

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8531 OF 2022

Chaitanya D/o. Sanjay Palekar
Age 24 years, Occ. Education,
R/o. Lecturer colony, Vasant Nagar,
Nanded, Tq. Nanded,
Dist. Nanded.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Caste Certificate
Verification Committee, Kinwat,
through its Dy. Director (R)
at Aurangabad.
3. The Dean Dr. Shankarrao Chavan,
Government Medical College,
Nanded Dist, Nanded.
4. The Registrar,
Maharashtra University of Health
Sciences, Dindori Road, Mhasrul/Nashik,
Dist. Nashik.

... RESPONDENTS.

Mr. S.M. Vibhute, Advocate for the petitioner,
Mr. P.S. Patil, AGP for respondent Nos. 1 to 3.

CORAM : MANGESH S. PATIL
& S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 13th JUNE 2023.
PRONOUNCED ON : 24th JULY 2023.

JUDGMENT [PER S.G. CHAPALGAONKAR, J]:-

1. The petitioner has approached this court under Article 226 of the Constitution of India, thereby challenging the order dated 7.7.2022 passed by the Scheduled Tribe Caste Certificate Verification Committee, Kinwat through its Deputy Director at Aurangabad, by which the tribe claim of the petitioner for 'Mannerwarlu' tribe has been rejected.

2. The petitioner contends that she belongs to 'Mannervarlu' tribe. The tribe certificate was issued by the competent authority on 1.7.2009. However, on 5.10.2015, the Verification Committee cancelled the same on the ground that the nomenclature of the tribe was wrongly recorded. The petitioner approached this Court in W.P. No. 3252 of 2017. The order dated 5.10.2015 was quashed and set aside. Thereafter, the competent authority issued the corrected tribe certificate on 20.7.2017. It was submitted to the committee for verification on 24.8.2017. It is further case of the petitioner that in the year 2016-17 she was qualified for admission to MBBS Course from Scheduled Tribe category and consequently, admitted to the respondent No.3 college. She completed her course in May 2021. However, by the impugned order dated 7.7.2022, the Committee rejected the Tribe claim.

3. Mr. Vibhute, learned advocate appearing for the petitioner would submit that on 5.3.2007, the scrutiny committee had validated the tribe claim of her father. Similarly, the committee at Nasik had validated tribe claim of her cousin uncle, namely, Amol Palekar on 20.5.1998. The tribe claim of her cousin grandfather Dnyanoba and cousin uncle Rajaram were also validated in the year 2005. The claims of many other blood relatives have been validated by the committee. He would further submit that on 10.8.2018, the Committee issued validity certificate in

favour of the paternal cousin Nishikant as per the directions of this court in W.P. No. 9382 of 2018. He would further submit that under the orders of this Court in W.P. No. 8417 of 2020 the validity certificate has been issued to Sarika and Sayali Palekar, who are blood relatives of the petitioner. Mr. Vibhute would further submit that the Committee relied upon the vigilance report dated 5.5.2020. The observations in the report were duly replied by the petitioner. He would further point out that remarks of the vigilance cell in the matter of Sarika and Sayali are similar to the one in the matter of the petitioner. This Court after considering such remarks directed the committee to issue tribe certificate to them. However, in case of the petitioner, differential treatment is given thereby invalidating her claim.

4. Mr. Pravin S. Patil, learned AGP for the respondent Nos. 1 to 3 supports the impugned order passed by the committee. He would submit that large number of fraudulent claims are being submitted to the committee for validation of 'Mannervarlu' tribe claim. The family of the petitioner does not belong to Scheduled Tribe. He would submit that the father of the petitioner had applied for issuance of validity certificate before the committee at Pune. The committee invalidated his Tribe claim and confiscated the certificate dated 9.7.1987 issued by the Tahsildar Nanded. However, suppressing these facts, in the year 2006, the father of the petitioner submitted fresh claim for validation of tribe claim and obtained the validity certificate by practicing fraud. He would further submit that the petitioner and her father have suppressed material information and filed false affidavits stating that no claim of the blood relatives was invalidated.

5. He would further invite attention of this court to the fact that the uncle of the petitioner, namely, Rajiy Palekar had also suffered invalidation of the Tribe claim on 26.4.1989. However, by suppressing

the fact he obtained fresh validity certificate. Mr. Patil would therefore urge that validity certificates issued in favour of the father and uncle of the petitioner are vitiated by fraud. Mr. Patil would further submit that subsequent validity certificates obtained by other relatives of petitioner, relying upon the validity certificate of the father and uncle of the petitioner by suppressing invalidation suffered by them cannot constitute a valid basis to grant validity to petitioners Tribe claim. Therefore, he urged to dismiss the writ petition.

6. We have heard learned advocates for the respective parties and perused the relevant record with their able assistance. The original record in respect of the validity certificates granted in favour of the relatives of the petitioner are also produced before this court. What we noticed from record is that, school record of the father of the petitioner was subsequently corrected to insert his caste as 'Mannervarlu'. Similar modus appears in respect of many other blood relatives. Pertinently, father of the petitioner Mr Sanjay Palekar had submitted his Tribe validity claim before the committee at Pune in the year 1989 and same was invalidated vide order of committee dated 13.04.1989. The appeal preferred by him before the Additional commissioner, Nashik as per the relevant provisions was dismissed on 19.06.1991 thereby confirming the order of invalidation of the claim. Similarly, petitioner's uncle - Rajiv Palekar had suffered invalidation of his Tribe claim under order dated 26.04.1989 of the committee. The appeal filed against said order was also dismissed on 20.06.1991. The orders passed by the then committee as well as appellate authority have attained finality.

7. It is abundantly clear that the affidavit was tendered by petitioner before the committee stating that there was no invalidity in the family. Pertinently, the father and uncle of the petitioner, who had suffered invalidation of the caste claim, again made false claims for

issuance of caste certificate suppressing the earlier rejection and succeeded in obtaining validity certificates. Apparently, father of the petitioner had resorted to fraud while obtaining the validity certificate dated 05.03.2007. He did not hesitate to file false affidavit before committee at Aurangabad in support of his subsequent claim as well as in the case of the petitioner. In our considered view, subsequent validation of the Tribe claim of the father and uncle of the petitioner cannot enure to her benefit.

8. The petitioner has been relying upon the validities granted in favour of the other relatives. We observe that invalidation of the claim of the father and uncle of the petitioner in the year 1989 and dismissal of their appeals in the year 1991 was suppressed from the committee in all those proceedings. Validity of Tribe claim of petitioner's father is vitiated by fraud consequently validations of distant relatives would not benefit the petitioner.

9. At this stage, reference can be made to the judgment of the Supreme Court of India in the matter of ***"Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and others"*** (2008) 9 SCC 54. Para. Nos. 27, 28 and 30 in the said judgment read thus:-

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

Applying above legal preposition to the facts of this case, it leaves no room to contend that validation of Tribe claims of the distant relatives of the petitioner, without noticing the earlier invalidation of the claim of the father and uncle and obtained by relying upon their subsequent validation which stands vitiated due to fraud can be used beneficially for validation of her tribe claim. It is a matter of record that committee after noticing fraud played by father of petitioner issued him show cause notice dated 08.11.2019 and a detailed notice dated 11.07.2022 as to why his Tribe Validation shall not be cancelled being vitiated by fraud.

10. Mr. Vibhute would urge that the Committee has no power to review its own decision. Therefore, the validity certificates issued in favour of the father and uncle of the petitioner as well as other relatives are subsisting as on date hence the claim of the petitioner could not have been negated. He relies upon the observations of this Court in **W.P. No. 5364 of 2023** between *Rajesh Umbarje and others Vs. State of Maharashtra* and others dated 3.5.2023 to contend that the Committee is not invested with the powers of review and even if the Committee issues notices to the caste validity holders, it cannot cancel the certificates. Mr.

Vibhute further submits that in present matter committee may be directed to re-consider the claim of the petitioner along with the cases of her father and uncle which are sought to be re-opened for fresh decision. He placed reliance on the order dated 10.12.2021 in the matter of ***Hrushikesh Garud Vs. State of Maharashtra (2022) 1 SCC 207***. Mr. Vibhute would further urge that in the similar circumstances, this court directed the Scrutiny Committed to issue validity certificate subject to decision in the proceeding re-opened in respect of validity holders relied by the petitioner. He placed his reliance on the order passed by this court in **W.P. No. 8432 of 2020 in the matter Aishwarya Modibayni Vs. State of Maharashtra.**

11. Although, petitioner relies on the various judgments passed by this Court where directions are given to issue validity certificates subject to final outcome of the inquiry in the re-opened caste validity certificates of the relatives, in the facts of the present case, we are not inclined to pass such order, since we are of the considered view that the present case is a glaring example of patent fraud on constitution. The affidavits tendered by the petitioner and her father stating that none from their family member had suffered invalidation of the tribe claim, clearly shows their dishonest intention. The petitioner cannot draw premium over the fraud practiced by her father and other blood relatives when the validity certificates relied by her are under cloud of doubts and obtained fraudulently and hence, the committee is justified in rejecting claim of the petitioner.

12. So far as the issue as to whether the Committee has power to review its own decisions is concerned, true it is that division Bench of this Court in the matter of **Rakesh Umbarje (Supra)** has taken a view that the Committee has no powers to review its own decision. In the present case we are not dealing with that issue, but are concerned with the case of

obvious fraud. What we notice in this case is that petitioner's tribe claim for 'Mannervarlu' Scheduled Tribe is based on validity issued to her father and uncle in the year 2007. The Committee has rightly observed that the fact of earlier invalidation of Tribe claim suffered by the father and uncle of the petitioner in the year 1989 which was confirmed by the appellate authority in the year 1991, was suppressed by them while obtaining subsequent validity certificate from a different committee. In that view of the matter, without waiting for the fate of the proceeding after re-opening of the caste validity of the father of the petitioner, we are inclined to reject the petition and confirm the impugned order as in facts of this case impeccable material is available to depict apparent fraud .

13. In the result, writ petition fails and is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

grt/-