



Judgment

140 corrected wp3519.22, 3520.22 & 700.23

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.3519 OF 2022
WITH
WRIT PETITION NO.3520 OF 2022
WITH
WRIT PETITION NO.700 OF 2023**

WRIT PETITION NO.3519 OF 2022

Umesh s/o Anandrao Rodge,
aged 49 years, occupation service,
r/o Vinkar Vasahat, Raipura,
Achalpur, tahsil Achalpur, district
Amravati. **Petitioner.**

:: V E R S U S ::

1. Scheduled Tribe Caste Scrutiny
Committee, Near Government
Circuit House, Sana House, Old
Bypass Road, Chaprashipura,
Amravati-444602, through its
Member Secretary.

2. Janta High School, Parsapur, tahsil
Achalpur, district Amravati,
through its head master. **Respondents.**

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Shri Anil S.Mardikar, Senior Counsel assisted by Shri
M.D.Lakhey, Advocate for Petitioner.
Shri P.N.Sharma, Counsel for Respondent No.2.
Shri N.S.Rao, Assistant Government Pleader for Respondent
No.1.

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WRIT PETITION NO.3520 OF 2022

Ku.Kalpana Anandrao Rodge (after
marriage Sau.Kalpana Sharad
Warudkar), aged 53 years, occupation
service, r/o 'Sarthak', 47, New

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Gilani Nagar, Opposite Dhruv
Primary School, Umarsara,
Yavatmal, district Yavatmal. **Petitioner.**

:: V E R S U S ::

1. Scheduled Tribe Caste Scrutiny
Committee, Near Government
Circuit House, Sana House, Old
Bypass Road, Chaprashipura,
Amravati-444602, through its
Member Secretary.

2. Amolakchand Mahavidyalaya,
Yavatmal, district Yavatmal,
through its Principal. **Respondents.**

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Shri Anil S.Mardikar, Senior Counsel assisted by Shri
M.D.Lakhey, Advocate for Petitioner.
Shri P.N.Sharma, Counsel for Respondent No.2.
Shri N.S.Rao, Assistant Government Pleader for Respondent
No.1.

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WRIT PETITION NO.700 of 2023

Suryakant s/o Anandrao Rodge,
aged about 57 years, occupation service,
r/o plot No.56, Pushpakarna Nagar,
Dhamangaon Railway, taluka
Dhamangaon Railway, district
Amravati. **Petitioner.**

:: V E R S U S ::

1. Scheduled Tribe Caste Scrutiny
Committee, Near Government
Circuit House, Sana House, Old
Bypass Road, Chaprashipura,
Amravati-444602, through its
Member Secretary.

2. The Principal,

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Adarsha Science Jairamdas
Bhagchand Arts and Birla
Commerce Mahavidyalaya,
Dhamangaon Railway, district
Amravati.

3. Dhamangaon Education Society,
through its President, Shashtri
Chowk, tahsil Dhamangaon
Railway, district - Amravati.

..... **Respondents.**

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Shri Anil S.Mardikar, Senior Counsel assisted by Shri
M.D.Lakhey, Advocate for Petitioner.
Shri P.N.Sharma, Counsel for Respondent Nos.2 & 3.
Shri N.S.Rao, Assistant Government Pleader for Respondent
No.1.

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CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.
CLOSED ON : 08/11/2023
PRONOUNCED ON : 15/12/2023

COMMON JUDGMENT : (Per : Urmila Joshi-Phalke, J.)

Date 30.12.2022
in paragraph No.1
is corrected as per the
court's order
dated 12.1.24.

1. By these petitions, petitioners take exception to orders dated 30.12.2022 and 9.6.2022 passed by respondent No.1 - Caste Scrutiny Committee, Amravati (the Committee) invalidating their tribe claim as belonging to "Halbi" Scheduled Tribe.

2. The petitioners are real brothers and sister. Petitioner 'Umesh' is serving as 'Assistant Teacher' in respondent No.2 - Janta High School, Parsapur, tahsil Achalpur, district Amravati. Petitioner 'Ku.Kalpana', was

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serving as 'Teacher' in respondent No.2 Amolakchand Mahavidyalaya, Yavatmal, district Yavatmal. Petitioner 'Suryakant', was serving as 'Associate Professor' in respondent No.2 - Adarsha Science Jairamdas Bhagchand Arts and Birla Commerce Mahavidyalaya, Dhamangaon Railway, district Amravati, who has been terminated from services for want of Caste Validity Certificate.

3. A proposal of caste claim of petitioner 'Umesh' was forwarded by respondent No.2 - Janta High School, through Headmaster, Parsapur, tahsil Achalpur, district Amravati on 11.1.2007, a proposal of caste claim of petitioner 'Ku.Kalpana' was forwarded by respondent No.2 - Amolakchand Mahavidyalaya, through Principal, Yavatmal on 29.7.2013, and a proposal of caste claim of petitioner 'Suryakant' was forwarded by respondent No.3 - Dhamangaon Education Society, through its President, Dhamangaon Railway, district Amravati on 22.7.2013. The petitioners have relied upon as many as 47 documents out of which 7 documents are pre-constitutional. The petitioners have submitted their genealogical tree along with other documents from which it reflects that their great-

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grandfather namely 'Raoji Rodge' and grandfather 'Ramchandra Raoji' are recorded as "Halbi". As per petitioners, there are consistent entries during pre-independence era showing their forefathers belong to "Halbi". The Tribe claim of one of brothers of petitioners viz. Rajesh has been validated in view of order of this court in Writ Petition No.2300/2007 on 7.9.2020.

4. Learned Senior Counsel Shri Anil S.Mardikar, for petitioners submitted that as per family tree, caste of 'Raoji Rodge', great-grandfather of petitioners, is recorded as "Halbi" who has one son viz. 'Ramchandra Raoji' who is recorded as "Halbi". Said 'Ramchandcra Raoji' has three sons and two daughters who are also recorded as "Halbi". The petitioners have submitted family tree to the Vigilance Cell also and there is no dispute as to the fact that 'Raoji' has son viz. 'Ramchandra' who is grandfather of petitioners. Thus, petitioners great-grandfather 'Raoji'; grandfather 'Ramchandra', and father 'Anandrao' are recorded as "Halbi". The school records and birth extracts of brothers and sisters of Anandrao also show they belong to "Halbi". Thus, there are consistent entries during pre-Independence

era and thereafter also. The Committee had considered two adverse entries in the names of 'Maroti Raoji' and 'Pandurang Ramchandra' who are recorded as "Koshti" and invalidated the claim. The petitioners, while replying show cause notice, explained these two entries that these persons are not related to their family. Learned Senior Counsel for petitioners submitted that the Committee had not considered that one of brothers of petitioners viz. 'Rajesh' was granted Tribe Validity in view of order of this court. This court, while deciding the Tribe Claim of 'Rajesh', considered and scrutinized all documents and granted Tribe Validity to 'Rajesh' which had attained finality. In view of the above, orders impugned of the Committee are arbitrary, illegal, and liable to be set aside.

5. In support of his contentions, learned Senior Counsel Shri Anil S.Mardikar for petitioners placed reliance on following decisions:

(1) Vinod s/o Mahadeorao Shrote vs. State of Mah., thr.its Secretary, Ministry of Tribal Welfare and Social Justice Department, Mantralaya, Mumbai and ors (Writ Petition No.2549/2021 decided by this court on 1.3.2022;

(2) Tejas s/o Ramesh Katole vs. The Scheduled Tribes Caste Certificate Scrutiny Committee, thr.its Member Secretary and Deputy Director, Amravati and ors (Writ Petition No.3758/2020 decided on 7.10.2021);

(3) Mukesh Pandurang Bastav and anr vs. State of Maharashtra and ors, reported in 2018(2) Mh.L.J.180;

(4) Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.2 and ors, reported in 2010(6) Mh.L.J. 401, and

(5) Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors, reported in 2023(2) Mh.L.J. 785.

6. Learned Assistant Government Pleader Shri N.S.Rao for the Committee, stressed upon the adverse entries and canvassed that petitioners could not prove their Tribe Claim. He invited our attention to Vigilance Report and submitted that the Vigilance Cell collected documents during enquiry which show that one of ancestors 'Maroti Raoji' is recorded as "Koshti" as well as 'Pandurang Raoji' is also recorded as "Koshti". These adverse entries are pre-independence era which sufficiently create a doubt about

the claim of petitioners. He further reiterated that the Tribe Claim of one of sisters viz. 'Hemlata' was invalidated and the said fact is suppressed by petitioners. In view of above facts and circumstances, the Committee has rightly passed orders impugned. In support of his contentions, he placed reliance on following decisions:

(1) Narayan Dinbaji Jambule and ors vs. The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli and ors (PIL No.102/2012 and another connected PIL decided by this court on 15.4.2016);

(2) Raju Ramsing Vasave vs. Mahesh Vasave (Civil Appeal No.5308/2008 decided by the Honourable Apex Court on 29.8.2008);

(3) Urmila Chandrakant Baviskar vs. The State of Mah., thr.its Secretary Health and Science Department, Mantralaya, Mumbai and ors (Writ Petition No.4432/2023 decided by this court on 11.9.2023);

(4) Rushikesh Bharat Garud vs. The State of Mah., thr.its Secretary, Tribal Development Department, Mantralaya, Mumbai and ors (Writ Petition St.No.11536/2021 decided at Principal Seat at Bombay on 29.6.2021);

(5) Priyanka d/o Dilip Rekulwad vs. The State of Maharashtra (Writ Petition No.10827/2023 decided by this court at Aurangabad Bench on 20.9.2023);

(6) S.P.Chengal Varaya Naidu (dead) by LRs vs. Jagannath (dead) by LRs and ors, reported in (1994)1 SCC 1, and

(7) A.V.Payappa Sastry and ors vs. Govt. of A.P. and ors, reported in (2007)4 SCC 221.

7. Undisputedly, brother of petitioners viz. 'Rajesh' was granted Tribe Validity Certificate in view of order of this court in Writ Petition No.2300/2007 on 7.9.2020. The Tribe Validity Certificate granted to him is not challenged subsequently. The relationship between petitioners and 'Rajesh' is not disputed. There is no dispute as to the family tree. While considering the claim of 'Rajesh, co-ordinate bench, (one of us Shri Avinash G.Gharote, J. was member), considered all documents and allowed the petition directing to issue Tribe Validity Certificate.

8. Perusal of the entire material on record reveals that in support of the claim, petitioners have placed reliance on following documents of independence era:

1. birth register extract showing birth date as 26.6.1921 of daughter of 'Ramchandra' wherein 'Ramchandra' is recorded as "Halbi";

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2. birth register extract showing birth date as 7.10.1928 of son of 'Ramchandra' wherein 'Ramchandra' is recorded as "Halbi";

3. School Leaving Certificate of uncle of petitioners viz. 'Janardan' showing his birth date as 20.6.1921 who was admitted in school on 12.7.1934 and was recorded as "Halbi";

4. birth register extract showing birth date as 19.8.1939 of son of 'Ramchandra' viz. 'Anandrao' (father of petitioners) was recorded as "Halbi";

5. copy of sale deed showing grandfather of petitioners purchased a house on 3.5.1932 wherein also 'Ramchandra' was shown to be "Halbi", and

6. School Leaving Certificate of daughter of 'Ramchandra' was recorded as "Halbi".

9. Besides the pre-constitutional entries, death register extract dated 24.7.1974 showing 'Ramchandra' as "Halbi" and birth extract of daughter of 'Ananda' dated 29.9.1972 recording 'Ananda' as "Halbi". Thus, there are consistent entries during pre-independence era showing forefathers of petitioners to be "Halbi".

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10. The Committee referred the claim of petitioners for vigilance. The Vigilance Report indicates two adverse entries; viz. (1) Dakhal Kharij Register Extract dated 10.9.1914 showing one Maroti Raoji as “Koshti” and relationship with petitioners as cousin grandfather and (2) birth entry as 29.6.1944 of daughter ‘Mankarna’ of one ‘Pandurang Ramchandra’ recording as “Koshti”.

11. After receipt of the Vigilance Report, Show Cause Notices were issued to petitioners which were replied by them denying the relationship with ‘Maroti Raoji’ and ‘Pandurang Ramchandra’. The Vigilance Report nowhere discloses that on what basis these two persons are shown to be related with petitioners. The family tree submitted by petitioners, along with their Tribe’s Claim and family tree submitted to the Vigilance Committee, nowhere reflects these both names in the family tree. If the Vigilance cell shows these two persons as relatives of petitioners, the documents must be collected to support the same. As the Committee placed reliance on these documents, there ought to have been some material showing connection between petitioners and these names.

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12. It is, however, material to note that though the Vigilance Cell Report specifically mentions about the entry in the register of births and deaths of October 1928 in which a male child born to 'Ramchandra Raoji' is shown to have died wherein his caste is recorded as "Halbi", the entry in the register of births and deaths of 9.8.1939 in which male child 'Ananda' is shown to have born to 'Ramchandra Raoji', the grandfather of petitioners, which records caste as "Halbi" and the entry in the School Leaving Certificate, in respect of maternal aunt of petitioners (Kumari Godu Ramchandra Rodge), dated 12.7.1955 was recorded her caste as "Halbi". The Committee has totally ignored these entries while deciding the Tribe Claim of petitioners. The rejection of the Tribe Claim of petitioners, on the basis of these adverse entries, ignoring documents of pre-independence era, is completely unjustified. The Committee has laid a great stress on the correction made in the caste of 'Ananda Ramchandra Rodge', the father of petitioners, in the High School Admission Register of "Rashitraya High School & Junior College of Science" where earlier entry of his caste recording as "Koshti" was changed to "Halbi". Perusal of

this entry at Sr.No.148 in the High School Admission Register of the said school clearly indicates that the entry of the caste of the father of petitioners as “Koshti” was corrected by the school authorities as per order No.14797 dated 23.12.1957 and order No.74797 dated 23.12.1957. The explanation given by petitioners for this change, that the correction was made by the school authorities by duly passing order, has been brushed aside by the Committee. The reasoning given by the Committee has no basis whatsoever as it ignores the pre-independence entries of the years 1928 and 1939 in respect of grandfathers of petitioners recording caste as “Halbi”. It is nobody’s case that there was any reservation facility available during pre-independence so as to bring entries of the years 1928 and 1939 in disrepute. The position is otherwise. This is more so, as the entry of the caste in respect of ‘Godu Ramchandra Rodge’, the paternal aunt of petitioners, in the School Leaving Certificate issued by the Headmaster, Zilla Parishad, Primary Marathi Girls School, Achalpur City dated 12.7.1955 has recorded her caste as “Halbi” which has been duly verified by the Vigilance Cell.

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13. It is well settled that entries of pre-independence era have probative value. Sub-rule (2) of Rule 12 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000 (Act No.23 of 2001) provides that only if the Scrutiny Committee is not satisfied with documentary evidence produced by applicant, it shall forward application to the Vigilance Cell for conducting enquiry. While interpreting the said Rule, the Honourable Apex Court in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors** (*supra*) held that, "in every case, as a matter of routine, the Scrutiny Committee cannot mechanically forward the application to Vigilance Cell for conducting an enquiry. When sub rule (2) of Rule 12 contemplates that only if the Scrutiny Committee is not satisfied with the documents produced by the applicant that the case should be referred to Vigilance Cell, it follows that the Scrutiny Committee is required to pass an order recording brief reasons why it is not satisfied

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with the documents produced by the applicant. Before referring the case to the Vigilance Cell, application of mind to the material produced by the applicant is required and therefore, the application of mind must be reflected in the order sheets of the Scrutiny Committee.

14. Perusal of the record nowhere reflects that the Committee recorded its reasons as to dissatisfaction of the record and its reasons for referring the application to the Vigilance Cell. The Committee placed reliance on the documents collected by the Vigilance Cell showing adverse entries in the names of 'Maroti Raoji' and 'Pandurang Ramchandra'. The petitioners have denied the relationship with both the entries. Neither the Vigilance Cell nor the Committee placed any documents on record to show that these entries are related to forefathers of petitioners and the petitioners have suppressed the same.

15. Thus, nothing is on record to show that these two persons are related with petitioners. The respondents could not point out through any documents that the said entries relate to family members of petitioners.

16. It is common knowledge that several persons could be found of the similar names in one village. When the Committee came with a specific case that these adverse entries are regarding family members of petitioners, the Committee has to show the connection.

17. As observed earlier, that pre-constitution documents showing the caste of petitioners and their ancestors are of highest probative value. The Honourable Apex Court in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors** (*supra*) held in para No.20 that one of the tests is as laid down in the case of **Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and others, reported in AIR 1995 SCC 94**. It lays down that the documents of the pre-constitution period showing the caste of applicant and their ancestors have got highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the pre-constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations

provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all.

18. In the present matter, such is not the case. On the contrary, the Committee ought to have considered that on the basis of similar documents, the Tribe Validity Certificate is granted to real brother of petitioners viz. 'Rajesh'. The Committee must be mindful of the fact that it is not an appellate authority to test correctness of order of validation issued by this court after scrutiny of the material. The Committee, while examining the claim of petitioners, ought to have considered that the Tribe Validity Certificate is granted to the family member of petitioners in view of judgments of this court after verifying and scrutinizing the documents. The said judgment has attained finality as the same was not challenged. The Tribe Validity Certificate granted to the family member of petitioners can only be ignored in the event of receiving evidence that the Tribe Validity Certificate has been obtained by playing a fraud. It is only in such cases, in case fraud is established, the Committee can re-examine the facts.

19. In the present case, it is nowhere contended by the Committee that earlier the Tribe Validity Certificate granted is either obtained by fraud. The Committee must understand that such approach would result into anomaly in the family if its members have different social status. The Committee is under obligation to rely upon the Tribe Validity Certificate granted in view of the judgments of this court and cannot adopt an approach as if it is sitting in appeal over the judgment of this court.

20. Learned Assistant Government Pleader Shri N.S.Rao for the Committee, vehemently argued that the earlier Tribe Validity Certificate was obtained by fraud. The plea of 'Fraud' is one of facts and has necessarily to be determined on the basis of evidence to be led. This has never been done. The Committee nowhere records in its finding in the order impugned that earlier Tribe Validity Certificate was obtained by a fraud. He placed reliance on catena of decisions wherein it is held that if fraud is noticed, Caste Validity Certificates can be revoked while exercising jurisdiction under Article 226 of the Constitution of India in order to prevent abuse of provisions of the Constitution.

21. In the present matter, neither there is a finding recorded by the Committee nor any evidence is adduced to show that earlier Tribe Validity Certificate has been obtained by a fraud and, therefore, the submission of learned Assistant Government Pleader for the Committee cannot be accepted.

22. Insofar as affinity test is concerned, learned Assistant Government Pleader for the Committee submitted that petitioners could not prove their affinity test.

23. In the case of **Anand vs. Committee for Scrutiny and Verification of Tribe Claims and ors, reported in (2012)1 SCC 113**, wherein the judgment in the case of **Shilpa Thakur** *supra* was referred to, it was held that the affinity test is not a litmus test and that document of pre-constitutional era is of highest probative value in the eyes of law. The same view is reiterated by the Honourable Apex Court in the recent judgment in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors** *supra* wherein in paragraph No.25 it is held that the Vigilance Cell,

while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. It is further held that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant. While concluding, the Honourable Apex Court held that affinity test will not be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the tribe validity claim and in short, affinity test is not a litmus test to decide a tribe claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.

24. In the light of the above, when affinity test is not an integral part of determination of correctness of claim and when petitioners had submitted number of documents which were pre-constitutional having high probative value

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showing their tribe as “Halbi” and when a family member holds the Tribe Validity Certificate, we are of a considered view that the Tribe Claim of petitioners ought to have been considered by the Committee by giving an appropriate weightage to the Tribe Validity Certificate issued to the family member of petitioners by order of this court and also to the pre-constitutional documents. The co-ordinate bench of this court in the case of **Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee NO.1 and ors, reported in 2001(6) Mh.L.J. 401** has held that where tribe claim of a person has been scrutinized and accepted and one Committee has given a finding about validity of his tribe, another Committee ought not to refuse the same status to his/her blood relatives who apply subsequently.

25. In the light of the above facts and circumstances of the case, since we find that petitions deserve to be allowed by directing the Committee to issue Tribe Validity Certificates to petitioners to be “Halbi” Scheduled Tribe, following order is passed:

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ORDER

(1) The writ petitions are **allowed**.

(2) The orders dated 30.12.2022 and 9.6.2022 passed by respondent No.1 - Caste Scrutiny Committee, Amravati invalidating Tribe Claim of petitioners belonging to "Halbi" Scheduled Tribe are quashed and set aside.

(3) It is declared that petitioners belong to "Halbi" Scheduled Tribe and the Committee shall, within a period of four weeks from the date of receipt of writ of this Court, issue Caste Validity Certificates to petitioners accordingly.

(4) After issuance of Tribe Validity Certificates, petitioner viz. Suryakant, whose services have been terminated, would be entitled to be reinstated in services with all service benefits as that is the only ground for termination.

The petitions stand disposed of accordingly.

(URMILA JOSHI-PHALKE, J.) (AVINASH G.GHAROTE, J.)

Date 30.12.2022
in operative order
clause No.2
is corrected as per the
court's order
dated 12.1.24.

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Mr.N.S.Rao, learned Assistant Government Pleader, at this stage, prays for stay of the judgment for eight weeks.

Considering what has been discussed above and the finding rendered that petitioners belong to “Halbi” Scheduled Tribe, we do not see any reason to grant stay. The request is, therefore, declined.

(URMILA JOSHI-PHALKE, J.) (AVINASH G.GHAROTE, J.)

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