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

WRIT PETITION NO. 13809 OF 2021

Gorakhnath s/o Baliram Wagwad,
Age: 41 years, Occu: Service,
R/o. Marwali, Tq. Naigaon (Kh.),
District Nanded

....PETITIONER

VERSUS

- 1) The State of Maharashtra,
through Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32
- 2) Schedule Tribe Certificate
Scrutiny Committee,
Nashik Division, Nashik,
through its Member Secretary
- 3) Schedule Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad,
through its Member Secretary
- 4) Zilla Parishad, Hingoli,
District Hingoli
through its Chief Executive Officer
- 5) Zilla Parishad, Nanded,
District Nanded,
through its Chief Executive Officer

....RESPONDENTS

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Mr Mahesh S. Deshmukh, Advocate for petitioner

Mr Amar V. Lavte, A.G.P. for respondent Nos.1 to 3/State

Mr Shaikh Parvez, Advocate h/f Mr S. B. Pulkundwar, Advocate for
respondent Nos.4 & 5

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**CORAM : MANGESH S. PATIL
AND
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 24th January 2025

JUDGMENT (PER : Prafulla S. Khubalkar J.)

1. Heard learned advocates for respective parties.
2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
3. Challenge is raised to the order dated 30/05/1998, passed by respondent No.2/ Scheduled Tribe Certificate Scrutiny Committee, Nashik in a proceeding under Section 7 of the Maharashtra Act No.XXIII of 2001, by which petitioner's claim for 'Koli Mahadev' Scheduled Tribe is invalidated.
4. By the impugned order, the caste scrutiny committee has observed that the petitioner has failed to establish his caste claim on the basis of documentary evidence as well as on account of failure to prove affinity with 'Koli Mahadev' Scheduled Tribes. Although the committee has referred to a number of documents submitted by the petitioner including the documents of pre-independence era, however,

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it has concluded that those documents cannot be conclusively relied upon in view of residence of petitioner's family being not from the scheduled area.

5. Advocate Mahesh Deshmukh learned counsel for petitioner has vehemently argued that the petitioner's claim ought to have been validated in view of the documents of high probative value relied upon by him and in view of the validity in favour of his close blood relatives. He has placed heavy reliance on validity of petitioner's brother Navnath Baliram Wagwad, daughter Madhavi Gorakhnath Wagwad and his nephew Sujeet Navnath Wagwad. It is submitted that the validity was granted to these blood relatives by following the due procedure and in view of validation of their claims, the petitioner's claim needs to be validated on this sole count. As regards the affinity test, it is submitted that the inference of the respondent committee is erroneous and is general in nature and demonstrates erroneous approach. He has relied upon the order dated 07/07/2023 in the matter of Madhavi Gorakhnath Wagwad Vs. State of Maharashtra and others in Writ Petition No.10954/2022, allowing petition of Madhavi granting her validity.

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6. Advocate Mr Lavte, learned A.G.P. for respondent Nos.1 to 3 and learned advocate Mr Shaikh Pirzade for respondent Nos.4 and 5 have strongly opposed the petition raising several grounds. They have vehemently submitted that the petition is liable to be dismissed on account of delay and laches since the impugned order dated 30/05/1998 is challenged in the year 2021 without any justifiable reason. They have also submitted that the validity in the matter of Navnath Baliram Wagwad, Madhavi Gorakhnath Wagwad and Sujeet Navnath Wagwad cannot be conclusively relied upon since the petitioner was required to prove his claim independently since burden to prove caste claim lies upon the candidate as per Section 7 of the Maharashtra Act No.XXIII of 2001.

7. To overcome of opposition on the point of delay and laches, learned advocate for the petitioner has relied upon the observations of this court in the judgment dated 04/04/2007 in Writ Petition No.8374/2006 in the matter of **Sudhakar Gunarao More Vs. S.T.C.C. Committee, Nashik and others**, which was also relied upon judgment of this court dated 25/11/2010 in Writ Petition No.3457/2010 (Suraj Fulchand Balvant Vs. Scheduled Tribe Certificate Scrutiny Committee, Aurangabad).

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8. During the course of hearing, the original record in the matter of Madhavi Gorakhnath Wagwad and the petitioner were made available for our perusal. We have considered the rival contentions and perused the records.

9. Before we delve into the merits of the matter, the issue of delay and laches needs to be carefully considered. It is undisputed fact that the impugned order is challenged in the year 2021, which is after a substantially long period. There is delay on the part of the petitioner in approaching this Court. Petitioner has averred in the petition that his employment as Shikshan Sevak was against General (open) category seat and since he did not avail of any benefit on the basis of being member of scheduled tribe, he had not challenged the impugned order earlier. True it is, there is substantial delay on the part of petitioner, however, material issue is whether the delay is intentional and further, whether any prejudice is caused to the respondents on account of failure to raise immediate challenge. Issue is with respect to decision of social status of the petitioner, which is crucial for his entire family. It has also to be noted that after the invalidation of his claim, the petitioner has not availed any benefit based on his social status and therefore, no intention can be attributed to him only on account of

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delayed challenge. As the issue is about his social status, which has far-reaching consequences, it will not be in the interest of justice to adopt a hyper technical approach and nonsuit the petitioner on this count alone.

Our view is fortified by the observations of this court in paragraph No.7 of the judgment dated 04/04/2007 in Sudhakar Gunarao More (supra), which is reproduced below :-

“7. It is true that on earlier occasion, the decision is rendered by the Committee on 16.06.1994, whereas the petitioner has raised challenge to the said decision in the year 2006. There are latches on the part of the petitioner in approaching this Court. However, as the petitioner has not taken any benefits in respect of his tribe claim while prosecuting his studies nor has claimed any benefits in respect of employment, it would be appropriate to afford an opportunity to the petitioner to establish his status claim. As the matter relates to the social status of the petitioner which will have far reaching consequences and not only the petitioner but the future generations are also likely to be affected because of determination of status claim, we find it appropriate to entertain the challenge raised by the petitioner, though belatedly, in view of the peculiar circumstances stated above.”

10. Pertinent to note, challenge to an order of invalidation is not an adversarial litigation. The issue is about petitioner's social status, which he is entitled to agitate for the purpose of claiming benefits. Although the candidate is required to be vigilant in raising

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challenge, however, in absence of any prejudice being caused to the respondents, the petitioner cannot be non-suited on account of delay and laches. Allowing a candidate to raise delayed challenge to his invalidation will at the most give him an opportunity to establish his social status. At the same time, in case, on account of delayed challenge, any prejudicial situation arises like creation of rights in favour of others by way of employment, election or otherwise, then of course the issue of delay will have to be given due consideration. In the instant case, since the petitioner has not claimed any benefit of his category despite order of invalidation of 1998, the challenge raised in the year 2021 need not be negated on that count. Petitioner has demonstrated that although he was not in need of validity certificate for his employment, however, failure to challenge the order of invalidation may attract severe consequences touching the rights of his family members. On careful consideration of the entire issue, we are of the view that, although challenge is raised belatedly, the petition needs to be entertained.

11. As regards the reliance placed on validity certificates of close relatives of the petitioner, the relationship of the petitioner with Navnath Baliram Wagwad being real brother brother, Madhavi

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Gorakhnath Wagwad as daughter and Sujeet Navnath Wagwad as nephew is not disputed. In view of the validity certificates in favour of these persons, the petitioner's reliance on their validities appears to be genuine.

12. Further, the petitioner has adverted our attention to the recent judgment dated 07/07/2023 in Writ Petition No.10954/2022 in the matter of Madhavi Gorakhnath Wagwad (supra) and submitted that in view of the validation of claim of his daughter, his claim also needs to be validated. Perusal of the original record in the matter of Madhavi Gorakhnath Wagwad, makes it clear that the claim of Madhavi was decided by following due procedure, pertinently, on the basis of vigilance cell report dated 30/06/2021. As laid down in the judgment of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others, [AIR 2023 Supreme Court 1657]**, the scope of enquiry in case of validities of blood relatives is about compliance with due procedure and therefore the petitioner is entitled to rely upon and derive benefit of the validity of Madhavi.

13. Thus, considering the validity certificates of petitioner's close blood relatives, view of the position of law settled by the authoritative pronouncement of the Hon'ble Supreme Court in the

matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra) and the judgment of this Court in the matter of **Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, [2010 (6) Mh. L.J. 401]**, the petitioner is also entitled to validation of his claim. However, since the committee has observed that certain other documents were not considered while deciding the claim of Madhavi, the decision to grant validity to Madhavi was made subject to outcome of decision in the matter of Navnath Baliram Wagwad, and therefore, the petitioner's claim also need to be made co-terminus with that of Madhavi and Navnath. Therefore, in view of the judgment of the Principal Seat in the matter of **Shweta Balaji Isankar vs. The State of Maharashtra and others, [2018 SCC OnLine Bom 10363]** (Writ Petition No.5611/2018), the claim of petitioner needs to be validated making it subject to outcome of the validities which the committee has decided to reopen.

14. Hence, we pass the following order:-

- (a) The writ petition is partly allowed.
- (b) The impugned order dated 30/05/1998, passed by respondent No.2/scrutiny committee is quashed and set aside.

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(c) Respondent No.2/scrutiny committee is directed to immediately issue validity certificate to the petitioner of 'Koli Mahadev' Scheduled Tribe, which shall be co-terminus with the validity of Madhavi Gorakhnath Wagwad and Navnath Baliram Wagwad.

(d) The petitioner shall not claim any equities.

15. Rule is made partly absolute in above terms.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)

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