



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

WRIT PETITION NO.12522 OF 2022

Chittaranjan s/o Gyanoba Dhemkewad
Age 33 yrs Occup-SERVICE,
R/o. Sarsam (bk), Taq – Himayat Nagar,
Dist – Nanded, Pin no 431 802

... PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32
2. The Deputy Director (Research) and
Member Secretary, Scheduled Tribe
Certificate Verification Committee,
Kinwat, Division Aurangabad,
Near Behind CIDCO N-1 Bus Stand,
Aurangabad

3. The Superintendent of Police
Office at Nanded, District Nanded

... RESPONDENTS

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Mr. R. B. Dhakane, Advocate for the Petitioner

Mr. S. K. Tambe, AGP for Respondent Nos. 1 to 3 – State

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

**RESERVED ON : 07. 08. 2024
PRONOUNCED ON : 21. 08. 2024**

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

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The Petitioner has put forth prayer clauses (B) and (C), as under:-

“B. For a writ of mandamus, order or direction in the nature of mandamus, or any kind of writ, the decision rendered by the Respondent no.2, rejecting the proposal bearing Case No.4/511/Ser/042018/110614 for Caste / Tribe Validity Certificate (Mannervarlu-27) by the Respondent no 2, dated 4.11.2022, may kindly be quashed and set aside, in the interest of justice.

C. For a writ of mandamus, order or direction in the nature of mandamus, or any kind of writ, the Hon’ble court may kindly be direct the Respondent no.2, to issue Caste / Tribe validity certificate (Mannervarlu-27) to the petitioner based upon the documents and Caste / Tribe validity certificate of the real brother of the petitioner / validity certificate of the blood relatives of the paternity of the petitioner within the stipulated period.”

3. We have considered the strenuous submissions canvassed on behalf of both the sides, so also we have gone through the written notes of arguments tendered on behalf of the Petitioner and the Respondent caste scrutiny committee.

4. On 13.12.2022, this Court had passed an order and directed Respondent No.3 / Superintendent of Police, Nanded, not to dispense with the service of the Petitioner, on the ground that the Petitioner's caste claim belonging to 'Mannervarlu' Scheduled Tribe, has been invalidated.

5. On the face of the record, it appears that, on 01.10.2012, the Petitioner has joined as Police Sub-Inspector with the Police Department under the reserved category of Scheduled Tribe and presently he is working with Respondent No.3 / Superintendent of Police, Nanded.

6. On 05.04.2018, his proposal for scrutiny of caste claim belonging to 'Mannervarlu' Scheduled Tribe, was referred to Respondent No. 2, however, there were some spelling mistakes in the caste certificate. Therefore, the Petitioner had approached before this Court in Writ Petition No. 6360 of 2017 and during pendency of said Petition, the caste claim of the Petitioner was pending with Respondent No. 2 since 05.04.2018.

7. On 20.06.2017, this Court passed an order in Writ Petition No.6360 of 2017, permitting the Petitioner to file a fresh

proposal with Respondent No. 2 Scrutiny Committee. Accordingly, the proposal for scrutiny of caste claim of the Petitioner was submitted with Respondent No. 2 along with various documents including primary school extract register, higher secondary school extract register, affidavit with genealogy tree, school leaving certificate, school extract of Petitioner's father, the caste validity certificate issued in favour of his real brother Vivekanand Gyanoba Dhemkewad, school leaving certificate of his brother, vigilance report, copy of caste certificates issued by the Sub-Divisional Officer, Hadgaon, District Nanded, etc. However, on 04.11.2022, Respondent No. 2 Scrutiny Committee passed the impugned order and invalidated the tribe claim of the Petitioner belonging to 'Mannervarlu' Scheduled Tribe.

8. The learned Counsel appearing for the Petitioner in vehemence canvassed that, as per genealogical tree, Vivekanand Gyanoba Dhemkewad, who is biological brother of the petitioner, was granted caste validity certificate by Respondent No. 2 on 19.04.2010 on the basis of documents produced before it and as such, the caste claim of the biological brother of the Petitioner has not been revoked. Therefore, Respondent No. 2 should have granted caste validity

certificate in favour of the Petitioner. However, by the impugned order, Respondent No. 2 invalidated the caste claim of Petitioner only on the ground that the validity was granted in favour of the Petitioner's brother on the basis of validity of maternal side relatives, namely Bhagwan Shivaji Mandalwar, without following the due process of law. To buttress these submission, the learned Counsel appearing for the Petitioner relied on the following case laws:-

- (i) *Bharat Nagu Garad and others Vs. State of Maharashtra and others, 2024(1) Mh.L.J. 647;*
- (ii) *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra – 2023 SCC OnLine SC 326;*
- (iii) *Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010(6) Mh.L.J. 401;*
- (iv) *Umesh Anandrao Rodge Vs. State of Maharashtra, 2024(2) Mh.L.J. 523;*
- (v) *Shweta Balaji Isankar Vs. The State of Maharashtra and others, 2018 SCC OnLine Bom 10363 (Writ Petition No.5611 of 2018, decided on 27,07,2018;*
- (vi) *Syanna Vs. State of Maharashtra and others, judgment in the Supreme Court Civil Appeal No.6253 of 2009, arising*

out of S.L.P (Civil) No.1774 of 2007, decided on 15.09.2009;

(vii) Anjali d/o Baliram Muddewad Vs. The State of Maharashtra and others, the order dated 26.06.2023, passed by the coordinate Bench of this Court in Writ Petition No.11323 of 2022.

9. Per contra, Respondent No. 2 has filed the written notes of argument and opposed the claim of the Petitioner. Mr. Tambe, the learned AGP submitted in vehemence that on 05.04.2018, the Petitioner submitted his proposal for caste verification, through the Commissioner of Police, Nanded. Accordingly, Respondent No. 2 referred said claim to the Vigilance Cell, who submitted an inquiry report on 26.08.2022 with the remark that the Petitioner does not belong to 'Mannervarlu' Scheduled Tribe. The Vigilance report duly served upon Petitioner and invited for reply. Proper opportunity to reply and hearing was provided to the Petitioner. After assessing the documents which were produced by the Petitioner, Respondent No. 2/ Committee concluded that the Petitioner does not belong to 'Mannervarlu' Scheduled Tribe caste, because, the documents produced by the Petitioner are contrary to his caste claim as under:-

Sr. No.	Name	Relation with Petitioner	Caste Mentioned in School Record	Document	Remark
01	Gyanoba Madhav Dhemkewad	Father	Munnerwarlu	Admission Extract	Lu & Matra is added on Nn subsequently
02	Suman Madhav Dhemkewad	Real Aunt	Marathi OR MARATHA	Admission Extract	--
03	Gyanba Madhav Dhemkewad	Father	Munnerwarlu	Admission Extract	--
04	Madhav Govind Dhemkewad	Grand Father	Mannervarlu	Admission Extract	Detail Remark given in order of the committee

10. The learned AGP strenuously submits that though the Petitioner has relied on validity certificate of his natural brother, but said certificate was granted on the basis of validity certificate issued on 19.04.2010 to relative of his maternal side namely Shri Bhagwan Shivaji Mandalwar without following the due process of law and as such, a show cause notice has already been issued to the real brother of the Petitioner for reopening of the case and , if the cases on which the present Petitioner places reliance upon, are re-opened, the material available would indicate that validity certificates granted to all such cases, should be set aside. Therefore, the Petitioner is not entitled for validity of his caste claim.

11. In support of these submissions, the learned AGP relied has on the case of ***Rajeshwar Baburao Bone Vs. State of Maharashtra and others (SLP No. 5778/2015) and Maharashtra Adiwasi Thakur Jamat Mandal Vs. State of Maharashtra, Supreme Court Civil Appeal No.2502 of 2022.***

12. Needless to say that Respondent No. 2/Caste Scrutiny Committee, has already granted validity certificate of 'Mannervarlu' Scheduled Tribe in favour of Vivekanand Gyanoba Dhemkewad, who is the biological brother of the Petitioner.

13. This Court at the Principal Seat has delivered a judgment in ***Shweta Balaji Isankar vs. The State of Maharashtra and others, 2018 SCC OnLine Bom 10363 (Writ Petition No.5611/2018)***, decided on 27/07/2018, wherein it is concluded in Paragraph Nos. 3 and 4 as under :-

“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.”

14. In the case of **Apoorva Vinay Nichale** (Supra), this Court has concluded that, if several biological relatives from the paternal side have been granted validity certificates, the Committee cannot come to a conclusion in a given case that the said candidate does not belong to the same caste or tribe, with reference to which series of biological relatives have been granted validity certificates.

15. The Hon'ble Supreme Court in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra), in Paragraph Nos. 23 and 38, observed as under:

“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.

38. *Thus, to conclude, we hold that:*

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny

Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.”

16. In the case in hand, the validity as ‘Mannervarlu’ Scheduled Tribe, is already granted in favour of Vivekanand Gyanoba Dhemkewad, who is biological brother of the Petitioner and such as on today, the said validity has not been revoked or cancelled by Respondent No. 2. Therefore, in these circumstances the pragmatic approach pitted against a pedantic approach, would be to grant a conditional certificate to the Petitioner in the light of the law laid down in the case of **Shweta Balaji Isankar** (supra) and by recording that the Petitioner would face a re-opened case as regards his validity certificate, if his real brother, who has been granted validity certificate, suffers invalidation on account of re-opening of his case

and he would not be entitled to any service benefits in view of *Chairman and Managing Director Food Corporation of India and others Vs. Jagdish Balaram Bahira and others, (2017) 8 SCC 670.*

17. In view of above, **this Writ Petition is partly allowed.** The Petitioner shall furnish an affidavit undertaking with Respondent No.3/Employer that in case his case is re-opened and he suffers an invalidation of his caste claim, he would not be entitled to any service benefits. The Respondent No. 2 is hereby directed to issue the validity certificate in favour of Petitioner belonging to 'Mannervarlu' Scheduled Tribe category, within a period of 90 days from today, on the condition that in the event, the biological brother of the Petitioner suffers invalidation on account of re-opening of his case, the petitioner would be liable to suffer the same consequences.

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

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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