

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

WRIT PETITION NO. 5517 OF 2022

Abhishek Mahendra Umbarje
Aged years, residing at
Block No. 36, Koli Samaj, Society
No. 2, Vijapur Road, Solapur,
Dist. Solapur.

... Petitioner

Versus

1. State of Maharashtra
Through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai – 400032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Pune Division,
Pune through its Members Secretary,
having its Office at Kapil Towers,
C Wing Near RTO office,
Pune – 411001.

3. Visvesvaraya National Institute
of Technology through its
Registrar having its office at
Nagpur, Dist. Nagpur

... Respondents

**WITH
WRIT PETITION NO. 5519 OF 2022**

Dhiren Rajesh Umbarje
Aged 27 years, residing at
9B, Koli Samaj Society no. 2
Saiful, Vijapur Road, North Solapur
Dist. Solapur – 413 004.

... Petitioner

Versus

1. State of Maharashtra
Through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai – 400032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Pune Division,
Pune through its Members Secretary,
having its Office at Kapil Towers,
C Wing Near RTO office,
Pune – 411001.

... Respondents

**WITH
WRIT PETITION NO. 5522 OF 2022**

Chandrakant Raghunath Umbarje
Aged 46 years, Occ. Service, residing at
C/o Raghunath Dhareppa Umbarje,
Near Mahadev Mandir, 26, At Post.
Auj Mandrup, Tal. South Solapur,
Dist. Solapur, Solapur – 413 221.

... Petitioner

Versus

1. State of Maharashtra
Through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai – 400032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Pune Division,
Pune through its Members Secretary,
having its Office at Kapil Towers,
C Wing Near RTO office,
Pune – 411001.

3. Chief Executive Officer through
Education Dept. (Primary),

Panchayat Samiti, South
Solapur, Zilla Parishad,
Dist. Solapur.

... Respondents

Mr. R.K. Mendadkar, for the Petitioners.
Mr. S.B. Kalel AGP for the Respondent-State.

**CORAM : S. V. Gangapurwala &
R. N. Laddha, J.J.**
Reserved on : 12th September, 2022
Pronounced on : 23rd September, 2022

JUDGMENT (Per R. N. Laddha, J.) :

Heard the learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned counsel for the parties.

3. In all these matters, a common issue of law and facts arises. Therefore, with the consent of the learned counsel for the parties, these petitions are taken up for hearing together.

4. The Petitioners question the Respondent-Scrutiny Committee's decisions and orders invalidating their tribe certificates belonging to Koli Mahadev-Scheduled Tribe. Further, they sought directions to the Scrutiny Committee to issue a certificate of validity in their favour.

5. Facts giving rise to the Writ Petition No. 5517 of 2022 is that the Petitioner claims to belong to Koli Mahadev, Scheduled

Tribe. The Petitioner was, therefore, granted Tribe Certificate by the Competent Authority on 18.05.2005, certifying that he belonged to the Koli Mahadev - Scheduled Tribe. Being a student, the Petitioner was required to submit a tribe certificate for prosecuting higher studies. The tribe certificate of the Petitioner, as per procedure, was forwarded to the Respondent Committee for verification. Before the Respondent Committee, the Petitioner produced several documents, which consisted of, pre-constitutional period documents, the certificates of validity issued to his blood relatives and the copies of several orders passed in various writ petitions whereby the Respondent Committee was directed to give validity certificates to the blood relatives of the Petitioner from his paternal side.

6. The Respondent Committee referred the documents for verification to the Vigilance Cell. The Vigilance Cell made the investigation and submitted its report. A copy of the report of the Vigilance Cell was supplied to him. An opportunity for a hearing was also granted. The Respondent Committee, after evaluating the documents by an order dated 07.03.2022, rejected the Petitioner's tribe claim. The Respondent Committee has also recorded that the Petitioner failed the affinity test. The Respondent Committee made a specific reference to the case of Arya Vaibhav Umbarje, cousin of the Petitioner. It stated that the Committee, by its order dated 21.12.2021, invalidated her tribe claim. The Respondent Committee also referred to some of the blood relatives of the

Petitioner and recorded that the tribe's claim of those relatives of the Petitioner was already invalidated by it on the ground that contra entries were found during the enquiry.

7. In Writ Petition No. 5519 of 2022, the Petitioner states that he is a student. Since the submission of tribe validity certificate is the condition precedent to confirm his admission, he moved the Respondent Committee through his College and, had submitted several documents, including the certificates of validity given to his blood relatives, orders in various writ petitions whereby the Respondent Committee was directed to give validity certificates to his blood relatives. After completing the required formalities Respondent Committee rejected his tribe's claim.

8. In Writ Petition No. 5522 of 2022, Petitioner Chandrakant was granted a tribe certificate by the competent authority on 06.10.1995. Based upon the said certificate, he was appointed as a primary school teacher under the reserved category of the scheduled tribe by an order dated 18.11.1996. The Petitioner works with Respondent No. 3. His tribe certificate was also referred to Respondent Committee for verification. The Respondent Committee, however, after about 20 years, on 12.02.2015, invalidated his tribe certificate on technical grounds keeping the merits of the case open and granting liberty to the petitioner to obtain a fresh certificate in the prescribed format. Accordingly, he received a new tribe certificate dated 27.03.2018

from the competent authority in the prescribed form certifying that he belongs to Koli Mahadev-Scheduled Tribe. After that, again, he moved the Respondent Committee for verification of his tribe claim and submitted several documents in support of his claim. However, the Respondent Committee invalidated his tribe certificate.

9. Mr R.K. Mendadkar, learned counsel for the Petitioners, submitted that the Respondent Committee failed to acknowledge that the Committee itself granted tribe validity certificates in favour of several blood relatives of the petitioners. It is submitted that the Respondent Committee ought to have considered the documentary evidence and should have placed greater reliance on pre-independence documents. He further submitted that the affinity test is not the litmus test for establishing the link of the petitioners with a scheduled tribe. According to the learned counsel, it is mandatory to issue a tribe certificate to the claimant if the validity is already given to his blood relatives. It has been submitted that the tribe validity certificates produced on records of blood relatives have been overlooked.

10. The learned counsel relied on cases in (i) *Miss Kanchan Chindananda Umbarje v/s. State of Maharashtra & Ors.*¹, (ii) *Sharad Shrikrishna Umbarje v/s. State of Maharashtra & Ors.*²,

1 Writ Petition No. 448 of 1993 decided on 01.03.1996.

2 Writ Petition No. 2360 of 1993 decided on 01.03.1996.

(iii) *Shri Kashinath Sangappa Umbarje v/s. State of Maharashtra & Ors.*³, (iv) *Mahesh Bhimshankar Umbarje v/s. State of Maharashtra & Ors.*⁴, (v) *Deepak Chandrakant Umbarje v/s. State of Maharashtra & Ors.*⁵, (vi) *Shri Pundlik Gur Sidappa Umbarje v/s. State of Maharashtra & Ors.*⁶, (vii) *Nillapaa Mangleshwar Umbarje v/s. State of Maharashtra & Ors.*⁷, (viii) *Balchandra Shadanand Umbarje v/s. State of Maharashtra & Ors.*⁸, (ix) *Madhavi Shashikant Umbarje v/s. State of Maharashtra & Ors.*⁹, (x) *Kum. Arya Vaibhav Umbarje & Anr. v/s. State of Maharashtra & Anr.*¹⁰ and (xi) *Kiran Rajkumar Umbarje & Ors. v/s. State of Maharashtra & Ors.*¹¹, in support of his contention.

11. The learned counsel points out that all the Petitioners in the above-cited petitions are blood relatives of the present Petitioners and, under orders of this Court, they have been granted tribe validity certificates.

12. Mr S.B. Kalel, learned Additional Government Pleader, contested the contentions of the learned counsel for the Petitioners. He submitted that the Respondent Committee has relied upon various judgments of this Court in the impugned

3 Writ Petition No. 2806 of 1994 decided on 01.03.1994.

4 Writ Petition No. 2386 of 1994 decided on 29.07.1994.

5 Writ Petition No. 2389 of 1994 decided on 29.07.1994.

6 Writ Petition No. 7846 of 2003 decided on 08.12.2003.

7 2009 SCC OnLine Bom 1163.

8 Writ Petition No. 6182 of 2010 decided on 29.11.2010.

9 2019 (1) Mh. L.J. 525.

10 Writ Petition No. 3735 of 2022 decided on 31.03.2022.

11 Writ Petition No. 2671 of 2020 decided on 31.03.2022.

orders and has rightly invalidated the tribe claim of the Petitioners. It is submitted that in several documents, the blood relatives of the Petitioners have been shown as belonging to the Koli caste and not the Koli Mahadev-Scheduled Tribe. In the investigation, as the contra entries are found, the decisions of the Respondent Committee to invalidate the Petitioners tribe claim cannot be faulted. In his view, some relatives of the Petitioners have been declared to be Koli Mahadev is not conclusive as regards the Petitioners claim that they belong to the Koli Mahadev Scheduled Tribe. According to the learned AGP, if the entire record is examined in its proper perspective, the impugned orders of the Respondent Committee cannot be faulted. The impugned orders passed by the Respondent Committee are reasoned, and findings are based upon evidence produced before the Committee.

13. We have considered the rival contentions and examined the records with reference to the applicable law.

14. In *Apoorva d/o Vinay Nichale v/s. Divisional Caste Certificate Scrutiny Committee and others*¹², the Division Bench of this Court has held that if the Committee has validated the tribe claim of the candidate as belonging to the scheduled tribe, then the other close blood relatives cannot be denied the validation of tribe certificates unless, of course, case of fraud, misrepresentation or suppression of facts is made out.

¹² 2010 (6) MH.L.J. 401

15. In all these petitions, the Petitioners blood relatives, such as their father, brother and sister, were granted a certificate of validity by the Scrutiny Committee. These validity certificates are conclusive proofs of the social status of the Petitioners. The existence of a paternal relationship claim is a compelling consideration. The basic premise is that paternal relatives take the same caste as their common ancestors based on consanguinity. No Court can conclude that a paternal relationship belongs to one community and that another relationship can be considered to belong to another. The caste/tribe of the petitioners cannot be different from the caste/tribe of their father, brother, sister, uncle and other blood relatives.

16. The above ruling in *Apoorva* is also authority for the proposition that if the Committee has validated the tribe claim of the candidate as belonging to the scheduled tribe, then the other blood relatives cannot be denied the validation of the tribe certificate unless it was obtained without producing vital evidence or was issued on a wrong premise or mistake.

17. Besides, in these matters, it does appear that the Respondent Committee has not appreciated the documents of the pre-constitutional era in their proper perspective. The material on record indicates that the petitioners had submitted several documents in support of their tribe claim before the Respondent

Committee, indicating the tribe and social status of their blood relatives like father, brother, uncle, sister etc. to be that of Koli-Mahadev, Scheduled Tribe. The documents relied upon by the Petitioners are much before 1950. The Respondent Committee should have given due weightage to such pre-constitutional period documents.

18. In *Anand Katole v/s. Scheduled Tribe Caste Scrutiny Committee*¹³, the Hon'ble Supreme Court also emphasised that while dealing with the documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status as a caste as compared to post-independence documents.

19. One of the grounds for invalidating the tribe certificate of Petitioner Abhishek is that the Respondent Committee, by an order dated 21.12.2021, invalidated the tribe certificate of Arya Umbarje. It is evident that the decision and order of the Scrutiny Committee to invalidate the tribe's claim of Arya was set aside by the Division Bench of this Court in the case of Kum. Arya (*supra*), and that decision has become final. When the High Court, upon examining the order of the Scrutiny Committee, comes to its own conclusion regarding the tribe claim of the blood relatives of the Petitioners, then the order rules the field and the Petitioners are entitled to the same benefit as their blood relatives. We are inform

13 2012 (1) SCC 113

that about 18 blood relatives of the Petitioners have been granted tribe validity certificates by the Scrutiny Committee certifying that they belong to Koli Mahadev, Scheduled Tribe. Further, the decisions of the Respondent Committee in the cases of Pratik Umbarje, Kantilal Umbarje, Utkarsh Umbarje, Pankaj Umbarje, Laxmi Umbarje, Shubhangi Umbarje and Kiran Umbarje, whose reference is found in the impugned orders, are also under challenge before this Court. It is not in dispute that under the orders of the Court, the blood relatives of the Petitioners have been granted the tribe validity certificates. Also, there is no dispute that the judgments relied upon by the learned counsel for the Petitioners have attained finality. A Judgment which has become final shall bind all subordinate authorities. Moreover, the affinity test is not the litmus test for establishing the links of the Petitioners with a scheduled tribe as enunciated by the Hon'ble Supreme Court in the case of **Anand Katole** (*supra*).

20. Therefore, based on the aforesaid, we find it difficult to approve the impugned orders of the Respondent Committee. We also find it difficult to endorse the reasoning of the Respondent Committee. Having found that each of the findings and conclusions is unsustainable in law, perverse and vitiated by complete disregard to the judicial pronouncements, we have no hesitation in allowing these writ petitions. Accordingly, we quashed and set aside the impugned orders of the Respondent-Scrutiny Committee. We also direct that the Respondent

Committee shall issue validity certificates in the name of the Petitioners of “Koli Mahadev, Scheduled Tribe” immediately.

21. Rule is accordingly made absolute in the above terms.
There shall be no order as to costs.

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)

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