



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO. 9831 OF 2023

VISHAL PRAKASH MAKHANA OM VISHAL MAKHANA
THROUGH NATURAL GUARDIAN FATHER PETITIONER NO. 1

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioner : Mr. Chapalgaonkar Shailesh S.

AGP for Respondents : Mr. A.R. Kale

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 20 AUGUST 2024

PER COURT :

Heard both the sides finally at the stage of admission.

2. The petitioner is challenging the order of the respondent no. 2 – Scrutiny Committee, refusing to validate his ‘Nhavi (108)’ OBC certificate.

3. Learned Advocate for the petitioner submits that petitioner’s father possess certificate of validity which was issued by following due process of law. Even subsequently, his second degree cousins have also been issued with certificates of validity by following due process of law. The Committee by referring to some record stated to be describing the petitioner's blood relatives as

‘Hindu Marwadi Nhavi’ or ‘Marwadi Hindu Nhavi’ has refused to extend the benefit of validities in the family. It is unthinkable that though the father is certified to be belonging to a particular caste, the son cannot be tread so. Even if the Committee has now decided to undertake fresh scrutiny of the validity in his family, the petitioner cannot be deprived of the benefit since the process of re-consideration would be a long drawn process. The petitioner is ready to face the consequences contemplated in *Shweta Balaji Isankar Versus State of Maharashtra and others*, passed by this High Court in Writ Petition No. 5611/2018.

4. Learned AGP would oppose the petition. He would take us through the record particularly the judgment indicating that the petitioner’s ancestors were referred to as ‘Marwadi Hindu Nhavi’ or ‘Hindu Marwadi Nhavi’ which is not the same as ‘Nhavi OBC (108)’. He would also submit that the Committee having reached a conclusion about the validity holders having obtained certificate by fraud and has decided to undertake fresh scrutiny.

5. We have considered the rival submissions and perused the papers.

6. At the outset, it is necessary to note that in spite of the fact that the Committee was alive and expressly referred to the observations from the matter of *Apoorva Vinay Nichle Versus Divisional Caste Scrutiny Committee, Nagpur and Others*, **2011 (2) Bom.C.R. 824**, to substantiate the stand of undertaking a fresh scrutiny, the impugned order is devoid of any objective material to assess whether the inference regarding alleged fraud being drawn by the Committee is plausible or otherwise.

7. As far as validity possessed by the petitioner's father, there is not even a whisper as to the circumstances in which he had obtained certificate of validity, by due process of law or otherwise. The impugned order mentions about having orally inquired with the petitioner's father and he having replied that he was granted certificate of validity on the basis of the same record which was referred to and relied upon by the petitioner's second degree cousins Bhavana Yogesh Makhana and Harshal Yogesh Makhana. In our considered view, the approach of the Committee in perfunctorily discarding the validity possessed by the petitioner's father is demonstrative of the arbitrariness and perversity in the decision.

8. In order to satisfy ourselves, as to the manner in which the certificate of validity was issued to the petitioner's father, learned AGP is unable to place before us the original files of the validity holder. The fact remains that the Committee is not refusing to extend the benefit of the validity possessed by petitioner's father on the ground that it was issued without following due procedure of law or that there was no reasoned order.

9. Considering the aforementioned state of affairs, when the petitioner is ready to run the consequences contemplated in *Shweta Balaji Isankar* (supra), and in view of the fact that the judgment and order is devoid of any scrutiny of father's validity certificate, the petitioner albeit conditionally deserves to be issued a certificate of validity.

10. The writ petition is partly allowed. The impugned judgment and order dated 19.07.2023 passed by respondent no. 2 – Scrutiny Committee, is quashed and set aside.

11. Respondent no. 2 / Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as

belonging to “Nhavi (108)’ Other Backward Class in the prescribed proforma.

12. The validity certificate of the petitioner shall be subject to the outcome of the reverification to be undertaken by the Scrutiny Committee. The petitioner shall not be entitled to claim equities.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]