

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12023 OF 2024

Sayali Shivaji Sable

Age – 23 years, Occ. Student

Residing at Kolyachi Wadi, Ismalpur, Tal and
Dist. Ahmadnagar

...Petitioner

Versus

1. The State of Maharashtra

through its Secretary,

Tribal Development Department,

(Social Justice Department), Mantralaya,
Mumbai.

2. District Caste Certificate Scrutiny Committee,
Nashik

3. The Competent Authority,

State Common Entrance Test Cell,

Having office at 8th Floor, New Excelsior ...Respondents
Building, A.K. Nayak Marg, Fort,
Mumbai – 400 001

Dr. Uday Warunjikar a/w Sumit Kate for the Petitioners.

Mr. Abhijeet Naik, AGP for Respondent Nos. 1 and 2/State.

Ms. Kavita Solunkhe, for Respondent No.3/CET Cell.

**CORAM : RAVINDRA V. GHUGE AND
M.M. SATHAYE, JJ.**

DATE : 08th OCTOBER, 2024

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.)

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

2. The Petitioner Sayli Shivaji Sable and her sibling brother, Sanket Shivaji Sable, had appeared before the competent Scrutiny Committee seeking validation of their claim of belonging to Koli Mahadev Scheduled Tribe category. Their claims were turned down by the impugned order of the Committee, dated 22.09.2022. Sanket approached this Court in Writ Petition No. 12415 of 2022. By an order delivered on 18.11.2022, the Writ Petition was disposed off by quashing and setting aside the judgment of the Committee *qua* Sanket Shivaji Sable and the Committee was directed to issue a validity certificate to Sanket. It was further recorded that if the validity certificate is subjected to a review or re-opening of proceedings, the decision in such proceedings would bind Sanket.

3. In *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 Nagpur*¹, this Court has laid down the law that when it comes to blood relatives from the paternal side and more so in the case of siblings, the siblings cannot hold two different castes or tribe certificate.

4. In *Shweta Balaji Isankar vs. The State of Maharashtra and*

¹ 2010(6) Mh.L.J.401

*others*², this Court has concluded that if the validity certificate on which the claim of the Petitioner is founded, is subjected to reopening of Scrutiny and results in invalidation, the consequences suffered by such candidate would befall upon the Petitioner. For clarity, we are reproducing paragraph numbers 2 to 4 & 8, here 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 5th December 2005 and another certificate of validity dated 5th 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.

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."

5. Recently, the Hon'ble Supreme Court has delivered a judgment in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. The State of Maharashtra and others***³, wherein the law on this count has been settled in paragraph Nos. 21, 22 and 23.

³ AIR 2023 SC 1647

6. When this Court delivered an order in Sanket Shivaji Sable (supra), an earlier order in favour of one Prathamesh, who is said to be the paternal blood relative of Sanket, was cited before this Court which led to the order dated 15.01.2021. This order was also considered by this Court while delivering the order in Sanket (supra).

7. In view of the above, **this Writ Petition is partly allowed in terms of prayer clause (a).** The impugned order of the Committee dated 22.09.2022, stands quashed and set aside *qua* the present Petitioner Sayli Shivaji Sable. The Committee shall issue the Koli Mahadev Scheduled Tribe validity certificate to the Petitioner, within 10 days from today. The Respondent CET Cell, which is before us, shall note this judgment dictated in the open Court and shall accordingly, proceed on the premises that the present Petitioner's claim has been validated.

8. Needless to state, the law laid down in Shweta Balaji Isankar (supra), shall be applicable to the case of Sayali, as the case may be.

9. Rule is made absolute in the above terms. No order as to costs.

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)