

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 13014 OF 2022

Omar Shah Khan s/o Riyaz Shah Khan,
Age: 22 years, Occu.: Student,
R/o: H. No. 4-14-50/P, Kaisar Colony,
Ward No. 55, Jinsi Road,
Aurangabad.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through the Principle Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. Joint Commissioner and Vice President,
Scheduled Tribe Certificate
Verification Committee, Aurangabad,
Near Saint Lawrence High School,
Town Centre, CIDCO, Aurangabad,
Dist. Aurangabad.

... **Respondents**

...
Mr. Amol N . Kakade, Advocate for Petitioner.

Mr. P. S. Patil, AGP for Respondents.
...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 02nd January, 2023.

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

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties. This matter was heard for quite some time on 22nd December, 2022 and was posted today in the “passing orders” category. We have considered the further submissions of the learned advocates on behalf of the appearing parties.

2. The petitioner has suffered invalidation of her “Tadvi” Scheduled Tribe claim vide order dated 25th November, 2022. The family tree, undisputedly, indicates 9 validity holders amongst the blood relatives. The petitioner is the son of Riyaz Shah Khan, who has been granted validity certificate by the committee. The biological sister of the petitioner, Khan Nabila Raheen has also been granted validity certificate. The biological sister of the petitioner’s father, Khan Arefa Nazia had earlier suffered invalidation. She approached this Court in Writ Petition No.415 of 2003. A document dating back to 1936-37 (30th Isfandar 1346 Fasli) was noticed to be in Urdu language. By an order dated 28th March, 2003 passed by this Court, the official translator was directed to translate the said document in English. After the translation was produced on record by the Sub-Registrar, this Court considered the same and delivered an order

dated 8th July, 2003, thereby partly allowing Writ Petition No.415 of 2003 and remitting the matter to the committee. The committee, thereafter, granted validity to Khan Arefa Nazia after taking into account the 1936-37 document. Two more biological sisters of the petitioner's father, viz. Khan Raisa Begum and Khan Anisa have also been granted validity certificates. The daughter of the petitioner's biological uncle, namely Khan Humera Tazeen, daughter of Iliyas Shah Khan and two biological cousins, Minhaj Shah Khan and Maaz Shah and one biological cousin sister Maheen Fatema, who are children of the biological brother of the petitioner's father Ejaz Shah Khan, have also been granted validity certificates.

3. The learned AGP representing the respondent – committee has vehemently opposed the petition, in the light of the observations of the committee, that several documents referred to earlier while granting validity certificates, pertain to the recent last three decades. He, therefore, submits that in the face of such conclusions of the committee, the law laid down in *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee, 2010 (6) Mh.L.J. 401*, would not be applicable.

4. We find that the present committee, which has invalidated

the claim of the petitioner, has virtually criticised the conclusions of the earlier committee, which has granted validity certificates to 9 blood relatives. We fail to understand as to how the present committee can criticise the conclusions of the earlier committee, which granted validity certificates to 9 blood relatives. When these many family members have been granted validity certificates of belonging to “Tadvi” Scheduled Tribe, it would be inappropriate to conclude that the present petitioner, whose biological sister and biological first cousins, her father and two biological sisters belong to “Tadvi” Scheduled Tribe.

5. The learned AGP submits that show cause notices have been issued to some of the validity holders for reopening their cases. In our view, such contention would be squarely covered by the view taken by this Court (Coram: S. C. Dharmadhikari and Smt. Bharati H. Dangre, JJ.) in the order dated 27th July, 2018 passed at the Principal Seat in Writ Petition No.5611 of 2018 (***Shweta Balaji Isankar Vs. State of Maharashtra and ors***). This Court has concluded in paragraph Nos.2 to 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.

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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."

6. We are, therefore, of the considered view that this case is squarely covered by the Judgment delivered in Apoorva Vinay Nichale (supra).

7. In view of the above, this petition is partly allowed. The

impugned order dated 25th November, 2022 stands quashed and set aside. The petitioner would be entitled for a validity certificate declaring her to be belonging to “Tadvi” Scheduled Tribe category. Let such validity certificate be issued, on or before 31st January, 2023.

8. Needless to state, in the event of any of the validity holders, on whose certificates the petitioner has placed reliance, suffer invalidation on account of the reopening of the cases, the consequences suffered by such candidate, in the light of paragraph No.8 of ***Shweta Balaji Isankar*** (supra), would befall upon the petitioner and the petitioner would then be liable to suffer similar consequences.

9. Rule is made partly absolute in the above terms.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE J.]

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