



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14732 OF 2023

1. Somnath Gorakh Bagul,
age 63 yrs, Occ. Retired,
R/o 56-b, Laxmi Nagar,
Behind ITI College,
Deopur Dhule, Dist. Dhule.
 2. Sonal Somnath Bagul,
age 32 yrs, Occ. Nil,
R/o 56-b, Laxmi Nagar,
Behind ITI College,
Deopur Dhule, Dist. Dhule.
- Petitioners.

VERSUS

1. The State Of Maharashtra
Through Tribal Department
Mantralaya, Mumbai.
 2. The Deputy Director,
Caste Scrutiny Committee,
Having office at Deopur,
Tq. & Dist Dhule.
- Respondents

.....

Advocate for the Petitioners : Mr. M.R. Wagh
AGP for Respondents No.1,2 : Mr. V.M. Jaware

.....

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

Dated : January 08, 2024

.....

JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. Rule, Rule made returnable forthwith. Heard finally by consent of parties.

The petitioners have approached this Court under Article 226 of the Constitution of India, impugning the order dated 13.9.2023 passed by the respondent no.2-Caste Scrutiny Committee, Dhule, by which the validity certificate granted in favour of the petitioners have been canceled and their caste claim for “Thakur Scheduled Tribe” has been declared as invalid and further directions are given to initiate action against petitioner no.1 under the provisions of section 10 and 11 of the Act of 2000. Further, directions are given to deposit caste certificate and caste validity certificates dated 12.1.2001 and 9.6.2000 with the Committee within a period of eight days.

2. The petitioners contend that they are belonging to “Thakur Scheduled Tribe.” Consequently, the caste claim of petitioner no.1 was submitted for verification with the Committee. The Committee vide order dated 12.1.2001 validated caste claim of the petitioner and issued certificate no.DD/TCSC/NSK/DHU-SERV-467-97. Similarly, caste claim of the petitioner no.2 had been validated by the Committee and validity certificate no. DD/TCSC/NSK/DHU/EDN-567-99/5745 had been issued in her favour by the Committee at Nashik. The Committee, was referred with the caste validity certificates of the petitioners while considering caste claim of Bhavana Yashwant Thakur. During hearing said claim, the Committee issued show cause notice to the petitioners indicating that the Committee possess the powers of cancelling the validity certificates on the ground of fraud or suppression of material facts or misrepresentation. In response to such

notice petitioners submitted detailed reply to the show cause notice and also filed on record several documents justifying their caste validity for “Thakur Scheduled Tribe”. However, the Committee under impugned order cancelled/recalled the caste validity certificates after almost 20 years and directed to surrender the same. Petitioner no.1 is now retired from service. Petitioner no.2 has completed her education. According to the petitioners, the Committee had wrongly assumed jurisdiction to cancel caste validity certificates that too after more than twenty years of its existence. The reasons adopted by the Committee are nothing more than on assumptions, presumptions and surmises and inconsistent with voluminous record supporting caste claim of the petitioners.

3. Mr. M.R. Wagh, learned advocate appearing for the petitioners vehemently submit that the Committee could not have exercised the powers of review in absence such provisions under the Act of 2000 or rules framed thereunder. He would submit that the Division Bench of this Court in recent order dated 1.11.2023 passed in the group of writ petitions tagged with Writ Petition No.8822 of 2022 reiterated that the caste Scrutiny Committee cannot exercise suo-motto powers of review and set aside/recall the validity certificate issued earlier. Mr. Wagh, would further submit that, the caste claims of the petitioners have been considered by the then Committee in the year 2001 and, after due inquiry and investigation, validity was conferred upon them. While considering the claim of the blood relations namely Bhavana Yashwant Thakur, vague show cause notices were issued

without assigning proper reasons for re-opening/re-calling of the caste validity conferred upon the petitioners. He would further submit that petitioners have not only justified the validity granted in their favour by then Committee, but also produced voluminous documents justifying their caste claim. As such, he urges that the order passed by the Committee is liable to be quashed and set aside.

4. Learned AGP vehemently supports the order passed by the Committee. He would submit that, in case validity certificate is found to be obtained by exercising fraud or misrepresentation, the Committee has adequate powers to reopen the inquiry pertaining caste validity certificate and in appropriate cases recall or cancel such validities. He would submit that the petitioners had obtained validity certificates by misrepresentation and suppression of contra entries regarding their caste. Therefore, show cause notices were issued to the and after granting sufficient opportunity of hearing, the Committee has concluded to cancel/recall caste validity granted in favour of the petitioners.

5. We have considered the submissions advanced by the learned advocates appearing for the respective parties. Perused the documents submitted alongwith the petition so also original record received from the Committee. Admittedly, both the petitioners were granted caste validity certificates for “Thakur Scheduled Tribe” by the competent committee on 12.1.2001 and 9.6.2000 respectively. The petitioner no.1 Somnath retired from service. Petitioner no.2 Sonal completed

her education. However, while considering caste claim of blood relations, caste validity certificates conferred upon the petitioners were relied as supporting evidence hence committee called record in files of petitioners. Thereafter in month of September 2019 Committee issued show cause notices to petitioners. The perusal of the committee's order dated 23.8.2019 or notes of proceedings dated 4.9.2019 would depict that no specific reasons have been mentioned as to why the Committee took the decision to reopen inquiry in respect of validity granted in favour of the petitioners. It simply states that the Committee possess powers to cancel/recall validity certificates obtained by exercise, fraud or by misrepresentation. Therefore, the petitioners shall show cause as to why the caste validity granted in their favour shall not be canceled or recalled.

6. It appears that petitioners caused their appearance before the Committee and submitted a detailed representation dated 5.11.2019 and raising objection to reopening of inquiry in the matters of validity certificates granted to them. The petitioners denied relationship with the persons who were found to have contra entries as per vigilance report received by the Committee. The petitioners have also relied upon the various judgments of this Court to contend that the Committee has no jurisdiction to review the caste validity already granted in favour of the petitioners.

7. In aforesaid factual background, the issue that requires consideration is *'as to whether the Committee has*

jurisdiction to review/reopen the inquiry into caste validity certificates granted in favour of the petitioners.’ The petitioners have placed reliance upon the judgment dated **dated 1.11.2023** delivered by Division bench of this court in the matter of **Bharat Nagu Garud Vs. State of Maharashtra and others in WP No.8822 of 2022** (reported in 2023 SCC online Bom 2537) wherein it is observed thus :-

“there cannot be a free hand or a license to the Caste Scrutiny Committee to reopen concluded cases of validity being conferred by it by its earlier orders to be revisited or re-examined on a complaint or otherwise and review its orders. This Court has further observed that if an inherent power of review is to be read in the provisions of the Act of 2000, it would lead to a monumental uncertainty and absurdity in the functioning of the Caste Scrutiny Committee, as it can be at the ipse dixit of the Caste Scrutiny Committee to reopen concluded cases. This would lead to patent arbitrariness. For such reasons, it is not possible to come to the conclusion that any inherent powers of review is available with the Caste Scrutiny Committee”.

8. Pertinently Division Bench considered the legal position in great detail. Even, the observations of the Supreme Court in case of **J. Chitra Vs. District Collector and Chairman State Level Vigilance Committee, Tamil Nadu & Ors. In Civil Appeal No.5160 of 2010** have been considered alongwith statutory provisions under act of 2000 and rules and finding is arrived that the Committee possess no power to reopen the concluded claims. At this stage, the learned the AGP would submit that, in case, validity is obtained by misrepresentation, suppression or fraud, the Committee cannot be said to be powerless to withdraw/recall the validity certificates. He relies on observations of Supreme Court in case of **Raju Ramsing Vasave**

Vs. Mahesh Deorao Bhivapurkar and others reported in (2008) 9 SCC 54, to the effect that it would be permissible to reopen the Scheduled Castes and Tribes validity certificates on the basis of further developments, which warrant re-consideration, if it can be seen that the Scheduled Tribes status was wrongly granted. He submits that in case of **Rajeshwar Bone vs State of Maharashtra reported in (2015) 14 SCC 497** decision of Division bench of this court approving decision of committee to reopen caste validity on ground of fraud has been upheld by Supreme Court when it was noticed that subject validity was obtained suppressing invalidation of claim of real brother which had attained finality up to supreme court. He has further relied on pristine maxim which has never lost its temper over the centuries “*fraus et jus nunquam cohabitant*” i.e. Fraud and justice never dwell together. In words of lord Denning “no judgment of court, no order of minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything’

9. Although, Division bench of this court concluded that the Committee had no jurisdiction to review its own order of granting caste validity under the scheme of act of 2000 and rules framed thereunder and we have no hesitation to concur with the said view, but in light of material relied by learned AGP, even assuming such powers are with the Committee to undo the fraud, we are inclined to examine whether Committee is justified to do so in facts of this case. Apparently, the petitioners were granted validity certificates in the year 2000-2001 by the competent committee. The Committee

recorded finding that the petitioners have obtained the validity certificates by suppression of material facts as regards to contra entries in respect of blood relations. The Committee relied upon contra entries in respect of the alleged blood relations of petitioners right from 1905 to 1922 indicating their caste entries as “Bhat”. According to the Committee, such entries were suppressed by the petitioners. The Committee observed that such contra entries are revealed during verification of the caste claim of Jagannath Gorakh Bhamare, who is real brother of petitioner no.1 and Bhavana Yeshwant Bagul. Pertinently, the Committee has nowhere observed that petitioners were aware about any such contra entry and they have intentionally suppressed the same from the Committee. Perusal of the proceedings before the Committee nowhere depicts that petitioners were specifically called upon to explain any contra entry. The show cause notice was apparently sans reasons to reopen inquiry in to validated caste certificates.

10. Per contra, the petitioners have in fact placed on record the oldest document of 1877 in respect school admission of Bhagwan Ramsing, which records his caste as ‘Thakur’. Said document has been verified by Vigilance Officer while dealing with the caste claim of the Rahul Thakur. There are no adverse remarks in respect of the said document. There are many other school entries from 1877 onward till 1932 in respect of the blood relations of the petitioners, wherein the entry regarding ‘Thakur’ has been recorded. It is trite that when the reliance is placed upon pre-constitutional documents, the oldest documents would fetch greater probative value. In

such case contra entries noticed in recent past would not have overriding effect over oldest pre-constitutional record which needs to be given precedence in the matter of appreciation of evidence. Pertinently committee has not recorded cogent reason as to why the oldest record produced on behalf of the petitioners is not worthy acceptance. In our considered view when the Committee was dealing with caste validities already granted to petitioners almost twenty years back, there was no scope of re-appreciation of the evidence like appellate forum. The petitioners cannot be asked repeatedly to reestablish their caste only because his validity certificate is sought to be relied by his blood relation in recent claim. One can understand that the Committee records glaring fraudulent instances and issues show cause notices to the validity holder calling his explanation. However, only because some contra material has been discovered latter in point of time, the petitioners cannot be called upon to explain such material or re-establish his claim. If such practice is permitted, whole object of constitution of Caste Scrutiny Committee or verification of the claims and object of giving finality under section 7(2) of the Act would be frustrated. No finality could be attached to any validity certificate and it would be prone to be attacked any time. It is possible that such practice adopted by the Committee would be misused and validities granted are re-opened after enormous delay. For the reasons as recorded above, we have no hesitation to hold that the order passed by the Committee is perverse and liable to be quashed and set aside. Resultantly, we pass the following order.

ORDER

- i. Writ Petition is hereby allowed.
- ii. The impugned order dated 13.9.2023 passed by respondent no.2 - Caste Scrutiny Committee thereby recalling the earlier decision granting validity of caste certificate to the petitioners and invalidating caste certificates or recalling validity certificates issued to petitioners is hereby quashed and set aside.
- iii. The caste validity certificate dated 12.1.2001 granted in favour of petitioner no.1 and caste validity certificate dated 9.6.2000 granted in favour of petitioner no.2 shall stand restored.
- iv. Writ Petition is accordingly disposed off with no order as to costs. Rule is made absolute.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

...

aaa/-