

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7624 OF 2018

YAHAYA AZAM QURRAM AHMED KHAN AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Deshmukh H. D.

AGP for Respondents No. 1 to 3 :

Mrs. M. A. Deshpande

Advocate for Respondent No. 4 : Mr. V. S. Kadam

...

WRIT PETITION NO. 6633 OF 2018

MUKRAM GULAM GHOUK KHAN

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. C. T. Jadhav

AGP for Respondents No. 1 to 4 :

Mrs. M. A. Deshpande

...

CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.

DATE: 03rd JULY, 2019

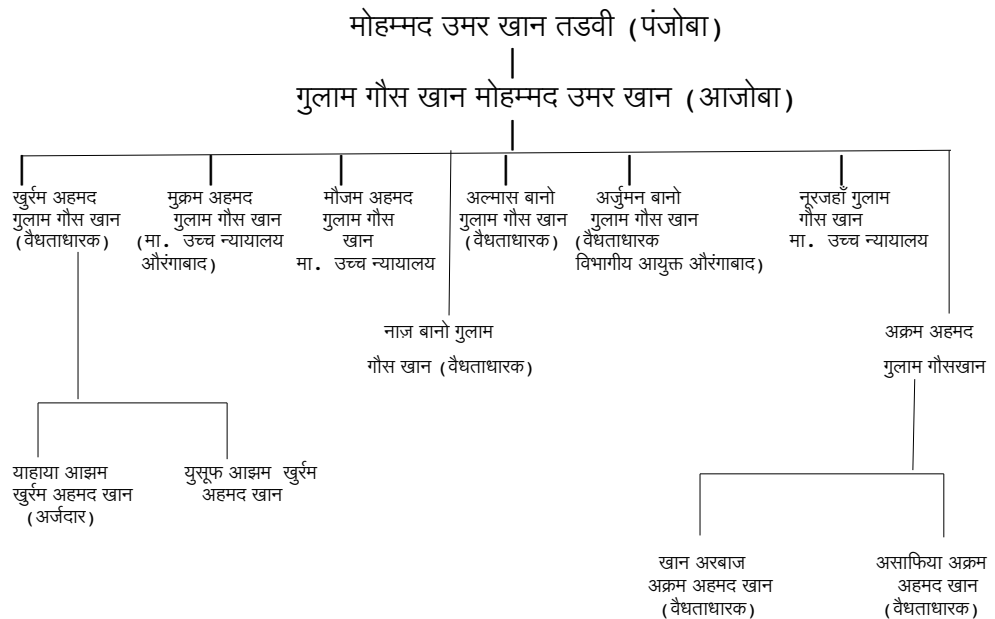
PER COURT:

1. The tribe claim of the petitioners as Tadvi, Scheduled Tribe are invalidated.

2. The petitioners in both these writ petitions are near paternal cousins. The contention of the

learned counsel for the petitioners is that, the father of the petitioners in Writ Petition No. 7624 of 2018 is issued with the validity certificate of Tadvi, Scheduled Tribe. The father of the petitioners in the said writ petition is the real brother of the petitioner in Writ Petition No. 6633 of 2018. The petitioners have relied on about eight validity certificates issued to the family members i.e. the real paternal uncle, real paternal aunt etc. The genealogy is placed on record which shows the validities issued to the various family members, the same is as under -

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3. According to the learned counsel, the entry of caste Musalman in the school record can not be said to be contra evidence. There is no suppression of fact.

4. As far as petitioner in Writ Petition No. 6633 of 2018 is concerned the caste claim of the petitioner was negatived by the committee earlier. The petitioner had approached this Court by filing Writ Petition No. 1016 of 1987, the same was allowed. In fact, this Court held that the said petitioner belongs to Tadvi, Scheduled Tribe, however the further order remained to be passed i.e. directing committee to issue validity certificate. The Court directed the respondents therein to admit the petitioner to MBBS first year course and the petition was disposed of. This aspect has not been considered. According to the learned counsel, the affinity test is not the litmus test. The learned counsel relies on the judgment of the Apex Court in case of **Anand Vs. The Committee for Scrutiny and Verification of**

Tribe Claims and others reported in ***(2012) 1 SCC 113.***

5. The learned Additional Government Pleader submits that in the school record of the petitioners and other family members the caste recorded was Musalman. The entry Tadvī, was recorded in the school record after the aunt got the validity certificate from the Divisional Commissioner and relying on the said validity certificate issued by the Divisional Commissioner subsequently validity certificates are issued to the other family members of the petitioners. There was no record available to conclude that the petitioners belong to Tadvī, Scheduled Tribe. All these aspects have been considered by the committee threadbare and has thereafter taken conscious conclusion.

6. According to Mr. Kadam, learned counsel for the respondent / institution, the respondent / institution is a deemed University and the

petitioner would not be entitled for reimbursement of fees.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. One Mauzam Ahmed Gulam Gaus Khan and Noorjahan Gulam Gaus Khan are the real brother and real sister of petitioner Mukram. The real paternal uncle and paternal aunt of petitioners in Writ Petition No. 7624 of 2018 were denied validity certificate of Tadvi Scheduled Tribe. They had approached this court. This Court had allowed their writ petitions directing committee to issue validity certificates of Tadvi, Scheduled Tribe. The judgment was also confirmed by the Apex Court.

9. The entry of Musalman in the school record can not be said to be contra evidence. The said entry is of religion.

10. Moreover, the validity certificates issued to all these persons is not cancelled. The judgment

in case of **Apoorva D/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee and others** reported in **2010(6) Mh. L. J. 401** would be relevant. The eight validity certificates are in the family of the petitioners. Out of eight, two have been directed to be issued validities under the orders of this Court and confirmed by the Supreme Court.

11. The impugned orders passed by the committee are quashed and set aside. The committee shall issue validity certificate to the petitioners of Tadvi, Scheduled Tribe.

12. In case the committee decides to reopen the case as observed by it in the judgment impugned in respect of the relatives whose validities are relied by the petitioners, then in that case the committee may take further steps with regard to the validities in respect of the petitioners also. Consequences shall follow.

13. With regard to the fees in Writ Petition No.

7624 of 2018 is concerned, the petitioner may approach the State Government and seek clarification with regard to its liability to pay the fees, though from a scheduled tribe category.

14. Writ Petitions are disposed of accordingly.

No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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