

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

Writ Petition No. 5221 of 2015

Ujwala Hanmant Yeranwad,
Age : 20 years,
Occupation : Student,
R/o. Yedur, Taluka : Degloor,
District : Nanded.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai - 32.
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division,
Aurangabad,
Through its Deputy Director (R),
Aurangabad.
3. The Sub-Divisional Officer,
Degloor,
Taluka : Degloor,
District : Nanded.

.. Respondents.

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Mr. Pratap V. Jadhavar, Advocate, for the petitioner.

*Mrs. M.B. Gangwal (Patni), Assistant Government Pleader,
for respondent nos.1 and 3.*

Mr. Pravin S. Patil, Advocate, for respondent no.2.

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**CORAM : A.V. NIRGUDE &
A.M. BADAR, JJ.**

DATE : 17TH JUNE 2015

ORAL JUDGMENT (Per A.M. Badar, J.) :

1. Heard Counsel for respective parties.
2. Rule. Rule made returnable forthwith. With consent of the learned Counsel for the parties, taken up for final hearing.
3. By the instant petition, the petitioner is challenging the impugned order dated 8-1-2015, passed by respondent no.2 - Committee, rejecting appeal of the petitioner challenging the order dated 26-6-2014, passed by respondent no.3 - Sub-Divisional Officer, rejecting the application for issuance of tribe certificate of 'Koli Mahadev' - Scheduled Tribe, to the petitioner.
4. Mr. Jadhavar, the learned Counsel for the petitioner, submits that the petitioner has filed application seeking tribe certificate as belonging to 'Koli Mahadev' - Scheduled Tribe, with respondent no.3 - Sub-Divisional Officer. That application for issuance of tribe certificate came to be rejected by holding that the petitioner had not filed any revenue record prior to the year 1950 and the evidence adduced by her is of recent period. Mr. Jadhavar, the learned Counsel for the petitioner, further argues that the said order of respondent no.3 - Sub-Divisional Officer, Degloor, was carried in appeal before respondent no.2 - Committee. However, that

appeal is also dismissed with a perverse judgment. The learned Counsel for the petitioner submits that the school record of the petitioner as well as tribe certificate of her relatives shows that she belongs to 'Koli Mahadev' - Scheduled Tribe. He further argued that the appellate order, holding that the petitioner failed to prove her socio-cultural affinity and ethnic linkage towards 'Koli Mahadev' tribe, is also arbitrary and perverse.

5. Mr. Patil, the learned Counsel appearing for respondent no.2 - Committee, relying on Full Bench judgment of this Court, in the case of ***Shilpa Vishnu Thakur Vs. State of Maharashtra & others [2009(3) Bom.C.R. 497]***, argued that the Competent Authority is empowered to conduct further enquiry if it is not satisfied with the claim of the petitioner, and after considering the evidence, statement of the petitioner and after taking into account the material gathered by the Competent Authority, if it is established that the petitioner belongs to a particular Scheduled Tribe, then only the tribe certificate can be issued. According to Mr. Patil, the learned Counsel for respondent no.2 - Scrutiny Committee, in the case in hand, the petitioner failed to adduce necessary evidence, so also, failed to pass affinity test and therefore, the authorities have rightly rejected her application for issuance of tribe certificate for 'Koli Mahadev' - Scheduled Tribe.

6. We also heard Mrs. Gangwal (Patni), the learned Assistant Government Pleader, for respondent nos.1 and 3.

7. We have carefully considered the rival submissions canvassed by the learned Counsel for respective parties.

8. Matter of issuance of caste (tribe) certificate to a person belonging the backward class is governed by the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance And Verification Of) Caste Certificate Act, 2000 [**For short, hereinafter referred to as “Act of 2000”**]. Section 3 of the said Act provides that, such person has to make an application in the prescribed form and manner to the competent authority. Section 4 of the said Act provides that, if the Competent Authority is satisfied about genuineness of the claim, then it has to issue a caste certificate by following the prescribed procedure.

9. The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 [**For short, hereinafter referred to as “Rules of 2003”**], and more particularly Rule 4 thereof, prescribes the procedure for issuance of tribe certificate. Rule 4(5) provides that the Competent Authority should scrutinize the claim of such person and on being satisfied about genuineness of the claim, it is expected to issue the tribe certificate. If the Competent Authority is not satisfied with the claim of the applicant, then as per provisions of Sub-Rule 9 of Rule 4 of Rules of 2003, the Competent Authority can order further enquiry as deemed fit. Thereafter, considering the material gathered in the said enquiry, coupled with the evidence tendered by such person, if the Competent Authority is satisfied about genuineness of the claim, then it has to issue the Scheduled Tribe certificate within the prescribed time limit. At the stage of issuance of tribe certificate, a detail investigation and enquiry is not contemplated.

The Competent Authority has to issue tribe certificate on being *prima facie* satisfied about genuineness of the claim made by the petitioner. This is so, because the caste (tribe) certificate issued by the Competent Authority, in terms of Sub-Section 2 of Section 4 of the Act of 2000, is deemed to be valid only subject to its verification and issuance of validity certificate by the Scrutiny Committee.

10. In the case in hand, the Competent Authority had conducted enquiry. Report of the Circle Officer, dated 19-3-2013, who conducted enquiry, is at page 32. The Circle Officer has collected necessary documents and has recorded statement of witnesses. The Circle Officer in his report has recommended that tribe certificate for tribe '*Koli Mahadev*' be issued to the petitioner. The Circle Officer who has conducted enquiry, has not expressed any doubt about the tribe claim of the petitioner. However, the Competent Authority - respondent no.3 rejected the tribe claim of the petitioner, only with a reasoning that the petitioner failed to produce revenue record / evidence prior to year 1950. This finding of the competent authority is totally perverse and no prudent person can arrive at such a conclusion on a given facts and evidence. It has totally ignored the material evidence on record.

11. Respondent no.2 - Committee went further while deciding the appeal. The petitioner and her cousin were asked information regarding characteristics of the tribe claim by the Committee. Then, respondent no.2 - Committee concluded that the petitioner failed to prove her socio-cultural affinity and ethnic linkage towards '*Koli Mahadev*' - Scheduled Tribe.

This finding of respondent no.2 - Committee, in appeal, is also totally unreasonable and unsustainable. No reasons are given by respondent no.2 - Committee, as to absence of affinity of the petitioner to 'Koli Mahadev' - Scheduled Tribe. There is total absence of any reasoning on the question as to why the petitioner failed to fulfill the affinity test. As against this, the petitioner had produced her school record as well as school record of her relatives to show that they belong to 'Koli Mahadev' - Scheduled Tribe. It is clear that during further enquiry, the Circle Officer has recorded statements of witnesses apart from collecting documents and had also opined that the tribe certificate needs to be issued to the petitioner. Considering this *prima facie* evidence, there was no impediment for the competent authority to issue the tribe certificate which, no doubt, requires detail scrutiny at the time of validation proceedings.

12. In the light of above, we proceed to pass following order :

ORDER

(A) The petition is allowed.

(B) The impugned order dated 8-1-2015 (Exhibit "E"), passed by respondent no.2 - Committee, so also, order dated 26-6-2014 (Exhibit "C"), passed by respondent no.3 - Sub-Divisional Officer, are quashed and set aside.

(C) Respondent no.3 - Sub-Divisional Officer, Degloor, shall issue tribe certificate to the petitioner, as belonging to 'Koli Mahadev' - Scheduled

Tribe, which certificate certainly will always be subject to the scrutiny in validation proceedings.

13. Rule is made absolute in the above terms. There shall be no order as to costs.

(A.M. BADAR)
JUDGE

(A.V. NIRGUDE)
JUDGE

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