

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO. 5641 OF 2020

1. Kum. Maseera Parvin d/o  
Mohd. Ashfaq Shaikh,

2. Kum. Saba d/o Mohd. Azaz Shaikh ... Petitioners

**Versus**

The State of Maharashtra and others ... Respondents

Mr Madhur A. Golegaonkar, Advocate for the petitioner  
Mr. P. S. Patil, Addl.G.P. for respondents State

CORAM : S. V. GANGAPURWALA &  
SHRIKANT D. KULKARNI, JJ.

DATE : 9th October, 2020

**ORDER:**

1. The tribe claim of the petitioners as Tadvi scheduled Tribe is invalidated. Aggrieved thereby, the present petition.

2. We have heard Mr. Golegaonkar, learned Advocate for the petitioners and Mr. Patil, the learned Additional Government Pleader for the respondents.

3. According to the petitioners, there are total 30 validity certificates issued in favour of the family members of the petitioners. Fathers of the petitioner No.1 and 2 are real brothers. The learned counsel submits that father of petitioner No.1 has been issued with the validity certificate of Tadvi Scheduled Tribe under the orders of this Court. Two real uncles of the petitioners are issued with the validity certificates by the appellate authority at the relevant time i.e. Additional Commissioner, Tribal Development. Learned Advocate further submits that the grandfather of the petitioners has been issued with the validity certificate by the

committee. Two real aunts of the petitioners are issued with validity certificates by the scrutiny committee of Tadvi, Scheduled Tribe. Real brother of the petitioner is issued with the validity certificate of Tadvi scheduled tribe by the caste scrutiny committee. The learned counsel submits that the committee ought not to have rejected the claim of the petitioners for issuance of validity certificates of Tadvi scheduled tribe.

4. Mr. Patil, the learned Additional Government Pleader submits that the documents relied upon by the Committee while invalidating the tribe claim of the petitioners were not before this Court and the earlier scrutiny committees deciding the matters in favour of the family members of the petitioners. The sale deed executed by the ancestors of the petitioners in favour of third party is placed on record. From the sale deed and the report, it is clear that the petitioners' family is not tribal. It is further submitted that in case of paternal relatives of the petitioners, the school record has been obtained by the vigilance cell in which the record is found of non backward. The learned Additional Government pleader refers to the findings of the Scrutiny committee in that regard and submits that in case of cousin brother, cousin sisters of the petitioners, in caste column of the school record, caste is shown as 'non backward'. The statement of Kazi is also recorded. Kazi is a person who conducts marriages. He has also stated on oath about the procedure and that Shaikh is not included in Tadvis.

5. The learned Additional Government Pleader further submits that the committee has forwarded proposal for filing review of the orders of this

Court and also is contemplating reopening of the proceedings against the family members of the petitioners who are granted validity certificates by the Committee. The learned Additional Government Pleader further submits that many of the relatives of the petitioners, who had obtained validity certificates and relied by the petitioners, have fraudulently taken the blank validity certificates from the office and forged the same. Criminal case under section 420 of the Indian Penal Code has been filed against those persons.

6. We have considered the submissions canvassed by the learned advocate for the parties so also gone through the judgment of the committee.

7. From the record available, following family members/paternal relatives of the petitioners have been issued with the validity certificates, either under the orders of this Court or the appellate authority at the relevant time or the caste scrutiny Committee. The relationship does not appear to be disputed. The details of the persons issued with validity certificates are as under:

| Sr. No. | Names of Validity Holders | Relation -ship with Petitioner | Caste Scrutiny Committee/ High Court   | Date       | File No. Order                                                                                     |
|---------|---------------------------|--------------------------------|----------------------------------------|------------|----------------------------------------------------------------------------------------------------|
| 1       | Mohd Ashfaq<br>Mohd Hanif | Father                         | Hon'ble High Court                     | 11.09.1992 | Verified by Bombay High Court Bench at Aurangabad vide order in WP 30/92                           |
| 2       | Shaikh Ajaj<br>Mohd Hanif | Real Uncle                     | Commissioner Tribal Development Nashik | 29.04.1988 | Verified by the Additional Commissioner, Tribal Development, Nashik vide order in Appal No.91/1987 |

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|----|---------------------------|---------------------|----------------------------------------|------------|---------------------------------------------------------------------------------------------------------------------------|
| 3  | Shaikh Iqbal Tadvī        | Real Uncle          | Commissioner Tribal Development Nashik | 26.06.1990 | Verified by Add Commissioner Tribal Devp. Nashik vide order in Appeal No.188/1989                                         |
| 4  | Shaikh Wahid Abdul Rajjak | Cousin Uncle        | Caste Scrutiny Committee Nashik        | 24.11.1997 | Dy. Director, Scrutiny Committee, Nashik vide order No.DD/TCSC/NSK/SSD/4865                                               |
| 5  | Andul Hamid Abdul Wahab   | Cousin Uncle        | Caste Scrutiny Committee Aurangabad    | 21.04.2001 | Verified by Scrutiny Committee, Tribal Research & Training Institute, A'bad vide order No.DD/TCSC/Abad/SER/Elec/2001/1201 |
| 6. | Abudil Hakim Abdul Gafoor | Cousin Grand father | Caste Scrutiny Committee, Aurangabad   | 21.04.2001 | vide order No.DD/TCSC/Abad/Elec/2001/1201                                                                                 |
| 7. | Abdul Azim Abdul Rauf     | Cousin Uncle        | Caste Scrutiny Committee Aurangabad    | 21.04.2001 | vide order No.DD/TCSC/Abad/End/28/01/1201/02                                                                              |
| 8. | Sajjiya Abdul Rauf        | Cousin Aunt         | Caste Scrutiny Committee Aurangabad    | 21.04.2001 | Vide order No.DD/TCSC/Abad/SER/2001/725/02                                                                                |
| 9  | Abdul Rafiq Abdul Gafoor  | Cousin Grand father | Caste Scrutiny Committee Aurangabad    | 14.06.2002 | Order No.DD/TCSC/Abad/Ser/I-2001/725/02                                                                                   |
| 10 | Nishat Rafiq              | Cousin aunt         | Caste Scrutiny Committee Aurangabad    | 27.01.2004 | Order No.DD/TCSC/Abad/Edn36/03/32/04                                                                                      |
| 11 | Imran Abdul Kayyum        | Cousin brother      | Caste Scrutiny Committee Aurangabad    | 23.07.2004 | Order No.DD/TCSC/Abad/Edn/154024/864/04                                                                                   |
| 12 | Ayesha Abdul Kayyum       | Cousin sister       | Caste Scrutiny Committee Aurangabad    | 26.07.2004 | Order No.DD/TCSC/Abad/Edn/153/02/900                                                                                      |
| 13 | Abdul Hamid Abdul Majid   | Cousin uncle        | Caste Scrutiny Committee Aurangabad    | 18.08.2008 | Order No.DD/TCSC/Abad/Ser/99/03/4443                                                                                      |

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|----|---------------------------|---------------|-------------------------------------|------------|--------------------------------------------------------|
| 14 | Ajara Mohd Hanif          | Real aunt     | Caste Scrutiny Committee Aurangabad | 27.02.2007 | Order No.DD/TCSC /Abad/Ser/36/2006/1630                |
| 15 | Habdul Haseeb Abdul Alim  | Cousin Uncle  | Caste Scrutiny Committee Aurangabad | 25.11.2008 | Order No.DD/TCSC /Abad/Edn/78/2007/8233/08             |
| 16 | Gazala Mohd Hanif         | Real Aunt     | Caste Scrutiny Committee Aurangabad | 19.05.2001 | Order No.DD/TCSC/ /Abad/Ser/70/08/3877/09              |
| 17 | Sumaya Abdul Rauf         | Cousin Uncle  | Caste Scrutiny Committee Aurangabad | 05.06.2009 | Order No.DD/TCSC/ Abad/Edn/104/08/4311/09              |
| 18 | Abdul Latif Abdul Razzak  | Cousin uncle  | Caste Scrutiny Committee Aurangabad | 10.09.2009 | Order No.DD/TCSC /Abad/Ser/22/09/5085                  |
| 19 | Bushra Abdul Alim         | Cousin Aunt   | Caste Scrutiny Committee Aurangabad | 30.04.2010 | Order No.DD/TCSC/ Abad/Edn/104/08/3756                 |
| 20 | Sayeed Abdul Majid        | Cousin Uncle  | Caste Scrutiny Committee Aurangabad | 17.06.2010 | Order No.DD/TCSC /Abad/Ser/17/10/5308                  |
| 21 | Saba Firdous Abdul Latif  | Cousin sister | Caste Scrutiny Committee Aurangabad | 02.02.2011 | Order No.DD/TCSC /Abad/Edn/25/10/918                   |
| 22 | Shaikh Sharekh Anwar      | Real brother  | Caste Scrutiny Committee Aurangabad | 15.04.2011 | Order No.DD/TCSC /Abad/Edn/25/10/2463                  |
| 23 | Shaikh Zaid Abdul Rafiq   | Cousin Uncle  | Caste Scrutiny Committee Aurangabad | 15.04.2011 | Order No.DD/TCSC /Abad/Edn/103/09                      |
| 24 | Sauikh Shahim Abdul Majid | Cousin Aunt   | Caste Scrutiny Committee Aurangabad | 15.04.2011 | Order No.DD/TCSC /Abad/ Ser/16/2010/2464               |
| 25 | Shaikh Rauf               | Grad father   | High Court Aurangabad               | 03.05.2014 | Bombay High Court, Bench at Aurangabad WP No.5183/2012 |

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|----|-----------------------|----------------|-------------------------------------|------------|-----------------------------------------------------------------------------------------------------|
| 26 | Sadiya Almas Waheed   | Cousin sister  | Caste Scrutiny Committee Aurangabad | 22.06.2015 | Case NO.JC/Scheduled Tribe Certificate Scrutiny Committee /ABD/Edn/1015/213 W.P.No.5782/15 /2348/15 |
| 27 | Saniya anam Waheed    | Cousin sister  | High Court, Mumbai                  | 25.09.2017 | High Court, Mumbai Writ Petition No. 2547/2017                                                      |
| 28 | Adnan Abdul Kayyum    | Cousin brother | High Court, Mumbai                  | 27.09.2017 | High Court, Mumbai Writ Petition No. 10294/2017                                                     |
| 29 | Mohd Saif Abdul Wahid | Cousin brother | Caste Scrutiny Committee Aurangabad | 18.07.2018 | Case No.4/515/Edu/122017                                                                            |
| 30 | Roman Mohd Aziz       | Cousin sister  | Caste Scrutiny Committee Aurangabad | 18.07.2018 | Case No.4/515/Edu/ 072016/ 100765                                                                   |

8. Perusal of the aforesaid, it would be clear that the father of petitioner No.1 is issued with the validity certificate under the orders of this court in writ petition No. 430/92 dated 11.09.1992. The tribe claim of the father of petitioner No.1 was negated. The father of petitioner No.1 filed writ petition before this Court and the same is allowed and the High Court directed the committee to issue validity certificate to the father of the petitioner No.1. Father of petitioner no.2 is issued with validity certificate under the order of the Additional Commissioner, Tribal Development, Nasik. At the relevant time, Additional Commissioner was the appellate authority. In case of two real uncles of the petitioners, the Additional Commissioner (Appellate authority) has directed to issue validity certificate to the real uncle of the petitioners of Tadvi Scheduled Tribe. The grandfather of the petitioner is also issued with the validity certificate of Tadvi Scheduled Tribe by the caste scrutiny committee. Two real aunts of the petitioner are

issued with the validity certificates of Tadvi Scheduled Tribe by the Caste Scrutiny Committee. The real brother of the petitioners is issued with the validity certificate by the caste scrutiny committee. The grandfather of the petitioner Shaikh Rauf has filed writ petition before this Court against the order of the Scrutiny Committee negating his claim. This Court, in Writ petition No.5183/2012 under judgment and order dated 03.5.2014 allowed the writ petition and directed the committee to issue validity certificate to the grandfather of the petitioners. It is stated that the judgment of this Court in Writ petition No. 5183/2012 was assailed before the Supreme Court and the S.L.P. against the same is dismissed. There are other cousins also who have been issued with the validity certificates either by this Court or by the scrutiny Committee as is clear from the chart referred to above.

9. The statement of the Kazi is of a general nature and is not specific as far as the petitioners or their parents are concerned.

10. It is observed that the committee has found some school record of the cousins of the petitioners, wherein, the caste is recorded as non backward.

11. It would appear that the father, real uncles, grandfather and the real brother have been issued with the validity certificates of Tadvi Scheduled Tribe. The judgment of this Court directing issuance of validity to the father and the grandfather of the petitioner Nio.1 is intact. The validity certificate issued in favour of the real brother, real aunts, real uncles are also intact.

12. Considering all the aforesaid, it would be improper to reject the proposals of the petitioners for issuance of validity certificates of Tadvi Scheduled Tribe.

13. It is submitted by the learned Additional Government Pleader that the proposal is moved to file review petition of the order in writ petitions filed by the father and grandfather of the petitioner. So long as the judgments of this Court hold the field, it would not be appropriate to take a different view.

14. In light of above, we pass the following order.

O R D E R

- 1) The impugned judgment and order is quashed and set aside.
- 2) The Committee shall issue validity certificates to the petitioners of Tadvi Scheduled Tribe.
- 3) In case, the judgment of this Court, in writ petition No. 430/1992 dated 11.09.1992 and in Writ petition Petition No. 5183/2012 dated 03.05.2014 are reviewed, then the respondents may proceed against the petitioners in accordance with law.
- 4) Writ petition is accordingly disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC