

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

2 WRIT PETITION NO.13123 OF 2023

Ishika Shankar Bodhanapod,
Age: 19 years, Occu. Student,
R/o. Bolegaon, Tq. Biloli,
Dist. Nanded.

...Petitioner

Versus

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

2] The Scheduled Tribe Certificate Scrutiny Committee,
Kinvat, Headquarter, Aurangabad
through its Deputy Director (R)

...Respondents

...
Advocate for Petitioner : Mr. Pratap V. Jadhavar
AGP for Respondent/State : Mr. A. A. Jagatkar
...

**CORAM : MANGESH S. PATIL
AND
NEERAJ P. DHOTE, JJ.**

DATED : 23rd OCTOBER 2023

PER COURT :-

. Heard.

2. Petitioner is challenging the order of invalidation passed by the Scrutiny Committee in a proceeding under Section 7 of the Maharashtra Act No. XXIII of 2001, invalidating her claim of being belonging to 'Mannervarlu' Scheduled Tribe.

3. We have heard both the sides finally in view of the exigency, inasmuch as the petitioner is seeking admission in the current round of Centralized Admission Process.

4. The learned advocate for the petitioner submits that the petitioner's father possesses a certificate of validity, which was granted after a vigilance inquiry. Though the committee observes that he had obtained it by resorting to fraud, till the time it is not confiscated and cancelled by following the due process of law, the petitioner cannot be denied the benefit in the light of the decision of the Hon'ble Supreme Court in the case of **Mah. Adiwasi Thakur Jamat Swarakshan Samiti v. The State of Maharashtra & Ors.** [Civil Appeal No. 2502 of 2022, decided on 24 March 2023].

5. He would submit that the observation made by the Committee relying upon the so-called manipulated and bogus record of cousin grandfather Gangaram Gangana Bodhanapod was very well available to the Scrutiny Committee and the Vigilance Cell when Shankar's validity was being considered. Even if now Committee decides to resort to re-inquiry in his matter, it will have to substantiate its inference about he having obtained certificate of validity by resorting to fraud or misrepresentation.

6. Learned advocate would lastly submit that the Committee has relied upon the invalidation of an individual who does not fall in the petitioner's genealogy. Neither there is any reference in the vigilance report about it nor was the fact brought to the notice of the petitioner before the Committee resorted to rely upon it and concluded that he was from the petitioner's family and had faced invalidation so that he could have an opportunity to dispute it.

7. Per contra, the learned AGP supports the order. He submits that it is revealed during vigilance inquiry that the school record of the cousin grandfather Gangaram Gangana Bodhanapod was, in fact, forged one. There were blank pages in the register and all the entries were made in the recent past at one go. He would also submit that even there is a manipulation inasmuch as, letter 'lu' has been added subsequently in the school record of Shankar and petitioner's father and uncle Ashok. He would submit that since petitioner's father had succeeded in obtaining certificate of validity by resorting to misrepresentation and fraud, the Committee has the jurisdiction and power to undertake fresh scrutiny of his matter and the petition be dismissed.

8. Having heard both the sides and having gone through the papers, it appears that the oldest entry which the committee has now doubted in respect of Gangaram Gangana Bodhanapod of 1953, was

very well relied upon by the then Scrutiny Committee while validating the petitioner's father's tribe certificate. If such is the state of affairs, till the time the Committee does not extend an opportunity to Shankar, petitioner's father, to explain these facts and does not take its inference to the logical end by invalidating his claim and confiscating and cancelling the validity certificate issued to him by the the then committee, it would be premature to reach such a conclusion.

9. Besides, the petitioner's father is not before us. We do not intend to make any comment in respect of the alleged misrepresentation or fraud as it is likely to cause a serious prejudice to him. That would be the course available for the Committee to undertake in the proceedings which it has decided to reopen.

10. Similar would be the fate of the grounds being relied upon by the Committee regarding the addition of letter 'lu' in the school record of the petitioner's father and uncle.

11. Invalidation of one Vitthal Piraji Bodhanapod is also being referred to by the Committee to disbelieve the petitioner's claim and to buttress its inference about petitioner's father having concealed it. That may be so. However, as has been noticed, invalidation of the Vitthal Piraji Bodhanapod is not a fact which is revealed in the

vigilance inquiry. Obviously, the petitioner had no occasion to controvert this. Independently, if the Committee has decided to rely upon that invalidation, it was imperative for it to have informed the petitioner about it and to have solicited her stand touching that. Using contrary material without notice to a party is contrary to the principles of natural justice and inconsistent with the decision in the matter of **Sayanna Versus State of Maharashtra and others** [Civil Appeal No. 6253 of 2009, decided by the Hon'ble Supreme Court on 15 September 2009].

12. In the result, when the petitioner's father possesses a certificate of validity, which the Committee is still to confiscate and cancel by resorting to appropriate proceedings, the petitioner cannot be denied to have the benefit. Hence, the following order.

ORDER

- [i] The petition is partly allowed.
- [ii] The impugned Judgment and Order dated 05.10.2023 passed by the Scrutiny Committee, is quashed and set aside.
- [iii] The Committee shall immediately issue a certificate of validity to the petitioner of 'Mannervarlu' Scheduled Tribe.

- [iv] The Law Officer of the Committee is present in the Court and has been assisting the learned AGP. Both of them shall communicate this decision to the Committee.
- [v] The petitioner shall not claim any equity.
- [vi] The certificate of validity would be subject to the final outcome of the petition and the matter of her father which the Committee intends to reopen.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE