



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2645 OF 2022

Madhav Govindrao Potulwar,
age 20 years, Occ. Student,
R/o Kathewadi, Tq Degloor,
Dist. Nanded.

Petitioner

Versus

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai 32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad, through its
Member Secretary.
3. The Sub Divisional Officer,
Degloor, District Nanded.

Respondents

...
Mr.M.A. Golegaonkar, advocate for petitioner.
Mrs M.N. Ghanekar, AGP for Respondents-State.

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CORAM : SMT .VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.

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Reserved on : 19th March, 2024.
Pronounced on : 27th March, 2024.

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

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

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2. The petitioner approaches this Court under Article 226 of the Constitution of India, impugning the order dated 11.11.2020 passed by the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad Division, Aurangabad – Respondent no.2, thereby invalidating Tribe claim of the petitioner for ‘Mannervarlu Scheduled Tribe.’

3. The petitioner contends that, he belongs to Mannervarlu Scheduled Tribe. The Competent Authority i.e. Sub Divisional Officer, Degloor issued Tribe certificate dated 4.12.2017 in his favour. While the petitioner was pursuing his education, the proposal for verification of his Tribe certificate had been made to the Committee. Claim of the petitioner was supported by the voluminous documentary evidence. The Committee procured Vigilance Cell report, which is made part of the record. The petitioner’s father and uncle have been already conferred with validity certificates for ‘Mannervarlu Scheduled Tribe,’ which are intact till this date. However, the Committee invalidated his tribe claim for erroneous reasons.

4. We have heard Mr. Madhur Golegaonkar, learned advocate appearing for the petitioner and Ms. M.N. Ghanekar, learned AGP appearing for the Respondent-State.

5. Mr. Golegaonkar, learned advocate appearing for the petitioner submit that the petitioner’s claim is supported by voluminous document. The Committee has already conferred the validity in favour of petitioners father Govind Maroti

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Potulwar, uncle Kishan Marotirao Potulwar, Sopan Marotiro Potulwar, Amitkumar Pandhari Potulwar, Chandrakant Gopalrao Potulwar, Suryakant Gopalrao Potulwar and Surekha Gopalrao Potulwar. There is no dispute about relationship of the petitioner with the validity holders. The school record of the petitioner records his Tribe as Mannervarlu. The school admission entry of petitioners father dated 15.7.1977 depicts his caste as Mannervarlu. The school admission entry dated 6.7.1971 of his cousin grand father Pandhari Laxman Potulwar record caste as Mannervarlu. Similar entries can be found in respect of other blood relations during subsequent period.

6. Mr. Golegaonkar, learned advocate appearing for the petitioner would submit that the Committee referred to invalidation of tribe claim of Sopan Maroti Potulwar in the year 1986. However, later on, Committee itself conferred validity certificate upon Sopan in year 2008, which is still intact. He would, therefore, urge that as long as such certificates of validity conferred upon petitioners blood relatives are in-force, there was no reason for invalidation of petitioner's claim.

7. Mrs. Ghanekar, the learned AGP would support the order of the Committee stating that the petitioner's cousin uncle Sopan had suffered invalidation of his Tribe claim under the order of the Committee dated 9.1.1986. Said order is confirmed by this Court in Writ Petition No.674 of 1986 vide judgment and order dated 30.10.2000. Suppressing aforesaid facts, blood relatives of the petitioner have obtained validity

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certificates. On 15.3.2008 said Sopan has also fraudulently obtained validity certificate, suppressing his previous invalidation. Therefore, the Committee has decided to issue show cause notice for cancellation of the validity certificates issued in favour of the petitioner's blood relatives.

8. We have considered the submissions advanced on behalf of the learned advocates appearing for the respective parties. We have perused the documents tendered into service alongwith the writ petition. The original files of validity holders and record in respect of petitioner's claim is placed before us for consideration. We have gone through the original record. The petitioner seeks to establish his claim for Mannervarlu Scheduled Tribe. The petitioners reliance is on documentary evidence in the form of school admission entries of his father, blood relatives from 1971 onward and as many as eight validity certificates conferred upon blood relatives including his father and real uncle. It is not disputed before us that Sopan Marotirao Potulwar i.e. real uncle of the petitioner suffered invalidation of the tribe claim vide order dated 9.1.1986 passed by the Committee, which is confirmed by this Court on 13.10.2000. Later on, the petitioner's father has been conferred with validity vide order dated 8.12.2006 passed by the Committee.

9. The claim application submitted by petitioner's father to committee shows that he made specific statement that none of his blood relative suffered invalidation Tribe claim. He

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rest his claim on validity conferred upon Amit Pandhari Potulwar dated 15.9.2005. The validity conferred upon Amitkumar Pandhari Potulwar appears to have been issued relying upon the validities conferred upon his maternal side relatives. Pertinently, invalidation of tribe claim of Sopan i.e. real brother is conveniently suppressed by petitioners father from committee.

10. It appears that validity certificates conferred upon Amitkumar Pandhari Potulwar, Chandrakant Gopalrao Potulwar, and other blood relatives of petitioner, suffers from non-disclosure of invalidation of the Tribe claim of Sopan. Pertinently, Sopan suppressing invalidation of his tribe claim, obtained validity vide order dated 15.3.2008. Apparently, Sopan obtained validity exercising fraud. Although, it is argued before us that petitioners father Govind Maroti Potulwar and uncle Kishan Maroti Potulwar have independently obtained validity on 8.12.2006 and, therefore, such validities cannot be discarded, we are afraid to accept such contentions. Sopan is real brother of Govind and Kishan. He suffered invalidation of tribe claim in the year 1986. He persuaded his claim before this Court in Writ Petition No.674 of 1986. This Court vide order dated 13.10.2000 passed in Writ Petition no.674 of 1986, confirmed the order of the Committee. When Govind and Kishan applied for caste validity before the Committee, they have intentionally suppressed invalidity suffered by real brother Sopan. Suppression of the material fact, which has direct bearing on decision making as

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regards to caste status would definitely constitute fraud on the Committee.

11. Proforma of the application to be submitted before the Scrutiny Committee contains specific clauses as regards to validity or invalidity in the blood relations. Petitioners father, uncles i.e. Govind and Kishan both suppressed invalidation suffered by the real brother. Therefore, validity conferred upon them would not help petitioner while pursuing his tribe claim. The Supreme Court of India in case of **Raju Ramsing Vasave Vs. Mahesh Devrao Bhivapurkar reported in (2008) 9 SCC 54** in paragraph nos.27, 28 and 30 observed thus :-

“27. We do not mean to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another committee while examining the case of other members of the family in some detail. If it is found that in granting a certificate in favour of a member of a family, vital evidence had been ignored, it would be open to the Committee to arrive at a different finding.

28. We reiterate that to fulfill the constitutional norms, a person must belong a tribe before he can stake his claim to be a member of a notified Scheduled Tribe. When an advantage is obtained by a person in violation of the constitutional scheme, a constitutional fraud is committed.

30. The principle of res-judicata is undoubtedly a salutary principle. Even a wrong decision would attract the principle of res-judicata. The said principle, however, amongst others, has some exceptions e.g. when a judgment is passed without jurisdiction, when the matter involves a pure question of law or when the

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judgment has been obtained by committing fraud on the court."

12. Applying the aforesaid principles espoused by the Supreme Court, the decision of the Committee to discard the aforesaid validity certificates while dealing with petitioner's Tribe status cannot be faulted. In the recent decision in case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra reported in 2023 (3) Mh.L.J. 2785** in paragraph no.22, observed 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 case¹ 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 Patil¹, 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

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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.”

13. In view of the aforesaid observations, when the Committee has arrived at the conclusion that validity certificates relied by the petitioner are product of the suppression of material fact akin to the fraud, we do not find infirmity in the approach of the Committee.

14. Beside validity certificates of blood relatives, petitioner placed reliance on school admission record of blood relatives. The committee observed that the documents from 1971 onwards depicts that entries like Munurwar, Munurwad, Munurwar are illegally changed to Munnurwarlu hence cannot be relied. Pertinently this court had occasion to refer those entries of school record while dealing with writ petition filed by Sopan Marotiro Potulwar. This court observed that changes in the school record were made de-horse permissible mode. In paragraph no.7 of the said judgment, this Court observed that initially school entry of the Sopan was for Mannervar, which was subsequently changed to Mannervarlu Tribe. The correction in record is caused without following due procedure contemplated under Rule 26.3 of the Secondary School Code. Therefore, even school admission record as relied upon, the petitioner is not sufficient to hold that petitioner belongs to

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Mannervarlu Scheduled Tribe. The Committee has rightly observed that Mannervarlu Scheduled Tribe is independent of Munervarlu, which is recognized as independent caste.

15. Mr. Golegaonkar, learned advocate appearing for the petitioner would submit that the validity certificates conferred upon the blood relatives of the petitioner are intact. Merely because Committee has decided to issue show cause notices to the validity holders, petitioner cannot be put to disadvantageous position, particularly, when Committee has no power to review its own orders. Placing reliance on the judgment of this Court in case of **Bharat Nagu Garud Vs. State of Maharashtra through its Secretary and others** (Writ Petition No.8822 of 202), he submits that committee exceeded its jurisdiction. However, we are of the view that while considering petitioner's claim, when committee rightly observed that validity conferred upon petitioner's blood relatives are product of material nondisclosure or suppression of material facts, we cannot rely on such validity certificate and add premium in favour of the petitioner by conferring validity upon him. We are of the firm view that validity certificates which are obtained by exercise of fraud, suppression of the facts, inherently suffers dis-qualification to constitute positive evidence. We concur with the view taken by the Committee. In the result, writ petition fails. Hence, we proceed to pass the following order.

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ORDER

- i. The Writ Petition is dismissed. Rule discharged.
- ii. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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