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WP 6387 OF 2021-f.odt

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

WRIT PETITION NO. 6387 OF 2021

Mayuri D/o. Dilip Koli
Age : 19 Years, Occu. Student
R/o. Vitthal Mandir Chowk,
Kawthal, Post, Nyahlod,
Tq. & Dist. Dhule.

... Petitioner

VERSUS

01. The State of Maharashtra
Department of Tribal Development
Mantralaya, Mumbai – 32
Through its Secretary
02. The Schedule Tribe Certificate Scrutiny
Committee, Nandurbar Division, Nandurbar
Through its Member Secretary.
03. Gangamai Education Trust's
Arts, Commerce & Science College, Nagaon,
Tq. & Dist. Dhule.
Through its Principal.

... Respondents

Mr. Sushant C. Yeramwar, Advocate for Petitioner
Mr. V. M. Jaware, AGP for Respondent Nos.1 & 2

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

**Reserved On : 10/01/2024
Pronounced On : 18.1.2024**

Judgment (per S. G. Chapalgaonkar, J.) :-

The petitioner approaches this Court under Article 226 of the Constitution of India impugning the order dated 5.3.2021 passed by the

Scheduled Tribe Certificate Scrutiny Committee, Nandurbar invalidating the tribe claim of the petitioner for 'Tokre Koli' Scheduled Tribe.

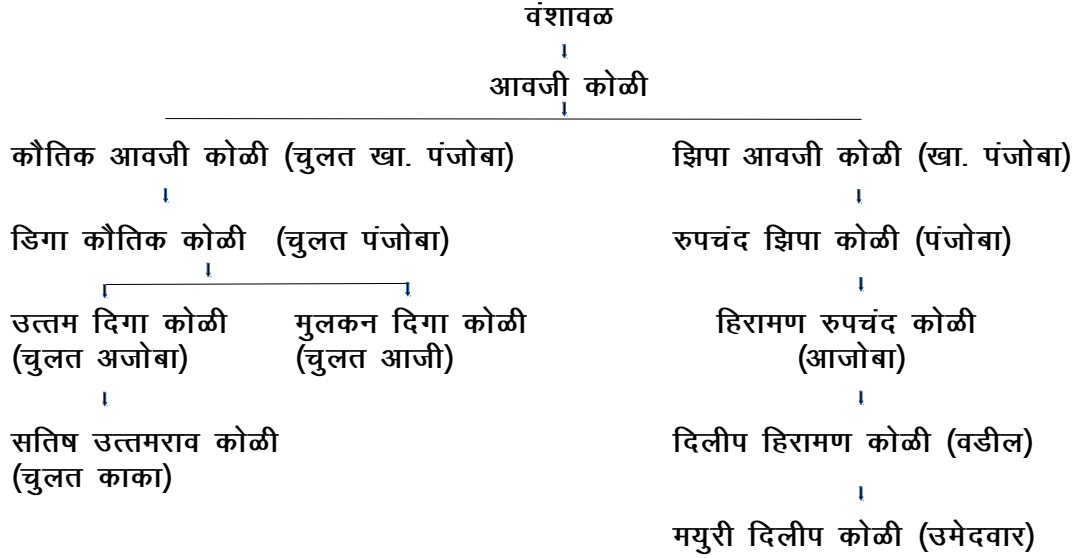
2. Mr. Sushant Yeramwar, learned advocate appearing for the applicant would submit that the Committee failed to consider the positive evidence relied upon by the petitioner in support of her caste claim. He submits that petitioner filed an affidavit in Form No. F showing genealogy of the family. The birth record dated 9.4.1926 in respect of Mulkan D/o Diga Kautik i.e. cousin grand aunt of petitioner shows her caste is recorded as "Tokre Koli". The photo stat copy of the relevant birth register was placed on record. This document bears greater probative value being a pre-constitutional document. Similarly, revenue entries in form of 7 x 12 extract showing allotment of land to the petitioner's great grandfather Rupchand Ziba Koli being a tribal is also pressed into service. Revenue entry in the name of cousin uncle of the petitioner namely Satish Uttamrao Koli showing the land to be non-transferable under Section 36 and 36A of the Maharashtra Land Revenue Code was made part of the record. The aforesaid documents are not doubted by the Vigilance Officer in his report dated 9.11.2020 submitted to the Committee. However, committee discarded the aforesaid evidences on flimsy grounds. He would, therefore, urge to quash and set aside the impugned order and issue directions to the Committee for granting validity certificate in favour of the petitioner.

3. Mr. V.M. Jaware, learned AGP appearing for the respondent Nos. 1 and 2 vehemently opposes the contentions. He would submit that the 1926 document in the name of Mulkan appears to be a manipulated/made-up. Except the so called birth register entry in the name of Mulkan

in the year 1926, similar entries in respect of her two brothers or any other family member is not available. On the other hand, contra death entry dated 3.7.1944 of Zipa Awaji Koli who is uncle of Mulkan indicates his caste as "Koli. Death entry of Rupchand s/o. Zipa in the year 1962 depicts his caste as "Koli". The school register entry in respect of Hari Zipa Koli, records caste as Koli - Raising Wakde. Entry regarding Uttam Diga Koli i.e. cousin grandfather of the petitioner in the year 1946 and the school entry regarding Shankar Diga Koli recorded in 1954 registers "Hindu Raising" or "Hindu Koli" as caste. The school admission entry in respect of petitioner's father is of the year 1984, wherein, his caste is recorded as "Tokre Koli".

4. Learned AGP would therefore submit that except the document of 1926 in the name of Mulkan, no other evidence supports claim of the petitioner for 'Tokre Koli' Tribe. Further there are contra entries. The Committee has taken appropriate view based on material pressed in to service by the petitioner and collected by the Vigilance Cell and rightly invalidated the claim.

5. We have considered submissions advanced by the learned advocates appearing for the parties. We have perused the original file received from the Caste Scrutiny Committee. The claim of the petitioner for 'Tokre Koli' Schedule Tribe is sought to be established on the basis of document of 1926 i.e. birth entry dated 9.4.1926 in the name of Mulkan D/o. Dika, who is distant paternal aunt of the petitioner. It would be appropriate to refer to the genealogy as given by the petitioner's father alongwith his affidavit as submitted before the Committee in Form "F".



6. Perusal birth entry extract of 1926 would show that name of Mulkan is entered using different ink. On overall consideration of document use of different ink at various places can be observed, however it would be hasty to draw inference of any manipulation, particularly, at the instance of the petitioner or her family member. The document is coming from the proper custody. Therefore, it cannot be discarded at the threshold. The Committee observed that the possibility of insertion of the name of Mulkan in the said register can not be ruled out. The Committee has also observed that Mulkan's real brothers namely, Uttam and Shankar were born in the year 1939 and 1947, respectively, to Diga S/o. Kautik, who is cousin great grandfather of the petitioner. Pertinently, the birth entries in respect of real brothers of Mulkan are not brought on record. The age difference in between Mulkan and her brothers is more than 13 to 21 years. The Committee has further observed that if caste entry as Tokre Koli was entered in relation to Mulkan, similar entries could have been available in respect of other family members. We find that observations of committee are in tune with record.

7. The Committee has further relied upon the contra entries in respect of close blood relations of the petitioner. We have gone through such documents and find that the entries right from 1940 onward in respect of paternal relations of the petitioner show caste as “Koli” or “Hindu Koli”. The revenue record as relied upon by the petitioner nowhere supports her claim. The school record of Uttam Digha Koli shows entry of caste as “Hindu Raisingh Wakde”. The entry of 1-7-40 in respect of Hari Zipa Koli records his caste as “Koli Raisingh Wakde”. The entry dated 2.6.1955 in respect of Panditrao Rupchand Koli and entry of 2.8.40 in respect of Hiranman Ranvir Koli i.e. grandfather of the petitioner depicts entry as “Hindu Koli”.

8. At this stage Mr. Yeramwar, learned advocate appearing for the petitioner submits that while dealing with the documentary evidence, greater reliance may be placed on pre-independent documents which furnish higher degree of probative value for the purpose of determining caste status. He would further submit that even some contra entries are found in the subsequent years, the oldest pre-constitutional entry would fetch highest probative value. In support of his contention, he relies upon the order dated 29.11.2017 passed by the Supreme Court of India in the matter of ***Veena Ashok Godse @ Veena Hemant Sonawane vs. State of Maharashtra (Civil Appeal No. 19968 of 2017)***. He would further rely upon the order dated 13.9.2023 passed by this Court in W.P. No. 11298 of 2023 in the matter of ***Pratik Kishor Suryawanshi vs. State of Maharashtra*** to contend that if the pre-constitutional document comes from proper custody there is no scope to draw inference of manipulation at some later point of time, there is no reason to discard such document.

9. There cannot be dissent to aforesaid salutary proposition of law espoused in the aforesaid judgments, however on perusal of the document of 1926 regarding birth entry of Mulkan, we are of the considered opinion that solitary document relied upon by the petitioner does not inspire confidence so as to form sole basis to declare the caste validity in favour of the petitioner, particularly, in the light of many other contra entries even in respect of Mulkan's brothers. We find that the Committee has taken a possible view of the matter on appreciation of evidence which need not be disturbed in exercise of writ jurisdiction of this court under Article 226 of the Constitution of India. Resultantly, there is no merit in the writ petition. Same stands dismissed.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-