



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 11990 OF 2024

Shaikh Imadoddin Wajidoddin  
S/o. Shaikh Wajidoddin Fakroddin  
Age. 26 years, Occu. Student,  
R/o. DRT 6, Labour Colony,  
Aurangabad.

... Petitioner.

Versus

1. The State of Maharashtra,  
Through its Secretary,  
Tribal Development Department,  
Mantralaya, Mumbai - 32.

2. The Scheduled Tribe Certificate  
Scrutiny Committee,  
Chhatrapati Sambhajanagar Division,  
Chhatrapati Sambhajanagar.

... Respondents.

...

Advocate for Petitioner : Ms. Pradnya Talekar  
i/b. Talekar and Associates  
AGP for Respondents : Mr. V.M. Kagne

...

CORAM : S. G. MEHARE AND  
SHAILESH P. BRAHME, JJ.

DATE : 14 NOVEMBER 2024

Per Court :

1. Rule. Rule is made returnable forthwith. Heard both sides finally at the admission stage considering the exigency that the petitioner seeks to prosecute post-graduation on the basis of caste benefits.

2. The petitioner is challenging the judgment and order dated 17.10.2024 passed by respondent no. 2 / Scrutiny

Committee confiscating and invalidating his tribe certificate of the scheduled tribe 'Takankar'.

3. The Scrutiny Committee rejected the tribe claim by discarding the validity certificates of Sk. Mohd. Waquiuddin and his son Sk. Abdul Albarr. The relationship of the petitioner with validity holder Sk. Mohd. Waquiuddin was doubted due to the letter dated 03.05.2023. Considering the school record of the petitioner's father and cousin uncle, it was held that they do not belong to the scheduled tribe 'Takankar'. It was further held that the petitioner is Muslim by religion and he failed to prove that he belongs to 'Takankar' scheduled tribe which is at entry no.38.

4. The Committee further recorded that by notification dated 19.07.2024, the State Government classified 'Takankar' vide entry no. 22 as 'SBC-A'. The petitioner is found to have been taking disadvantage of similarity in the name of the tribe. As per the information collected by the vigilance cell, nobody from the petitioner's family resided at Palam, Taluka Palam, District Parbhani. The school record of the petitioner's grandfather Fakruddin and cousin great-grandfather of Maula Sk. Mahuddin was discarded considering their place of residence. The relationship of the petitioner with Sk. Maula and Sk. Hussain was doubted. The census entries are recorded to be incompatible with his tribe claim. Additionally, the affinity test was also recorded against the petitioner.

5. Learned counsel for the petitioner Ms. Pradnya Talekar submits that the clinching material of the validity certificates of Sk.

Abdul Albarr and sons of Sk. Khaja Mainuddin have been discarded arbitrarily and highhandedly. She further submits that without conducting proper vigilance, the pre-constitutional school entry of the petitioner's grandfather Fakroddin was discarded. It is submitted that previously on two occasions the matter was remanded to the Scrutiny Committee. The last order of remand dated 24.11.2017 passed in Writ Petition No. 12770/2017 shows that there was no contra evidence. More literature and research were expected to be conducted after the remand but no endeavour was made. She also argued that the affidavit of Mr. Sk. Waquioddin, is of no use as he turned from his affidavit. However, the reasons for discarding the tribe validity are not sound.

6. Learned counsel for the petitioner relies on the order dated 06.07.2023 passed in Writ Petition No. 11742/2022 granting conditional validity to 11742/2022 in the matter of *Sk. Abdul Albarr Shaikh Mohd. Waquioddin Versus The State of Maharashtra and Others*. She would further submit that the papers were not called for, from the Kinwat Committee to ascertain the record of validity holder Sk. Musasab and his children which amounts to dereliction of the duties. The finding recorded by the Committee with respect to the place of residence of the petitioner and his blood relatives is unsustainable in view of the removal of area restrictions. It is vehemently argued that the entry 'Muslim Takankar' cannot be treated as a contrary entry, as 'Muslim' is a religion.

7. Learned counsel for the petitioner relies on the following judgments:

- i. *Taaseem Sartaj Mohammad Khan Versus State of Maharashtra and Another*, **2022 SCC OnLine Bom 5285** ;
- ii. *Muhammed Anas Abdullah Dandu Versus State of Maharashtra and Others*, **2020 SCC OnLine Bom 8752** ;
- iii. *Khan Namirah Khanum Abdul and Another Versus State of Maharashtra and Others*, **2019 SCC OnLine Bom 1442** ;
- iv. *Pandurang Rangnath Chavan Versus State of Maharashtra and Others*, **(1998) 2 Mah. L.J. 806** ;
- v. *Anand Versus Committee for Scrutiny and Verification of Tribe Claims and Others*, **(2012) 1 SCC 113**.

8. Learned AGP tenders on record the original papers of the petitioner and the validity holder Sk. Musasab which is received from Kinwat Committee. He supports impugned judgment and order. He would point out that the school record of the petitioner, his father and his cousin uncle disclosed caste as 'Islam Takankar' or 'Musalman Takankar' which is not a scheduled tribe 'Takankar'. He would invite our attention to the affidavit filed by Sk. Waquioddin, his letter dated 03.05.2023 and the difference of his signatures. It is vehemently argued that the branch of Waquioddin is not a relative of the petitioner and validities in the said branch would be of no avail to the petitioner. It is further submitted that the petitioner has played fraud and granting him validity on the basis of the validities of Sk. Adbul Albar would amount to the perpetuation of the mischief.

9. Learned AGP refers to the judgment and order dated 15.09.2023 passed by the Committee from the file of Sk. Musasab. During the course of the vigilance the manipulated entries of Sk. Mohd. Musasab and Ismail B were traced. He would further submit that the relevant material was taken into account by the Committee and the petitioner failed to produce the literature to support his tribe claim. During the vigilance enquiry, the information was collected by recording statements of the local residents and considering the overall material the tribe claim has been rejected which cannot be interfered with.

10. We have considered rival submissions of the parties. We have also gone through relevant papers from the files produced by learned AGP on record.

11. The petitioner is relying on validity certificates issued by the coordinate bench vide order dated 06.07.2023 to Sk. Abdul Albarr in Writ Petition No. 11742/2022, validities issued to Sk. Musasab, Sk. Khaja Moinuddin and his children. He is further relying on the preconstitutional record of his grandfather Fakruddin of 1933 (1343 Fasli), cousin great grandfathers Maula Shaikh of 1927 (1337 Fasli) and Shaikh Husain of 1925 (1335 Fasli).

12. The school record of petitioner's grandfather Fakruddin of 1933 indicating caste as 'Takankar' was produced before the Committee. The Committee should have conducted a vigilance enquiry and verified the school record but no endeavour was made to verify the school record. In the case of school entries of cousin

great grandfather Shaikh Maula and Shaikh Hussain, records are verified and found to be 'Takankar'. Both entries are of 1927 and 1925, respectively. The clinching record is discarded only on the ground of place of residence. Being a preconstitutional record, it has greater probative value in view of the law laid down by the Supreme Court in the matter of *Anand Versus Committee for Scrutiny and Verification of Tribe Claims and Others*, (2012) 1 SCC 113. Learned counsel for the petitioner is justified in contending that the vital school record having greater probative value has been discarded by the Committee arbitrarily.

13. The Committee has conducted a vigilance enquiry and the information was collected from a few local residents. On the ground of the place of the residence, the tribe claim of the petitioner is doubted which is highly objectionable. The preindependant record is also discarded for the same reason. In view of the removal of area restrictions, the enquiry into the place of residence has become inconsequential. A useful reference can be made to the decision of *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another Versus State of Kerala*, (1994)1 SCC 359.

14. The petitioner had submitted the application dated 11.07.2024 before the Committee intimating that the Kinwat Committee had issued the validity certificate to Sk. Musasab and his children. Considering the said application, the Committee had intended to call for papers from Kinwat Committee for verification. Observations are recorded to that effect in paragraph no. 8 of the impugned judgment. However, the record was not called for from

the Kinwat Committee. Learned AGP admits that papers of Sk. Musasab was not called for from Kinwat Committee. Thus without ascertaining the relevant material, the Committee proceeded to deal with the matter. The genealogy referred by the petitioner shows that Sk. Musasab is the blood relative of the petitioner. We find that record of the Kinwat Committee was relevant and the Committee failed to exercise the jurisdiction as contemplated by the statute.

15. Interestingly, learned AGP tendered on record file of Sk. Musasab from Kinwat Committee. It is submitted that despite of tampered school record of the blood relatives, the claimant Sk. Musasab was granted validity vide judgment dated 15.09.2023. Without extending any opportunity to deal with the record, it is not permissible to confront a few entries of Sk. Mohammad, Ismail and Musasab to the petitioner. The confrontation of record for the first time in the High Court is impermissible.

16. While remanding the matter on the last occasion to the Committee, the following relevant observations were made by the co-ordinate bench in its order dated 24.11.2017 in Writ Petition No. 12770/2017 :

*“9. It is recognized that some Scheduled Tribes can be referable to even Muslims such as Tadvīs, Padvis. There is no dispute in respect of it. The literature will have to be gone into to come to the conclusion whether the Mohammedans also would belongs to Takankar tribe. More literature and research would be required.*

*10. As far as documentary evidence is concerned voluminous record is produced by the petitioner. It is clear that consistently even in pre-independence document in respect of the grandfather caste is recorded as Takankar and in respect of his father's as Muslim Takankar. There is not a single contra evidence.*

*11. The experts will have to dilate more about the traits and the factum of Takankars professing Muslim religion / Islam or otherwise.*

*12. The committee consists of experts and also a research officer. It would be appropriate if all this material is considered in detail and then the committee delivers a judgment considering all the literature and the material on the record.*

*13. We are remitting the matter back for reconsideration by the experts in view of the above reasons. The petitioner as it is now cannot be considered for admission in his professional course as the admissions are closed.”*

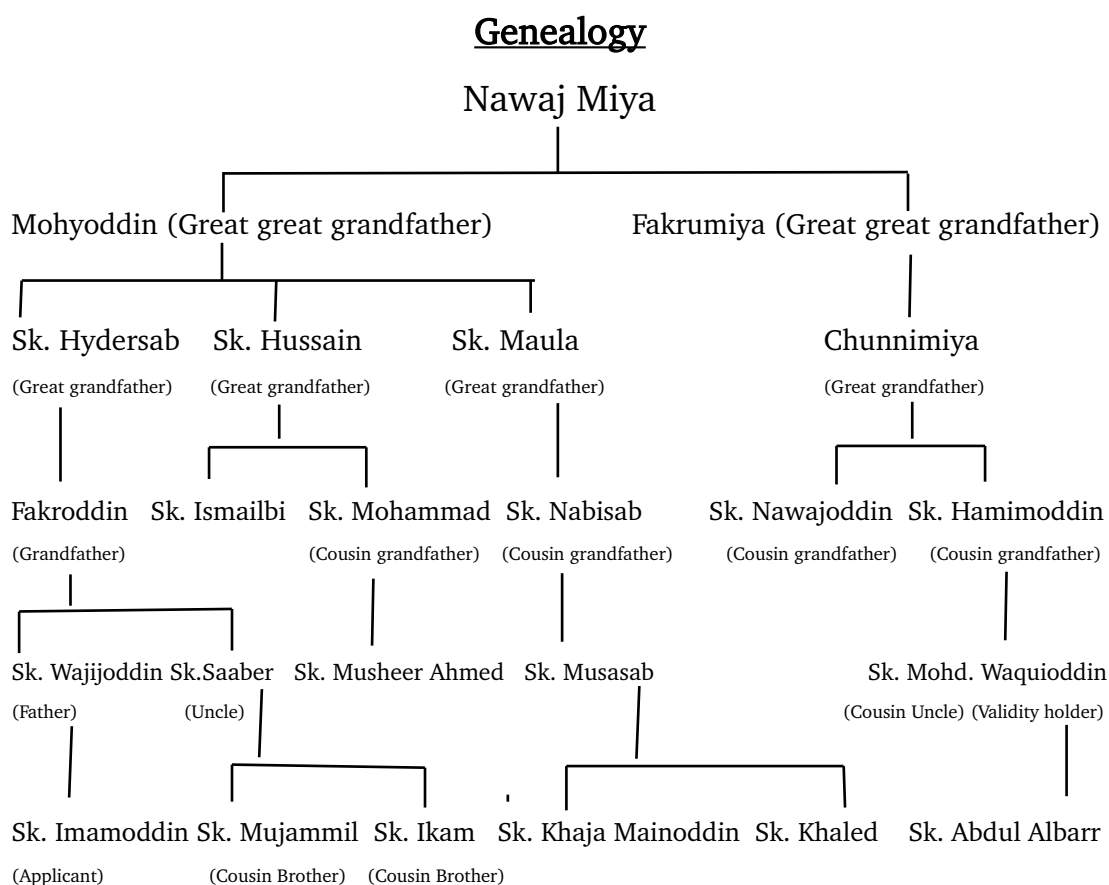
17. The Committee was expected to consider the literature and conduct research. It has been expressly recorded in paragraph no. 9 of the impugned judgment that the expert's assistance was not available due to his ailment. The Committee is equipped with the vigilance cell comprising of research officers and vigilance officers. It was possible for the Committee to collect the necessary

information. No efforts were taken by the Committee. Merely collecting the information from a few of the residents was not enough to deal with the contentious issues. In that view of the matter, we are of the considered view that the Committee failed to conduct proper vigilance.

18. It is vehemently submitted by the learned AGP that Sk. Mohd. Waquioddin and Sk. Musasab who are the validity holders are not the blood relatives of the petitioner. The petitioner has produced the affidavit of Sk. Waquioddin stating therein that the petitioner was his cousin nephew. From the original record, we have pointed out a letter dated 03.05.2023 addressed by Sk. Waquioddin to the Committee informing that his affidavit was bogus and there was no relationship with the petitioner. The validities issued to Waquioddin and his son Sk. Albarr were discarded by the Committee. We have compared the signatures of Waquioddin which are appearing on his letter and his affidavit produced by the petitioner in the present matter. We do not find that there is any remarkable difference in the signatures. For that purpose additionally, we compared the signatures with the affidavit of Waquioddin dated 04.09.2024 given in the matter of Sk. Musasab Sk. Nabisab whom the Committee had issued with a validity certificate vide order dated 15.09.2023. There is no difference in signatures.

19. In the above affidavit, Waquioddin is contended to be the cousin of Sk. Musasab. If that is so then on one hand Sk. Waquioddin is disowning any relationship with the petitioner and on the other hand showing a relationship with Sk. Musasab. If we

consider the genealogy then petitioner and Sk. Musasab are descendants of Moiuddin and Sk. Waquiuddin is the descendant of Fakrumiya. Moiuddin and Fakrumiya are the real brothers and they are siblings of Nawajmiya. Considering the genealogies, there is no reason to doubt that Sk. Waquiuddin is the blood relative of the petitioner (please check). The following genealogy given by the petitioner makes the picture clear:-



20. The Committee did not call for the record of Sk. Musasab whom the the Kinwat Committee., had issued the validity certificate. While granting him validity, the Committee relied on the validity of Sk. Waquiuddin. The school record of Nawajuddin Chunnumiya, Chunnumiya Fakrumiya, Hamiddoddin Chunnumiya, Sk. Mohd. Hussain Sab was pitted against him being manipulated. We are not considering as to whether those entries are manipulated or not. But one thing is clear if the above persons are

blood relatives of Sk. Musasab then obviously the petitioner needs to be held to be the blood relative of the branch of Fakrumiya of which Sk. Waquioddin is the lineal descendant. The natural consequence is that the validity of Sk. Abdul Albarr who is son of Sk. Waquioddin issued by the co-ordinate bench in Writ Petition No. 11742/2022 cannot be discarded for want of relationship. We have no iota of doubt that Sk. Waquioddin though he disowned his relationship by addressing a letter dated 03.05.2023 cannot be believed. His validity and the validity issued to his son Sk. Abdul Albarr would ensure the benefit of the petitioner.

21. The reliance is placed on the judgment of the co-ordinate bench dated 06.07.2022 passed in Writ Petition No. 11742/2022 in the matter of *Shaikh Abdul Albarr Shaikh Mohd. Waquioddin Versus The State of Maharashtra and Others*. The petitioner in that case is the son of Sk. Waquioddin who was directed to be issued with the conditional validity. The observations recorded by the co-ordinate bench have barring over the merits of the matter. We reproduce the relevant observations in paragraph nos. 10, 11 and 12 :

*“10. Again, it is indeed perverse and arbitrary for the scrutiny committee to only refer to the so called contrary entries by ignoring the oldest one which are in favour of the petitioner. When there is a school record of the year 1925 and 1928 in respect of the great-grandfather and the brother of the great-grandfather mentioning the caste as ‘Takankar’, merely because some of the subsequent entries of the blood relations in the*

*school record mentioned as Muslim, Musalman or Musalman Takankar, the committee could not have drawn inference in such pick and choose manner rather the oldest entry will have a more probative value and here there are two.*

*11. The committee has then resorted to some statements made in the registered sale deeds wherein the petitioner's blood relations have declared that they did not belong to any tribe while executing the sale deeds for selling the lands.*

*12. In our considered view assuming that these sale deeds contain a statement that the executant/vendor does not belong to scheduled tribe, such a statement in the sale deed obviously must have been made to come out of the clutches of law which prohibit sale of land by a tribal without the permission of the Collector, no amount of declaration, may be in the registered sale deed, in our opinion can change the caste or the tribe which an individual gets by birth. It is not a matter which can be renounced. Therefore even this observation of the scrutiny committee that because of such declaration in the sale deeds the petitioner is not belonging to scheduled tribe is not sustainable being clearly perverse and arbitrary."*

22. The net result is that the preconstitutional entries of the grandfather and cousin great grandfathers, validities of Sk. Waquioddin and Sk. Albarr would corroborate the petitioner's claim which is discarded for unsustainable reasons. We propose to follow the reasoning assigned by the co-ordinate bench in the above referred matter that the different entries of the blood relatives of the petitioners showing 'Muslim Takankar' or 'Musalman Takankar' or 'Islam Takankar' cannot be treated to be a contrary record. Muslim or Musalman is the religion and 'Takankar' is the scheduled tribe. In the earlier round of litigation, the co-ordinate bench in its order dated 24.11.2017 in Writ Petition No. 12770/2017 already observed in paragraph no. 9 that some scheduled tribes can be referred to even Muslims such as 'Tadavis' and 'Padvis'

23. Learned counsel Ms Pradnya Talekar is relying on the Judgment of *Taaseem Sartaj Mohammad Khan* (supra). The co-ordinate bench has observed in paragraph no. 5 which is as follows:

*"5. In the present case also from the record no contra entry appears. Mentioned 'Muslim' cannot be said to be contra entry, the same is religion."*

24. Thereafter, She is relying on *Muhammad Anas Adbullah Dandu* (supra). The relevant paragraph no. 6 is as follows :

*"6. A perusal of the record clearly shows that the Petitioner's father has filed Writ Petition No. 43 of 1997 challenging the order dated*

*23/07/1996 passed by the committee rejecting his claim as belonging to Koya, Scheduled Tribe. This Court vide order dated 10.01.1997 while allowing the petition filed by the Petitioner's father observed as follows :*

*"A joint reading of sub-clauses (iv) and (v) would show that when a person claims to belong to a Scheduled Caste he should be professing either the Hindu or Sikh religion. However, if a person claims to be a Scheduled Tribe, he may profess any religion. In the circumstances, merely because the petitioner professes the Muslim religion, he cannot be deprived of his claim as belonging to Koya Scheduled Tribe. The impugned order passed by the scrutiny committee on the 23<sup>rd</sup> of July, 1996, in the circumstances, is quashed and it is declared that the petitioner belongs to Koya Scheduled Tribe. Rule is made absolute in aforesaid terms with no orders as to costs."*

25. She further relies on the judgment of *Khan Namirah Khanum Abdul* (supra). Following are relevant observations in paragraph no. 9 :

*"9. It is stated that the Government of Maharashtra notified that Scheduled Tribes and there is no restriction as far as religion is concerned. Thus, scheduled tribe can be belonging to Muslim religion. It is , therefore, apparent that instructions were received by the*

*Government of Maharashtra to issue caste certificates and the scheduled tribe candidate was allowed to avail of the concessions and benefits meant for the scheduled tribe in education, employments and elections.”*

26. We therefore derive support from the judgments referred the above for holding that a member of ‘Takankar’ scheduled tribe can be from the Muslim religion. Muslim or Islam Takankar cannot be said to be a contrary entry. In this regard, one Dr. Shaikh M.W.H., President of TIDE Teachers’ Association solicited information from the Research Officer, Tribal Research and Training Institution, State of Maharashtra and the information was supplied that ‘Muslim Takankar’ has not been deleted from entry no. 38 just on the basis of religion. This information is referred to in paragraph no. 12 of the impugned judgment. We, therefore, do not approve the submission of learned AGP in this regard.

27. It is submitted by learned AGP that the government resolution dated 19.07.2014 was issued inserting an entry of ‘Takankar’ at serial no. 22 as Special Backward Class A categories. It is tried to argue that ‘Takankar’ falls into a special backward class – A category and not a scheduled tribe. This argument is refuted by learned counsel Ms. Pradnya Talekar by referring to the judgment of the co-ordinate bench in the matter of Pandurang Rangnath Chavan (supra). In that matter, the petitioner was claiming to be ‘Thakar’ belonging to the scheduled tribe as specified by the President of India after consultation with the

Governor of State in accordance with provisions of Article 342 of the Constitution of India. The government issued G.R. dated 08.07.1982 declaring Thakar at entry no. 200 as other backward class. The following observations in paragraph no. 22 are useful :

*“22. In view of the voluminous evidence that is produced before us, and in the light of the decision of the Apex Court in (i) Palghat Jilla Thandan Samudhaya Samrakshna Samithi V. State of Kerala, (1994) 1 SCC 359 and (ii) Pankaj Kumar Saha V. Sub-Divisional Officer, Islampur, (1996) 8 SCC 264, we are of the view that the petitioner is entitled to be declared to be belonging to the Scheduled Tribe of Thakar. The matter is pending in this court since 1991. No useful purpose would be served by sending the matter back, in view of the decisions of the Apex Court which make it clear that once the tribe has been declared by a parliamentary enactment to be a Scheduled Tribe, there is very little scope for the State or even for this Court to inquire into the matter or to include in or exclude from or to substitute or to declare synonym to be a Scheduled Caste or a Scheduled Tribe. No inquiry can be held or evidence led to determine whether or not a particular community falls within it or outside it. The S.T. Order has to be applied as it stands. Since the Thakars have been entered under Entry 44 of the 1976 enactment to be a Scheduled Tribe and the documentary evidence*

*on record clearly shows that the petitioner belongs to the Scheduled Tribe of Thakar, the petitioner will be entitled to succeed.”*

28. We propose to follow the above ratio and accept the submissions of learned counsel for the petitioner. It is not permissible to hold that ‘Takankar’ is not a scheduled tribe but a Special Backward Class – A.

29. Considering our reasoning stated above, we are of considered view that the impugned judgment and order of the respondent scrutiny committee is unsustainable and liable to be quashed. However, in future, if the committee proposes to conduct reverification of the validity certificate of blood relatives of the petitioner then the validity certificate which would be issued to the petitioner can be made co-terminus. Hence, we pass the following order :

#### **ORDER**

- i. Writ Petition is allowed partly.
- ii. The impugned judgment and order passed by respondent no. 2/Scrutiny Committee dated 17.10.2024 is quashed and set aside.
- iii. The respondent no.2/Scrutiny Committee shall issue the tribe claim certificate forthwith. The same shall be subject to the outcome of re-verification if proposed by respondent no. 2/Scrutiny Committee.

- iv. Parties to act on an authenticated copy of this order.

[ SHAILESH P. BRAHME, J. ]

[ S.G. MEHARE, J. ]

Thakur-Chauhan/-