



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 7934 OF 2006

Balaji s/o Mohan Madewad

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

.....  
Shri A.S.Golegaonkar, advocate for the petitioner  
Smt. S.B.Wadmare, A.G.P. for respondent nos. 1, 3 and 4  
Shri M.S.Deshmukh, advocate for respondent no.2  
Shri A.N.Nagargoje, advocate for respondent no.5  
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W I T H

WRIT PETITION NO. 3382 OF 2007

Yashwant s/o Mohan Madewad

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

.....  
Shri S.M.Vibhute, advocate for the petitioner  
Smt. S.B.Wadmare, A.G.P. for respondent nos. 1 and 3  
Shri M.S.Deshmukh, advocate for respondent no.2  
Shri V.S.Panpatte, advocate for respondent no.4  
Shri A.N.Nagargoje, advocate for respondent no.5 and 6  
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CORAM : P.V.HARDAS  
AND  
N.D.DESHPANDE, JJ.

DATED : 28.8.2008

PER COURT :

1. Writ Petition No. 7934 of 2006 has been filed by the petitioner, who takes exception to the order of the respondent/scrutiny committee, dated 4.11.2006

invalidating the tribe claim of the petitioner as belonging to Mahadeo Koli Scheduled Tribe. Writ Petition No. 3382 of 2007 has been filed by the petitioner, who takes exception to the order of the respondent/scrutiny committee, dated 28.5.2007 invalidating the tribe claim of the petitioner therein. Since both the petitioners are related inter-se i.e. they are brothers, these petitions are being decided by this common order.

2. Such of the facts, as are necessary for decision of this petition, may be stated as under.

. Petitioner Balaji s/o Mohan Madewad i.e. petitioner in Writ Petition No. 7934 of 2006 had his claim referred to the respondent/scrutiny committee. Since the tribe claim of the petitioner has been invalidated, earlier the petitioner had filed Writ Petition No. 8189 of 2005 and this Court had remitted the matter back to the respondent/scrutiny committee for decision afresh. In support of his claim as belonging to Koli Mahadeo Scheduled Tribe, the petitioner Balaji produced various documents which are enlisted in the order of the respondent/scrutiny committee. The respondent/scrutiny committee upon examination and evaluating various documents found that the school

record pertaining to the father and brother of the petitioner i.e. Yashwant - petitioner in Writ Petition No. 3382 of 2007, militated heavily against the claim set up by the petitioner as belonging to Mahadeo Koli Scheduled Tribe. The respondent/scrutiny committee also found that the petitioners have not been able to establish by impeccable documents that they belong to Koli Mahadeo which is recognized as a Scheduled Tribe. The respondent/scrutiny committee also found that the petitioners have utterly failed to prove their affinity and ethnic linkage towards Mahadeo Koli Scheduled Tribe.

3. Mr. Golegaonkar, learned counsel appearing on behalf of petitioner Balaji has urged before us that the respondent/scrutiny committee has not evaluated the documents, namely validity granted to the relative of the petitioner by name Deelip Namdeo Madewad and validity granted to another relative by name Vithabai Chandar Madewad. According to the learned counsel for the petitioner, these documents unimpeachably establish that the petitioner belongs to Mahadeo Koli Scheduled Tribe. In support of this plea, the learned counsel for the petitioner has invited our attention to the document by which validity has been granted to Vithabai Chandar Madewad. It is further stated that Vithabai had sworn an affidavit and on oath had produced the genealogy.

Similarly, our attention had also been invited to the validity granted to Deelip Namdeo Madewad and the affidavit sworn by him, as also the genealogy which has been proved by said Deelip. It is, therefore, urged before us that since the genealogy has been proved, the respondent/scrutiny committee ought to have accepted implicitly the aforesaid documents and the order of the respondent/scrutiny committee, therefore, stands vitiated for non-consideration of the aforesaid documents in their proper perspective. It is also stated before us that the report of the vigilance cell is also supporting the case of the petitioner and in respect of certain tampered entries relating to the father and brother of the petitioner, the petitioner had submitted his reply pointing out that the report of the vigilance cell does not disclose the date and the author of the aforesaid tampering in the school register and in the absence of that no reliance at all could have been placed on the said tampering. It is further urged before us that the tabular form of the relatives denoting their caste and date of admission is misleading as in the tabular extract, first entry relates to one Mohan Balaji, who is shown as father and said person is obviously not the father of the petitioner. The name of the father of petitioner is Mohan Laxman Madewad and consequently the reliance placed upon the entry in

respect of Mohan Balaji ought not to have been relied upon by the respondent/scrutiny committee.

4. Mr.Deshmukh, learned counsel appearing on behalf of respondent/scrutiny committee has referred to the original registers which were called by this Court and on referring to the said original registers, the learned counsel appearing on behalf of the respondent/scrutiny committee has brought to our notice the entries relating to the admission of father and brother of the present petitioner. It is urged before us that these basic entries relating to father and brother of the petitioner show that the word "Mahadeo" has been added subsequently. It is also urged before us that the petitioner has not been able to establish and prove the genealogy. It is also urged that the genealogy tendered by Deelip and Vithabai are irreconcilable and they are not identical and in such circumstances, the respondent/scrutiny committee cannot be faulted for not placing reliance on the said genealogy and the validity certificates. It is also urged before us that since the basic documents militate heavily against the claim set up by the petitioner as belonging to Mahadeo Koli Scheduled Tribe, merely because some relatives have been granted validity certificate would not be a sole ground on which the claim of the petitioner could be said to be

validated.

5. In respect of Writ Petition No. 3382 of 2007, the petitioner herein is the real younger brother of the petitioner in Writ Petition No. 7934 of 2006. The petitioner Yashwant had produced various documents in respect of his claim as belonging to Koli Mahadeo Scheduled Tribe. One of the documents on which heavy reliance was placed by the petitioner, was a Urdu document, which is dated 1345 Fasli, that would be about 1945 A.D. It is stated that in the aforesaid document, which is of the year 1945 A.D., entry in respect of the caste of the grand-father of the petitioner has been recorded and the aforesaid entry shows that the grand-father of the petitioner belongs to Mahadeo Koli Scheduled Tribe. It is also urged before us that the respondent/scrutiny committee has not taken into consideration the validity granted to the relatives of the petitioner by name Deelip and Vithabai and the genealogy which has been produced by the said relatives in order to prove that they are related to the petitioner. It is also urged before us that the respondent/scrutiny committee has mechanically observed that the petitioner has failed to prove his ethnic linkage without discussing or giving reasons as to why answers given in response to questions posed by the

vigilance cell are ignored. It is also urged before us by Mr. Vibhute, learned counsel for the petitioner that the respondent/scrutiny committee has relied upon various documents submitted by the complainant. Copies of the documents submitted by the complainant were never provided to the petitioner and thus the petitioner was deprived of the advantage of submitting his explanation and rebutting the said documents.

6. Mr. Deshmukh, learned counsel appearing on behalf of the respondent/scrutiny committee has urged before us that the respondent/scrutiny committee has only made a reference to the documents submitted by the complainant and has not chosen to rely upon the same. However, even if those documents are ignored and are left out of consideration, the document pertaining to the admission extract of the father of the petitioner would clearly establish that the word, "Mahadeo" has been subsequently written in the column relating to the caste and since the basic document militates against the claim of the present petitioner, the other document, particularly the validity certificate would pale into insignificance. Mr. Deshmukh, learned counsel urged before that the Urdu document is a private document and not a registered document and in the absence of necessary proof in this regard, merely tendering of the

documents by the petitioner would not amount to proving the said documents. It is also urged on behalf of the respondent/scrutiny committee that the respondent/scrutiny committee evaluated the answers given by the petitioner in respect of various traits and customs relating to Mahadeo Koli Scheduled Tribe and has found that the answers do not conform to the traits and characteristics of Koli Mahadeo Scheduled Tribe. It is, therefore, urged that these petitions deserve to be dismissed.

7. Shri Nagargoje, learned counsel appearing on behalf of the original complainant and respondent to this petition, has supported the order of the respondent/scrutiny committee and has prayed dismissal of these petitions.

8. It is true that the validity granted to a close relative assumes great importance while evaluating the tribe or caste status of a candidate who sets up a claim as belonging to a particular caste or tribe. The validity granted to the relatives is certainly a weighty piece of evidence meriting great consideration and has also considerable persuasive value. This is so, because the scrutiny committee has already done the exercise of the validating the claim of the said relatives as



belonging to a particular caste or tribe. Since the said relatives have been able to establish by impeccable evidence as belonging to a particular caste or tribe, the subsequent claim set up by another relative would certainly be influenced by the earlier evaluation of the claim of the relative. However, the said document, as pointed out by us above, has a great persuasive value. It cannot be said that the scrutiny committee should mechanically accept the said document and by accepting the said document the caste claim of the candidate would be axiomatically validated. The candidate, whose claims as belonging to a particular caste or tribe, has to establish his claim. The concerned candidate is required to tender documents of impeccable character, so as to establish that he/she belongs to a particular caste or tribe. As pointed out by us above, the validity granted to a relative would assume great importance and would have persuasive as well as corroborative value to the claim set up by the concerned candidate.

9. While evaluating whether a candidate belongs to a particular caste or tribe, certain basic documents assume great importance. The aforesaid basic documents could be said to be one relating to the caste or tribe of the father, uncle, grand-father, etc. If basic

documents militate against the tribe or caste claim set up by the candidate, the validity granted to a relative, no doubt by a duly constituted scrutiny committee, would not supersede the basic documents of the concerned candidate. In other words, the validity granted to a relative would only have persuasive and corroborative value and would not mechanically lead the scrutiny committee to decide the validity. In the present case, what we find is that the basic document relating to the father of the petitioner is not above Board. At the insistence of the petitioners, the register was directed to be made available to the Court when the matter would be placed for admission. Accordingly, Mr. Panpatte, learned counsel appearing on behalf of respondent no.4 has made available, for our perusal, the said documents. Upon perusal of the said documents, we certainly find that the word, "Mahadeo" in respect of father of the petitioner appears to have been written at a point different and in different ink and by a different person than the person who had made the entry of "Koli". Similarly, upon perusal of the original registers relating to petitioner Yashwant, we also find that the word, "Mahadeo" has been subsequently written at different point and time and that too in different ink and pen. The handwriting is obviously different and, therefore, we cannot fault the respondent/scrutiny

committee for not placing implicit reliance and in fact, drawing an adverse inference against the petitioners in respect of the claim set up by them as belonging to Koli Mahadeo Scheduled Tribe.

10. Apart from this, we find the validity granted to Deelip and Vithabai would certainly have great persuasive value. Apart from the difference in the genealogy and upon careful perusal of the genealogy, we find that the genealogy produced by both the petitioners in respect of Deelip and Vithabai cannot be reconciled. Apart from the irreconcilability in the genealogy which have been produced, as pointed out by us above, the basic documents i.e. the documents relating to father of the petitioner and Yashwant i.e. the petitioner himself militate heavily against his claim. Therefore, in that light, the respondent/scrutiny committee cannot be faulted for the observations made by the respondent/scrutiny committee.

11. Turning to the Urdu document, on which reliance is placed, we find that it is a private document, which has been produced by the petitioner Yashwant in the proceedings before the respondent/scrutiny committee. Curiously, this document was not produced by the petitioner Balaji who is said to be elder brother of

Yashwant. Be that as it may, the said Urdu document is not a registered document. It is true that merely because the document is an unregistered document, would not be a ground for refusing to examine the said document. The question is in respect of authenticity of the document. A registered document has a certain presumption about its authenticity and genuineness, particularly as we are concerned in respect of verification of the tribe claim in respect of the date on which the said document is stated to have been executed. In the present case, as pointed out by us above, this is a private document, which is not a registered document. Apart from tendering the affidavit of the petitioner Yashwant, no other evidence has been led to establish the authenticity and the genuineness of the document, particularly the time or the period when the said document is alleged to have been executed.

12. Our attention has been invited to the observations made by the Division Bench of this Court in Sow.Shailaja w/o Chandrashekhhar Sangvikar @ Shailaja Gadgaiyya Swami Padsalage vs State of Maharashtra & ors., [2008 (3) ALL MR 638], to which one of us (P.V.Hardas, J.) was a member. The Division Bench by referring to the earlier Division Bench judgment has observed as follows :

" Even an unregistered document can be taken into consideration provided authenticity and genuineness of the document is established by as proper evidence. In the present case, apart from tendering the document, no efforts have been taken by the petitioner in leading evidence for establishing authenticity and genuineness of the document apart from mere filing an affidavit. "

We are in agreement with the observations made by the Division Bench of this Court in the said judgment. In the present case also, as noticed by us above, no efforts have been taken by the petitioners by leading evidence for establishing the authenticity and genuineness of the said document. The reason given by the respondent/scrutiny committee that it refused to take into consideration the document on the ground that it was a private and unregistered document, may at first blush appear to be incorrect. What the respondent/scrutiny committee intends to convey is that the said document has not been proved. We, therefore, as pointed out by us above, cannot fault the respondent/scrutiny committee for not placing reliance on the said document.

13. Turning to the submission of the learned counsel appearing on behalf of the petitioner that certain documents which have been tendered by the complainant, had not been provided to the petitioner, so as to enable

the petitioner to rebut the said documents. We are of the view that even if the said documents are left out of consideration, the petitioners have utterly failed to prove their tribe claim, particularly in view of the fact that in the school entries in respect of the father of the petitioner and the petitioner himself are not above Board, as the word, "Mahadeo" in both the entries appears to have been added subsequently. Similarly, merely because the respondent/scrutiny committee has not given details, nor has it discussed in detail the reasons as to why the petitioner has not been able to establish his affinity and ethnic linkage, according to us, would pale into insignificance. The petitioner himself is not able to establish his tribe claim by tendering basic documents.

14. Reliance is placed by the learned counsel for the petitioner on the judgment of the Division Bench of this Court in Writ Petition No. 7417 of 2007 dated 30.7.2008. This judgment, according to us, would not come to the aid of the petitioner. This judgment, therefore, can be distinguished on the facts of the present case.

15. Reliance is also placed by the learned counsel appearing on behalf of the petitioner on a judgment of

the Division Bench of this Court in Varsha Ramsing Dhanavat vs State of Maharashtra and others [2006 (4) Mh.L.J. 676], to urge before us that the validity granted to a relative is certainly a weighty piece of evidence and cannot be brushed aside.

16. We have already held above that the validity granted to a relative, no doubt, is a weighty piece of evidence, which has a great persuasive and corroborative value. For the reasons which we have given above, we have pointed out as to how the validity granted to the relative would not come to the aid of the petitioner in establishing that the petitioners belong to Koli Mahadeo Scheduled Tribe.

17. Reliance is also placed on the Division Bench judgment of this Court in Rajesh Jagdishrao Gode vs State of Maharashtra and others [2006 (4) ALL MR 131], to urge before us that the document would not have been brushed aside merely because it was a unregistered document. We have already pointed out above and we have also held on similar lines that the claim cannot be brushed aside merely because it was a unregistered document. In the present case, we have already observed that the petitioner has not been able to establish by leading necessary evidence that the Urdu document,

though private and unregistered, it has impeccable character warranting its acceptance and meriting implicit reliance.

18. For the reasons, which we have given above, we do not find any merit in both the petitions and both the petitions consequently are dismissed with no order as to costs. Interim relief granted to the petitioner in Writ Petition No. 3382 of 2007 to continue for a period of four weeks from today.

(N.D.DESHPANDE, J.)

(P.V.HARDAS, J.)

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