



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10399 OF 2023

Arvind S/o Baliram Deshatwad,
Age : 20 years, Occu.: Student,
R/o. At. Post. Ritha, Tq. Bhokar,
Dist. Nanded.

..Petitioner

Versus

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

..Respondents.

...

Mr. C. R. Thorat, Advocate for the Petitioner.
Mr. N. S. Tekale, AGP for Respondent Nos.1 and 2.

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

DATED : 11th JANUARY 2024.

ORDER (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioner approaches this Court under Article 226 of the Constitution of India, assailing order dated 13.05.2022 passed by respondent no.2-Scheduled Tribe Certificate Scrutiny Committee,

Kinwat, thereby rejecting caste claim of the petitioner as belonging to '*Mannervarlu*', Scheduled Tribe.

3. Mr. Thorat, learned Advocate appearing for the petitioner would submit that the petitioner belongs to the '*Mannervarlu*', Scheduled Tribe. The Competent Authority had issued caste certificate in his favour. The claim of the petitioner was referred for verification to the respondent-Scheduled Tribe Certificate Verification Committee, which was supported by validity of the blood relative i.e. Pandurang Vitthal Deshatwad (real uncle), so also some other documents. The Committee on its own, examined the record in the matter of his uncle's validity and found that the claim of the cousin uncle of the petitioner namely Vishwanath Mahajan Deshatwad was invalidated in the year 1998. By suppressing the said fact he obtained fresh validity. The real uncle of the petitioner namely Pandurang Vitthal Deshatwad has obtained his validity certificate on 03.06.2011 based on validity granted to Vishwanath. Accordingly, the Committee invalidated the claim of the petitioner by discarding evidence in the nature of validity of Pandurang. Mr. Thorat would submit that the petitioner was not given any opportunity to furnish his explanation. He would further submit that so far as validity of the real uncle of the petitioner i.e. Pandurang Vitthal Deshatwad is concerned, it has been issued after following due process of law. The report of the vigilance inquiry favors the caste claim of Pandurang. Therefore, even excluding the validity granted in favour of Vishwanath Mahajan Deshatwad, the validity granted in favour of the Pandurang Vitthal Deshatwad dated 03.06.2011 can be maintained and caste claim of the petitioner could have been positively considered being close relative from paternal side of the validity holder.

4. The learned AGP strongly opposes the contention of the petitioner and justifies the order passed by the Committee.

5. We have considered the submissions advanced on behalf of the respective parties and also perused the original files of petitioner and record pertaining to the caste validity relied before the Scrutiny Committee. It is not in dispute that the petitioner in support of his claim relied upon the caste validity certificate dated 03.06.2011 granted in favour of his real uncle i.e. Pandurang Vitthal Deshatwad. While examining the claim of the petitioner, the Committee called record in respect of validity granted in favour of Pandurang Vitthal Deshatwad as well as Vishwanath Mahajan Deshatwad. The Committee found that the caste claim of Vishwanath Mahajan Deshatwad was invalidated on 02.09.1998 and validity in case of Pandurang Vitthal Deshatwad is granted relying upon validity granted in favour of Vishwanath Mahajan Deshatwad. Apparently, whole basis of validity granted in favour of Pandurang Vitthal Deshatwad i.e. real uncle of the petitioner is based on fraud exercised by Vishwanath Mahajan Deshatwad, thereby obtaining validity by suppressing his previous invalidation of the caste claim. It is true that the order granting validity in favour of Pandurang Vitthal Deshatwad refers to the report of the vigilance cell and remark of the Research Officer. However, ultimate grant of validity to Pandurang is based on validity conferred in favour of Vishwanath Mahajan Deshatwad.

6. We have perused the papers pertaining to file granting validity in favour of Pandurang Vitthal Deshatwad and found that except validity in case of Vishwanath Mahajan Deshatwad, there is no other document that would support his caste claim.

7. Mr. Thorat, learned Advocate appearing for the petitioner submits that Pandurang Vitthal Deshatwad i.e. real uncle of the petitioner has not made any misrepresentation or adopted any fraudulent means in the process of obtaining validity and his caste validity certificate is undisturbed. Therefore, the caste claim of the

petitioner could not have been invalidated. We are afraid to accept the aforesaid contentions. Although there is no reason to make direct allegation of fraud or misrepresentation against Pandurang Vitthal Deshatwad, but whole basis of his validity i.e. caste validity granted in favour of Vishwanath Mahajan Deshatwad appears to be fraudulent. While entertaining the caste claim of Pandurang Vitthal Deshatwad, the previous invalidation of Vishwanath Mahajan Deshatwad was not surfaced, therefore, the Committee relied upon the fraudulent validity obtained by Vishwanath Mahajan Deshatwad and extended further benefit to Pandurang Vitthal Deshatwad. By accepting the plea raised on behalf of the petitioner and grant him validity relying upon the validity of Pandurang Vitthal Deshatwad would amount to perpetuating or percolating fraud. This Court cannot look to the validity granted in favour of Pandurang Vitthal Deshatwad as valid evidence.

8. Pertinently, the Supreme Court of India in the matter of ***Mah. Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and Ors.***¹ observed in paragraph no.22 that 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 case 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 whose validity certificate relied upon by him 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

¹ AIR 2023 SC 1657.

granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. In the last line, it has been observed that 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 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.

9. The aforesaid observations would clearly depict that when the caste claim is sought to be justified based on validity granted in favour of the blood relative, the Committee is empowered to examine the background of such validity certificate to ascertain whether it has been issued after following due process of law and undertaking proper enquiry to form valid basis.

10. In the present case, the Committee had called the record in respect of the caste validity granted in favour of Pandurang Vitthal Deshatwad (real uncle) as well as Vishwanath Mahajan Deshatwad (cousin uncle) and concluded that Vishwanath's validity was obtained by exercising fraud. It is trite that the fraud and justice never dwell together (*fraus et jus nunquam cohabitant*). Lord Denning observed 'no judgment of the court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything' (***Lazarus Estates Ltd. v. Beasley***²). In view of the aforesaid factual and legal position, the decision of the Committee to discard validity granted in favour of Pandurang Vitthal Deshatwad while considering the claim of the petitioner (real nephew) cannot be faulted.

2 (1956) 1 All ER 341.

11. During the course of hearing we have repeatedly called upon the learned Advocate appearing for the petitioner to point out any other material to justify caste claim of the petitioner barring caste validity granted in favour of Pandurang Vitthal Deshatwad however, no such document or material could be placed into service by petitioner. Resultantly we do not find any infirmity in impugned order, there is no merit in the Writ Petition, hence, dismissed.

12. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/January-2024