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wp 7040.24

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

WRIT PETITION NO. 7040 OF 2024

Shambala d/o Ashok Shinde,
Age: 31 Years, Occu: Student,
R/o At Post Ghansargaon,
Tq. Renapur, Dist. Latur.

... **PETITIONER**

V/s.

1. The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai – 32.
2. Chief Executive Officer,
Zilla Parishad, Ratnagiri,
Dist. Ratnagiri.
3. Deputy Director (Research)
and Member Secretary,
Scheduled Tribe Certificate Verification
Committee, Kinwat,
Headquarter Chhatrapati Sambhajinagar,
Near Cidco Bus Stand, Ch. Sambhajinagar,
Dist. Chhatrapati Sambhajinagar.

... **RESPONDENTS**

**AND
WRIT PETITION NO. 7041 OF 2024**

Mahesh s/o Ashok Shinde,
Age: 29 Years, Occu: Student,
R/o At Post Ghansargaon,
Tq. Renapur, Dist. Latur.

... **PETITIONER**

V/s.

1. The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai – 32.
2. The Director of Medical
Education and Research,
Maharashtra State,
PD. Melo Road, Fort, Mumbai.
3. District Civil Surgeon,
District Civil Hospital, Latur.
4. Deputy Director (Research)
and Member Secretary,
Scheduled Tribe Certificate Verification
Committee, Kinwat,
Headquarter Chhatrapati Sambhajanagar,
Near Cidco Bus Stand, Ch. Sambhajanagar,
Dist. Chhatrapati Sambhajanagar.

... **RESPONDENTS**

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Mr. O.D. Totawad h/f. C.R. Thorat, Advocate for the Petitioner/s
Mr. R.K. Ingole and Ms. Neha Kamble, AGPs for Respondent-State

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

RESERVED ON : 10th July, 2024

PRONOUNCED ON : 18th July, 2024

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matters are heard finally at the stage of admission.

2. In both these Petitions, the Petitioners, who are siblings, pray for quashing and setting aside the order dated 30.05.2024, passed by the Scheduled Tribe Caste Scrutiny Committee, Kinwat thereby invalidating “Thakar” Scheduled Tribe caste claim.

3. After considering the extensive submissions of the learned advocates, we have perused the Judgment passed by a Co-ordinate Bench of this Court, dated 21.08.2023 in Writ Petition No. 10305 of 2023 (Rohit s/o Gopalrao Shinde and Ors. V/s. State of Maharashtra and Anr.), wherein real cousins of both these Petitioners have been conditionally granted validity certificates as “Thakar” Scheduled Tribe. The operative order reads as under:

- “(i) The writ petition is partly allowed.*
- (ii) The common judgment and order dated 11.08.2023 passed by the Scrutiny Committee is quashed and set aside*
- (iii) The Scrutiny Committee shall issue tribe validity certificates of scheduled tribe “Thakar” in favour the petitioners forthwith which shall be subject to outcome of the reopened matters.*
- (iv) The petitioners shall not be entitled to claim equities.”*

4. There is no dispute that both the Petitioners before us, namely Shambala Ashok Shinde and Mahesh Ashok Shinde, are ~~real~~ siblings. Both are real cousin sister and brother of Rohit Goopalrao Shinde, Aaditya Gopal Shinde and Somnath Ganpat Shinde, who are Petitioners in W.P. No.10305 of

2023 and by order dated 21.08.2023, conditional validity has been granted to them.

5. The Petitioners have placed on record genealogical tree, which shows that, Tukaram Shinde was having two sons namely Gyanoba Tukaram Shinde and Dhondiba Tukaram Shinde. Shri Gyanoba was having sons namely Chandar, Balbhim, Ashok and Balasheb. Shri Vyankat, Ganpat, Shankar and Gopal are biological children of Chandar Vitthal Shinde. Shri Somnath is son of Ganpat (Petitioner No.3 in W.P. No. 10305 of 2023). Rohit and Aaditya are sons of Gopalrao Shinde (the Petitioners Nos. 1 & 2 in W.P. No. 10305 of 2023) to whom the Coordinate Bench has already granted “Thakar” Scheduled Tribe Certificate. Shambala Ashok Shinde (in W.P. No. 7040/2024) and Mahesh Ashok Shinde (in W.P. No. 7041/2024) are siblings and biological sons of Shri Ashok s/o Vitthal Shinde. This aspect is undisputed.

6. The learned AGP canvassed that the Petitioners themselves produced affidavit of Shri Gopal Chandar Shinde, who has given genealogical tree stating that, one Shri Pund Shinde is shown as biological son of Dhondiba Tukaram Thakar but in genealogical tree his name is not shown. In Census of 1951 caste of the Petitioners forefathers is shown as “Maratha”. As per vigilance report, the Petitioners forefathers have not migrated from the area where people of “Thakar” Scheduled Tribe are residing. Therefore, the Petitioners

failed to prove that they belong to “Thakar” Scheduled Tribe. It is further submitted that if this Court is inclined to accept the Writ Petition filed by Rohit s/o Gopalrao Shinde & others (W.P. No. 10305/2023), similar conditions be imposed on the said Petitioner.

7. Needless to say that the Census Report wherein the caste of the present Petitioners is described as “Maratha” is not a substantial proof to prove their caste. Though the learned AGP canvassed that one Shri Pund Shinde is shown as biological son of Dhondiba Tukaram Thakar but in genealogical tree his name is not shown, however, said contention not been raised by the Respondents before the Coordinate Bench of this Court in W.P. No. 10305 of 2023 decided on 21.08.2023.

8. In case of **Shweta Balaji Isankar V/s. State of Maharashtra & Ors.** (W.P. No. 5611/2018 decided on 27.07.2018, 2018 SCC Online Bom. 10341, the Coordinate Bof his Court has held 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 5 th December 2005 and another certificate of validity dated 5 th 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."

9. In Apporva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010 (6) Mh. L.J. 401, this Court has concluded that when the biological father, biological siblings, biological uncle etc., are

granted validity certificates, a candidate so related to them, cannot be deprived of a validity certificate.

10. In case of **Mah. Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra & Ors.**; AIR 2023 SUPREME COURT 1657, the Hon'ble Supreme Court in paragraph nos.22, 23 and 24 has held as under:

“22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil's case (AIR 1995 SC 94) or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of Kumari Madhuri Patil, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the

Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.

23. *In a given case, the Scrutiny Committee may be satisfied that the caste validity certificate relied upon by the applicant has been issued after making a lawful enquiry. But if the Scrutiny Committee is of the view that the applicant has not clearly established that the person to whom caste validity certificate produced on record has been granted is his blood relative, in terms of sub- rule (2) of Rule 12 of the ST Rules, the Caste Scrutiny Committee will have to refer the case for conducting an enquiry through Vigilance Cell. In such a case, the Vigilance Cell can be directed by the Scrutiny Committee to conduct an enquiry limited to the relationship claimed by the applicant with the person in whose favour the caste validity certificate has been issued. If, on the basis of the report of the Vigilance Cell, the Scrutiny Committee is satisfied that the person in whose favour caste validity certificate has been issued is a blood relative of the applicant and lawful enquiry has been conducted before issuing the validity certificate, the Scrutiny Committee will have to issue validity certificate even if the applicant does not satisfy the affinity test. For example, if it is established that the father or grandfather of the applicant has been given a caste validity certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee cannot hold that the grandfather or father of the applicant, as the case may be, belongs to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established, the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.*

24. *As provided in sub-rule (7) of Rule 12 of the ST Rules, the Vigilance Cell's report is not conclusive. If on the basis of the report of the Vigilance Cell and other evidence on record, the*

Scrutiny Committee comes to a conclusion that the caste claim is genuine, a caste validity certificate can be issued. Only on the ground that the report of vigilance cell is in favour of the applicant, validity certificate cannot be mechanically granted without application of mind. If the report of the Vigilance Cell is against the applicant, his caste claim cannot be rejected only on the basis of the report of the Vigilance Cell without providing a copy of the report to the applicant and without giving him an opportunity of being heard on the report. After giving an opportunity to the applicant to make submissions on the report, the Scrutiny Committee may reject the caste claim. In a given case, the Scrutiny Committee can also record a finding that the caste claim is genuine. It all depends on the facts of each case.”

11. In cases cited supra, the law has been well settled that if the validity certificates of any of the holders, who are subjected to reopening of their cases, are set aside and such holders suffer adverse orders after reopening of the cases, the same consequences would befall upon those Petitioners who have placed reliance upon such certificate holders for seeking validity certificates from this Court.

12. Therefore, keeping in view the law laid down by this Court in **Shweta Balaji Isankar** cited (supra) and by the Hon'ble Supreme Court in **Mah. Adiwasi Thakur Jamat Swarakshan Samiti** cited (supra), the conditions reproduced above from the case of Rohit s/o Gopalrao Shinde & two Others in W.P. No.10305 of 2023, shall squarely apply to both these Petitioners in Writ Petition No. 7040/2024 (Shambala d/o Ashok Shinde) and Writ Petition No. 7041/2024 (Mahesh s/o Ashok Shinde).

13. Since, the Petitioner in W.P. No. 7040 of 2024 is selected as a Assistant Teacher through the Pavitra Portal for the Zilla Parishad Ratnagiri and is placed at sr.no. 983 in selection list. Therefore, the Petitioner is hereby called upon to furnish an affidavit with this Court as well with her employer that, in case the caste claim of her cousin is reopened and said caste claim is invalidated on any ground in that event, the Petitioner would not claim any service regularization/increments/promotion/pay-scale revision or service benefits, in the light of **Chairman and Managing Director FCI & Ors. V/s. Jagdish Balaram Bahira & Ors.; AIR 2017 SUPREME COURT 3271.**

14. In W.P. No. 7041 of 2024, the Petitioner - Mahesh Shinde is appointed as a Dental Assistant with Civil Hospital, Latur from the reserved seat for the Scheduled Tribe category, therefore, the Petitioner is hereby called upon to furnish an affidavit with this Court as well with her employer that, in case caste claim of her cousin is reopened and said caste claim is invalidated on any ground in that event, the Petitioner would not claim any service regularization/increments/promotion/pay-scale revision or service benefits, in the light of **Chairman and Managing Director FCI & Ors. (supra).**

15. In view of above discussion, we proceed to pass the following order:

ORDER:

- i. **Both the Writ Petitions are hereby partly allowed.**
- ii. In both the petitions the impugned orders dated 30th May, 2024 passed by Respondent - Scheduled Tribe Certificate Verification Committee, Kinwat are hereby quashed and set aside.
- iii. The Respondent- Committee is hereby directed to issue caste validity certificate in favour of both the Petitioners belonging to the 'Thakar' Scheduled Tribe category within a period of 30 days from today.
- iv. In case the Committee recalls the validity certificates granted in favour of the blood relations of the Petitioners, the Petitioners shall also be liable to be dealt with accordingly.
- v. The Rule is made partly absolute in above terms.

[Y.G. KHOBRADE, J.]**[RAVINDRA V. GHUGE, J.]**