



IN THE HIGH COURT OF JUDICATURE OF BOBBY
BENCH AT AURANGABAD

WRIT PETITION NO. 3585 OF 2006

Balaji Baburao Yamalwad,
R/o Takali (Kh.), Post Atkali,
Taluka Biloli, Dist. Nanded. PETITIONER

VERSUS

- 1] The State of Maharashtra
- 2] The Scheduled Tribe Certificate
Scrutiny Committee, through its
Member Secretary, Aurangabad.
- 3] Collector, Nanded.
- 4] The Tahsildar, Biloli. RESPONDENTS

AND

WRIT PETITION NO. 3586 OF 2006

Kumari Sangita Baburao Yamalwad,
R/o Takali (Kh.), Post Atkali,
Taluka Biloli, Dist. Nanded. PETITIONER

VERSUS

- 1] The State of Maharashtra
- 2] The Scheduled Tribe Certificate
Scrutiny Committee, through its
Member Secretary, Aurangabad.
- 3] Collector, Nanded.
- 4] The Tahsildar, Kandhar,
District Nanded.
- 5] The Metron, Government Nursing
College, Ahmednagar. RESPONDENTS

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Shri A.S. Bayas, advocate with Ms. Rashmi Gaur,
advocate, for the petitioner in both writ petitions.
Shri M.S. Deshmukh, advocate for respondent No.2
in both writ petitions.
Shri K.M. Suryawanshi, AGP for respondents No. 1,
3 and 4 in writ petition No. 3585/2006 and for
respondents No. 1, 3, 4 and 5 in writ petition
No. 3586/2006.

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[CORAM: N.V. DABHOLKAR
M.G. GAIKWAD, JJ.]
DATE : 12th October, 2007

ORAL JUDGEMENT [PER : N.V. DABHOLKAR, J.] :

1] Heard learned counsel, appearing on behalf of respective parties.

2] Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, petition is heard finally.

3] The two petitioners are the real brother and sister and they have approached this court feeling aggrieved by the orders passed by the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad Division, Aurangabad on 13-09-2005 thereby invalidating the tribe claims of both the petitioners, claiming to belong to Scheduled Tribe "Mahadeo Koli". The claims were referred to the Scrutiny Committee by the Educational Institutions i.e. the Principal, Degloor College, Degloor, District Nanded on 26-12-2002.

4] Both the claims can be conveniently considered together because the evidence produced by both the applicants/petitioners before the Vigilance Cell and/or the Scrutiny Committee and the reasons recorded by the Scrutiny Committee for invalidating the tribe claims are identical.

5] We are referring to the documents from Writ Petition No. 3586/2006 pertaining to sister Sangita

because the claimants have produced one more affidavit of Shri Balaji Ramesh Yamalwad saying that he is real cousin of applicant/petitioner Balaji, son of, and Sangita, daughter of Baburao Yamalwad. It appears that the tribe claim of said Balaji Ramesh Yamalwad is validated by the Scrutiny Committee and he is declared to be a person belonging to Scheduled Tribe Mahadeo Koli by order dated 19-04-2003. An affidavit is accompanied by a copy of validity certificate as also genealogy to the reply filed on behalf of the Scrutiny Committee in writ petition No. 3586/2006.

6] Having gone through the impugned order, it is evident that as many as fourteen documents were produced by the petitioner pertaining to themselves or their close relatives. We may say that the documents included school records of the applicants/petitioners, school record of their brother Ramrao, caste certificates issued to them by the Executive Magistrates, xerox copy of service-book record of their father Baburao Hanmantrao Yamalwad, caste certificate issued to father by Tahsildar, Mukhed on 13-06-1978 and one school leaving certificate issued by the Principal, Shivaji Mahavidyalaya, Udgir bearing Transfer Certificate (T.C.) No. 499 pertaining to father of the petitioners. Date of admission of the father of petitioners in the said school was 15-06-1971 and in which, caste is mentioned as

"Mahadeo Koli". No doubt, all these documents either certificates issued or the school record of both the petitioners, their brother Ramrao and father stated their caste to be "Mahadeo Koli", but the document earlier of these documents is pertaining to school record of father which is of dated 15-06-1971.

. There is a list of as many as twenty eight documents pertaining to relatives of the petitioners and wherein caste is stated either "koli" or "koli kalal". Only in case of two relatives, namely, Vivek Baburao Yamalwad and Govind Satwa Yamalwad, caste is stated to be Hindu Mahadeo Koli.

7] In fact, it is the school record of the father of the petitioners which has created greatest obstacle in the path of validation of tribe claims of the petitioners. In the file of the Scrutiny Committee, at pages No. 67 and 91, there is school record pertaining to entry regarding the father of the petitioners, namely, Baburao Hanmantrao Yamalwad, which is the school record of Zilla Parishad Primary School, Gavan, Taluka Jalkot, District Latur. It shows that entry regarding admission of father of the petitioners is at serial No. 98. The birth date is shown as 28-01-1948. Admission is said to be on 09-07-1956 and the caste column shows the caste to be "Mudira". In fact, in this record, surname "Yamalwad"

is not written in the column of surname, but this is not the only entry. There are other entries also wherein surname is not written and therefore, we are not inclined to look to the record with disbelief. In fact, name of the father of the petitioners appears at serial No. 5 on the page wherein five names are registered and all others are shown as surnamed "Yamalwad".

. The other school record of father of the petitioners is at file pages No. 87 and 89 pertaining to Balaji which is a copy of transfer certificate and admission register from Shivaji Mahavidyalaya, Udgir. The transfer certificate is dated 24-05-1974. In this record, the birth date is shown to be 28-01-1951 and the caste is shown to be "Mahadeo Koli". However, admission of father of the petitioners is dated 15-06-1971. Prior to that, at file page 85, is the extract of admission register of Sevadas Vidyalaya, Vasantnagar Kotgyal, Taluka Mukhed, District Nanded pertaining to father of the petitioners, namely, Yamalwad Baburao Hanmantrao. Here, the date of birth is shown to be 28-01-1951 and the father was admitted on 11-07-1966. Thus, this seems to be the second school which was attended by the father for his education in 8th standard and thereafter. Here, the caste is recorded as "Mahadeo Koli". We are afraid if the entry at page No. 67 is taken into account and

the petitioner and his father have not disputed of father having attended Zilla Parishad Primary School, Gavan, Taluka Jalkot, the entry in the Primary School is the first in time and that was on 09-07-1956. The caste of the father recorded therein must have been recorded as per the information given by grandfather of the petitioners or grandmother of the petitioners, whoever accompanied the child to the school in July, 1956. Although it was tried to be urged by learned counsel for the petitioners that single adverse entry cannot stand on the face of so many favourable pieces. We are afraid, single adverse entry is older in time. Subsequent entries must be on the information given by Baburao Hanmantrao Yamalwad at the time of admission to children (applicants/petitioners) to the school. Even the certificates issued by the Executive Magistrate must be on the basis of the affidavits and applications presented by Baburao Hanmantral Yamalwad, but the entry regarding caste of Baburao Hanmantrao as in the school record must be as per the information given by his father. No doubt, there is variance in the birth date of Baburao as recorded by the two schools. It is evident that at the time of admission to High School, the father is shown younger by three years. Age being shown on the lower side is always beneficial to the individual who is shown younger. He can enter the service at an early stage. This is because for entry into Government service, completion

of age of 18 years is ordinarily compulsory. Because of this variance, we are not inclined to draw extreme inference that entry in the record of Zilla Parishad Primary School, Gavan is pertaining to someone else and not pertaining to father of the applicants/petitioners. It is not the case of the applicants that there was any other individual with similar name Baburao Hanmantrao Yamalwad at village Gavan, Taluka Jalkot, District Latur.

8] Learned counsel for the petitioners has placed heavy reliance upon the affidavit of Balaji Ramesh Yamalwad and validity certificate issued to him by the Scrutiny Committee on 19-04-2003. The affidavit is at paper-book page 51 and this affidavit also gives genealogy. According to genealogy provided by the affiant Balaji Ramesh Yamalwad, his father Ramesh is son of Maroti, his grandfather Maroti is son of Vyankoba. As per genealogy given at paper-book page 52, Vyankoba is common ancestor. So far as other branch, Hanmant is other son of Vyankoba and thus real brother of Maroti. Baburao is son of Hanmantrao and applicant/petitioner Balaji is son of Baburao. Thus, applicant/petitioner Balaji Baburao Yamalwad and Balaji Ramesh Yamalwad, both are shown to be great grandsons of common ancestor Vyankoba by two parallel branches. Ramesh Maroti Yamalwad, son of Maroti Vyankoba Yamalwad thus would be nephew of

Hanmant Vyankoba Yamalwad i.e. nephew of grandfather of applicant/petitioner Balaji.

. In order to demonstrate that this affidavit is not relied upon, learned advocate Shri M.S. Deshmukh for the Scrutiny Committee has produced for our perusal together with affidavit of Shri S.B. Pongle, Research Officer of the Scrutiny Committee, a copy of statement of Ramesh Maroti Yamalwad, father of affiant Balaji Ramesh Yamalwad, from the file of the affiant wherein material on the basis of which validity certificate is issued to affiant Balaji Ramesh Yamalwad, Ramesh Yamalwad has stated that he is uneducated, his grand-parents and parents were residents of Gavan, Taluka Jalkot. They all were uneducated. He has stated "

i.e. I have no paternal uncle, but we have one brother. In the genealogy, given by affiant Balaji Ramesh Yamalwad, we may not find fault because brother of Ramesh is not indicated in this genealogy since it was written for a limited purpose of showing relationship between the applicants/petitioners Balaji and Sangita on one side and affiant Balaji on the other. But if this genealogy is correct, Ramesh has a paternal uncle, namely, Hanmantrao Vyankoba Yamalwad, Ramesh's father Maroti and said Hanmant being two sons of common ancestor Vyankoba. However, according to

Ramesh Yamalwad, he has no paternal uncle. If this statement of Ramesh is taken into consideration, the genealogy must be looked with disbelief.

9] We are, therefore, convinced that although school leaving certificate of both petitioners, their brother and to some extent their father showed their caste as "Mahadeo Koli", the oldest entry in the school record regarding admission of father of the petitioners recorded his caste to be "Mudira". This single piece of evidence, which entry is of the year 1956, cuts across all subsequent evidence. This is because subsequent entries in the school record or subsequent caste certificates obtained from Executive Magistrates are based on the information furnished by father Baburao of both applicants/petitioners whereas caste of the father as recorded in his Primary School record is on the basis of the information, most probably, as given by father of Baburao. We have no hesitation to consider the oldest entry regarding caste of the father as recorded in the Zilla Parishad Primary School at the time of admission of the father to that school in July, 1956, as a very strong and weighty piece of evidence capable of demolishing evidentiary value of documents produced by the petitioners which are recorded at serial Nos. 1 to 14 in the order of the Scrutiny Committee. So far as list of names of 28 relatives of the petitioners which

includes two items pertaining to father of the petitioners and which we have already discussed hereinabove so far as remaining 26 are concerned, they are said to be relatives of the petitioners from maternal side and caste recorded is either "koli" or "kalal koli" in all the cases except three i.e. Kondiba Narsing, Vivek Baburao and Govind Satwa. The direct relationship of the two individuals out of these three is not demonstrated at all.

10] We, therefore, feel that in entry in the school record of the father of the petitioners when he was admitted in Primary School speaks against the claim of the petitioners belonging to Scheduled Tribe, the affidavit and validity certificate of Balaji Ramesh Yamalwad tried to be relied upon is not available as support to the petitioners because by virtue of statement of Ramesh, father of the affiant, it is evident that the affiant is not cousin of applicants/petitioners as stated in the affidavit. We, therefore, find no fault with the order of the Scrutiny Committee. It has taken a reasonable view on the basis of material available on record and the orders passed by the Scrutiny Committee, therefore, call for no interference.

11] In the circumstances, therefore, both writ petitions are dismissed, with no order as to costs.

Rule is discharged accordingly.

[M.G. GAIKWAD]
JUDGE

[N.V. DABHOLKAR]
JUDGE

NPJ/WP3585-3586-06