

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

**WRIT PETITION NO.12736 OF 2022**

1. Khan Umamah Yousuf Khan  
Age: 20 years, Occu. Student,  
R/o: Plot No.67, Azam Colony,  
Dargah Road, Parbani,  
District Parbhani
2. Khan Usamah Yousuf Khan,  
Age: 23 years, Occu. Student,  
R/o: Plot No.67, Azam Colony,  
Dargah Road, Parbani,  
District Parbhani

... **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  
through its Member Secretary.
3. The Sub-Divisional Officer,  
Office of SDO, Gangakhed,  
Dist. Parbhani
4. Commissioner & Competent Authority,  
State Common Entrance Test Cell,  
Maharashtra State, Mumbai
5. Rajiv Gandhi Medical College,  
Thane through its  
Principal/Dean

... **RESPONDENTS**

...  
Advocate for Petitioner : Mr. A.S. Golegaonkar  
AGP for respondent Nos.1 to 3 : Mr. P.S. Patil  
...

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

**DATE : 06.07.2023**

**ORDER (MANGESH S. PATIL, J.) :**

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for the respondents. At the joint request the matter is heard finally at the stage of admission.

2. The petitioners are aggrieved by the order passed by the respondent No.2 – Scrutiny Committee constituted under The Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 whereby it has refused their request for validation of tribe certificate issued by the competent authority certifying them as belonging to “Tadvi” scheduled tribe.

3. The learned advocate for the petitioners Mr. Golegaonkar would submit that the petitioners’ blood relations from the paternal side by name Husna Sadaf and Saba Iram, daughters of Sayyed Khan Shabir Khan have been granted validity certificates by this Court subject to a rider enabling scrutiny committee to undertake detail investigation in respect of the school register of their great grandfather namely Hanif Khan Mohammad Khan dated 22.06.1933 bearing Sr. No.865. Since it is not being disputed by the scrutiny committee that the present petitioners are the blood relations of Saba Iram and Husna Sadaf, so long as the scrutiny committee does not undertake the scrutiny pursuant to the liberty granted by this Court, the petitioners cannot be deprived of the similar benefit. He would therefore

submit that even the petitioners can be granted validities conditioned upon the ultimate decision to be reached in the matter of Husna Sadaf and Saba Iram.

4. Mr. Golegaonkar would submit that the committee has gone astray in reaching to a conclusion that the petitioners have made some attempt to have the validity by resorting to an incorrect genealogy. He would submit that the genealogy collected by the vigilance cell and reproduced in the impugned order based on the statements of the petitioners' father has nothing to do with the family of which the vigilance cell obtained the genealogy which is also reproduced in the impugned order. Since the petitioners are also relying upon the school record of their grandfather Hanif Khan Mohammad Khan which was also before this Court in the matter of Husna Sadaf and Saba Iram which is of the year 1933 indicating Hanif Khan to be "Tadvi Musalman" unless the committee reaches a conclusion based on correct appreciation of the material that was to be collected by resorting to some investigation and subsequently decides to issue notices to Husna Sadaf and Saba Iram for revoking and cancelling the tribe certificates granted to them, the petitioner is entitled to rely upon the same entry. That being the oldest one, the subsequent entries even if those are treated to be contrary entries which in fact are not contrary entries, the observations and conclusions of the scrutiny committee are perverse and arbitrary.

5. He would further submit that the affinity test which hitherto was being considered as vital, cannot be treated now as imperative in every case as has been concluded by the Supreme Court, may be in respect of 'Thakur' Scheduled Tribe, in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.**; 2023 SCC Online SC 326.

6. Learned AGP Mr. Patil would strenuously submit that intentionally a false genealogy has been provided by the petitioner claiming himself to be relating to one Mohammad Khan Mehboob Khan resident of Taru Mohalla Gangakhed Taluka Gangakhed. He would submit that during the vigilance inquiry the officer had inquired with said Mohammad Khan Mehboob Khan who had flatly denied to be a blood relative of the petitioners' father. This is an attempted fraud.

7. Mr. Patil would then submit that pursuant to the liberty granted by this Court in the matter of Husna Sadaf and Saba Iram, an inquiry was made. The entire register of the school was found to be in Urdu. The entries were found to have been written with a pen and were seen to be of recent origin. These entries are of 1933. There were no pens. All these entries are apparently written in pen and which was sufficient for the committee to doubt the genuineness.

8. We have carefully considered the rival submission and perused the papers including the original school register of the year 1933. It is quite apparent that the respondent - scrutiny committee has refused to recognize

the petitioners as “Tadvi” only on two counts. Firstly, the entry in the name of Hanif Khan Mohammad Khan in the school record of the year 1933 is not genuine, and secondly, the genealogy referred to by the petitioners does not tally with the one furnished by one Mohammad Khan Mehboob Khan.

9. As far as the first ground is concerned, we have carefully considered the reasoning resorted to by the scrutiny committee in the impugned order. To make ourselves doubly sure we have also perused the original school register. The committee has entertained a doubt about its genuineness on the ground that all the entries in that register are in Urdu. The impugned order does not indicate that either the committee members were conversant with the script and language or had taken assistance of some translator. We having perused the original register find it difficult to subscribe to the perception of the scrutiny committee that the entries made therein are of recent origin. We also cannot make out from the reasoning as to on what basis the committee could reach a conclusion that the handwriting is with some pen and not by the old instrument which were being used in the year 1933 in the form of some bamboo or wooden stick (in vernacular ‘टाक’).

10. We cannot make out from the reasoning whether any of the committee members is an expert in ascertaining as to if the handwriting is with some recent instrument or the old one. In any event, the reasons for which the committee entertains a doubt about genuineness of this entry do not appeal to the reason. At least the impugned order does not furnish

sufficient grounds for us to subscribe to the inference drawn by the committee to entertain the doubt.

11. Pertinently, in spite of the committee having drawn such a inference and in spite of this Court having granted liberty to it, no steps are being taken to reconsider the claims of Husna Sadaf and Saba Iram. Therefore, in our considered view, this ground resorted to by the committee to discard the oldest entry of 1933 of the paternal grandfather of the petitioners is not sustainable.

12. So far as the second ground resorted to by the scrutiny committee is regarding the fact that the petitioners' father during the vigilance inquiry stated his address as Village Taru Mohalla, Gangakhed. However, when the vigilance officer visited that place and inquired with an individual by name Mansoor Khan, he had stated that he was the son of Mohammad Khan resident of Taru Mohalla and his father was the only person from that locality having that name. A genealogy was obtained from Mansoor Khan which is reproduced in the impugned order. It is therefore being inferred by the committee that a false genealogy has been furnished by the petitioners.

13. It is most interesting to note that the impugned order is absolutely silent as to in what manner the petitioners can be said to be having any relation with the genealogy that was obtained by the vigilance officer from that Mansoor Khan Mohammad Khan. It is not the observation of the vigilance officer or the committee that the genealogy furnished by the

petitioners which is also reproduced in the impugned order is incorrect.

14. If at all an individual wants to derive some benefit which he otherwise is not entitled to only then would he resort to and rely upon an incorrect genealogy. When we asked the learned AGP as to how the petitioners could have been benefited even if it is assumed that they were falsely showing to be the relatives of Mohammad Khan Mheboob Kha resident of Taru Mohalla, Gangakhed, he submits that it is because of the school record of Hanif Khan Mohammad Khan, discussed herein above of the year 1933 that the petitioners are putting up a claim through that Mohammad Khan.

15. However, conspicuously there is no person to be found in the genealogy collected by the vigilance cell from Mansoor Khan Mohammad Khan showing that any person by name Hanif Khan son of Mohammad Khan. In fact in this genealogy there is no person by name Hanif Khan. Again, both these genealogies, one collected by vigilance cell furnished by Mansoor Khan Mohammad Khan and the one being relied upon by the petitioners, except one individual having first name as Mohammad Khan there is absolutely no similarity in the names of rest of the persons.

16. The petitioners are furnishing a specific genealogy. The vigilance cell and the scrutiny committee has gone astray in making an inquiry with an individual having the first name Mohammad Khan and by obtaining a genealogy from him and taking a statement from him denying that the petitioners are related to them. The inference drawn is clearly

perverse, arbitrary and capricious. Unless one can find an individual in the name of Hanif Khan Mohammad Khan in the genealogy furnished by Mansoor Khan Mohammad Khan, the committee could not have reached a conclusion that the petitioners were to gain something when they are not even relying upon the genealogy collected by the vigilance cell from that Mansoor Khan Mohammad Khan. Consequently, even this grounds fails.

17. Resultantly, there is an old entry in the name of Hanif Khan Mohammad Khan from the school record of the year 1933 who is the grandfather of these applicants. The reasoning resorted to by the committee to discard this entry in our considered view is not apparently sustainable. The impugned judgment and order is clearly perverse and arbitrary and deserves to be quashed and set aside.

18. The writ petition is allowed. The impugned order is quashed and set aside. The respondent – Scrutiny Committee shall now issue tribe validity certificate to the petitioners of “Tadvi” Scheduled Tribe as expeditiously as possible and in any case within two weeks.

19. Rule is made absolute.

**(SHAILESH P. BRAHME, J.)**

**(MANGESH S. PATIL, J.)**

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