

**(1986) 06 BOM CK 0018**  
**In the Bombay High Court**  
**Case No : Writ petition No. 438 of 1985**

Subhash Ganpatrao Kabade

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

**Date of Decision :** 20-06-1986

**Acts Referred:**

Evidence Act, 1872 — Section 114, 3

Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 — Section 4

**Citation :** (1987) 3 BomCR 615

**Hon'ble Judges :** M.S. Ratnaparkhi, J; M.S. Jamdar, J

**Bench :** Division Bench

**Advocate :** S.B. Talekar, for the Appellant; S.S. Choundhari, Govt. Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

M.S. Jamdar, J.—The petitioner who claims to belong to the Scheduled Tribes "Mahadev Koli" sought admission to the Medical College at Aurangabad in the quota reserved for the Scheduled Tribes on the basis of the marks obtained by him in the Biology group at the H.S.C. Examination held in March 1983. He secured 65% marks in the Biology group and stood third in the merit list of the Scheduled Tribe candidates who had applied for admission to the Medical College against the seats reserved for Scheduled Tribe candidates. He was refused admission on the ground that he does not belong to Schedule Tribe, Mahadev Koli. The finding to that effect was recorded by the Director of Social Welfare, Pune in his capacity as the chairman of the Caste Verification Committee constituted by the Government to scrutinise the caste claims of persons applying for admission to various educational institutions and for employment in Government service. The finding was confirmed by the Director of Tribal Development cum-Additional Commissioner of Tribal Development, Maharashtra State, Nasik, in the Caste Appeal No. 17 of 1983 preferred by the petitioner. The petitioner has challenged these findings as perverse, and completely inconsistent with the various documents filed by the petitioner in support of his claim that he

belong to scheduled Tribe, Mahadev Koli. We find that the documentary evidence tendered by the petitioner in support of his caste claims and the queer reasoning adopted by the Caste Verification Committee as well as by the Director of Tribal Development completely justifies petitioner's grievance that the findings on the basis of which his legitimate claim for admission to the Medical College came to be rejected were absolutely perverse and showed non-application of mind and basically wrong approach on the part of the concerned authorities.

2. It is an admitted position that in support of his claim the petitioner filed in all eighteen documents as mentioned para 8 of the petition and these documents included School Leaving Certificate of his brothers and sister, an extract of the service-book of his father and a duplicate School Leaving Certificate as amended on the application of the petitioner. The Scrutiny Committee did not attach any significance to the School Leaving Certificates of petitioner's brothers and sisters solely on the ground that these brothers and sisters are younger to the petitioner. They conveniently ignored the position that in relevant school registers the caste of these brothers and sisters was shown as Mahadev Koli and that these entries were obviously made on the basis of the information supplied at the time when these students were admitted in the school which was long before the petitioner sought amendment of the school register for the purpose of incorporating an entry in respect his caste.

3. We are more dismayed by the funny argument adopted by the Scrutiny Committee in respect of the service record of petitioner's father. The service record shows that as far back as in the year 1956 the caste of petitioner's father was record as back ward (Koli Mahadev). The Scrutiny Committee rejected this clinching piece of evidence on the ground that petitioner's father was shown in his service record as backward and not as belonging to Scheduled Tribe. This incorrect classification, according to the Scrutiny Committee rendered the service record of petitioner's father unreliable. This reasoning is obviously incorrect because Schedule Tribe is one of the recognise species of the genus "backward class". Hence simply because it was not specifically mentioned that petitioner's father belonged to one of the categories of the backward classes viz. Scheduled Tribe, the entry in the service record, the genuineness of which is, and cannot be challenged, cannot be ignored. The Director of Tribal Development gave different though equally absurd reason for rejecting this entry in the service record of petitioner's father in respect of his caste. The learned Appellate Authority found material difference between the certificate (Ex. 13) produced by the petitioner and the certificate (Ex. 163) produced by the office in which petitioner's father is working. In Ex. 163 the caste of petitioner's father is shown as "Backward (KoliMahadev" while in Ex. 13 it is shown as "Backward (Koli Mahadev). In our view there is absolutely no distinction, much less material, between the two entries. It is nobody's case that the word "Mahadev" was subsequently incorporated.

4. Both, the Scrutiny Committee as well as the Director of Tribal Development,

ignored the amended transfer certificate dated June 23, 1983, which was issued as duplicate of the transfer certificate "issued on June 29, 1977, by the Head Master of the Lalbahadur Shastri Vidyalaya. Udgir, through which institution the petitioner appeared for the S.S.C. Examination. Both these authorities ignored the amended certificate on the ground that in the earlier school leaving certificate the caste of the petitioner was not mentioned and it was only mentioned that he is Hindu. The Director rejected this certificate also on the grounds that it cannot be the duplicate of the certificate issued in 1977 which did not contain the relevant entry relating to the caste of the petitioner and that this amended certificate was not duly proved. Both these grounds are not valid and cannot be sustained.

5. Admittedly before the entries in the school register were amended in 1983 the petitioner's caste and sub-caste were not mentioned in the school register. What was mentioned was that the petitioner was a Hindu. This entry cannot be said to be inconsistent with the claim of the petitioner that he belongs to Scheduled Tribe, Mahadev Koli. According to Hindu Social structure all Hindus are divided in various castes and sub-castes and, therefore, the petitioner must belong to some caste. This caste was not mentioned in the relevant column of the school register but this omission cannot lead to an inference that the petitioner must not be Mahadev Koli claimed by him.

6. It is pertinent to note that persons belonging to Mahadev Koli caste and residing in Marathwada region were not recognised as backward falling in the category of Scheduled Tribes till the year 1976. They were recognised as Scheduled Tribes only from 1st of May, 1976 by virtue of section 4 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 read with paragraph 3 of the Constitution (Scheduled Tribes) Orders, 1950 and the Schedule, as amended by the aforesaid Act. Therefore, as per the rules governing the entries in the School register as prevailing on the date on which the petitioner was admitted to the school it was not necessary to mention that the petitioner belonged to Mahadev Koli Caste. As per the form of School leaving certificates caste and sub-caste were required to be mentioned only in the case of pupils belonging to the backward classes and categories among backward classes, for example, S.C./S.T. etc. As at the time when the petitioner was admitted to the school, Mahadev Kolis in Marathwads region were not recognised as backward falling in the category of Scheduled Tribe, the petitioner was not expected to mention in his application for admission, nor the school authorities were expected to mention in the relevant school register, the caste to which the petitioner belonged.

7. Rule 26 of the Secondary School Code relate to the entries in the general register expected to be maintained by every recognised school. Before the Rule 26 was amended by a resolution dated March 16, 1983 sub-rule (4) of Rule 26 of the Secondary School Code specifically provided that application for change of

date of birth, caste, etc. in the general register will be entertained only on behalf of a pupil who is attending the school. Therefore, as the position stood before the amendment of the rule by the resolution dated March 16, 1983 no amendment of the entries in the general register could be applied for after the pupil left the school. This rule obviously caused hardship especially to the students who belonged to the castes which were previously treated as no-backward and subsequently declared by the Government as backward or vice versa. This infirmity was removed to some extent by the Government by a resolution No. GAC/1083/89-SE2 dated March 16, 1983 issued by the Education and employment Department by which Rule 26 and Appendix 6 of the Secondary School code were substituted by the revised Rule 26 and Appendix 6 as shown in the annexure "A" to the said Government Resolution. By virtue of the Rule 26, obvious mistakes could be corrected any time especially when the school leaving certificate is relied upon as evidence of name, surname, date of birth, caste for the purposes like admission to another educational institution, with the previous permission of the Appropriate Authority. Clause (iii) of new Rule 13 of Appendix 6 prescribing Rules and Procedure for change of name, surname, date of birth, caste etc. of pupils inter alia provides that permission to change the entries in the general register in respect of caste of sub-caste may be given if the caste previously treated as non-backward was subsequently declared by the Government as backward or vice versa. Invoking this provision the Education Officer, of the Zilla Parishad, Latur, granted permission to the Head Master of Lalbahadure Shastri Vidyalaya, Udgir, to note the caste of the petitioner as Mahadev Koli. A copy of this letter addressed by the Education Officer to the Head Master was one of the documents filed by the petitioner in support of his claim and a copy thereof is produced at page 28 as annexure "B" to the petition. It is in pursuance to this permission that the entries in the general register relating to the petitioner were amended by the Head Master and an amended school leaving certificate was issued. All these aspects of the matter have been completely ignored not only by the Scrutiny Committee but also by the Director of Tribal Development. The fact that in the previous school leaving certificates the caste of the petitioner was not mentioned lost whatever little significance that could be attached to it. As observed above the entry showing that the petitioner was Hindu and the omission to mention his caste cannot lead to an inference that the petitioner does not belong to the caste to which he claims to belong. Moreover, at the time when he was admitted to the school no mention of his caste was expected because at that time Mahadev Kolis in Marathwada region were not recognised as backward on the footing that they belong to the Scheduled Tribes.

8. Much was made by the Scrutiny Committee of the failure of the petitioner to mention the name of organisations representing Mahadev Koli Scheduled Tribe, and to correctly state the traditions and cultural functions, god and goddesses of Mahadev Koli Scheduled Tribe. The petitioner had mentioned the name of Tribal Research and Training institute as one of the social organisation of Mahadev

Kolis. There is nothing surprising in this age that the petitioner who was born and brought up at a fairly big place like Udgir was unaware of the traditions, cultural functions and god and goddesses of Mahadev koli Scheduled Tribe. As a matter of fact in view of the voluminous documentary evidence it was not even necessary for the Scrutiny Committee to test this knowledge of the petitioner.

9. On going through the orders passed by the Scrutiny Committee and the Director of Social Welfare we strongly feel that the entire approach of the said authorities was of those who were determined to reject the claim of the petitioner. Both the orders which are the basis of rejection of petitioner's claim for admission to the Medical Course are absolutely perverse to say least, and hence the rejection of petitioners application for admission to medical course must be quashed.

10. There cannot be any rebalance of doubt that the petitioner belonged to the Scheduled tribe of Mahadev Koli and hence on the basis of his performance at the H.S.C. Examination and his ranking amongst the students belonging to the reserved category of Scheduled Tribes he was entitled to be admitted to the Medical Course during the year 1983-84 itself. He was wrongly deprived of this valuable opportunity and hence he must be admitted for the medical course in the year 1986-87. This will have to be done by creating an additional seat because otherwise it would deprive some other student of admission to the Medical College, Aurangabad, on the basis of his performance at the H.S.C. Examination held in 1986. As the petitioner deprived of admission solely because of the palpably wrong orders of the concerned authorities we do not want to cause any hardship even indirectly to any other student who would be eligible for admission on the basis of his performance in the relevant examination. The only course open is for the respondent No. 1 to sanction an additional post in the Aurangabad Medical College for the Medical course commencing in 1986-87 and admit the petitioner.

11. The petition is, therefore, allowed with costs. Rule made absolute in terms of prayer clauses "B", "C" and "D". Respondents Nos. 1 and 3 are directed to admit the petitioner for the Medical course commencing in 1986- 87 by creating an additional seat in the medical college at Aurangabad.