Phatale
AGP for Respondents 1 to 3/State : Shri V.M. Kagne
...

**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 01st November, 2023

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

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

2. On 18.10.2023, after hearing the learned Advocates for the respective sides, we had passed the following order:-

- “1. *The petitioner has suffered invalidation of his claim of belonging to the ‘Thakur’ - Scheduled Tribe Category by the impugned order dated 17.04.2023. He is a retired employee and is receiving pension regularly.*
2. *The petitioner Raghunath has two biological brothers, Murli and Bhagwan. His grandfather Eknath and Dattabuwa are biological brothers. The grandfather of Dattabuwa/Eknath, namely, Haribaba is the biological brother of Namdeo. From the branch of Haribaba, nine persons have received validity certificates. More specifically, his biological son Sachchidanand and his biological daughter Ganeshwari have also been granted validity certificates. From the branch of Namdeo, Amol s/o Jagannath, Swati d/o Narayan, Akshay s/o Vasant, Akanksha d/o Vasant, Mukund s/o Madhukar and Makrand s/o Madhukar have also been granted validity certificates. There are in all 15 validity holders from the paternal side.*
3. *The learned advocate for the petitioner submits that as the petitioner is presently earning his pension having retired as a peon, he undertakes that if his claim is invalidated by this Court, his pension may be stopped.*
4. *Issue notice to the respondents nos. 1, 2 and 3. Learned AGP waives service of notice on behalf of all the respondents.*
5. *Considering the law laid down by this Court in*

Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee No. 1 and others, 2010(6) Mh.L.J. 401 and by the Hon'ble Supreme Court in Mah. Adiwasi Thakur Jamat Swarakshan Samiti v. The State of Maharashtra & Ors. [Civil Appeal No. 2502 of 2022, decided on 24th March, 2023], we are listing this petition on the request of the learned AGP on 01st November, 2023 in the urgent orders category.

6. *Needless to state, until further orders in this petition, the pension of the petitioner shall not be stopped.”*

3. The learned AGP has gone through the records and finds that the relation between the Petitioner and many of the validity holders, is not controvertible. More specifically, his biological son Sachchidanand and his biological daughter Ganeshwari, have been granted the validity certificates. In the backdrop of 15 validity holders from the paternal side, the learned AGP submits that this Court granted the validity certificates to Sachchidanand and Ganeshwari by allowing their Writ Petition No.2004/2022, vide the order dated 09.02.2022. He, therefore, submits that certain conditions may be imposed.

4. In *Shweta Balaji Isankar vs. The State of Maharashtra and others*, Writ Petition No.5611/2018 decided on 27.07.2018 at the Principal Seat, this Court has concluded in

paragraphs 2, 3, 4 and 8 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.”*

5. In view of the above and in the light of ***Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010 (6) Mh.L.J. 401***, this Writ **Petition is allowed**. The impugned order dated 17.04.2023 is quashed and set aside. The Scrutiny Committee shall issue a validity certificate to the Petitioner for “Thakur”, Scheduled Tribe, within 30 days from today.

6. In the event, any of the validity holders, who are the foundation to the claim of the Petitioner, suffers an adverse order

after reopening of their cases, the consequences suffered by such candidates would also befall upon the Petitioner, who would then be liable to face the same consequences.

7. **Rule is made absolute** in the above terms.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)