

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12320 OF 2022

Anushree Mohan Umbarje
Eastern Wing CHS,
D-Wing, Room No.1402,
Opp. Bantar Bhavan,
Qureshi Nagar, Kurla (East),
Mumbai 400 070.

... Petitioner

Versus

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

2. Scheduled Tribe Certificate
Scrutiny Committee, Pune
Division, Pune through its
Member Secretary, having its
Office at Kapil Towers, C Wing,
Near RTO Office, Pune 411001
Mumbai 400001

... Respondents

CORAM : S. V. Gangapurwala &
R. N. Laddha, J.J.

DATED : 17th October 2022

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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. Petitioner calls into question the legality of the order dated 15th September 2022 passed by the Respondent No.2- Scrutiny Committee invalidating her tribe certificate belonging to Koli Mahadev – Scheduled Tribe. Further, she sought directions to the Scrutiny Committee to issue a certificate of validity in her favour. Being a student, the Petitioner was required to submit tribe validity certificate for prosecuting higher studies. Before the Respondent Committee the Petitioner produced a number of documents that consisted of pre-constitutional period documents, the certificates of validity issued to her blood relatives and copies of several orders passed in various writ petitions whereby the concerned scrutiny committee was directed to give validity certificates to her blood relatives from paternal side.

4. The Respondent Committee forwarded the documents to the Vigilance Cell for verification. The Vigilance Cell conducted the investigation and submitted its report. A copy of the report of the

Vigilance Cell was given to the Petitioner. The Respondent Committee having assessed the documents, by an order dated 19th September 2022 rejected the claim of the Petitioner's tribe claim. The Respondent Committee has also noted that the Petitioner did not pass the Affinity Test.

5. Assailing the impugned decision and order of the Scrutiny Committee, Mr. R.K.Mendadkar, learned Counsel for the Petitioner, argues that the Respondent Committee conspicuously missed the point 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-constitutional documents.

6. Adverting next to the adverse finding as given by the Respondent Committee to the effect that the Petitioner failed the Affinity Test, Mr. Mendadkar submitted that the Affinity Test is not the litmus test for establishing the link of the Petitioner with a Scheduled Tribe. According to the learned Counsel, it is mandatory to issue the tribe certificate to the claimant if the validity is already given to her blood relatives. It has been submitted that from paternal side including to the Petitioner's

father and real sister, the Scrutiny Committee after thorough enquiry on the same set of facts and evidence as that of in the case of Petitioner granted validity certificates of their tribe claim. It has been submitted that the tribe validity certificates produced on records of blood relatives have been overlooked. The learned Counsel relies on the judgments in the case of (i) *Pundalik Gursiddhappa Umbarje*¹ in WP No.7846/2003, (ii) *Naina Girish Umbarje and Harish Girish Umbarje*² (iii) *Kanchan Chidanand Umbarje*³, (iv) *Sharad Shrikrishna Umbarje vs. Secretary, Tribal Development Department*⁴; (v) *Kashinath Sangappa Umbarje*⁵, (vi) *Mahesh Bhimashankar Umbarje*⁶, (vii) *Arya Vaibhav Umbarje vs. State of Maharashtra*⁷, (viii) *Nilappa Mangeshwar Umbarje vs. State of Maharashtra*⁸, (ix) *Bhalchandra Umbarje vs. State of Maharashtra*⁹ and (x) *Kum. Madhavi Shashikant Umbarje vs. State of Maharashtra*¹⁰; (xi) *Abhishek Mahindra Umbarje vs. State of Maharashtra*¹¹, in support of his contentions.

7. Moreover, he stresses that all the Petitioners in the above

1 WP No.7846 of 2003 order dt. 8.12.2003

2 Order dt.5.9.2001 by Hon'ble Vth Joint Civil Judge, Sr. Division, Solapur.

3 WP N o.448/1993 order dt. 1.3.1996

4 WP No. 2368/1993 order dt. 1.3.1996

5 WP No.2368/1993 order dt.1.3.1996

6 WP No.2388/1994 order dt.29.7.1994

7 WP No.3735/2022 order dt. 31.3.2022

8 WP No.6561/2008 order dt. 5-08-2009

9 WP No.6182/2010 order dt. 29.10.2010

10 WP N o.9072/2018 order dt.13.10.2018

11 2022 SCC Online Bombay 2858

mentioned petitions are blood relatives of the present Petitioner and, pursuant to Court orders, they have been issued tribe validity certificates. The learned Counsel has submitted the Chart showing caste validity certificates granted to several blood relatives of the Petitioner from paternal side by the Respondent Committee itself which were before it while deciding the tribe claim of the Petitioner.

Sr. No.	Name	Date of CVC	Relationship with the petitioner	Page no. in the Petition
1.	Mohan Dhareppa Umbarje	24.8.2010	Father	92
2.	Dhanshree Mohan Umbarje	23.1.2009	Real Sister	93
3.	Arvind Dhareppa Umbarje	01.6.2007	Real Uncle	
4.	Kanchan Chidanand Umbarje		Cousin Aunt	104
5.	Bhalchandra Sadanand Umbarje	18.2.2011	Cousin Uncle	95
6.	Ambika Pundlik Umbarje	19.5.2008	Cousin Aunt	96
7.	Sharad Shrikrishna Umbarje		Cousin Uncle	97

8.	Satish Shrikrishna Umbarje	21.7.2000	Cousin Uncle	98
9.	Vinayaditya Mallikarjun Umbarje	29.6.2000	Cousin Brother	99
10.	Chetan Mallikarjun Umbarje	15.6.2001	Cousin Brother	100
11.	Reshma Basavraj Umbarje	Nil.6.2000	Cousin Sister	101
12.	Naina Girish Umbarje	16.2.2002	Cousin Aunt	102
13.	Harish Girish Umbarje	16.2.2002	Cousin Uncle	103
14.	Kashinath Sangappa Umbarje	15.6.2001	Cousin Uncle	

8. Mr. Kalel, learned Additional Government Pleader, contested the contentions of the learned Counsel for the Petitioners. He submitted that in several documents, the blood relatives of the Petitioner have been shown to belong to the Koli caste and not the Koli Mahadev – Scheduled Tribe. In the investigation, as the contra entries are found, the decision of the Respondent Committee to invalidate the tribe claim of the Petitioner cannot be faulted. According to him, some of the relatives of the Petitioner were declared to be Koli Mahadev is not conclusive with respect to

the Petitioner's claim that she belongs to the Koli Mahadev Scheduled Tribe. According to learned AGP, if the entire record is examined from its proper perspective, the impugned order of the respondent committee cannot be blamed. In his view the impugned order is reasoned, and the conclusions are based on the evidence before the Committee.

9. The rival contentions now fall for our determination.

10. In *Apoorva v/s. Divisional Caste Certificate Scrutiny Committee No.1*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.

11. In the present petition, the Petitioner's blood relatives were issued a certificate of validity by the Scrutiny Committee. These certificates of validity constitute conclusive evidence of their social standing. The claim for a paternal relationship is an imperative consideration. The basic principle is that paternal relatives take the same tribe as their common ancestors on the basis of

¹² 2010 (6) Mh.L.J. 401

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 tribe of the Petitioner cannot be different from the tribe of her blood relatives.

12. 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.

13. 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 petitioner had submitted several documents in support of her tribe claim before the Respondent Committee, indicating the tribe and social status of her blood relatives to be that of Koli Mahadev- Scheduled Tribe. The documents relied upon by the petitioner were long before 1950. The Respondent Committee should have given sufficient weight to the pre-constitutional documents.

14. In *Anand Katole v/s. Committee for Scrutiny and*

Verification of Tribe Claims & ors¹³, 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 probate value to the declaration of status as a caste as compared to post independence documents.

15. It is stated that about 17 blood relatives of the Petitioners have been granted tribe validity certificates by the Scrutiny Committee certifying that they belong to Koli Mahadev - Scheduled Tribe. It is not disputed that under the orders of the Court, these 17 blood relatives of the petitioner have been granted the tribe validity certificates. Also, there is no dispute that the judgments relied upon by the learned Counsel for the Petitioner have attained finality. A Judgment which has become final shall bind the Scrutiny Committee. 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 Petitioner, then the order holds the field and the Petitioner is entitled to the same benefit as their blood relatives. Moreover, the Affinity Test is not the litmus test for establishing the links of the Petitioner with a Scheduled Tribe as enunciated by the Hon'ble Supreme Court in the case of ***Anand Katole (supra)***.

13 2012 (1) SCC 113

16. Therefore, based on the aforesaid, we find it difficult to approve the impugned order 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 this writ petition. The Writ Petition succeeds.

17. Accordingly, we set aside the impugned order of the Respondent-Scrutiny Committee. We also direct that the Respondent- Committee shall issue validity certificate in the name of the Petitioner of 'Koli-Mahadev-Scheduled Tribe' immediately.

18. 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.)