

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4704 OF 2023

Shubham Sharad Mahandule

.. Petitioner

Versus

1] The State of Maharashtra,
Department of Tribal Development,
Mantralaya, Mumbai – 32.

2] The Scheduled Tribe Certificate
Scrutiny Committee,
Nashik Division, Nashik-2,
Tq & Dist. Nashik,
Through its Member Secretary

3] The Principal,
Pravara Rural Education Society's
Pravara Rural Engineering College,
Loni Bk, Tq. : Rahata,
Dist. Ahmednagar

.. Respondents

...

Advocate for petitioner : Mr. Hemant U. Dhage
AGP for the respondent – State : Mr. S.R. Yadav-Lonikar
Advocate for respondent no. 3 : Mr. A.V. Hon

...

AND
WRIT PETITION NO. 5763 OF 2023

Pankaj S/o Gotiram Mahandule

.. Petitioner

Versus

1] The State of Maharashtra,
Through Secretary,
Department of Tribal Development,
Mantralaya, Mumbai – 32.

2] Scheduled Tribes Certificate
Scrutiny Committee,
Through its Member Secretary,
Nashik Division,
Nashik.

3] The Principal,
Arts, Science and Commerce
College, (Kala, Vidnyan and Vinijya
Mahavidyalay), Rahuri, Taluka
Rahuri, Dist. Ahmednagar

.. Respondents

...
Advocate for petitioner : Mr. Deepak D. Chaudhari
AGP for the respondent – State : Mr. A.A. Jagatkar
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 11 SEPTEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

Though these are two separate writ petitions challenging the separate orders passed by the respondent – scrutiny committee in a proceeding under section 7 of the Maharashtra Act no. XXIII of 2001 thereby confiscating and cancelling their tribe certificates of Koli Mahadev scheduled tribe, since there is no dispute that they are related by blood from the paternal side and even have been relying upon the same set of evidence and the validities in the family, we have heard both the sides in succession finally and are disposing of these matters by this common order to avoid rigmarole.

2. The learned advocates for the petitioners would vehemently submit that the committee has not undertaken minute scrutiny of the material being relied upon by the petitioners and has drawn inference based on surmises and conjectures. It has ignored the old record and particularly the fact that the certificates of validities

have been issued to the petitioners' blood relations from time to time after undertaking thorough scrutiny and in accordance with law by following necessary procedure. All the contrary record being relied upon by the committee in the present orders was available to be seen by the then committees which had still granted certificates of validities to the blood relations. Following decisions in the matter of ***Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee no. 1 and others; 2010 (6) Mh.L.J. 401*** as also ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***, the petitioners are entitled to have certificates of validity.

3. The learned advocates would further submit that by the impugned order, the committee has now doubted the old school record by observing that there is manipulation. However, in the absence of any evidence about actual manipulation based on the credible evidence, no such inference doubting the old school record could have been drawn. They would rely upon the observations and the principles laid down in the matter of ***Sayanna Vs. State of Maharashtra and others; (2009) 10 SCC 268***. The learned advocates, therefore, would submit that the approach of the committee to doubt the school record which was relied upon by the then committees while granting

certificates of validities to the petitioners' relations is clearly perverse, arbitrary and capricious.

4. The learned advocates would further submit that the committee has found entry of one Chandrabhaga Savlaram Mahandule to be contrary even when in the reply to the vigilance report any relation with her was specifically denied. They would, therefore, submit that the orders be quashed and set aside and the petitioners be granted certificates of validity, may be subject to the condition that their fate would be dependent on the ultimate decision to be reached in respect of the matters of the validity holders which the committee has now decided to re-open.

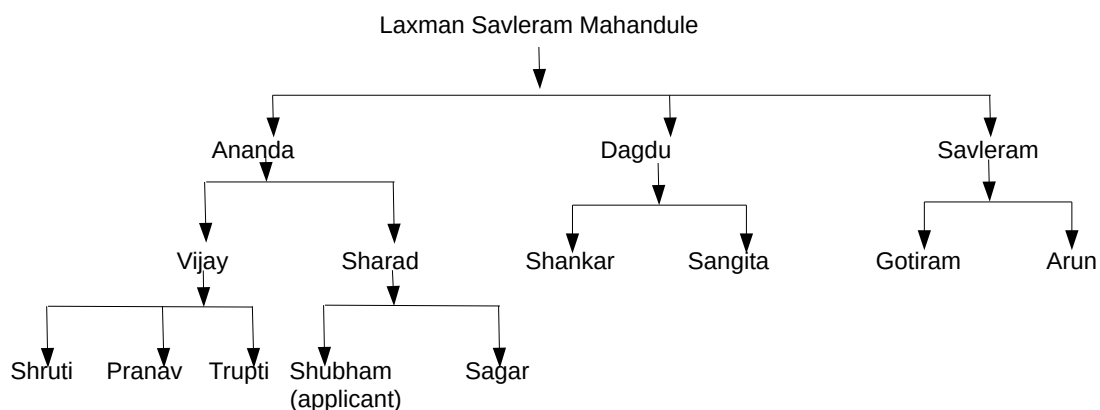
5. The learned AGPs would strongly oppose the petitions and support the orders. They would submit that merely because the previous committees for whatever reason were unable to trace the oldest record and failed to notice the manipulation in the school record and also several contrary entries were not available to them, the present committee while deciding the petitioners' cases, was not denuded of the powers to undertake a threadbare scrutiny. It is only during such scrutiny that the old contrary record was revealed and so was the manipulation noticed. Coloured photocopies of the school record have been obtained and the inference has been drawn by the committee objectively from apparent manipulations. They would

submit that even the original files can be looked into and a bare look would substantiate the inference being drawn by the committee. The committees has also endeavoured to point out the contrary record which falsifies the claim of the petitioners of belonging to Koli Mahadev scheduled tribe.

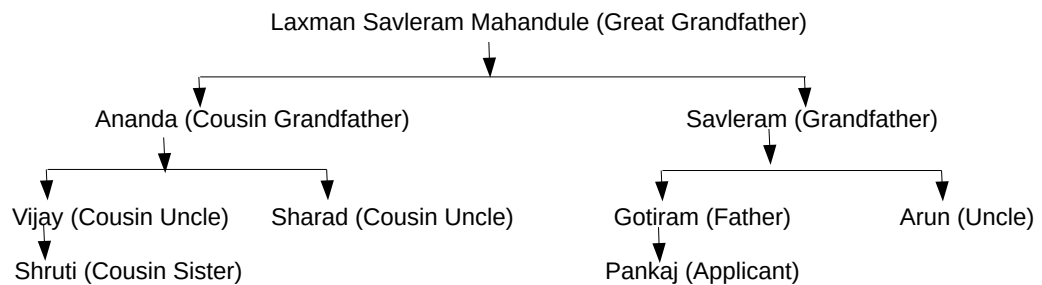
6. We have carefully considered the rival submissions and perused the papers.

7. As has been observed in the beginning there is not much dispute about the genealogy and about the petitioners being related by blood inter se.

8. The genealogy furnished by the petitioner – Shubham's father Sharad is as under :-



9. The genealogy furnished by the petitioner – Pankaj's father Gotiram is as under :-



As can be seen, petitioners' fathers are first degree cousins from the paternal side. One Laxman Savlaram Mahandule was the common ancestor. Though Pankaj's father Gotiram has not shown son Dagadu being the third son of Laxman, the other two being petitioner's great grandfather Ananda and Savleram. Barring this difference, they are unanimous about the inter se relationship.

10. As can be noticed from the orders under challenge, the committee has been castigating the school record of petitioner – Shubham's grandfather Ananda Laxman Savleram Mahandule in both the matters to draw inference about it being manipulated. Word 'Mahadev' having been added subsequently in a different handwriting. In addition, in the matter of Shubham, the committee has even raised a serious dispute about the original school record of Dagadu stated to be the third son of common ancestor Laxman. Obviously, in petitioner – Pankaj's matter, he having not shown Dagadu to be his cousin grandfather, as is mentioned herein-above, the contrary record of Dagadu Laxman which is relied upon by the committee in the

Shubham's matter has not been referred to and relied upon while deciding petitioner – Pankaj's matter.

11. True it is that both the petitioners have been specifically denying Chandrabhaga Mahandule to be related to them. There is no other material to demonstrate that she was related to the petitioners being the sister of their grandfather. We are, therefore, ignoring the observations of the committee in respect of her school record.

12. It would, therefore, be imperative for us to deal with the school record of Ananda Laxman Mahandule and Dagadu Laxman Mahandule.

13. According to the committee, as far as Ananda's school record is concerned, after obtaining the coloured photocopies of the school register during vigilance it has been revealed that in the column of caste, original entry of Koli has been prefixed at a later point of time by word 'Mahadev' in different ink and handwriting. This word 'Mahadev' has been written over the earlier sign of 'ditto' ('- " -'). It has also observed that in-fact on that page, in respect of a student at serial no. 1, in column 7 word 'Hindu' was written and below that in respect of other students only 'ditto' sign ('- " -') had appeared which was apparently there even in respect of entry of Ananda Laxman Mahandule and on that sign of '- " -', word 'Mahadev' has been overwritten.

14. Pertinently, the committee has made a similar observation in respect of school record of Dagadu Laxman Mahandule of 1948, albeit, as is mentioned herein-above, since petitioner – Pankaj has not been showing in the genealogy this Dagadu, in his matter the committee does not seem to have resorted to the school record of Dagadu. It has been observed by the committee that in the school record of 1948 of this Dagadu, he has been shown to be Koli and not Koli Mahadev.

15. In the matter of both these petitioners, the committee has then pointed out the contrary entries in the school record of petitioner – Pankaj's father Gotiram wherein it has been mentioned that he was Hindu Koli.

16. In order to appreciate such inference by the committee we have gone through the coloured photocopies in respect of register of Ananda Laxman Mahandule. It can be noticed that in the column of caste and sub-caste, prior to the entry in the name of Ananda Laxman Mahandule in respect of other students it has been mentioned as Hindu, Ma Brahman. In the next entries, in place of Hindu, ditto sign ('- -') has been appearing and in the latter portion, specific casts like Christi, Pa Kumbhar, Ma Brahman, Chambhar, Nhavi, Marwadi and Wadari have been written. Against caste in respect of Ananda Laxman Mahandule after the sign of ditto ('- -') word Koli has been appearing

and the word Mahadev ex facie seems to have been subsequently added on the sign of ditto ('- " -'). Apart from the fact that this is the oldest entry wherein petitioners' ancestor Ananda has been described as Hindu Koli and would constitute an adverse entry inasmuch as Koli is other backward class whereas Koli Mahadev is a scheduled tribe, the manipulation is apparent on the face of the record and we find no hesitation in conforming to the observations and conclusions of the scrutiny committee.

17. Besides so far as Dagadu Laxman Mahandule, the original school record, photocopy of which is available in the file of Shubaham, in the column of caste the entry is Hindu Koli. This entry being of the year 1942 will have a greater probative value. It does appear that in the school record of subsequent period, he was shown to be Mahadev Koli, however, following the principles laid down in the matter of **Anand Dhananjay Nalawade Vs. State of Maharashtra; 2014 (4) Mh.L.J. 77**, the oldest entries would prevail having greater probative value.

18. So far as Gotiram's school record is concerned, again we have verified the papers and find no hesitation in subscribing to the observations of the committee that even in his school record he was shown to be Hindu Koli.

19. As is observed earlier there is no material before us to demonstrate and none has been referred to by the committee in the impugned orders showing relationship of the petitioners with Chandrabhaga and her contrary record placed before us will have to be ignored. However, in respect of Ananda Laxman Mahandule there is apparent manipulation. His original entry was of Hindu Koli. So was the case in respect of Dagadu Laxman Mahandule. Even petitioner – Pankaj's father Gotiram's school record shows him to be Hindu Koli. We, therefore, find no hesitation in subscribing to the observations and conclusions of the committee that there is enough material of pre constitutional period demonstrating the petitioners' ancestors as Hindu Koli and not Koli Mahadev.

20. If such is the state-of-affairs, following the observations of the Supreme Court in the matter of **Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar; (2008) 9 SCC 54**, if the present committee has been able to discover contrary material which clearly demonstrates that the petitioner's father is Koli – OBC and not Koli Mahadev ST, it is entitled to draw independent inference ignoring the validities granted in the family at earlier point of time.

21. The committee has observed that the earlier validity holders had obtained the certificates of validity by suppressing the afore-mentioned facts and by resorting to misrepresentation and has

expressed desire to re-open the validities and undertake a fresh scrutiny.

22. We do not intend to make any comment on the aspect of powers of the committee to undertake a review and the facts which according to the committee constitute fraud or misrepresentation. We are doing so for two reasons; firstly the validity holders are not before us and we do not intend to cause any prejudice to them by making observations in this matter behind their back, and secondly, any observation made by us could have a bearing on the matters which the committee has decided to re-open.

23. Once it is found that the committee has taken a plausible view by correct appreciation of the material on the record, in exercise of the powers under Article 226 we have limitations and cannot interfere unless the orders are perverse or arbitrary which the present orders are not.

24. We have gone through the decision in the matter of **Sayanna** (supra). In our respectful view, the facts in that matter were peculiar inasmuch as the committee had rejected the claim by observing that letter 'lu' was added subsequently to word 'Mannervar' and had drawn the inference. We have pointed out above having seen the coloured photocopy in respect of the school record of Ananda Laxman Mahandule and have demonstrated as to how ex facie it is

visible and the 'ditto' sign ('- " -') has been overwritten with word 'Mahadev'. We have pointed out that word 'Mahadev' will have to be ignored and ignoring that word, the entry would read '- " -' Koli which is nothing but Hindu Koli. If the first entry on the page is read, we are of the view that the petitioners are not entitled to derive any benefit from the decision in the matter of **Sayanna** (supra).

25. At this juncture sensing that we are not inclined to grant any relief to the petitioners, the learned advocates for the petitioners request to remand the matters to the committee so that the petitioners would get an opportunity to lead additional evidence. In the normal course such a statement would look innocuous. However, it is apparent that no additional evidence is being sought to be produced before us for which the matter can be relegated to the committee. The request is hollow and therefore cannot be conceded to.

26. The petitions are dismissed.

[**SHAILESH P. BRAHME**]
JUDGE

[**MANGESH S. PATIL**]
JUDGE

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