



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5638 OF 2024

Sakshi Nanasaheb Koli
Age: 20 years, Occu.: Student,
R/o. Kasti Bk. Tq. Lohara,
Dist. Dharashiv.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department
(Social Justice Department),
Mantralaya, Mumbai-32.
2. The Joint Commissioner,
Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad,
Add – beside CIDCO Bus stand,
CIDCO, Aurangabad.

.. Respondents

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Mr. A.B. Kale i/by Mr. Mohanish V. Thoart, Advocate for the Petitioner.

Mr. R.S. Wani, AGP for Respondents/State.

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CORAM : MANGESH S. PATIL AND
SHAILESH P BRAHME, JJ.

RESERVED ON : 16 JULY 2024
PRONOUNCED ON : 23 JULY 2024

JUDGMENT [Per Shailesh P. Brahme J.] :

. Rule. Rule is made returnable forthwith. With the consent of the parties heard finally.

2. Petitioner is challenging judgment and order dated 20.05.2024 passed by the respondent no.2/Scrutiny Committee,

confiscating and invalidating tribe certificate of scheduled tribe, Koli Mahadev. The Scrutiny Committee discarded old fasli entries of Yashwanta Daji and Shamrao Yashwant Koli alleging manipulation. It is held that pre-independence record was not produced. The contrary entries of the relatives of the petitioner were considered for invalidating the claim. The place of residence of the petitioner and his forefathers is found to be incompatible with the tribe claim. The affinity test is held to be against the petitioner. Lastly, validity certificate of Venkat Shamrao Koli, real uncle of the petitioner is held to be unreliable.

3. Learned Counsel for the petitioner Mr. A.B. Kale submits that after order of remand passed by High Court in Writ Petition No.1164/2023, petitioner submitted application on 14.03.2023 before the Committee producing old documents so as to have vigilance inquiry. Only two documents were referred to the vigilance cell for inquiry and remaining documents having probative value were excluded without any reason. He would submit that there is fasli record supporting the petitioner which has been discarded without sound reasons.

4. He would submit that petitioner's uncle Venkat Shamrao Koli was issued with validity certificate by relying upon validity certificate of Satish Limbaji Koli. There was vigilance inquiry conducted in the matter of Venkat Shamrao Koli and by a reasoned order, he was issued with validity certificate which should enure to the benefit of the petitioner. The selfsame record was already scrutinized. Learned Counsel refers to judgment in

the matter of Aishwarya Shesharao Kabade and Anr. Vs. State of Maharashtra and Others, in Writ Petition No.111/2021. He tenders on record coloured photocopies of old revenue entry and birth record of Shamrao Yashwanta to show that there is no manipulation.

5. Per contra, learned AGP supports impugned judgment and order. In support of his submission, original papers of petitioner, her brother Kunal and their father Nanasaheb are produced on record. Learned AGP submits that the Scrutiny Committee is justified in rejecting the claim, considering contrary entries and manipulation in the record. After remand, fresh inquiry was conducted on the basis of which old fasli documents are discarded. He would further submit that the validity certificate of Venkat is suspicious and procured by suppressing material facts and incompatible genealogies.

6. Learned AGP informs that the Committee has decided to reopen validity of Venkat Shamrao Koli. A reliance is placed on judgment of High Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.**, 2023 SCC Online SC 326. It is further informed that the documents which are contended to be produced vide application dated 14.03.2023 by the petitioner before the Committee, are not found in the record.

7. We have considered the rival submissions of the parties and have gone through relevant record which was made available by

both the sides. Petitioner's claim was invalidated by the Scrutiny Committee on 20.09.2023, on earlier occasion. Being aggrieved Writ Petition No.2264/2023 was preferred in the High Court. During the course of arguments, old fasli record was tendered across the bar and due to that matter was remitted to the Scrutiny Committee for consideration afresh with a liberty to the petitioner to produce additional documents. Impugned judgment and order was passed on 20.05.2024.

8. It is the contention of the petitioner that on 14.03.2023 couple of documents were produced before the Committee alongwith application and there is acknowledgment of the office of the Committee for having received application. This application was tendered before earlier decision by the Committee was rendered on 20.09.2023. Application dated 14.03.2023 was not submitted after order of remand passed by this Court on 03.11.2023. There is no substance in the submission of the petitioner that the documents produced with the application dated 14.03.2023 were not scrutinized.

9. Petitioner relies on the revenue record of Yashwant Daji Koli of 1358 (1948) fasli and birth record of Yashwant Shamrao Koli which is of 1343 (1933). These documents were referred to the vigilance inquiry and the report is received in respect of birth entry of Shamrao Yashwant of 1343 fasli. It is reported that word 'Koli Mahadev' appears in the dark letters. We have gone through the report and coloured photocopies of extract of entry no.10 which is in Modi script. We do not notice any change of ink or

dark letters so as to suspect any manipulation. The Vigilance Officer or the Committee could have solicited opinion of handwriting expert. Without resorting to due verification, a finding is recorded, castigating the entry to be manipulated which is perversity and arbitrariness.

10. So far as revenue entry of Yashwant Daji Koli of fasli 1358 is concerned, we do not find that there is any report submitted by revenue authority or Vigilance Officer regarding genuineness of the entry. The petitioner produced photocopies of revenue entries of Shamrao Yashwant Koli, Bapu Daji Koli which were not referred to vigilance enquiry. The Committee is bold enough to record that word 'Koli Mahadev' has been incorporated in different handwriting and ink, but this finding is unsupported by any material. This finding is also contrary to the record.

11. The findings recorded by the Committee in respect of fasli entries of 1343 and 1358 are unsustainable. Both the entries are of pre-independence period indicating caste as 'Koli Mahadev'. The relationship of the petitioner with Yashwant Daji Koli and Shamrao Yashwant Koli is not disputed. In view of law laid down by Supreme Court in the matter of **Anand Versus Committee for Scrutiny and Verification of Tribe Claims and Others**, reported in (2012) 1 SCC 113, the entries have greater probative value and support the claim of the petitioner.

12. Petitioner's real uncle Venkat Shamrao Koli was issued with validity certificate which is pressed into service by the petitioner.

The validity certificate of Venkat was discarded by the Scrutiny Committee for two reasons i.e. suppression of the contrary entries and for giving two inconsistent genealogies by way of affidavit of selfsame affiant who is none other than validity holder, Venkat Shamrao Koli. It is not disputed that Venkat was issued with validity certificate after conducting vigilance inquiry. In his case, reliance was placed on validity certificate of Satish Limbaji Koli who happens to be descendant of Rama. In case of Venkat, affidavit was filed by him stating relationship with validity holder, Satish showing two sons of Daji namely Rama and Yashwanta. Whereas in the present matter, Venkat Shamrao Koli filed affidavit, showing two sons of Daji namely Bapu and Yashwanta. There is no mentioned of son Rama.

13. Apparently there is inconsistency in the genealogies given by Venkat in his own matter and in the present matter. We are of the considered view that merely because of inconsistency in the genealogies, we cannot jump to a conclusion that petitioner's claim is false. The Committee has already proposed to reopen validity of Venkat. It would be open for the Committee to inquire into inconsistent genealogies and fraud if any. Unless validity certificate of Venkat is revoked, the petitioner cannot be deprived of its benefit. We, therefore, do not approve the finding recorded by the Committee in this regard.

14. Learned AGP seeks to rely upon the judgment in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra). At this juncture, validity certificate of Venkat needs to

be followed as per law laid down in paragraph no.22.

15. In the judgment of Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (Supra), it is held that affinity test is not a litmus test and conclusive when there is other reliable material on record. The finding in respect of affinity test recorded by the Scrutiny Committee is inconsequential. The place of residence of the claimant or his forefathers cannot be considered as a decisive factor, after area restriction was removed in 1976. Therefore, we are not inclined to accept the finding of the Committee in that regard.

16. For the reasons stated above, the impugned judgment and order is unsustainable and we pass following order :

ORDER

- a. The Writ Petition is allowed.
- b. The impugned judgment and order dated 20.05.2024 is quashed and set aside.
- c. The respondent no.2/Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner for 'Koli Mahadev' scheduled tribe.
- d. The same shall be subject to the outcome of re-verification of the validity certificates of Venkat Shamrao Koli as proposed by the Scrutiny Committee.
- e. Petitioner shall not claim equity.

- f. Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

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