

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8762 OF 2018

Atharva Suresh Khade, Minor
through Father and natural guardian
Suresh Mahadev Khade ... Petitioner

Vs

State of Maharashtra through its
Secretary, Tribal Development Department
and Ors. ... Respondents

Mr.R. K. Mendadkar a/w C.K.Bhangoji, Priyanka Shaw, Komal
Gaikwad, Tanaji Jadhav for the Petitioner.

Mr.S.B. Kalel, AGP for the Respondent State.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

WEDNESDAY, 08TH AUGUST , 2018

P.C. :

1 Heard both sides. Perused the original record. By this
order, the writ petition is disposed of finally.

2 Rule. The respondents waive service. By consent heard
finally.

3 The petitioner before us is a minor and son of Suresh Mahadeo Khade. The writ petition is filed through his father and natural guardian claiming that he belongs to “Koli Mahadev” Scheduled Tribe. It is recognized as a Scheduled Tribe under Constitution (Scheduled Tribes) Order 1950 as amended from time to time. The first respondent to the petition is the State of Maharashtra through the Secretary, Tribal Development Department. The second respondent is the Scheduled Tribe Certificate Scrutiny Committee, Pune. The Common Entrance Test Cell has been established so as to conduct common entrance test for admission to under graduate health science and engineering courses. The fourth respondent is the college imparting education and training in engineering courses.

4 The fourth respondent granted admission to the petitioner in a seat reserved for “Scheduled Tribe” subject to submission of caste validity certificate on or before 10th August 2018.

5 The petitioner produced the Tribe Certificate issued by

the competent authority dated 22nd March 2010, the copy of such certificate is at Exh.B to the petition. Since the admission is sought for engineering and technology degree course for the academic year 2018-2019, the petitioner's caste certificate was forwarded to the second respondent-Committee for verification and scrutiny of the tribe claim. The petitioner appeared before this Committee through his father. He placed on record voluminous documentary evidence, including certified true copies of the caste validity certificate issued to his father and his real uncle-Vishwas Mahadeo Khade. The father of the petitioner- Suresh Mahadeo Khade was issued the certificate of validity on 3rd April 2008. Prior thereto, Vishwas, the real uncle of the petitioner, was issued the certificate of validity on 12th July 2006. Exhs.C and D are the copies of these certificates. Then, there is caste validity certificate issued recently on 30th June 2014 to Snehal Suresh Khade, the real sister of the petitioner and daughter of Suresh. Copy of this certificate is annexed and marked as Exh.E.

6 The petitioner pointed out that on 6th June 2006, this Court decided four writ petitions, all of which were filed by the

members of this family. The petitioner relied upon this judgment copy, which is at Exh.F to urge that this voluminous documentary evidence is enough to prove and establish that he is “Mahadev Koli” Scheduled Tribe.

7 The Committee felt otherwise. The Committee feels that it is not obliged to rely on this documentary evidence for the simple reason that these certificates of validity may have been issued to these persons, but the Committee was misled in relying upon this documentary evidence earlier. First of all, there is serious dispute about the cultural affinity. Secondly, if one goes by the record itself, it would reveal that on 6th September 1950, the family resided in District Nashik. They resided at Khadyachi Wadi, Dhodegaon, Taluka & District Nashik. However, there is no residential proof and the names of the petitioner's ancestors are not reflected into 7/12th Extract/ Revenue Record of the village. Thirdly, the Committee found that the Vigilance Cell attached to it visited the schools where the ancestors of the petitioner were admitted and in the school record, their addresses were stated as Ranjangaon Sandas, Mandavgan, Galandwadi and each of

these villages are in Taluka Shirur, District Pune. Therefore, relying upon these documents, neither Vishwas nor Suresh nor Snehal could have been issued certificates of validity. Finally, in the judgment delivered by this Court, copy of which is at Exh.F, this Court was not informed that close relatives of the petitioner from the paternal side, Dattatraya and Shantabai are stated to be belonging to this Tribe. However, the record pertaining to both of them is of 1932 and 1934. Relying upon this record and the entry therein against the Caste/Tribe column, Vikram and Virendra Khade, obtained relief from this Court. They claimed that they are the successor in title of Gangaram. However, in relation to their records, the Committee has now found that Dattatraya, Shantabai, Vikram and Virendra are the successors or in the branch of Gangaram. Gangaram could not be said to be the real brother of Savlaram. Thus, the Committee doubted the genealogy and family tree. It says that there is no proof that Gangaram and Savlaram are real brothers and the village record of village Dhondegaon demonstrates that only the branch of Gangaram resided therein and it is inconceivable that a real

brother did not reside in the same district in the year 1949, 1951 etc., but chose to reside in Shirur Taluka of Pune District. Thus, this divergence would reveal that the genealogy and family tree produced before this Court had led this Court to believe that the family is the same. This vital mistake and rather misrepresentation would reveal that the Court could not issue the directions to the Committee to issue a certificate of validity to the petitioners in those petitions in whose case the judgment, copy of which is at Exh.F, is delivered. More so, in the case of Dattatraya and Shantabai, the record may reveal that they belong to "Mahadev Koli" Scheduled Tribe, but there are other relatives and predecessors in title bearing the same surname but with different entry, namely, "Koli" simplicitor in the record. Thus, all persons, who have common surname are seeking to derive benefits meant for the "Mahadev Koli" Scheduled Tribe. That is how this Committee may have issued certificates of validity to the petitioner's father and real sister, but that issuance is vitiated as that order is based on the judgment of this Court. That judgment itself is obtained by a misrepresentation/suppression of facts.

8 Mr.Mendadkar, learned Advocate appearing for the petitioner would urge that there is no basis for such findings. Firstly, the judgment and order of this Court has gained finality. No attempt was made to seek a review of the same or to challenge it in the higher Court. Thereafter relying upon that judgment and order, certificate of validity has been issued to the real uncle of the petitioner-Vishwas Mahadeo Khade on 12th July 2006. Based on the certificate of validity issued to Vishwas, the petitioner's father and real sister have been issued certificates of validity on 3rd April 2008 and 30th June 2014. All these certificates have therefore great probative value. Their probative value is not diluted or whittled down by an observation or remark of the above nature. That means orders of this Court are disregarded and disrespected and the whole matter is being reopened after several years or rather a decade or more. Such attempts would lead to absurd and anomalous situation, namely, that the petitioner's father is a tribal, his real sister is a tribal, but he is not.

9 On the other hand, Mr. Kalel, learned AGP would urge

that once the suppression is brought on record, now every certificate of validity issued earlier loses its evidentiary value. The Committee, has therefore, taken a view which is probable and possible and cannot be termed as perverse. It is not vitiated by an error of law apparent on the face of the record. In the circumstances, the writ petition be dismissed.

10 With the assistance of both Advocates, we have perused the petition and annexures thereto. We have perused the original record produced by Shri Kalel as well.

11 The petitioner made an application for scrutiny and verification of his claim in the above facts and circumstances. He remained present for verification and scrutiny of his claim alongwith his father Suresh. Suresh filed an affidavit stating that he belongs to Hindu Mahadev Koli Scheduled Tribe. He pointed out that he is working and for his son, he is relying upon the certificate of validity issued to him, his brother Vishwas Mahadeo Khade and his daughter Snehal Suresh Khade. He produced copies of the certificates of validity and a genealogy/family tree. He pointed out that the original ancestor was Hari Khade. He had two sons – Gangaram and

Savlaram. Gangaram had one son- Pandurang who was unmarried and two others namely Namdeo and Dattatraya. The other son of Hari Khade namely Savlaram had also three sons. The petitioner is from the branch of Savlaram. The petitioner relied upon the certificates of validity issued to his father, sister and real uncle by urging that this family tree was never doubted or suspected earlier. To support that claim, reliance was placed on the judgment and order of this Court, copy of which is at Exh.F to the petition.

12 When this material was placed before the Committee, it called upon the Vigilance Cell attached to it to make a home inquiry. Accordingly all these documents were handed over to the Vigilance Cell and the report of the Vigilance Cell was placed before the Research Officer. The Research Officer attached to this Committee, perused the school records and discovered that there are certain school entries, but they are not tallying inasmuch as Gangaram and Savlaram are claimed to be real brothers (Both are sons of Hari Khade), but they seem to be residing in different villages and in distinct districts. If that is how they are residing, then, naturally, their

branch produced family tree and genealogy, which did not make any reference to their other relatives. This contradiction would reveal that some of the predecessors in title in the branch of Gangaram and Savlaram were not Hindu Mahadev Koli Scheduled Tribe, but Hindu Koli simplicitor. Their old or preconstitutional record does not tally or match and that is how the documentary proof loses its probative value.

13 A copy of this Vigilance Cell report together with the comments and findings of the Research Officer was provided to the petitioner and being a minor, his father Suresh Khade gave a written explanation or reply thereto. He made a positive assertion and also relied upon his affidavit and the genealogical tree. He says that now it is futile to hold that there is a suppression of facts if the certificates of validity issued pursuant to this Court's order have not been reopened. Thus several opportunities were available to the Committee. Neither the State Government nor the Committee challenged the order of this Court in a higher Forum or attempted to review it. Thus, Suresh argued that there is no point in denying the certificate of validity to the petitioner.

14 We are of the opinion that there is much substance in this stand of Suresh. It is our common experience in all such matters that right from the judgment of the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil Vs. State of Maharashtra reported in [1994] (6) SCC 241**], there is a needle of suspicion pointing towards the claim of the claimants asserting that they are belonging to “Mahadev Koli” Scheduled Tribe. The claim and the assertion is on record and all such claims are to be scrutinized pursuant to the directions of the Hon'ble Supreme Court in Madhuri's case. In fact, lot of claimants are complaining that some of them are issued certificates of validity while others are not. There is a great hue and cry in this part of this State and there has been always an agitation about non issuance of the certificates to all the deserving members of the Scheduled Tribe. The allegation throughout has been that some members claiming themselves to be “Hindu Mahadev Koli” Scheduled Tribe are not as such and they are taking away or snatching the benefits and concessions meant for the genuine and real tribals. If this was the position, we expected the State

Government to carry out a serious exercise and not to deny certificates of validity or issue them randomly. Even when there was doubt expressed about the claim, the certificates of validity were refused, the orders of the Scrutiny Committee came to be challenged before this Court. The Committee and the Government had an opportunity to defend its action before this Court, but they failed to defend it. The order of this Court reversing the view of the Scrutiny Committee and directing issuance of certificates of validity before this Court were not challenged nor any serious attempts have been made to review it. If the allegation is as serious as suppression of material and relevant facts or misrepresentation, then, the Committee should have been vigilant and before issuing certificates of validity to everybody, it should have caused detail investigation and inquiry to be made. We had given sufficient opportunity to the State Government and such Committees and, in fact, directed to hold thorough, proper and complete inquiry so as to bring out cases of fraud and misrepresentation to light. We are quite aware that in the process, some of the Scrutiny Committee Members,

Commissioner and Joint Commissioner of Tribal Development Department and high level officials would have to be prosecuted. Even they would face the music. We gave six months' time to the Government and Committee to make such investigation and inquiry to bring the guilty to book. During the process of such investigation and inquiry, the Committee could have been directed not to issue the certificates of validity or to keep the claim on hold. Before this academic year, this inquiry could have been concluded easily. We passed the orders and directions in the month of November/December 2017 and well in advance before the ensuing academic session. If the Government and the Committee is merely sitting over our orders and directions, doing nothing, then, they cannot turn around and deny certificates of validity by choosing one person in a family like the present petitioner. Now Suresh, Snehal and brother Vishwas are tribals. Suresh has a certificate of validity in the year 2008 whereas Vishwas has it in possession since July 2006. The daughter of Suresh and real sister of the petitioner is tribal and a certificate of validity is issued to her four years

back i.e. on 30th June 2014. They are availing of all the concessions, benefits and relaxations meant for the Scheduled Tribe in education and employment. The family of Vishwas also is seeking similar benefit. Now incongruous situation has occurred where one of the child of Suresh is denied a certificate of validity. It is indeed unfortunate that the certificate of validity is denied to the son of Suresh and now an attempt is made by the Scrutiny Committee to use and utilize this order to deny the certificate of validity to other members of the Khade family. In that process, the Committee will get over the binding judgment of this Court also. It is this attempt, which we do not wish to uphold or countenance. It is very easy to allege fraud and misrepresentation, but very difficult to prove it. Then every single party to the fraud, including State machinery would have to be punished. The State Government does not wish to do precisely this, but rather protect its rank and file. Their position in the hierarchy should not be a consideration to protect and shield the guilty. Some of these officials, after availing all the benefits as members of the Scheduled Tribe, have climbed up to the

position of being the members of the Scrutiny Committee themselves. Now they have started to issue or deny the certificates of validity at random and thus the Government and the State machinery is perpetuating the alleged fraud and the act of suppression or misrepresentation. None is bothered about the interest of the public at large or that of public exchequer. Now crores of rupees have gone down the drain in issuing certificates of validity, holding investigation and inquiries in individual cases and after benefit of admission and employment is availed, by paying their fees or reimbursing their expenses and releasing monthly salaries and emoluments so also retiral benefits, including pension. If the Government was indeed serious, it should have promptly acted on our orders and directions. It could have seized the opportunities pursuant to our orders and directions and curbed the above tendency. Once it does nothing of the kind, then, we are not persuaded to accept the argument of Mr.Kalel that hereafter we must not grant certificates of validity, relying on the judgment of this Court delivered in the case of Khade's or the members of the Khade family.

15 We decline to do that and rather rely on the very documentary evidence, which is reliable and trustworthy as it is based on the judgment of this Court. We, therefore, hold that the Committee's approach and order in the instant case is vitiated by non application of mind as also errors of law apparent on the face of the record. The same is perverse as relevant and vital documentary evidence has been discarded without any justification. As a result of the above discussion, the following order is passed.

: ORDER :

- a) The impugned order dated 24th July 2018 is quashed and set aside;
- b) Rule is made absolute in terms of prayer clause (b);
- c) The certificate of validity shall now be issued to the petitioner on or before 9th August 2018;
- d) The matter be posted for compliance on 10th August 2018 at 11.00 a.m.
- e) The learned AGP to inform the officials attached to the Committee and the Committee Members and apprise them of the urgency. He should impress upon them

that the certificate of validity is necessary in order to protect the educational prospects and career of the petitioner.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.