



1

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

WRIT PETITION NO.653 OF 2023

Prasad Laxmanrao Paratwad,
Shankar Prasad Nagar,
Bhagawati Nagar, Parli Road,
Gangakhed, Dist.Parbhani.
Age – 27 years, Occ – Student.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through Tribal Development
Department, Mantralaya, Mumbai-32.
2. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Aurangabad.
Through it's Deputy Director,
Plot No.10, Near Saint Laurence School,
Sector E-1, CIDCO, Aurangabad,
Dist.Aurangabad.
3. The Director,
Directorate of Medical Education
and Research, Government Hospital Building,
St. George's Hospital Compound,
Near V.T. Mumbai- 400001.
4. The Registrar,
Maharashtra University of Health Science,
Dindori Road, Nashik,
Dist. Nashik.
5. Dean,
Government Medical College,
Latur, Dist.Latur.

...RESPONDENTS

2

...

Shri V.D. Sapkal, Senior Advocate i/by Shri M.B. Karande,
Advocate for the Petitioner.

Shri S.G. Sangle, AGP for Respondents 1 to 3 and 5.

Shri A.S. Bayas, Advocate for Respondent 4.

...

**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

Reserved on :- 21st April, 2023

Pronounced on :- 28th June, 2023

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth the following prayer clauses C, D, E, F and G:-

“C) *By issuing appropriate writ, order, direction the order passed by the learned Scheduled Tribe Certificate Scrutiny Committee dated 28.11.2022 (EXHIBIT-M) passed in proceeding no. PBN/EDN/03/2014 may kindly be quashed and set aside.*

D) *To hold and declare that, the petitioner belong to Koli Mahadeo Scheduled Tribe and also direct Scrutiny Committee i.e. Respondent No. 2 to issue validity certificate in favor of the petitioner by issuing appropriate writ, order, direction as the case may be.*

- E) *Pending hearing and final disposal of the writ petition be pleased to stay the effect operation and implementation of the order dated 28.11.2022 of Respondent No. 2, Scrutiny Committee passed in proceedings no. PBN/EDN/03/2014.*
- F) *Pending hearing and final disposal of the writ petition direct the respondents not to take any coercive action against the petitioner in respect of the order passed by the learned Scheduled Tribe Certificate Scrutiny Committee dated 28.11.2022 passed in proceeding no. PBN/EDN/03/2014.*
- G) *The Respondents may kindly be directed to grant degree certificate for MBBS course completed by the petitioner by imposing nay (sic. "any") condition."*

3. By the impugned order dated 28.11.2022, the claim of the Petitioner of belonging to the "Koli Mahadev", Scheduled Tribe category, has been rejected by the concerned Scheduled Tribe Certificate Scrutiny Committee.

4. The Petitioner claims to be belonging to the "Koli Mahadev", Scheduled Tribe category. His school record indicates such entry on the basis of his father's (Laxman) entries. On 30.09.2013, he was selected for the MBBS first year course on the basis of his claim of belonging to the Scheduled Tribe category. His father is the only person in the family, who has received a validity certificate. No other member of the family

from the paternal side has received a validity certificate.

5. We have considered the extensive submissions of the Learned Senior Advocate on behalf of the Petitioner and the learned AGP on behalf of the Respondents. We have perused the original record which was also made available for the Petitioner's perusal. We have also taken on record the photostat colour copy of the disputed entries of the two persons in the family, namely, Laxman s/o Shankar (grand father of the Petitioner) and Ram s/o Shankar, his biological brother. The whole case before us revolves around these 2 seriously manipulated entries of these 2 ancestors. To avoid repetition, we are not reproducing their submissions separately.

DETAILS AS REGARDS THE PETITIONER'S FATHER

6. Laxman Shankarrao Paratwad (now deceased) is the father of the Petitioner. He received a tribe certificate on 23.08.1982. He relied upon the validity certificate of the son of his real aunt (*Aattya* in Marathi and *Buwa* in Hindi), for seeking a validity certificate. The order of the Committee dated 08.02.2011, granting him the validity certificate, is a cyclostyled order and the blank spaces have been filled in, by handwriting.

There are several blank spaces which are left blank in the said order thereby, indicating that the order had been kept ready in a cyclostyled form and issued mechanically, just by filling in the blanks.

7. The Petitioner's father has passed away and, therefore, it is the contention of the Petitioner that his father's case cannot be reopened for fresh scrutiny. It is further contended that a vigilance cell enquiry was conducted when his father's case was scrutinized and once such a vigilance cell enquiry is conducted while scrutinizing the case of his father, no further vigilance enquiry is required to be conducted in his case, in the light of paragraphs 19 to 24 of the recent judgment of the Honourable Supreme Court dated 24.03.2023, delivered in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. The State of Maharashtra and others, in Civil Appeal No.2502/2022,*** which read as under:-

“19. Sub-rule (2) of Rule 12 clearly provides that only if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other enquiry. Therefore, 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 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.

20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil. It lays down that the documents of the pre-Constitution period showing the caste of the applicant and their ancestors have got the 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.
21. In the impugned judgment in Civil Appeal No. 2502 of 2022 (Shilpa Vishnu Thakur's case), the Full Bench of the Bombay High Court has noted that people having the surname "Thakur" belong to both forward castes and various backward castes. Therefore, the Full Bench may be right in saying that in every case, only on the basis of the surname Thakur, it cannot be concluded by the Scrutiny Committee that the applicant belongs to Scheduled Tribe Thakur notified in the Entry

44 of the Maharashtra list. However, we must note that in the case of a person having the surname Thakur, there may be evidence in the form of entry of the name of the caste as a Tribe or Scheduled Tribe in the land records, school or college records or any official records concerning the applicant or his ancestors. Only on the ground that the persons having the surname Thakur may belong to a forward caste as well, it is not necessary that in every case, the Scrutiny Committee should send the case to Vigilance Cell. It all depends on the nature of the documents produced before the Caste Scrutiny Committee and the probative value of the documents. Therefore, whenever a caste claim regarding Thakur Scheduled Tribe is considered, the Caste Scrutiny Committee in every case should not mechanically refer the case to the Vigilance Cell for conducting an enquiry including affinity test. The reference to the Vigilance Cell can be made only if the Scrutiny Committee is not satisfied with the material produced by the applicant.

22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil's case or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact

relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of Kumari Madhuri Patil, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.

23. *In a given case, the Scrutiny Committee may be satisfied that the caste validity certificate relied upon by the applicant has been issued*

after making a lawful enquiry. But if the Scrutiny Committee is of the view that the applicant has not clearly established that the person to whom caste validity certificate produced on record has been granted is his blood relative, in terms of sub-rule (2) of Rule 12 of the ST Rules, the Caste Scrutiny Committee will have to refer the case for conducting an enquiry through Vigilance Cell. In such a case, the Vigilance Cell can be directed by the Scrutiny Committee to conduct an enquiry limited to the relationship claimed by the applicant with the person in whose favour the caste validity certificate has been issued. If, on the basis of the report of the Vigilance Cell, the Scrutiny Committee is satisfied that the person in whose favour caste validity certificate has been issued is a blood relative of the applicant and lawful enquiry has been conducted before issuing the validity certificate, the Scrutiny Committee will have to issue validity certificate even if the applicant does not satisfy the affinity test. For example, if it is established that the father or grandfather of the applicant has been given a caste validity certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee cannot hold that the grandfather or father of the applicant, as the case may be, belongs to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established, the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.

24. *As provided in sub-rule (7) of Rule 12 of the ST Rules, the Vigilance Cell's report is not conclusive. If on the basis of the report of the Vigilance Cell and other evidence on record, the Scrutiny Committee comes to a conclusion*

that the caste claim is genuine, a caste validity certificate can be issued. Only on the ground that the report of vigilance cell is in favour of the applicant, validity certificate cannot be mechanically granted without application of mind. If the report of the Vigilance Cell is against the applicant, his caste claim cannot be rejected only on the basis of the report of the Vigilance Cell without providing a copy of the report to the applicant and without giving him an opportunity of being heard on the report. After giving an opportunity to the applicant to make submissions on the report, the Scrutiny Committee may reject the caste claim. In a given case, the Scrutiny Committee can also record a finding that the caste claim is genuine. It all depends on the facts of each case.”

[Emphasis is supplied]

8. The learned Senior Advocate representing the Petitioner submits that once the claim of the Petitioner's father has been accepted by the Committee and the validity has been granted, the law laid down by this Court in ***Apoorva Vinay Nichale vs. The Divisional Caste Certificates Scrutiny Committee and others, 2010 (6) Mh.L.J. 401***, would become applicable. He refers to paragraphs 7 to 9, which read as under:-

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that

claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.

8. *Mr.Manohar, amicus curiae who assisted in the matter, submitted that the decision on the caste claim does not affect that person alone but has an impact on the future generation where the caste claim has been wrongly accepted or rejected. He, therefore, submitted that the committee must in all cases issue notice to the blood relatives who have wrongly or fraudulently obtained the caste certificate or obtained the certificate without jurisdiction in the committee to grant it and initiate proceedings to cancel that certificate. Referring to the decision in Indian Bank vs. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550 where the Supreme Court while dealing with a case under Consumer Protection Act, 1986 and the power of National Commission held that the Commission has inherent power to recall the judgment and order obtained by fraud. The Supreme Court further observed vide para 20 of the aforesaid judgment thus :*

"This plea could not have been legally ignored by the Commission which needs to be reminded that the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraus et jus nunquam cohabitant). It has been repeatedly said that fraud and deceit defend or excuse no man (Fraus et dolus nemini patrocinari debent)."

The position of law pointed out by the learned amicus curiae is undoubtedly correct but we are not called upon to decide whether the committee ought to have exercised such power in the present case.

9. *In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by Section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been done illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that*

the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner.”

[Emphasis is supplied]

9. The learned Senior Advocate then refers to the judgment dated 21.08.2019 delivered by this Court in ***Soham Arun Mandlik and others vs. The State of Maharashtra and others, Writ Petition No.8147/2019, Civil Appellate Jurisdiction, Mumbai, decided on 21st August, 2019*** and specifically relies upon paragraphs 4 to 9, 11 to 14, 15 to 18 and 23, which read as under:-

“4. The tribe in question is Koli Mahadev, a Scheduled Tribe. Claiming that they are belonging to this tribe and relying on the caste certificates issued in that behalf, they were mandated to approach this Committee for a validation of their claim. The plain and simple meaning of this is that underlying claim has to be scrutinized and verified by the competent Scrutiny Committee. In the scheme of Maharashtra Act No. XXIII of 2001 as also the Rules framed thereunder, these Committees perform a quasi-judicial function. In fact, one can safely say that as substitutes of Civil

Courts they have larger obligation and duty to perform. They have, therefore, been conferred with very wide powers and in the process of scrutiny and verification of the underlying claim, they can take assistance of the police machinery as well. There is a vigilance cell attached to these Scrutiny Committees. The Vigilance Cell assists the Scrutiny Committees by conducting what is popularly known as a home enquiry. The persons who approach these Committees seeking validation of their claim set out the details in the form of a genealogy and family tree. They set out the addresses of the villages and remote areas which were inhabited by the ancestors and forefathers. The Vigilance Cell visits the village, the primary schools and other educational institutions, if any, attended by these forefathers and ancestors and satisfies itself as to whether such a family with the members whose details are relied upon resided in the villages or resided in the areas and obtained benefits meant for the tribals.

5. *Needless to state that the status as Scheduled Caste and Schedule Tribe has been conferred after the Constitution of India and post-Independence. Therefore, pre-Independence documents have greater probative value. The presumption is that it would not possible to tamper with them or alter their contents easily, especially when they are in custody of public officials.*
6. *Apart therefrom, the object was not to visit with serious and severe consequences such claimants who are unfortunately not possessed of documents in relation to their ancestors. The presumption cannot be that every claim is false, bogus or not genuine. The presumption ought to be that when there is a caste certificate issued, that Caste or Tribe certificate carries with it a presumption, albeit a rebuttable one. No claimant says that the presumption*

underlying a Caste certificate is conclusive or that the veracity, genuineness or authenticity thereof can never be decided in the process of scrutiny and verification of the claim. The claim as a whole of belonging to a particular caste or tribe has to be, therefore, 'scrutinized', but strictly in accordance with law and bearing in mind that this is a quasi-judicial, though not a completely judicial, function.

7. *Yet, while the process is one of determining the authenticity, genuineness and veracity of the caste certificate in question, and though vested with powers of enquiry and examination, these Committees do not have before them a 'lis' properly so called. This is no adversarial proceeding of the kind known to our civil courts. There is no original jurisdiction, nor even an appellate jurisdiction. The remit of these Committees, with all their powers of investigation, is a limited one. It is limited to a scrutiny, and this necessarily means an examination. What exactly is to be scrutinized, and how, is also well-known. The nature of findings to be returned are also within well-established parameters and boundaries. Beyond these, no Scrutiny Committee may stray.*
8. *Given this, we expected to find these Committees acting responsibly. Instead, we have a truly alarming picture. There is no sense of regard to settled law, even binding decisions of this court. In that regard, we find all humility lacking in these members. The members of the Scrutiny Committee do not follow any discipline. They disregard orders passed by their brothers, saying that when these orders were passed and certificates of validity were issued, a proper and thorough enquiry was not conducted. After a caste validity certificate is issued to a member of the family from the paternal side, we do not know how this finding can be returned by another Scrutiny*

Committee which is scrutinizing and verifying the claim of another member of the same family. Therefore, we have startling results. A daughter is held to be a tribal, but her father is not. A son is held to be a tribal, but his father is not. A father is held to be a tribal, but his children are not. These Committees are not in the least perturbed by logical failures or inconsistencies or inherent contradictions in what they find. This is most frequent in the claims forwarded to the Scrutiny Committees at Nashik, Nandurbar, in the Vidharbha or Marathwada regions, and the Western Maharashtra region of the State. How it is possible for these Committees to disregard and disrespect the findings rendered and the conclusions reached by other Committees discharging identical functions has never been explained to us.

9. *This prelude was necessary because in this case as well this course has been charted by the Nandurbar Committee again. The justification that is provided is that though the petitioners relied upon the caste validity certificate issued to Arun Bharat Mandlik, the father of petitioner Nos. 1 and 2 and the real uncle of petitioner Nos. 3 and 4; a caste validity certificate dated 19th October 2004 issued in favour of Parag Prakash Mandlik, the first cousin of the petitioners (son of Prakash Bharat Mandlik, the real uncle of the petitioner); caste validity certificate dated 28th March 2008 issued in favour of Vijay Bharat Mandlik, father of petitioner Nos. 3 and 4 and real uncle of petitioner Nos. 1 and 2; a caste validity certificate dated 28th March 2008 issued in favour of Prakash Bharat Mandlik, the real uncle of the petitioners; and an affidavit duly and properly affirmed establishing and proving the relationship, the genealogy and family tree, still in the mission that the Committee*

undertook, it held against them. It did so on a solitary ground: that in this family, Bharat Motiram Mandlik was the paternal grandfather of all the petitioners. He was the father of the petitioners' fathers. In his primary school leaving certificate, a pre-Independence document, the caste was entered not as Koli Mahadev. There was a later insertion or correction. This was held by the Committee to be an interpolation or tampering in this certificate dated 30th June 1945. Therefore, according to this Committee, all the certificates of validity relied upon by the petitioners were automatically of no probative value. They had, therefore, to be discarded. It seemed not to matter one bit to this Committee that some of these certificates on which the Petitioners relied were issued by binding judgments of this Court."

- "11. Now, it has been repeatedly held by this Court that the reasoning in paragraphs 1, 2 and 3, reproduced above, cannot be sustained. The Committee saw that the petitioners' grandfather attended a school, and in his primary school certification, the admission and school-leaving records, or the general registers maintained by such primary schools way back in the year 1937 and 1941, the entries in the caste column are Ahir Koli and Koli Ahir. The Committee enlightens us by saying that Koli Ahir is not a tribe or a scheduled tribe but it is a Special Backward Class.*
- 12. Then it says that these entries were clear. How did the petitioners' grandfather dare to approach the local school board? Under what authority were the earlier entries scored out, with, in 1945, an insertion Koli Mahadev Scheduled Tribe? The Committee said this was not explained to it. We will put it bluntly and plainly. The Committee is not entitled to any*

such explanation. It cannot call on a candidate in 2019 to explain an entry made in 1945 or earlier. The Committee is entirely in error if it feels it can go back into the 1930's and 1940's to find out whether there was any authority or jurisdiction in the gentleman who made these insertions or who cancelled the earlier entries and inserted the words 'Koli Mahadev' against the caste column. The Committee concluded that this substitution or alteration therefore has no support or backing of law, and this was got-up evidence or fraudulent. In fact, in our view, it is the Committee's conclusion that has no support or backing of law.

13. What is far more interesting that what the Committee says is what it does not say. The committee does not say that the fathers of the petitioners who obtained the caste validity certificates earlier are responsible for such alterations, insertions and depicts after 1945. In other words, there is no finding returned that the petitioners or their fathers were responsible for any such alleged fraud. The members of the family are thus not prima facie guilty of any forgery or fraud. Undeterred by this gaping hole in logic and common sense, the Committee presses on regardless. It proceeds to hold that the petitioners are guilty of suppression of material facts, and therefore these certificates of validity in their favour lose all probative value. Once again the suppression of material facts is attributed to the certificate holders by the reasoning which we have reproduced above. The reasoning is that all these certificate holders whenever their claims were under scrutiny and verification did not point out to the respective Scrutiny Committees the records produced by the police/vigilance cell attached to these Committees. If the reports of the Vigilance Cell forwarded to these Scrutiny Committees had been produced and

carefully perused then this suppression of relevant and material facts would be apparent to the Committee.

14. *There is a fundamental error in this approach. The Committee has forgotten something vital. It has no lis before it. There are no adversaries. There is an investigation and a scrutiny. The Committee itself is not an adversary of the petitioners. It cannot behave as if it is one. The Committee seems to have taken the principle of fraud vitiates all, and instead of understanding its implications, goes about chanting it like some catch-all mantra. Fraud demands proof. It needs a pleading. Even if we say that in a situation like this, there can be no pleading, there must still be proof. Conjecture and surmise (“the 1945 alteration must have been obtained by fraud”) are no substitute for proof. It is one thing to say that a document is doubtful, or unreliable. It is quite another to say that it is obtained by illicit means without finding anything further — who, when, where, how. More fundamentally, every alteration or change is not evidence of fraud. It is not even prima facie evidence of fraud.*
15. *The next error, and it is a most grievous one, is in paragraph 3, where the Committee says that we, or some bench of this Court, was duped or misled. Nobody in this Court says so. It is not for the Committee, subject as it is to our writ jurisdiction, to say that in some past case, based only on the Committee’s present errant exercise in conjecture and speculation, that a court of law, and that, too, the highest court in the State, was misled. This is far from innocuous, because what the Committee is actually saying is that previous orders of this Court that directed the issuance of validity certificates to the petitioners’ family members are all non-est and vitiated as being obtained by concealment, misrepresentation and fraud. In*

saying this, even if only by necessary and ineluctable implication, the Committee is sailing very, very dangerously close to the wind. Its order verges on contempt of this Court by the Committee itself. This is a final warning. There will not be another. We have earlier had occasion to remove one Committee entirely. We will not hesitate to do so again.

16. *In the other paragraphs of the so-called reasoning, namely paragraphs 4, 5 and 6, we see that the Committee has not learnt any lessons at all. It seems impervious to direction, instruction, and even admonition and stricture. Again, this is a final warning. This Committee is not the final repository of all wisdom, learning and knowledge, and the sooner it realizes that, the better. We say this because the committee opines that despite all the settled law on the subject, and though armed with certificates of validity, the present petitioners/applicants before the Committee must establish and prove their socio-cultural affinity with Koli Mahadev Scheduled Tribe. Judgments of the Supreme Court and this Court are of no consequence to this Committee. It insists that the Ahir Koli and Koli Mahadev are two different communities having nothing in common in so far as socio-religious cultural traits, customs, practices etc. Therefore, the petitioners before us are held to failed this test.*
17. *It does not end there. The Committee then goes on to hold that residents of Dhule District, such as these petitioners, could never have made a claim to be from the Koli Mahadev Scheduled Tribe, for Mahadev Kolis were 'never found' in Dhule District. Now this finding and conclusions are reached by relying upon what possibly is produced by a Research officer attached to this Scrutiny Committee. The Research officer is supposed to assist the Scrutiny Committee by producing*

anthropological evidence and data. Research in anthropology is a very specialized study. It is the very carefully researched and thoroughly prepared work of great anthropologists, but it is only intermittently and in bits and pieces relied upon by such Research officers. They have never carried out any independent research nor have they collected any data scientifically. It is one thing to say that this community was never residing in or found inhabiting Dhule District. It is quite another to wholly ignore whether members of this community have later inhabited these districts and particularly Dhule after members of this community educated themselves, obtain concessions and relaxations meant for tribals and thus secured government jobs or public employment which results in people being transferred into such Districts.

18. *The Constitution of India is shortly going to complete 70 years. The tribal status already existed, but our Constitution gave it recognition and shape. The Constitution conferred powers in the executive and the State to grant relaxations and concession so that there is an upliftment and that untouchability, which was abolished by the Constitution, is in reality also wiped out from society. It is quite natural, therefore, that the members of such communities obtain these benefits, relaxations and concessions, educate themselves and after being fully equipped secure either public employment or hold public and elected offices. During the course of all this they are bound to shift their residence and they are not expected to have a fixed place of abode. Tribals can and have come out of the jungles and remote areas inhabited in few districts in the State of Maharashtra and shifted their bases elsewhere. Their children cannot be thrown out from the whole process or excluded therefrom on the reasoning that in Dhule this tribe was never*

found. It is precisely for this reason that 42 years ago, and 26 years after the Scheduled Tribe Order of 1950, the area restrictions it placed were removed by a Parliamentary amendment of 1976. If the Committee does not know this, it has no business functioning as such and perhaps it is best that it go. If it does know, and we do not see how it cannot, then the Committee is incompetent, insubordinate, vindictive and not judicious, and for that reason, too, must go. The one thing this Committee simply cannot do is to say that the area restriction did not 'override the law' or to brush aside an amending act of Parliament made in 1976. Our Constitution not only affords protection to persons from Scheduled Castes and Scheduled Tribes, but also guarantees, as a fundamental right, the right to move freely throughout the territory of India and to settle anywhere. The Committee cannot present applicants before it with a Hobson's choice by saying that the applicants must pick one of these two fundamental rights. They are entitled to both. It is entirely impermissible for the Committee to only trace the tribe, find that tribe's traditional or historical geographical roots, and place that against the applicants' address and conclude that the claim is not genuine. This is not a judicious approach. It is not even a reasonable one. It is wholly contrary to law. It is perverse. It betrays a wanton non-application of mind. The Committee's presumption is based on nothing at all. There is no anthropological research or scientific data. Absent that, such sweeping conclusions in matter after matter has been adversely commented upon by this Court and that part of the reasoning has been struck down as being unsustainable. We do so again. Unmindful of our orders — or perhaps in deliberate and contumacious defiance of them — the

Committee continues to render such reasoning. We have therefore no hesitation in setting aside this reasoning in clauses 4, 5 and 6 reproduced above.”

- “23. *However, Mr Samant with his persuasive ability says that the Committee thinks that Apoorva d/o Vinay Nichale vs. Divisional Caste certificate Scrutiny Committee No. 1 & Ors. Writ Petition No.1504 of 2010 decided on 22nd July 2010, a reported judgment of this Court, allows the course or the option which this Scrutiny Committee has adopted in the present case. We do not think that Apoorva makes any such exception. It only reiterated the settled principle that fraud may vitiate everything from inception but fraud has to be established. It is only a proven and established fraud which will vitiate everything from inception and the principle of res judicata then has no application. It is only when a judgment or order is a product of fraud that it has no precedential value. This is in cases where a fraud is pleaded and proved. Apoorva Nichale was a case where taking assistance of an amicus this Court held that a certificate of validity relied upon as a proof or a document having high probative value in another round of scrutiny and verification can be discarded or kept aside only when the same is vitiated by an underlying fraud. Fraud, therefore, and being of a serious nature together with misrepresentation of fact which also ought to be a deliberate and intentional act vitiates such certificate of validity and even if it is issued to the father, in the case of a scrutiny of the son or daughter’s claim that can be ignored. However, the Committee must undertake the exercise of arriving and concluding a fraud. It has to arrive at the conclusion that a fraud has been perpetrated not only on the Committees but on*

the general public by snatching away benefits and concessions so also relaxations in public employment, education etc meant for genuine tribals.”

[Emphasis is supplied]

10. The learned AGP has pointed out the family tree of the Petitioner and it is undisputed that Ram s/o Shankar is the biological brother of the Petitioner’s father, namely, Laxman s/o Shankar. The family tree produced by Laxman on an affidavit before the Committee while seeking a validity certificate, is undisputed. He refers to the vigilance cell enquiry and the report of the Research Officer dated 21.12.2010 in the case of the **Petitioner’s father which indicates that reliance was placed by Laxman on the validity certificate of his ‘MATERNAL’ cousin brother Shri Kerba Ganpat Rodewad** (*Mamebhau* in Marathi and *Mamera Bhai* in Hindi) and based on such validity certificate from the maternal side of Laxman, he claimed a validity certificate. This became a basis of the conclusion of the vigilance cell that Laxman’s claim is supported by the validity certificate of his ‘maternal’ cousin brother. This is impermissible and illegal.

SERIOUS INTERPOLATION

11. The learned AGP then points out the most serious aspect about the case of the Petitioner's father, which, according to him, was systematically ignored while granting him the validity certificate. He has placed before us a colour photostat copy of the school record of 1969 pertaining to the Petitioner's father, namely, Laxman s/o Shankar and his biological brother Ram s/o Shankar. A clear entry in the same handwriting and the same ink indicates "*Koli*" as the tribe of these two persons. Below the word "*Koli*", a word "*Mahadev*" is entered in a completely different handwriting and different ink. The Petitioner does not dispute these entries, though he disowns responsibility of orchestrating such interpolation. No entries were produced by Laxman to suggest that even his father Shankar had a '*Koli Mahadev*' entry. It is only the father of the Petitioner, namely Laxman and his biological brother, namely Ram, who have such interpolated entries in their records.

BOTCHED UP VIGILANCE CELL INQUIRY

12. The contention of the learned AGP is that despite such a serious case of blatant interpolation, the vigilance cell in

the case of Laxman, has completely ignored the said entry, rather deliberately overlooked and suppressed the fact of such serious interpolation. After such a “botched up inquiry”, the committee, by placing reliance upon the validity certificate of the “maternal cousin brother”, granted the validity to the Petitioner’s father Laxman vide a cyclostyled order (ready draft of an order) issued by the Committee headed by Shri V.S. Patil.

CYCLOSTYLED ORDERS KEPT READY

13. The learned AGP further submits that the Committee headed by the Chairperson Shri V.S. Patil (who is no more), had gained notoriety by keeping draft orders in a cyclostyled manner, ready for pronouncement, in hundreds of cases. Such cyclostyled draft orders with blank spaces were used by the said Committee while granting validity certificates to hundreds of candidates. The blank spaces were filled in by hand writings and sometimes, as like in the case of the Petitioner’s father, several blank spaces were kept blank and the orders were pronounced. There was no change in the reasoning of the committee. He drew our attention to the order passed in favour of the Petitioner’s father which is a cyclostyled order, which does not indicate any reference to the

serious interpolation caused in the school record. Based on such order, the vigilance cell in the case of the Petitioner recorded a finding that the Petitioner has passed the affinity test in the light of his father's statement dated 29.03.2017.

14. The learned AGP has drawn our attention to the impugned order dated 28.11.2022. He points out from the discussion in paragraph 4 onwards, that the Headmaster of the concerned School, namely, Shri Saraswati Primary School, Gangakhed, was called upon to remain present before the Committee to explain the serious interpolations in the entries pertaining to Laxman and Ram. Time and again, the Headmaster avoided appearing before the Scrutiny Committee. Then, an Assistant Teacher, namely, Girish Chandrakant Karande remained present with the school record from the years 1980 onwards and stated that the record was not available. Thereafter, the Headmaster of the school, finally, remained present and the Committee confirmed that there were serious interpolations by which, the entries of "Koli" in the records of Laxman s/o Shankar and Ram s/o Shankar, were modified and changed to "Koli Mahadev".

15. The learned Senior Advocate representing the

Petitioner contended that there is no evidence that the Petitioner's father was instrumental in such interpolation. Now that he has died, the learned Senior Advocate urged that there cannot be any enquiry as regards the conduct of the Petitioner's father after his demise.

16. The learned AGP countered by contending that as the interpolation is as glaring as the sunlight, no further enquiry is necessary. The Petitioner's father stood to gain the biggest advantage by the said interpolation. The Headmaster avoided appearing before the Scrutiny Committee for the fear of being exposed and when the Committee insisted on perusing the records, that he was left with no alternative but to produce the same.

17. He further adds that the Vigilance Cell, which conducted the enquiry during the proceedings pertaining to the Petitioner's father, has apparently played an undesirable and unethical role. Instead of noticing the serious interpolation and expressing an opinion on the same, the said Committee conspicuously ignored the interpolation and vide a cyclostyled order, the Petitioner's father was granted the validity certificate. In such circumstances, the law laid down in ***Darshan***

Chandravilas Bhamre vs. The State of Maharashtra and others, 2020 (3) ALL MR 474, Danshri Chambayya Swami vs. The Divisional Caste Scrutiny Committee and others (Writ Petition No.3535/2013), Priyanka Balaji Wadikar vs. The State of Maharashtra and others (Writ Petition No.9267/2021-Aurangabad Bench), Smt.Kalpana Tukaram Pardeshi vs. The State of Maharashtra and others (Writ Petition No.10314/2015-Aurangabad Bench) and State of Maharashtra vs. Ravi Prakash Parmar, AIR 2007 SC 295, would be applicable.

18. In *Vaishali Baban Dhumal vs. State of Maharashtra and others* (Writ Petition No.517/2008 decided on 22.08.2022), this Court at the Principal Seat [Coram : Dipankar Datta, CJ (as His Lordship then was) and M.S.Karnik, J.], considered the role of the vigilance cell and it was recorded in paragraphs 24, 25 and 26, as under:-

“24. In the instant case, the Scrutiny Committee expressed dissatisfaction with the first two reports of the Vigilance Cell and proceeded to consider the matter further only after the third report dated November 28, 2005 was submitted by the Vigilance Cell, which report was not in favour of Vaishali. The Scrutiny Committee, thereafter, in compliance with sub-rule (8) of Rule 12 issued notice to Vaishali and served on her the copy of the third report dated November 28, 2005. The first and second

reports, favourable to Vaishali, were not served on her. Vaishali was also not informed the basis and materials which compelled the Scrutiny Committee to direct re-enquiry over and over again. Vide reply dated May 22, 2006, Vaishali raised various objections to the Vigilance Cell report.

25. We are not impressed with the submission of learned advocate for Vaishali that the Scrutiny Committee ought not to have directed a re-enquiry and instead should have proceeded to issue a validity certificate considering that the Vigilance Cell's report is in Vaishali's favour. Having regard to the object of the enactment, and even on a bare reading of sub-rule (7) of Rule 12, the issuance of a validity certificate by the Scrutiny Committee is not just a ministerial act though a favourable report may have been submitted by the Vigilance Cell. The Scrutiny Committee has to issue a validity certificate only after satisfying itself and applying its own mind that the claim of the applicant is genuine and true after considering the report and materials on record. Such a procedure furthers the object of the Act. This would ensure that the validity certificate is issued only to a genuine claimant of the particular tribe. If the proposition that the Scrutiny Committee is bound to issue a validity certificate, the moment there is a favourable report of the Vigilance Cell, is to be accepted, the same would amount to reducing the task of the Scrutiny Committee to merely a clerical one. We are in respectful agreement with the view taken by the coordinate Bench (Aurangabad) of this Court in the case of Santosh s/o. Vyankat Nirude vs. State of Maharashtra & ors. The provisions of Rule 12 casts an onerous responsibility on the Scrutiny Committee to issue a validity certificate only if it is satisfied that the claim of the applicant is genuine and

true on the basis of the Vigilance Cell's report and the other documents available.

26. However, if the Scrutiny Committee on the basis of the Vigilance Cell's report and other documents available is not satisfied with the claim of the applicant, sub-rule (8) of Rule 12 postulates the procedure to be followed in such a case. The Scrutiny Committee has to issue a show cause notice to the applicant along with the service of the copy of the Vigilance Cell report providing for an opportunity to make a representation. Further, a personal hearing is contemplated under sub-rule (9)(a)(b) of Rule 12. The provisions clearly indicate that the Vigilance Cell report is not sacrosanct for the issuance of a validity certificate. It is one of the factors to be taken into consideration in the matter of grant or otherwise of the validity certificate. Issuance of validity certificate is essentially the function of the Scrutiny Committee. The Vigilance Cell is meant to assist the Scrutiny Committee. The function of the Vigilance Cell is to prepare a report after giving an opportunity to the applicant and upon gathering information including documents about the applicant's caste claim. The Vigilance Cell is expected to conduct a proper and a meticulous enquiry into the caste claim before submitting its report. The Vigilance Cell is a mechanism to aid the Scrutiny Committee in finding the genuineness of the claim."

[Emphasis is supplied]

Imperial Gazetteer of India, 1909 Hyderabad State

19. The contention of the learned Senior Advocate is that even if the interpolation is accepted and the addition of the

word “Mahadev” to the original entry “Koli” is ignored, the case of the Petitioner is not affected since the Imperial Gazetteer of India, 1909 Hyderabad State containing the “Historical and Descriptive Sketch of the Nizam’s Dominions and the Geography of India, 1909”, would indicate that all the “Kolis” in the Balaghat range of hills in the western half of the Hyderabad State extending from Biloli taluka in Nanded district to the southern portion of Parbhani district passing through Dharur and Patoda to Ashti in Beed district, having a length of 200 miles and width of 3 to 6 miles, are presumed to be “Koli Mahadev”. He refers to the following portion from the Historical and Descriptive Sketch of the Nizam’s Dominions:-

“Mountains: Balaghat range.

The most important ranges of mountains are the following:-

The Balaghat range running east and west from the taluk of Biloli in the Indur district, and passing through the districts of Nander and Palam in the Sarf-i-Khins domains, reaches the taluk of Ashti in the district of Birh. A length of about 200 miles of this range is within the Nizam's territory. The width of the range varies between three and six miles. A range of Balaghat hills lies in the country between the rivers Manjira, Sina and Kagna, proceeding from the taluk of Ashti in the district of Birh, and passing through the taluks of Bhinu, Dharaseo, and Naldrug, reaches Kulbarga.

In the south the most important range of hills runs from the taluk of Dewalpulli in the Nalgunda district to the district of Nagar Karnul, from whence it proceeds to the south. The length of this range is about 130 miles.

In the north the Sahiadr-parvat range runs from east to north-west, beginning in the taluk of Nirmal in the district of Indur, and passing through the Parbhani district and the Assigned Districts of Berar, reaches Ajanta, where it receives the name of the Ajanta Ghat, and goes further on towards the west into the province of Khandesh in British territory. The entire length of this range within the Nizam's dominions is about 250 miles, of which a length of about 100 miles is called the Ajanta Ghat range."

20. He, therefore, contends that as there is no fishing activity in the above stated region, all those persons who have the entry of "Koli", are deemed to be "Koli Mahadev". Kolis are normally fishermen and if there is no fishing activity and the candidates like the Petitioner are not alleged to be belonging to the fisherman community, it would mean that the Petitioner belongs to "Koli Mahadev", Scheduled Tribe.

21. The learned AGP submits that the Petitioner's father Laxman received the validity certificate vide a cyclostyled order of the Committee, only because he could secure interpolated entries of Koli Mahadev in his entire school record, without his

father having any such entry. By playing a fraud and upon obtaining a validity certificate, Laxman has paved the way for the present Petitioner Prasad to seek a validity certificate. He submits that if the Committee dealing with the Petitioner's case has noticed a fraud played by his father and which serious interpolations have been conveniently or deliberately ignored by the then Committee so as to facilitate the issuance of a validity certificate in favour of Laxman, the fraud played on the Committee would vitiate the grant of validity certificate to Laxman. The present Committee has, therefore, painstakingly exposed the serious interpolations, coupled with the fact that Laxman obtained a validity certificate by citing the validity certificate granted to his maternal cousin brother.

Shri G.S. Ghurye, Professor Emeritus of Sociology

22. The learned AGP relies upon a detailed study that was initiated at the instance of the Education Department of the Government of Bombay, which called upon the University of Bombay to undertake a study of the tribal people of the State. Shri G.S. Ghurye, Professor Emeritus of Sociology, University of Bombay, was called upon to shoulder the responsibility of

carrying out such study, especially with regard to the Mahadev Kolis. A detailed report running into 35 printed pages was submitted. It would be advantageous to reproduce certain portions of the said study here under:-

“..... *The overall designation of Koli, applied to a number of communities, only serves to disguise the variety of occupations and the different stages of cultural development which are met with in the different communities making up the group. This fact of cultural differentiation is reflected in the various names of the component communities current amongst themselves and their immediate neighbours. Thus in the Gujarati region we have two great constituents of the Koli ethnic group named Talabda Koli and Chunvalia Koli. The Chunvalia Koli is better known as an agricultural labourer and also as a dangerous character. And the Kolis who figured as the objects of punitive military measures of the British in the first quarter of the nineteenth century must have been the Chunvalia Kolis and not the very much more settled agriculturist section. The Talabda Koli, on the other hand, is a confirmed agriculturist and in some parts almost the superior agriculturist. And he has so far advanced on the cultural ladder that he has nearly shed his designation of Koli which, whenever it appears as a tag, forms a suffix.*

In Maharashtra, though Koli in general means a fisherman, it is the Son Koli who is almost exclusively the fisherman Koli with the Vaitee Koli and the Mangela Koli bringing up the rear. The Malhar Koli, on the other hand, is oday at least, and for a few centuries past has been, pre-eminently a water-carrier in the more

arid areas of the region. Perhaps in the early past he might have been in part at least the keeper of forts. The Koli that figures among the twelve standard 'balutas' or the traditional village officials in the Deccan, is the water-carrier. He is so identified with water-carrying that he is popularly not only known as the Panbhare Koli, because he fills or brings water, but also as the Chumbale Koli because, in discharging his function as a water-carrier, he uses a cloth-pad (Chumbal) on his head.

The Mahadev Kolis, as their full appellation indicates, have been known to Maharashtra after their region of concentration rather than by any occupational activity. It provides a clue to their history and migration. The present concentration of the Mahadev Kolis is such that one would a priori associate them with Bhimashankar, Kalsubai and Trimbak, the high peaks of the Sahyadri in Poona, Ahmednagar and Nasik districts. An early student of this community, Capt. Mackintosh has recorded his opinion that the Mahadev Kolis precipitated to their present area from the Mahadev Hills, which being situated in the north-west of Berar were naturally described to be in Hyderabad State of which that area then formed part.

The original habitat of the Mahadev Kolis and their dispersal in specific localities are not ascertained at this stage. Though S. S. Ul Hassan writing in 1920 has described the Mahadev Kolis as a tribe found in the Hyderabad State, even when Berar no longer formed a part of that State, repeated enquiries of the District Officers and the Backward Class Officer, too, of Parbhani and Aurangabad vouchsafed the information that there are no Mahadev Kolis in that area. On the other hand, very painstaking enquiries, in Akola taluka of Ahmednagar district, of the Mahadev Kolis and

others elicited the tradition strongly current among them that not only the Mahadev Kolis of Ahmednagar district but also those of the still northern district of Nasik had arrived there from Junnar in Poona and still look back to it as their place of origin. Consonant with this tradition is the historical fact recorded in the middle of the fourteenth century that the Sarnaik or the head captain of the Mahadev Kolis, who were spread over 'fifty-two valleys, or 'Bavan-Mavals', each with its own Naik or Captain, was stationed at Junnar. According to the same historical source the last Sarnalk of the Mahadev Kolis was Muhammad Latif, about 1670.

It is possible that Junnar was fixed upon as the headquarters by the Bahamani Kings for the Sarnaik, their nominee, and the current tradition of the Mahadev Kolis might be a reflection of that fact rather than a reality of ethnic history. This suggestion is supported by the fact that many of the most sacred and beloved places associated with their traditional connection with Valmiki and Rama, are located in Ahmednagar and Nasik districts, and not in Poona. Therefore, I am inclined to conclude that the early investigators were unable to clearly distinguish the Mahadev Kolis from the other Kolis. Russell and Hiralal have stated that in Vidarbha (Berar) the principal group of Kolis is that of Mahadev Kolis and that they are divided into two sections, Bhas' or pure and 'Akramase' or impure. Two or three different approaches made by me to ascertain the present position led to the information that there are no Mahadev Kolis at least in Chikhli taluka which was supposed to be their stronghold. I must also mention here the fact that even within Bombay State there is a serious discrepancy discovered between the census data available at the taluka headquarters and the information

gathered on the spot. In Sindkheda taluka of Khandesh district the figures for which were kindly supplied to me by the Mamlatdar from the National Register of Citizens a large number of Mahadev Kolis are shown. But Dr. A. J. Agarkar whom I specially sent there, after spending a good deal of time in contacting various people, came away fully satisfied that most of them were Suryavansi Kolis and hardly any Mahadev Kolis. The Mahadev Kolis of the five districts of Poona, Ahmednagar, Nasik, Thana and Kolaba have rarely any matrimonial alliance outside there five districts and when they have one, it is only with a Mahadev Koli family which has migrated there from one of the above districts.”

“..... In the present state of our knowledge we have to take the Kolis of Bombay State by themselves without trying to trace relationship if any the Kolis of Gujarat have with the Kolis of their supposed wanderings. Within the overall Koli group what Maharashtra cannot be ascertained without a thorough and comparative study of all the Koli communities. Writing about the various Koli communities of Maharashtra, I have to begin by mentioning that older authorities like John Wilson, who wrote at the end of the third quarter of the nineteenth century, considered all the different component sectional communities I have mentioned earlier as occupational varieties of the overall Koli community. So much is this the case that he opined that the community whom all know as the Agris today, were Agri Kolis. He says, "They get their name from the Sanskrit akara' (a mine) which in Marathi, however, has much signification of the Latin ager a field." In short, he implied that these Kolis were called Agri Kolis because they produced salt by working in a salt-pan. In no other source are we vouchsafed the information

that the Agri were ever called the Agri Kolis.

However it may be with the Agris, the Panbhare of Malhar Kolis, like the Mahadev Kolis, were keepers of forts in former times, though not so well-known and were without a reigning or noble family. Whereas, the region of activity of the Mahadev Kolis lay to the north of Poona, that of the Malhar Kolis was to its south. But where the two communities lived side by side, the Mahadev Koli generally assumed the superior position of a farmer whereas the Malhar Koli figured mainly as a village servant. Both these communities disown, or used to disown, any connection with the Son Kolis and the Vaitee Kolis. I shall conclude this brief discussion of the inter-relations of the Koli communities of Maharashtra with the observation that only the two communities, the Mahadev and the Malhar seem to have had a fairly close relationship.

It is the sign of times that the Mahadev Kolis today are taking a leading part in the movement for the integration of different Koli groups into an overall community.

In tradition and in historical records, Kolis are commonly mentioned without any distinction and specification. According to one tradition which ignores even the difference in name, the Kolis are represented as the descendants of the black dwarf who is believed to have emerged from the body of the famous King Vena. In the Pauranic story of Vena's death and its aftermath, the sages are said to have churned some parts of his body from which a darkish dwarf emerged. There he is described to be a Nishada. In the tradition about the origin of Sanskrit poetry recorded in the Ramayana, the hunter who killed the bird is called a Nishada. Guha, the friend of Rama's family who ferried him across the Ganga is also described as a Nishads. Commentators

have been inclined to equate Nishada with Koli." Siddheswarsastri Chitray describes Bhريسundin, whose story appears in the Ganesha Purana, as a Koll who lived in the Dandakaranya waylaying travellers."

In another tradition prevalent among the Mahadev and other Kolis, Valmiki, the first Sanskrit poet and the famous author of the Ramayana, is represented as their ancestor. Their supposed connection with Valmiki rests on occupational and not on racial identity. Valmiki's story as narrated in the Skanda Purana represents him as the son of a Brahmin reared by a Kirata and as such as having taken to the living of waylayers like the Kiratas. Owing to this aberrant activity of his, Valmiki was designated a Koli. Valmiki's subsequent reclamation and regeneration not being germane to the tradition may be left out.

Whatever may be the historicity of the supposed connection, it is a noteworthy fact testifying to the operative reality of the sentiment, that in this Koli region of the high peaks of the Sahyadri commonly dedicated to Shiva, Mahadeva or Shankara and dotted with the standard representations of that God, the Lingas of great veneralibility, there are a number of Maruti or Hanuman (Monkey-God) temples which are an indication to the veneration paid by the Mahadev Kolis to Rama and his life-story immortalised and popularised by Valmiki. There are even more positive traditions associated with this region in the minds of the Mahadev Kolis sanctifying it as the land where some of the most memorable events in Rama's life occurred."

"..... Further story of the Mahadev Kolis is mostly of a community that was frustrated and dislodged from its militant though irregular occupation. The records do speak of organized

dacoities which were almost of the nature of a revolt in A.D. 1879. Koli bands under Krishna Sable of the Purandar Chera were responsible for them. But I am not satisfied that this particular turmoil can be credited to the Mahadev Kolis. The Kolis of the Purandar Ghera are mostly Malhar or Panbhare Kolis. Mahadev Kolis, therefore, must be considered as not figuring specially till A.D. 1914 in which year they were notified as a criminal tribe in Nasik district under the Criminal Tribes Act. Subsequently all the Kolis living in the hilly areas of Poona, Ahmednagar, Nasik and Thana districts were included in the notification. Even in the Census of 1921, the Mahadev Kolis do not figure among the Forest Tribes. In 1925 there were more than one thousand Mahadev Kolis who were registered under the Criminal Tribes Act. Only a few years before the repeal of this Act, a band of Mahadev Kolis under the leadership of one Ladya, whom the Mahadev Kolis of Rajur today, disown, and represent as a Thakur, committed several robberies and dacoities in Ahmednagar and Nasik districts....”

“.... Until quite recently, the Mahadev Kolis of Akola-Igatpuri region had to carry a certificate of the Patil of their village before leaving on a journey. The surnames of some of the Mahadev Koli families offer another piece of evidence in this direction. It is said that three brothers involved in a dacoity and wanted by the officers of the State used different stratagems to evade the pursuers. One hid himself in a sack, one in a palm-grove and one in a skin-bag of a shoemaker. It is from these devices that the descendants of the three got the names Gondake, Shinde and Dhadawad. Similarly a Borhade having decamped with the jewellery of the then Raja of Jawhar concealed himself in

a seedling-plot of paddy to evade the Raja's men. His descendants are since known as Rongates from Rong meaning seedling-plot. Hajares are believed to be the descendants of one who was required to report at a Police Station every day. Whether the names have so changed or not, Gondakes, Dhadawads and Shindes are 'gotri-bhaus' to-day and so are Rongates and Borhades.

Truely does the following current remark summarise the record and potentialities of the Mahadev Kolis: "The Koli pleased, feasts you; enraged, he burns your all."

Mackintosh has carefully stated the fact that the community of Mahadev Kolis has enfolded within itself derelicts or rebellious members of other castes. He has also recorded irrefutable evidence in the form of a ceremony for the admission of outsiders into the community. He adduced the further evidence of the family surnames, some of which are specific to certain other castes. In view of this composite nature of the community, the homogeneity in appearance, dress, habits and culture-barring small regional differences-that it presents is remarkable."

[Emphasis is supplied]

COMMON SURNAMES

23. The learned AGP then points out hundreds of surnames that have been set out in the said report and contends that surname of the Petitioner, finds no place in the exhaustive list of hundreds of surnames cited by Shri Ghurye in the said report. He then submits that it is only "Koli Mahadev", which

has been granted the status of a Scheduled Tribe by the Presidential Order of 1960. We, therefore, find that the Kolis who carry such entries are pretending to be “Koli Mahadev”. There are several types of Kolis like Koli Mahadev, Malhar Koli, Raj Koli, Dongar Koli, Dhor Koli, Tokre Koli, Son Koli (who are recognized as fisherman, unlike Mahadev Kolis), etc. in the census of India, 1961- Volume X- Maharashtra, Part-VB- Scheduled Tribes in Maharashtra- Ethnographic Notes prepared by the Maharashtra Census Office, Bombay-1972.

24. A mere entry of “Koli” in the record of the Petitioner would not mean that he belongs to “Koli Mahadev”. It is only for his own convenience and for self serving purposes that this argument has been put forth. It is only the sub categories of Kolis like Tokre, Mahadev, Malhar and Dhor, that are Scheduled Tribes and the other 13 sub categories of Koli, fall in Special Backward Class (SBC) category. It would be apposite to advert to the following portions set out in the said report:-

“The Koli Mahadev are an advanced scheduled tribe in Maharashtra whose higher position is accepted by most of the scheduled tribes of the region. Numerically. they rank second after the Bhils in Maharashtra. In the President's order, 1960, they are referred to as "Koli Mahadeo or Dongar Koli". Field

investigations conducted at Nyahale Khurd in Jawhar tehsil, Gonds Khurd and Poshera (Pawar pada) in Mokhada tehsil of Thana district and Gopalpur in the Surgans tehsil of Nark district show that members of the tribe living at these places call themselves as Mahadev Kolis and the other people of the region also know them by the same name. They are generally not familiar with the name Dongar Koli' mentioned in the President's order, and do not know whether it is a synonym of Mahadev Koli or refers to a section of the same. According to the Mahadev Kolis of Nyabale, a village five miles from Jawhar, the Mahadev Kolis are also called Raj Kolis as the ruler of Jawhar belonged to the Mahadev Koli tribe (see, also Enthoven 245). The Mahadev Kulis living in the other investigated villages do not know who Raj Kolis are but, according to them, the possibility of some persons among the tribe, especially the kinsmen of the former ruling house of Jawhar State, calling themselves Raj Kolis cannot be ruled aut. According to Sirajul Hassan, their name is derived from the god Mahadev (334). A few tribes-men from the villages surveyed agree with this view and say that in the distant past their forefathers held Mahadev in great honour. But now they do not keep the image of Mahadev in their houses.

The Mahadev Kolis admit they are Kolis, but they do not show any affinity with the Koli caste or with any other Koli group such as Malhar Koli or Son Koli. Son Kolis are recognised as fishermen whereas Mahadev Kolis are known as husbandmen. The Mahadev Kolis and the Malhar Kolis both accept the designation of Koli, but treat themselves as distinct from each other. In the caste frame of reference, the Mahadev Kolis regard themselves as superior to the Malhar

Kolis.

According to Mackintosh, the Mahadev Kolis are divided into 24 kuls (clans) most of which were founded by individual leaders belonging to the higher classes who for certain reasons had left their own people and taken to the hills. It, however, seems more probable that the Kadams, Pavars, Chavans, Bhodes, and other Koli clans with Rajput names are of pant-Rajput origin (Gazetteer 169) The Mahadev Kolis from the villages surveyed have no knowledge of their Rajput origin but they do not rule it out. In matters of eating and drinking, they are treated on a level with the Kunbis as pointed out by Mackintosh and enjoy the same social status and position in the region. Enthoven connects them with the Kolis and says that they are a division of the Kolis of the Deccan and Konkan (245). The Mahadev Kolis do not know whether they originated from the Koli caste. According to one tradition, Valmiki, the first Sanskrit poet and author of the Ramayana, is represented as their ancestor, Ghurye feels that their supposed connection with Valmiki rests on occupational and not on racial identity.

The Mahadev Kolis are now found concentrated in the districts of Nasik, Poona, Ahmadnagar and Thana. Mackintosh thinks that their original home was in the Mahadev and Balaghat hills, the western boundary of the then Nizam's country (Ahmadnagar gaz. 194). They came west many centuries ago and settled first in the valley of the Ghoda river in Poona and from there moved north and west into the Konkan. The story of the eastern origin of the Mahadev Kolis is supported by the fact that in former days they were lingayats and had their marriage and funeral ceremonies conducted by Raval Gosavis. The Kolis switched over to Brahmanism during the Peshwa period. The

best known Kolis in Thana history are Mahadev Kolis, a Deccan tribe who apparently entered the Konkan at the close of the thirteenth century perhaps in consequence of the Muslim invasion of the Deccan. According to their own story, the Mahadev Kolis did not pass into the Konkan till the beginning of the fourteenth century, when a Koli leader, Panperah, was advised by a holy man in the Deccan to go to the Konkan, capture Jawhar and become its chief. Jawhar was then ruled over by a Varli Panperah. He went to Gujarat, wandered there for some years and then went to Jawhar and requested its chief to grant him a piece of land that would be covered by a bullock's hide. On the Varli chief agreeing to this, he made many strips of a bullock's hide and encircled the Varli chief's fort with it. The Varli chief admired Panperah's cleverness and granted him the country around Gambirghad. Thus the Mahadev Kolis settled in the Konkan. When the Muslims invaded parts of the Deccan. Panperah became their loyal friend and the Muslim sovereign granted him 22 forts and a territory yielding Rs.9 lakhs a year (Thana gaz. 166-9). Ghurye is of the view that the original habitat of the Mahadev Kolis and their dispersal in specific localities are not ascertainable at this stage. He says that according to the tradition current among them, the Mahadev Kolis of Ahmadnagar and those of Nasik, who had arrived there from Junnar in Poona still look back to Junnar as their place of origin. He quotes the historical fact recorded in the middle of the fourteenth century that the Sarnaik (captain) of the Mahadev Kolis who were spread over "fifty-two villages" or "Bavan mahals ", each with its own naik, was stationed at Junnar. According to the same historical source the last Sarnaik of the Mahadev Kolis was Muhammad Latif (c.

1670). It is possible that Junnar was then chosen as the headquarters by the Bahamani kings for their representative or nominee called Sarnaik. According to Ghurye, the claim of the Mahadev Kolis that Junnar was their original homeland thus seems to be based on their military connections with Junnar rather than a reality of ethnic history. He also points out that many of the sacred places associated with their traditional connection with Valmiki and Sri Rama are located in Ahmadnagar and Nasik districts and not in Poona (2-3). The Mahadev Kolis from the villages studied are not aware of their reported connections with Balaghat or Mahadev hills and Junnar and do not know when and from where their forefathers came into their present settlements.”

25. The learned AGP, submits that during the Peshwa period, the “Kolis” switched over to Brahmanism. He contends that the entries in the Petitioner’s school record as “Koli Mahadev” based on the interpolation which gave maximum advantage to his father, will have to be ignored and every entry made in this fashion in the Petitioner’s record based on the fraudulent entries of his father Laxman, would render the Petitioner’s entry purely as “Koli”.

26. We find that in ***Prabhu Narayan Surwase vs. State of Maharashtra and others***, Writ Petition No.1907/2003 decided on 16.12.2003 at Aurangabad, it was held in paragraphs 11, 12 and

13 as under:-

- “11. The conclusions that must follow from the discussion are as under:
- (a) The Committee, considering the claim of a candidate, is the only fact finding Committee. Therefore, great care must be taken in absence of any appeal, to consider and appreciate all the evidence, documentary or by way of affidavit or oral which has been produced.
 - (b) As a fact finding Committee and, a quasi judicial authority, deciding the status of the party and from which order no appeal lies, it must record reasons for rejecting the evidence produced, documentary or oral. The need, for recording reasons is because a High Court examining the order in the exercise of its extraordinary jurisdiction under Article 226 would be in a position to know whether correct tests have been applied and whether the evidence placed before the Committee has been considered.
 - (c) Merely because an entry as, for instance, Koli, is recorded in the School records, by itself, cannot result in rejecting the claim of a candidate. This is more so in the five districts, now eight districts, of Marathwada, which were earlier forming part of the erstwhile State of Hyderabad and who admittedly are not in the profession of fishing as traditional occupation nor is Marathwada a coastal belt. The Committee, while considering the claims of Scheduled Tribe candidates, coming from this area, will have to consider the other material placed before it and not merely proceed on the footing that, because Koli is shown in the school certificate or, some other document, all other evidence must be rejected. The Committee must consider the documentary evidence, coupled with the Vigilance Report and other evidence of tribal traits and

characteristics, to arrive at a conclusion that the petitioner belongs to the tribe, he/she claims to belong. No doubt, the burden will be more on the candidate where such entry is recorded unlike in a case, no such documentary evidence is recorded. As has been held in the case of Rajesh s/o. Yadavrao Sankpale (supra), Kolis in Marathwada did not become Mahadeo Kolis by the Presidential Order of 1976. However, it would still be open to persons claiming to be belonging to Mahadeo Kolis to establish that they are not fishermen and establish by evidence their tribe characteristics as Mahadeo Kolis.

- (d) *In so far as documentary evidence is concerned, mere absence of the records of the parents of the candidate cannot be held against a claimant. The very fact that the tribe/caste is notified, as S.C./S.T. is based on the historical fact that the tribe/caste is backward. In these circumstances, the mere absence of documentary evidence cannot be held against a claimant. In those cases the report of the Vigilance Officer, and of the Research Officer, about the tribal traits and characteristics and anthropological studies, must be decide the issue based on the evidence produced.*
- (e) *We have earlier observed that the orders are stereotyped. This needs correction at the hands of the Committee. In respect of the evidence pertaining to traits, characteristics, anthropological studies, there must be a specific proforma in respect of each tribe and, may be, even caste. A claimant should be asked questions in respect of his tribe claim and not pertaining generally to all tribes. It is possible that some traits will be common but, at the same time, there will be other traits which may be distinct to distinguish one tribe from the another. The proforma for verification of tribe claim, must include the specific traits of each*

tribe.

- (f) *In the absence of documentary evidence, the duty of the Committee will be to permit the candidate to lead evidence of tribal traits and characteristics, by answering the questionnaire prepared in respect of his tribe and also allow any evidence on affidavit to be led on which the candidate can be questioned. That material including in cases where there are documents should be made available to the Vigilance Officer who will verify the same by following the procedure laid down in judgment of the Apex court referred to earlier to find out the authenticity or genuineness of the claim.*
- (g) *The report of the Vigilance Officer along with any documents the Officer may collect must be given to the candidate, to enable him to give his say if the report is adverse, or if the Committee is of the prima facie opinion, that the report has to be rejected. The reply if any should be considered whilst passing order in the claim of the candidate.*
12. *Having considered the issue, to our mind, on the facts of the present case, we find that the tests which had to be applied, have not been applied by the Committee. The impugned order will have to be set aside.*
13. *For the aforesaid reasons, the impugned order is set aside and the matter is remanded to the second respondent for reconsideration in terms of the directions issued.”*

27. In *Rajesh Yadavrao Shankpale vs. The State of Maharashtra*, 2000 (1) *Mh.L.J.* 168, it has been held in paragraph 8 as under:-

“8. *Mr. Talekar, learned Advocate for the petitioner*

contended that as far as Marathwada region is concerned. Kolis residing in Marathwada region are Mahadeo Kolis. He further contended that, in the present matter, the school record relied upon at Exhibit R-3 of the Writ Petition shows that the petitioner was admitted in the Primary School on 10th July, 1976. He relied upon the Extract at Exhibit R-3 and contended that since the Presidential Order recognising Kolis as Mahadeo Kolis in the Marathwada region came into force in 1978 the Scrutiny Committee erred in rejecting the petitioner's claim of being Mahadeo Koli. He contended that on 10th July, 1976, petitioner got admission in the Primary School whereas the Presidential Order came into force in 1978 and, therefore, in any event, the said extract at Exhibit R-3 provides evidence of great value. We do not find any merit in the contentions advanced on behalf of the petitioner. Firstly, the extract relied upon at Exhibit R-3 shows that the Head Master of the Primary School has altered the record. The said extract has been signed by the Head Master. On 11th March, 1988 the Head Master has effected alteration and has even signed the altered entry. Secondly, the extract clearly shows that Madhav, brother of the petitioner, stood admitted in the same school on 4th July, 1970 when he was described as Koli and the petitioner herein was shown under the altered entry as Mahadeo Koli. It is for this reason that the Head Master has signed only against the altered entry in the case of the petitioner and not in the case of Madhav and Tara. One fails to understand as to why the Head Master corrected the entry pertaining to the petitioner only and not to Madhav. Taking into account the above facts, it is clear that the record has been changed after 1983 in order to obtain concessions from the policy of the Government. In the

circumstances, we do not find merit in the contentions advanced on behalf of the petitioner that there was a genuine entry made in favour of the petitioner before 1978. The petitioner has not produced the school record. R-3 has been produced by the respondents. However, even R-3 shows that the entry has been altered after 1978. R-3 has been signed on 11th March, 1988. Hence, we are satisfied that the Scrutiny Committee was right in coming to the conclusion that the entire basis of the petitioner's claim is founded on the change effected in the service roll of the father during 1982-83 and that even the brothers of the petitioner have received the benefits of that change after 8th January, 1983 when the father obtained the Certificate from the Taluka Executive Magistrate declaring him to be Mahadeo Koli.”

[Emphasis is supplied]

28. In ***Aruna Kashinath Koli vs. The State of Maharashtra and others***, Writ Petition No.5196/2000 decided at Aurangabad on 18.03.2002, the learned Single Judge noted that the entry of the Petitioner's father was recorded as “Koli”. In some entries, it was recorded as “Hindu Koli”. It was contended that Koli Malhar, Koli Mahadev and Tokre Koli are the sub tribes of Koli and they are generally known as “Koli”. Though the entry is mentioned as Koli, the Petitioner, in fact, belongs to “Koli Mahadev”.

29. While dealing with such contentions, the learned Single Judge relied upon the Imperial Gazetteer of India, 1909 Hyderabad State, the Historical and Descriptive Sketch of the Nizam's Dominions and the Geography of India, 1909, the census of India, 1961- Volume X- Maharashtra, Part-VB- Scheduled Tribes in Maharashtra- Ethnographic Notes prepared by the Maharashtra Census Office, Bombay-1972 and observed in paragraphs 15 to 24 of ***Aruna Koli (supra)*** as under:-

- “15. *The learned Counsel Shri Deshmukh placed reliance on the Division Bench judgment of this Court, Rajesh Yadavrao v. State, 2000(1) MhLJ P.168. The Division Bench was dealing with the same which I am dealing. The Division Bench has ruled that Kolis have been declared to be O.B.C. in the State of Maharashtra Kolis are fishermen and they live mainly in coastal region of Maharashtra; whereas Mahadeo Kolis are not sub-castes of Koli. Mahadeo Koli were recognised as Scheduled Tribe even prior to 1976 as a consequence of Presidential Order, 1978. The Kolis in erstwhile region did not become Mahadeo Koli. The main intention behind passing the Order of 1978 was to remove area restrictions and not to correct caste structure from O.B.C. to Scheduled Tribes. The Division Bench relied on the judgment of the Apex Court in Madhuri Patil's case. I will now advert to both these judgments now.*
16. *In Rajesh v. State (supra), this Court was considering of case of a candidate who was claiming that he belongs to "Mahadeo Koli" (S.T.). The candidate was a permanent resident*

of Taluka Biloli, District Nanded. The Taluka Executive Magistrates, Biloli has issued a caste certificate in favour of Rajesh to the effect that he belongs to "Koli Mahadeo" which is recognised as Scheduled Tribes at Serial No. 29 of the Scheduled Castes & Scheduled Tribes Order (Amendment) Act. The candidate intended to get admission to the professional courses. Therefore, he approached the Scrutiny Committee for verification of his tribe claim. The Committee has considered the documents and the report submitted in connection with the enquiry of the candidate and the Committee invalidated the tribe claim of the candidate. Thereafter appeal came to be filed before the Additional Commissioner, Tribal Development Nasik which came to be dismissed on 30th March, 1989 and the order of the Scrutiny Committee came to be confirmed. Those orders were challenged by filing a writ petition. In that case, it was contended before the Division Bench that as far as Marathwada region is concerned. Kolis reside in Marathwada region are Mahadeo Kolis. This submission is considered by this Court in Rajesh's case, in the light of the ratio laid down by the Apex Court in Madhuri Patil's case and considering the amendment made to the Presidential Order in 1976 the Division Bench of this Court held that the Kolis in Marathwada area cannot be treated as belonging to Scheduled Tribes Mahadeo Koli. This Court in Rajesh's case has an occasion to consider the relevant Government Resolutions passed by the Bombay Government in 1942; the Amendment Act, 1976. This Court has specifically negated the contention of the petitioner that in case that Kolis in Marathwada region are recognised as Mahadeo Kolis only after 1978. This Court, therefore, negated the contention of the petitioner in that case and held that Kolis in

Marathwada region cannot be recognised as Mahadeo Koli. In this respect, useful reference can be made to a publication referred to as Contention No. (viii) supra. In fact this part of the publication runs contrary to the contention of the learned Counsel. The said Chapter XVII deals with "Koli" tribe. Several Sub-Division of tribes are mentioned. Each of the tribe has its sub-divisional clans. The principal tribe is that of the "Mahadeo Kolis". The learned author has given brief account of:

The Mahadeo Koli Tribe:

It is situated under this heading. This tribe inhabits the track of the country on the east of Sahyadri Mountains from Trimbak in north to Museh in South. They also found in Bombay and in some parts of the province of Konkan. The Rajah of Jawara belongs to this tribe. It is further stated that Mahadeo Koli is divided into twenty four clan. Their names are:

Twenty four Mahadeo Koli Clans:

1) Waman Pal; 2) Kadam; 3) Pawar; 4) Kadam; 5) Budiwant; 6) Namdeo; 7) Kshirsagar; 8) Bhosla; 9) Bhagiwant; 10) Jagtap; 11) Gaikwad; 12) Suryawanshi; 13) Puliwar; 14) Utarada; 15) Dalvi; 16) Gauli; 17) Aghasi; 18) Chavan; 19) Ujaji; 20) Sagar; 21) Shaikhacha Shesh; 22) Kharad; 23) Sirkhi; 24) Shin.

Considering this, it is clear that "Mahadeo Koli" tribe does not exist in Maharashtra region. The learned Author has specifically given 24 clans of "Mahadeo Koli?". The petitioner's surname is "Koli" and not the 24 clans mentioned by the learned Author. As this Court has held in Rajesh's case that in Marathwada region there are no "Mahadeo Koli" get support from this publication.

17. *The learned Counsel Shri Golegaonkar, tried to distinguish the Division Bench judgment of*

this Court Rajesh Shankpale v. State of Maharashtra, before the Division Bench of this Court the identical question which arose in this petition was for consideration. This Court after considering the submissions made at the bar and considering the judgment of the Apex Court in the Madhuri Patil's case has ruled that Koli in Marathwada region cannot be equated or included to mean Mahadeo Koli this Court in paragraph 9 has dealt with the said contention. The learned Counsel contended that the submission which was made before the Division Bench was in respect of removal of restriction of area on the ground that the Scheduled Tribe outside the areas which were in areas existence earlier also can have the benefit of reservation and in order to have uniformity the area restriction was removed in the year 1976. The learned Counsel contended that considering the facts stated and brought on record in this present petition Koyas are included as Scheduled Tribes in the first Presidential Order of 1950 and that continued till this date. However, this Court in Rajesh's case has observed that Koli Mahadeo are not sub-caste of Koli, as no detailed submissions were made before the Division Bench and as the Census Reports, articles written by the scholar/experts in the field were not brought to the notice nor the provisions of State Reorganisation Act and Bombay Reorganisation Act were brought to the notice of the Division Bench. The learned Counsel contended that the observation of the Division Bench of this Court now should be restricted only the facts and submissions these were considered by the Division Bench. Therefore, the learned Counsel contended that the observation made by the Division Bench that by the Presidential Order of 1978 the people in Marathwada region did not become Mahadeo

Koli is not appropriate observation by the Division Bench.

18. *Coming to the judgment of the Apex Court in Madhuri Patil's case, the Apex Court dealing with an identical situation. Madhuri Patil has obtained a certificate from the concerned Magistrate showing her as Scheduled Tribe. In an enquiry of her tribe claim it revealed that Madhuri Patil's grandfather was admitted in the school in 1943 and in the school admission register his caste was shown as "Hindu Koli". Admittedly, Madhuri Patil's family was resident of Thane. It was found by the Apex Court that Mahadeo Koli was recognised to be Scheduled Tribes by Bombay Province as early as 1933 and the President of India, declared it in 1950 under Article 342 in consultation with Government of Bombay. In an enquiry into the validity of the certificate obtained by Madhuri Patil. It was held that Madhuri Patil belongs to Koli and not as "Mahadeo Koli". The Committee enquired into the tribal claim of Madhuri Patil and has considered all the relevant documents and relevant entries and found that Kolis resides mainly on coastal area : Kolis have different sub-castes, such as Mahadeo Koli resides in hilly region, agricultural labourers and gathering of minor forest products and sell thereon. With this background the Committee rejected the claim of Madhuri Patil. The matter ultimately reached the Apex Court and the Apex Court on the evidence and the findings that were recorded by the Commissioner, the Committee negatived the claim of Madhuri Patil. The Apex Court was considering, "whether Mahadeo Koli is a sub-caste of Kolis". The Apex Court found that Mahadeo Koli is not sub-castes of Kolis. In view of the ratio laid down by the Apex Court in Madhuri Patil's case and judgment by the Division Bench of this Court in Rajesh's case,*

it is very difficult for me to accept the contention of the petitioner that "Koli" includes "Mahadeo Koli" and it is sub-tribe of "Koli". The contention of Mr. Golegaonkar that the report of the Vigilance Cell is vitiated as the investigating team is not associated by the Research Officer cannot be accepted as there is evidence i.e. extract of school register to show that the caste of petitioner's father is recorded in 1967 as "Koli" and this document is accepted by the Committee and the said document is acceptable to me also. In view of this fact, merely because the Vigilance Cell is not associated with the Research Officer the order of the Committee cannot be faulted. In this aspect, I accept the contention of Mr. Deshmukh, the learned Counsel for the Committee.

19. *The learned Counsel, Shri Golegaonkar, has tried his level best to persuade this Court to accept the contention that Kolis in Marathwada region are Scheduled Tribes which is known as Koya in old Hyderabad State. For this purpose, the learned Counsel has relied on the articles and Census Reports to which I have already made a reference. Therefore, the question that has to be considered by me in this matter whether by reading the articles and the census reports which are produced before this Court whether "Koya" (ST) recognised in Hyderabad State can be "Kolis" in Maharashtra as Scheduled Tribe. Admittedly in the present case, the school record which was produced by the petitioner of the year 1967, shows that the petitioner's father caste is mentioned as "Koli" and caste of Koli has been declared by the Government of Maharashtra initially as OBCs and thereafter Special O.B.C. The learned Counsel contended that Marathwada region was part and parcel of Hyderabad State and even prior to the commencement of the*

Constitution Kolis are recognised and treated as Scheduled Tribes. As the learned Counsel has laid much stress on the articles which I have referred already where Kolis are mentioned as Tribes. In my judgment, in respect of interpretation of the entries in the Constitution Scheduled Tribes Order, 1950 is no more res integra in view of the judgment of the Apex Court reported in 2001(1) S.C.C. page 4, State of Maharashtra v. Milind and others. The question was "Whether Entry No. 19 in Part IX of the Constitution Scheduled Tribes Order, 1950 i.e. Halba/Halbi whether it includes Halba/Koshti or whether Halba Koshti is a sub-tribe of Halba". The Apex Court has held that the deletion or inclusion of entries in the Constitutional Scheduled Tribes Order are to be made only by the Act passed by the parliament. The courts or the Government has no jurisdiction to amend the Presidential order by relying on the literature or any other such material. The Apex Court ruled that the Scheduled Tribe Order must be read as it is and it is not even permissible to say that the tribe, sub-tribe part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribe Order if they are not specifically mentioned in it. In view of the law declared by the Apex Court in Milind's case, it is not possible for me to accept the contention of the learned Counsel that Koli in Marathwada region are Scheduled Tribes and they are Mahadeo Kolis, and since I have already traced the history. Applying the law declared by the Apex Court in Milind's case and the Division Bench judgment of this Court in Rajesh case it is very difficult to accept the contention of the learned Counsel and to record a finding that Koli is a Schedule Tribe is synonymous to Koya and the word Koli mentioned in school register should be treated

as Mahadeo Koli. This contention cannot be accepted on any count. The Apex Court in Milind's case has also considered the very correspondence relied on by Shri Golegaonkar regarding the suggestion to include the tribe in the Bill 1967 in respect of "Halba Koshti". The Apex Court has not accepted the said contention and did not give any importance to it.

20. One more aspect in this regard is that though not very much germane to the question but it can throw some light to judge and to test the contention of the learned Counsel qua and word 'Koya' is 'Koli' in Bombay/Maharashtra State. In erstwhile Hyderabad State HEH the Nizam Government has passed an Act i.e. Prevention of Agricultural Alienation Act No. 3 of 1349 fasli which received the consent of HEH Nizam on 29 Amardad 1349 fasli equivalent to 4-7-1940. The said Act deals with the law regarding alienation of agricultural land by which certain "agriculture class" was to be protected from the evil effects of land alienation. By Section 3 of the said Act the Government is authorised to determine the agriculture class and their groups and to published it in Jarida (Gazette). The notification to that effect was issued on 10 Azur 1350 fasli i.e. 15-10-1940 in exercise of powers under Section 1 of the Act. The said notification also notifies the person, classes and groups. As per the entries in the scheduled "Hindu" is noted as Agricultural classes and also the agricultural group, which includes the agricultural classes. In this group "Koli" is mentioned as agricultural group. This Act was passed under the Nizam regime and it has referred to "Koli" and not 'Koya'. Considering this aspect of the matter and considering the fact that entry 'Koya' was included in first Order of 1950 which continued even after

reorganization and it is carried forward in Bombay State and also in 1976 Order, the caste koli is not at all included in any of those entries. Therefore, it is very difficult to accept the contention of the learned Counsel and considering the fact that Marathi word "Koli" is mentioned in the agricultural Alienation Act which I have referred to above, it cannot be accepted that "Koya" means "Koli". Though the Act is repealed on enforcement of the Hyderabad Tenancy and Agricultural Lands Act. I had referred it to test the merit of the contention of Shri Golegaonkar.

21. *With the above observations and backdrop of legal provisions, it is not possible for me to accept the contention of the learned Counsel that the Division Bench of this Court has not considered the entire aspect of the matter. On the other hand the Division Bench has followed the law laid down by the Apex Court and it is not proper for me to make any observation in respect of the ratio laid down by the Division Bench. The learned Counsel had made this submission with full understanding that the Division Bench judgment is binding on the Single Judge. The learned Counsel has made his best efforts to show that the word Koya means Koli and entry Koya after 1976 is to be treated as Mahadeo Koli. But on the facts of the present case where the entry of caste of petitioner's father was recorded as Koli as back as in 1967, no attempts were made by the petitioner to correct the said entries. On the contrary, the petitioner has obtained caste certificate by not producing the extract of school register of her father before the Magistrate who has issued the certificate in favour of the petitioner, indicating that the petitioner belongs to Mahadeo Koli Schedule Tribe. The Committee in its jurisdiction has rightly considered all the aspects and*

considered the fact that the specific contention is raised by the learned Counsel that the Kolis were Scheduled Tribes in Hyderabad State and the state of affairs continued even this date, it is not possible for me to accept the contention of the learned Counsel.

22. *It is also not possible for me to accept the request to remand the matter to the Committee to record fresh findings on the basis of the unreported judgment of this Court referred to above. But with respect to the learned Single Judge, this is not a fit case to order re-trial. As I had followed the law declared by the Apex Court in Milind's case, Madhuri Patil's case and the judgment in Rajesh's case, the judgment of the learned Single Judge is not of any help to the petitioner.*
23. *For all the above said reasons and in particular the law declared by the Apex Court in (i) State of Maharashtra v. Milind and others, 2001(1) SCC 4, (ii) Madhuri Patil v. Commissioner, Tribal Development, AIR 1995 Supreme Court 94, (iii) Rajesh v. State of Maharashtra, 2000 (1) MhLJ 168, the contentions raised in this petition required to be rejected and the same are rejected.*
24. *Accordingly, there is no merit in the petition, writ petition stands dismissed. Rule discharged, with no order as to costs."*

30. The learned Senior Advocate representing the Petitioner has relied upon ***Sayanna vs. The State of Maharashtra and others***, (Civil Appeal No.6253/2009 arising out of SLP (Civil) No.1774 of 2007) decided on 15.09.2009, wherein, two alphabets "L" and "U", were added to the word "Mannervar".

The report dated 01.12.2003 forwarded by the Police Inspector, Vigilance Cell, did not mention that the certificate of “Mannervarlu”, Scheduled Tribe, is a forged document. As the Police Inspector did not state that the word “LU” was interpolated by the appellant and that two alphabets may have been added after being pointed out the correct spelling of the tribe, the Honourable Supreme Court that the said addition cannot be an interpolation at the behest of the appellant. The learned Senior Counsel further pointed out, vide paragraph 10 in *Sayanna (supra)*, that near relatives of the Appellant were always treated as belonging to “Mannervarlu”, Scheduled Tribe and hence, the decision of the Scrutiny Committee to cancel and confiscate the tribe certificate issued to the appellant was set aside.

31. In the case before us, the interpolation in the form of addition of the word “Mahadev” in a completely different handwriting and in a different ink in the school records maintained by the School in which the Petitioner’s father Laxman was working, becomes more conspicuous and serious in the absence of any such entry in his father’s (Shankar) record. This was systematically ignored by the Vigilance Cell in the case

of the Petitioner's father and the judgment of the Committee in his case, which is undisputedly a cyclostyled judgment delivered by the V.S. Patil Committee, which has delivered such cyclostyled orders in hundreds of cases without a change of a single word or reasons in support of acceptance of the claim, are clear indicators that such order of the Committee granting validity certificate to the Petitioner's father, is most unreliable.

IDENTICAL CYCLOSTYLED ORDERS

32. The judgment in the case of the Petitioner's father Laxman, is identical to hundreds of judgments delivered by the V.S. Patil Committee with regard to "Koli Mahadev". There is not a single sentence referring to the serious interpolation which changed the description of Laxman's social status from "Koli" to "Koli Mahadev". This creates a world of a difference because the social status of the Petitioner changes from "Koli", Special Backward Class (SBC) to "Koli Mahadev", Scheduled Tribe category. Since a cyclostyled order was pulled out to be used in Laxman's case, there is not even a whisper to the interpolation, in the said order. In these circumstances, this Court cannot blindly accept the said order and the validity in favour of Laxman so as

to be relied upon for granting a validity certificate to the present Petitioner. If this is so done, we are of the view that this would cause travesty of justice.

33. In the most recent judgment delivered by the Honourable Supreme Court in *Maharashtra Adiwasi Thakur Jamat (supra)*, it was held in paragraphs 22, 23 and 24 (reproduced above), which can be summarized as under:-

(a) Firstly, the Scrutiny Committee must ascertain whether the certificate is genuine.

(b) Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him, has been issued, is his blood relative.

(c) An enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee, after holding due enquiry and by following due procedure.

(d) If the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of *Kumari Madhuri Patil vs. Additional Commissioner, Tribal*

Development, (1994) 6 SCC 241: AIR 1995 SC 91, the examination will be whether the enquiry contemplated by the said decision has been held.

(e) If it is established that the validity certificate has been granted without holding a proper enquiry or without recording reasons, obviously, the Caste Scrutiny Committee cannot validate the caste certificate only on the basis of such validity certificate issued to the blood relative.

34. The above conclusions, especially clause (e), would support the impugned judgment of the Committee. Though an enquiry was conducted in the case of the Petitioner's father Laxman, the same was apparently a farce, since a glaring interpolation clearly noticeable at a single glance, was systematically overlooked and ignored by the Vigilance Cell, which gave a favourable report to Laxman, who succeeded in getting a validity certificate on the basis of the cyclostyled (fill in the blanks) order. The question would be as to whether, such an enquiry could be termed as being a lawful enquiry when the fraud that has occurred in the entries of Laxman s/o Shankar and Ram s/o Shankar, were systematically overlooked by the

Vigilance Cell only to avoid the submission of an adverse report. By deliberately turning a blind eye to such interpolation, the Vigilance Cell tendered a favourable report, which led to the grant of a validity certificate to the father of the Petitioner Laxman. Our conscience does not permit us to rely upon such report and upon the cyclostyled order in favour of the Petitioner's father, so as to overturn the findings of the Scrutiny Committee set out in the impugned order rejecting the claim of the Petitioner. It also cannot be lost sight of the fact that, even today, not a single member of the Petitioner's paternal family has any validity certificate.

WHETHER ALL 'KOLI' IN THE BALAGHAT RANGE
WOULD BE 'KOLI MAHADEV'

35. The learned Senior Advocate places reliance upon the Imperial Gazetteer of India- Hyderabad State (reproduced portions above) to contend that since there is no sea in the bordering Balaghat range, persons with the social status entry as "Koli" (fishermen), can never be just a Koli. The Deccan Plateau from the Ajantha range and the Balaghat hills, is an area wherein, people with the social status "Koli" reside. They have to be

treated only as Koli Mahadev. The Balaghat range would include even the Sahyadris.

36. We find from the reliable material placed before us by both the sides that, if a person is just a “Koli”, it cannot be presumed that he would be “Koli Mahadev” for the reason that there are many entries connected to the word “Koli” in the nature of Tokre Koli, Dhor Koli, Koli Mahadev, Son Koli, Vaitee Koli, Mangela Koli, Malhar Koli, Panbhare Koli, Chumbale Koli, Agari Koli, Dongar Koli, etc.. In the Gujarat region, there are Talabdar Koli and Chunwaliya Koli. Chunwaliya Kolis are better known as agricultural labourers, who were earlier objects of punitive military measures of the British. Talabdar Koli is a confirmed agriculturist. Out of these, it is only the sub categories of Kolis like Tokre, Mahadev, Malhar and Dhor, that are notified as Scheduled Tribes due to which, such candidates receive greater reservation benefits. Keeping this in mind, candidates, who are purely Koli, try to take disadvantage by adding the word “Mahadev” in front of the word “Koli”, as has been done by the grandfather of the Petitioner. Based on serious interpolations and a botched up enquiry, the father of the Petitioner succeeded in getting a validity certificate vide a cyclostyled judgment, which

cannot stand to the advantage of the Petitioner.

37. As per G.S. Ghurye, Professor Emeritus of Sociology, University of Bombay, “Mahadev Kolis” were not figuring specially in 1940 AD in which year, they were notified as criminal tribes in Nashik district under the Criminal Tribes Act. Subsequently, all the Kolis living in the hilly areas of Poona, Ahmednagar, Nashik and Thana districts were included in the notification. Even in the census of 1921, the Mahadev Kolis did not figure amongst the forest tribes. In 1925, there were more than 1000 Mahadev Kolis who were registered under the Criminal Tribes Act.

MACKINTOSH

38. According to Mackintosh, the Mahadev Kolis are divided into 24 Kul (clans). Most of which were founded by individual leaders belonging to the higher classes, who for certain reasons, had left their own people and taken to the hills. The Kolis switched over to Brahmanism during the Peshwa period. The best known Kolis in Thana history are Mahadev Kolis, a Deccan tribe which apparently entered the Konkan area close to the 13th century, perhaps in consequence of Muslim

invasion of the Deccan. Thus, Mahadev Kolis settled in the Konkan.

39. Prof. Ghurey is of the view that the original habitat of the Mahadev Kolis and their dispersal in specific localities are not ascertainable. He says that *“according to the tradition current among them, the Mahadev Kolis of Ahmadnagar and those of Nasik, who had arrived there from Junnar in Poona still look back to Junnar as their place of origin. He quotes the historical fact recorded in the middle of the fourteenth century that the Sarnaik (captain) of the Mahadev Kolis who were spread over fifty-two villages” or “Bavan mahals ”, each with its own naik, was stationed at Junnar. According to the same historical source the last Sarnaik of the Mahadev Kolis was Muhammad Latif (c. 1670). It is possible that Junnar was then chosen as the headquarters by the Bahamani kings for their representative or nominee called Sarnaik. The claim of the Mahadev Kolis that Junnar was their original homeland thus seems to be based on their military connections with Junnar rather than a reality of ethnic history”*. He also points out that many of the sacred places associated with their traditional connection with Valmiki and Sri Rama are located in Ahmadnagar and Nasik districts and not in

Poona. The Mahadev Kolis from the villages studied, are not aware of their reported connections with Balaghat or Mahadev hills and Junnar and do not know when and from where their forefathers came into their present settlements.

OUR CONCLUSION

40. Considering the entire record and material before us which we have analysed in the foregoing paragraphs, we are of the view that the Petitioner's case cannot be accepted. We would summarise our conclusions as under :-

- a. The serious interpolations are admitted by the Petitioner.
- b. It is only the Petitioner's father Laxman who carries the interpolated entry of 'Koli Mahadev'.
- c. Laxman's father does not carry any such entry.
- d. Laxman's entry is the first of it's kind.
- e. Laxman got his validity by relying upon the validity of his maternal cousin brother.
- f. Laxman's vigilance inquiry was a botched up inquiry.
- g. Laxman's validity order by the committee was a

cyclostyled '*copy paste order*' which had several blank spaces.

- h. All 'Koli' from the Balaghat or Sahyadri ranges would not be ONLY KOLI MAHADEV.

41. In view of the above, this **Writ Petition is dismissed.**
Rule is discharged.

42. No order as to costs.

43. At this juncture, the learned Advocate for the Petitioner prays that as this judgment is likely to lead to the cancellation of the Petitioner's admission from his MBBS course, he prays for stay to this judgment for a period of eight weeks.

44. The learned AGP vehemently opposes the request by contending that the Petitioner's father had acquired the validity certificate on the basis of a botched up enquiry and through a cyclostyled judgment, which was kept ready before the matter could be decided. He relies upon *Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others, 2017 AIR SC 3271*, contending that the moment a caste certificate claim is found to be invalid, the said candidate has to

73

be deprived of all the benefits that he has illegally gained.

45. In view of the above and as the Petitioner is a student of the MBBS course, we are granting stay to this judgment till 05.08.2023.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)