

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2305 OF 2020**

Akash Sanjay Gawali ...Petitioner
Versus
State of Maharashtra through Secretary Tribal ...Respondents
Development Department & Ors

**WITH
WRIT PETITION NO. 4547 OF 2019**

Sanjay Janardan Gawali & Ors ...Petitioners
Versus
State of Maharashtra through the Secretary & Ors ...Respondents

**Mr RK Mendadkar, with Komal Gaikwad, for the Petitioner in both
Petitions.
Mrs PJ Gavhane, AGP, for State in both Writ Petitions.
Mr GH Keluskar, for Respondent No.3 in WP/4547/2019.**

**CORAM G.S. Patel &
 Dr Neela Gokhale, JJ.
DATED: 2nd February 2023**

PC:-

WRIT PETITION NO. 2305 OF 2020:

Digitally
signed by
ASHWINI
HULGOJI
GAJAKOSH
Date:
2023.02.10
15:44:06
+0530

1. Although the Petition is filed in 2019 and numbered in 2020, there is no Affidavit in Reply.
2. We refuse to adjourn these matters further. Rule. Returnable forthwith.
3. The Petitioner was 26 years old at the time of the Petition. He says he belongs to the Thakar Tribe, a recognized Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950.
4. The Petition challenges an order and judgment of 20th February 2019 passed by the Scheduled Tribe Certificate Scrutiny Committee, Pune, invalidating the caste certificate of the Petitioner. The Petitioner was granted a caste certificate on 26th December 2000. Before the Committee, the Petitioner placed on record various pieces of evidence predating the Constitution showing the caste validity certificates granted to the Petitioner's father and two paternal uncles. The same committee had invalidated the caste validity certificate of the Petitioner earlier. Against that, the Petitioner filed Writ Petition No. 10194 of 2018. That petition succeeded on 13th December 2018 and this Court issued directions to the 2nd Respondent to issue a caste validity certificate to the Petitioner as a member of the Thakar Scheduled Tribe. There was however a clarification that if the validity certificates of other relatives were recalled or set aside then the benefit of the High Court order of the Petitioner would cease and the Petitioner would not be able to rely on it.

5. Leaping at this opportunity, though it was clearly not what the High Court intended. the 2nd Respondent, in complete ignorance of the limitations of its own jurisprudential limitations, issued a show-cause notice and then on 15th February 2019 proceeded to recall or set aside the validity certificates granted to the Petitioner's father and two paternal uncles. Those validity certificates were issued many years earlier in 2001. On that basis, it then passed the impugned order invalidating the Petitioner's caste certificate.

6. The action of the 2nd Respondent committee prima facie appears to be vindictive. It is also completely illegal. This committee has no suo motu power of review.¹ In case after case, it seems to rely on a general principle that "fraud vitiates everything" without realising the implications of this or how that fraud is to be detected, ascertained, proved and results based on such a finding. Perhaps this committee has no idea how difficult it is to actually prove fraud. A failure of proof is not fraud. That so-called 'fraud' must arise in the proceeding before it. It cannot be invoked like some mantra to confer on oneself a power of review over orders passed many years earlier, and which no one has called into question, about which there is no lis or proceeding, and which have all attained finality. This is so basic a concept in law that we are surprised that the Committee is so utterly oblivious to it. To be plain: no one ever assailed the Petitioner's father's and uncles' validity certificates on any ground. The Committee had no power to suo motu re-open those validity

1 *Narshi Thakershi v Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844; *Ram Sahu v Vinod Kumar Rawat*, (2020) SCC OnLine 896; *SREI Infrastructure Finance Ltd v Tuff Drilling Pvt Ltd*, (2018) 11 SCC 470; *Lily Thomas v Union of India*, (2000) 6 SCC 224; *Vikram Singh v State of Punjab*, (2017) 8 SCC 518; *Surendra Mohan Arora v HDFC Bank Ltd*, (2014) 15 SCC 294.

certificates and call them into question. The Committee's orders are not purely ministerial to admit of the narrow exception to the general rule that there is no inherent power of review.²

7. We find it surprising that we have to repeatedly state that this committee has no *Suo motu* power of review. None is conferred by statute. None can be necessarily inferred. The impugned order is entirely without jurisdiction.

8. This is also a case of the 2nd Respondent committee inviting extreme censure for wholly overreaching this Court. Only because this Court in its order of 13th December 2018 in Writ Petition No. 10194 of 2018 entered a caveat that should the certificates of the uncles or father be recalled or set aside then the Petitioner could not get any benefit, the 2nd Respondent committee could not have seen this as an opportunity to go ahead and do something that was entirely outside its jurisdiction.

9. The Petition succeeds. Rule is made absolute in terms of prayer clause (a) and (b) which read thus:

“(a) This Hon’ble Court be pleased to issue Writ of Certiorari and/or any other Writ, Order or Direction in the nature of Certiorari thereby quashing and setting aside the impugned judgment and order dated 20.2.2019 passed by the respondent no.2 committee, with further direction to respondent no.2 committee to revalidate certificate of validity dated 27.12.2018 issued to the petitioner.

(b) That this Hon’ble Court be pleased to hold and

² *RR Verma & Ors v Union of India & Ors*, (1980) 3 SCC 402.

declare that the caste validity certificate dated 27.12.2018 issued to the petitioner by the respondent no.2 committee is valid, legal and subsisting.”

10. No costs.

WRIT PETITION NO. 4547 OF 2019:

11. Rule. Returnable forthwith.

12. This Petition assails the common order referred to above in Writ Petition No. 2305 of 2020 by which the 2nd Respondent committee Suo motu cancelled the validity certificates of Akash Sanjay Gawali’s father and uncles. As we have noted this committee acted (and in matter after matter continues to act) entirely without application of mind.

13. The Petition succeeds. Rule is made absolute in terms of prayer clause (a), (b) and (c) which read thus:

“(a) This Hon’ble Court be pleased to issue Writ of Certiorari and or any other Writ, Order or Direction in the nature of Certiorari thereby quashing and setting aside the impugned judgment and order dated 15.2.2019 passed by the respondent no.2 committee with further directions to revalidate the caste validity certificates issued by it in favour of the petitioners.

(b) That this Hon’ble Court be pleased to hold and decree that the caste validity certificates granted to the petitioners by the respondent no.2 scrutiny committee are valid, legal and subsisting.

(c) That this Hon'ble Court be pleased to hold and declare that the petitioners belong to Thakar tribe which is recognized as Scheduled Tribe at Entry No.44 of Second Schedule, Part IX-Maharashtra appended to Scheduled Castes/Scheduled Tribes Orders (Amendment) Act, 1976."

14. No costs.

(Dr Neela Gokhale, J)

(G. S. Patel, J)

Note: This order is corrected as per praecipe dated 9th February 2023. The corrections are shown in bold, italics and underline.