

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 1999 OF 2018
AND CA/864/2023 IN WP/1999/2018**

Ku. Mayuri D/o Hanmant Karewad

.. Petitioner

Versus

- 1] The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.
- 2] The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad
- 3] The Maharashtra University of Health
Sciences, Nasik, through its Registrar
- 4] H.B.T. Medical College and
Dr. R.N. Kuper Municipal General
Hospital, Bhakti – Vedant Ville – Parle,
Mumbai through its Dean

.. Respondents

**WITH
WRIT PETITION NO. 8335 OF 2021**

Mamta D/o Hanmant Karewad

.. Petitioner

Versus

- 1] The State of Maharashtra,
through its Secretary,
Medical Education Department,
Mantralaya, Mumbai – 32.
- 2] The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Member Secretary,
Aurangabad

.. Respondents

**WITH
WRIT PETITION NO. 8318 OF 2021**

Swapnil S/o Laxmanrao Karewad

.. Petitioner

Versus

1] The State of Maharashtra,
through its Secretary,
Medical Education Department,
Mantralaya, Mumbai – 32.

2] The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Member Secretary,
Aurangabad

3] The Commissioner & Competent Authority,
Commissionerate of Common Entrance Test Cell,
Government of Maharashtra,
8th Floor, New Excelsior Building,
A.K. Naik Marg, Fort,
Mumbai – 32.

.. Respondents

...
Advocate for petitioner : Mr. S.R. Barlinge (WP/1999/2018)
Advocate for petitioners : Mr. O.B. Boinwad (WP/8318/2021 and 8335/2021)
APP for the respondent – State : Mr. S.G. Sangale
Advocate for the respondent no. 3 : Mr. S.D. Joshi (WP/1999/2018)
Advocate for respondent no. 4 : Mr. A.K. Tiwari (WP/1999/2018)
...

**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 02 NOVEMBER 2023
PRONOUNCED ON : 29 NOVEMBER 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith in all the petitions. Learned AGP waives service. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. By way of these separate writ petitions, the petitioners are challenging the two separate orders passed by the respondent - scrutiny committee confiscating and cancelling their Koli Mahadev scheduled tribe certificates.

3. Mayuri's claim was rejected by the order dated 05-12-2017 whereas the separate claims of her real sister - Mamta and their cousin Swapnil Laxman Karewad was decided by common judgment and order dated 28-11-2020. Since the committee in the impugned order has not denied the relationship inter se between these petitioners and since they all have been relying upon certificate of validity issued to Swapnil's real brother Tukaram Laxman Karewad and also relying upon the similar set of evidence, though discussed in the two different orders, we propose to dispose of these writ petitions by the common order to avoid rigmarole.

4. The learned advocate Mr. Barlinge for the petitioners and Mr. Boinwad would submit that the impugned orders are clearly perverse and arbitrary. There was no sufficient and cogent reason for the committee to discard the valuable evidence in the form of certificate of validity issued to Tukaram which was issued by following due process of law and after conducting vigilance enquiry. A pre-constitutional school record of Gynoba Kondiba Karewad who was the

grandfather of Mayuri and Mamta and cousin grandfather of Swapnil of 28-07-1947 has been disregarded on the ground that there was a manipulation in the original entry which was Koli but was converted as Koli Mahadev. Similarly, the committee has merely relied upon contrary entry of Gangaram Gynoba Karewad who is the real uncle of Mayuri and Mamta of the year 1953 and has ignored number of favourable entries. The approach of the committee is incorrect. The claims ought not to have been rejected simply by referring to this isolated and stray contrary entry.

5. Mr. Barlinge and Mr. Boinwad would further submit that contrary to the well settled principles, the committee has resorted to affinity test and area restriction which cannot be sustained in the light of the decision in the matter of ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113*** and ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***.

6. Per contra, the learned AGP would oppose the petitions by pointing out that some of the petitioners' family members in all probability and for the obvious reasons, have resorted to forgery wherein the original entry in the school record of grandfather Gynoba Kondiba Karewad of 1947 was found to be manipulated as Koli Mahadev, as word 'Mahadev' was added subsequently, in a different

handwriting and ink. For this reason alone, the petitioners cannot be allowed to put up a claim for social status.

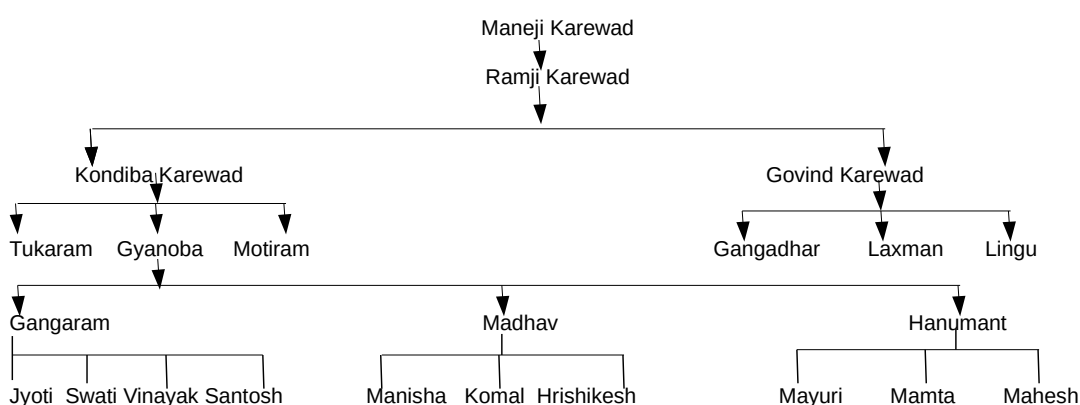
7. The learned AGP would further submit that Tukaram was granted certificate of validity by a committee chaired by one Mr. V.S. Patil whose functioning was found by the Government to be dubious and the Government has decided to verify all the validities issued by that committee. He would submit that Tukaram was granted certificate of validity relying upon validities of individuals who were not related to him by blood from the paternal side. It was noticed by the committee that he had obtained certificate of validity by concealing contrary entries while denying its benefit to be extended to the petitioners. The committee has decided to undertake a review of the validity granted to him.

8. The learned AGP would submit that the fact that Mayuri's claim was invalidated by the committee in the year 2017 was concealed by petitioners - Mayuri and Swapnil while submitting the proposal and affidavit in form 'F'. They ought to have disclosed this fact and the petitions be dismissed.

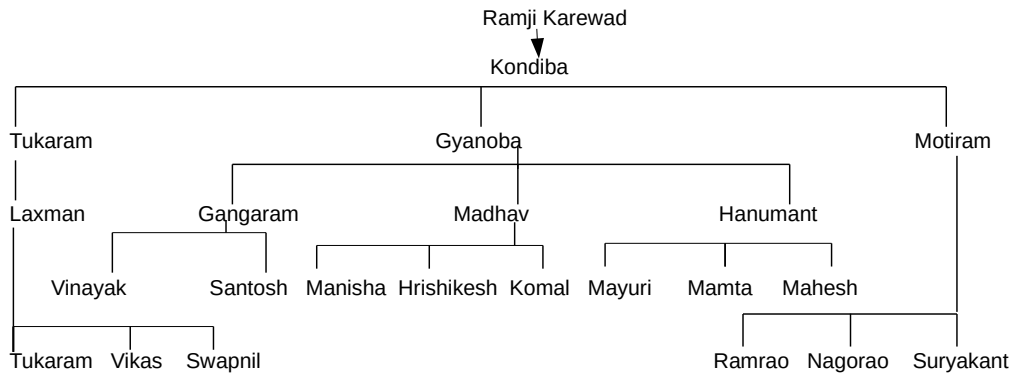
9. We have carefully considered the rival submissions and perused the papers including the the original files of the committee.

10. At the outset, it needs to be emphasized that the committee which has considered the claim of Mayuri in the year 2017 and in respect of sister - Mamta and Swapnil in the year 2020, without entertaining any doubt about they being related to each other by blood. Claims of Mamta and Swapnil have been decided by common order, by particularly observing in the impugned order passed in their matters that since both of them are from the same family the committee decided to consider their proposals simultaneously.

11. The committee has in the impugned order passed in the matters of Mamta and Swapnil entertained some doubt about the genealogy, observed that the genealogy prepared in the matter of Mayuri on the basis of vigilance conducted therein starts with one Maneji Karewad as the common ancestor, whereas the genealogy prepared in the matter of Mamta and Swapnil shows one Ramji to be the common ancestor. Things can be clear if one compares these two genealogies. The genealogy prepared in the matter of Mayuri is as under :-



12. The genealogy prepared in the matter of Mamta and Swapnil is as under :-



13. As can be noticed by comparison of the two genealogies, apparently there is no inconsistency. The first genealogy starts from the common ancestor Maneji showing his son Ramji who in turn had two sons Kondiba and Govind. Kondiba is the common ancestor of these petitioners, whereas the second genealogy starts from the common ancestor Ramji and his son Kondiba. The second genealogy does not indicate branch of Kondiba - brother of Govind. If all these petitioners are claiming to be the successors of Kondiba, merely because the first genealogy prepared in the matter of Mayuri shows the common ancestor Maneji and then proceeds to demonstrate the existence of second son of Ramji by name Govind, it cannot be said that these genealogies are incompatible. In all probability, this could be the reason for the committee to decide the claims of Swapnil and Mamta simultaneously by a common order by observing that they are from the same family.

14. However, the things do not seem to be as simple. The validity holder – Tukaram has filed affidavit in Mayuri's petition and has furnished the genealogy substantiating the afore-mentioned second genealogy and claims these girls to be his cousins but then, interestingly, the original file in his own claim which was made available to us apparently shows that during the vigilance enquiry, statement of his father Laxman Tukaram Karewad was recorded by the vigilance officer. A genealogy was prepared under his signature showing a common ancestor Kondiba to be survived by son Tukaram who was his father and more importantly in the statement he expressly mentioned that his father Tukaram Kondiba Karewad was literate but dead and had no brother or sisters and was the only child. No attempt has been made by the petitioners to take exception to this statement of Laxman Tukaram Karewad but his petitioner – Swapnil and validity holder – Tukaram's father. Nothing was demonstrated even before us as to why this statement is factually incorrect and should not be given any weightage. If this is so, irrespective of the fact that the committee in the order passed in the matter of Mamta and Swapnil has overlooked this important piece of evidence in the form of statement of Laxman Tukaram Karewad recorded during the vigilance enquiry conducted in the matter of validity holder – Tukaram, in our considered view, since it is a claim for social status, this piece of evidence is decisive to discard

the claim of these two sisters Mayuri and Mamta who claim to be the grandchildren of Tukaram Laxman Karewad who was the grandfather of petitioner – Swapnil and validity holder – Tukaram. This clearly demonstrates that even the validity holder – Tukaram has been bold enough to file an affidavit supporting the claims of these two girls and providing a genealogy showing that their grandfather Tukaram Kondiba Karewad was having brother Gynoba and Motiram which stand is inconsistent with the statement of his own father Laxman Tukaram as mentioned hereinabove.

15. Interestingly, this seems to be the reason why petitioner – Mayuri whose claim was decided in the year 2017 had not relied upon the validity of Tukaram which was obtained in the year 2011. One cannot comprehend any reason and even no attempt has been made before us to explain as to why the validity possessed by Tukaram was not relied upon her if he was related to her by blood from paternal side.

16. Obviously, there is no dispute about petitioner – Swapnil being the real brother of validity holder – Tukaram. Since the committee had issued certificate of validity to him by conducting necessary vigilance enquiry, Swapnil would be entitled to derive its benefit as laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra).

17. Interestingly, though the order in the matter of Tukaram reads that he could not stand to the affinity test, having failed to furnish information on the traits and characteristics of the community Koli Mahadev, the vigilance report in his matter, in fact, was otherwise. The Research Officer observed in column no.30 to replies given by Tukaram's father during the vigilance enquiry in respect of traits and characteristics were compatible with the traits of Koli Mahadev scheduled tribe, meaning thereby that though in the order passed in the matter of Tukaram, the committee had noted that he could not go through the affinity test in fact the vigilance report was otherwise favouring him.

18. True it is that Tukaram had relied upon the validity of one Sanjay Nagorao Sudewad who admittedly was not related to him by blood. However, we have gone through the order passed in the matter of Tukaram. Though it is a fact that even validity issued to Sanjay Nagorao Karewad was relied upon describing him to be maternal uncle, that was not the sole piece of evidence. As is mentioned hereinabove, even the school record of Tukaram's grandfather Tukaram Kondiba Karewad of 1953 was examined by the vigilance officer and was relied upon by the committee. Therefore, the approach of the committee in the impugned order passed in the matter of Mamta and Swapnil and the submission of the learned AGP supporting it that Tukaram was granted certificate of validity simply on the basis of the

validity of Sanjay who was not related to him by blood, is not factually correct and is rather perverse.

19. Consequently, though petitioner – Swapnil is entitled to have a certificate of validity based on the similar certificate issued to his brother Tukaram, its benefit cannot be extended to petitioners Mayuri and Mamta.

20. Consequently, the claims of Mayuri and Mamta will have to be considered independently ignoring the validity of Tukaram.

21. It does appear that the school record of grandfather Gyanoba, as observed by the committee, does not inspire confidence. Similarly some other school record, noticed in the order passed in the matter of Mamta and Swapnil has been rightly refused to be relied upon by the committee with the observation that there was something fishy about the school record, which in our considered view, is unassailable.

22. Thus, there was no sufficient and cogent evidence before the committee to substantiate the claims of petitioners Mayuri and Mamta. The committee has appreciated the evidence in the correct perspective and has taken a plausible view which cannot be unsettled in exercise of the writ jurisdiction, this being not a power of the appellate Court.

23. What transpires is that the school record of grandfather Gyanoba Kondiba Karewad was apparently manipulated and in the school record of 1961 of real paternal uncle, word 'Mahadev' has been added subsequently below the original entry in the caste column 'Koli' whereas the school record of real paternal uncle Gangaram Gyanoba Karewad of 1961 clearly reads in the caste column as 'Koli'. Besides, several other contrary entries of Koli were revealed in the vigilance enquiry as mentioned in the impugned order, the observations and the conclusions of the committee to discard the claims of sisters Mayuri and Mamta cannot be interfered with.

24. Even if the committee has now formed an opinion about Tukaram having concealed contrary entry, and had practiced fraud while obtaining certificate of validity, in our considered view, we cannot go into that aspect since Tukaram is not before us and we do not intend to cause any prejudice to him by undertaking scrutiny of the observations of the committee about he having practiced fraud. It would be a matter which would be directly and substantially in issue in a matter which the committee has decided to reopen for undertaking fresh scrutiny of his claim.

25. The committee has then observed that the committee which granted validity to Tukaram was headed by one Mr. V.S. Patil

and the functioning of the committee then was regarded as dubious by the government which directed re-consideration of the decisions made by it. We need not deliberate on this. So long as the certificates of validity issued by following necessary procedure in accordance with law are not confiscated and cancelled in accordance with law as is prescribed under section 7(1) of the Maharashtra Act no. XXIII of 2001, the committee could not have refused to extend the benefit of the validities in the family by questioning the functioning of the then scrutiny committee.

26. Apart from the fact that affinity test is not a litmus test as laid down in the matter of **Anand** (supra) and **Maharashtra Adiwasi Jamat** (supra), once in Tukaram's matter he could get through the affinity test, in our considered view it would be a relevant fact. Since it is a matter of social claim, once a family member gets through such affinity test, it cannot be expected that each family member should also independently get through the affinity test.

27. On a consideration of the entire conspectus of the matters, evidence before the committee and the afore-mentioned aspect, the committee could not have refused to extend benefit of validity possessed by Tukaram to Swapnil in the light of the ratio laid down in the matter of **Maharashtra Adiwasi Jamat** (supra), the impugned

orders, therefore, are not sustainable in law and are liable to be quashed and set aside.

28. Writ petition no. 1999 of 2018 of Mayuri Hanmant Karewad and writ petition no. 8335 of 2021 of Mamta Hanmant Karewad are dismissed. Rule stands discharged in these petitions.

29. Writ petition no. 8318 of 2021 of Swapnil Laxmanrao Karewad is partly allowed. The impugned order is quashed and set aside to the extent of Swapnil Laxmanrao Karewad. He shall be issued a certificate of validity of 'Koli Mahadev' scheduled tribe in the the prescribed format. The validity shall be subject to the final outcome of Tukaram's matter which the committee has decided to re-open. He shall not be entitled to claim equities. Rule is made absolute accordingly.

30. Pending civil application is disposed of.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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