

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6464 OF 2013**

Vaishali Shriram Gangurde ...Petitioner
Versus
State of Maharashtra, through Secretary, Tribal ...Respondents
Development Department & Ors.

Mr. R. K. Mendadkar, *for the Petitioner.*
Ms. Sushma S. Bhende, **AGP**, *for the Respondents Nos. 1 to 3.*

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**
DATED: 15th February 2016

PC:-

1. We have perused the Petition and all annexures thereto. We have found that the Committee has assigned cogent and satisfactory reasons for negating the caste claim.

2. The Committee has found from the record that the Petitioner/Applicant is ordinary resident of village Ravlji, Taluka Kalwan, District Nashik. The birth extracts in respect of the Applicant/Petitioner's blood relatives were perused and which also form part of the two reports submitted by the Vigilance Cell after detailed inquiry. These reports dated 25th March 2011 and 8th May

2013 indicate that the cousin grandmother, cousin uncle and cousin grandfather have all been certified as “Koli”. As far as the school record of the Petitioner’s father, the caste is recorded as “Hindu Koli”. This is the record pertaining to the year 1959. In the school record of the Petitioner’s cousin uncle, Shivaji Kadu Gangurde, Sahebrao Popat Gangurde and Nanaji Popat Gangurde, the entries against Caste/Tribe Column are “Hindu Mahadev Koli” and the record pertains to 1957, 1969 and 1970 respectively.

3. The Committee has found that surnames of the relatives are Gangurde, Pawar, Jadhav, Bachhav, Nikam, Pithe, Gumbade etc. They are ordinary residents of Nashik, Kalwan, Dindori, Satana, Deola etc.

4. The Petitioner heavily relied upon the validation by the Scrutiny Committee of the claim of her two cousin brothers, Rajaram Mahadu Gangurde and Suraj Nanaji Gangurde. They are dated 21st February 2006 and 11th January 2006 respectively.

5. However, the Research Officer attached to the Vigilance Cell observed that the surnames of the relatives of the Petitioner are not consistent with the Mahadev Koli Scheduled Tribe. Further, the information furnished by the Petitioner regarding traits, characteristic, customs etc. is not consistent with the Mahadev Koli Scheduled Tribe.

6. Though the copies of the Vigilance Cell report and all this material was supplied to the Petitioner and an explanation was called for, she was not in a position to give any explanation in writing.

7. At a personal hearing held before the Committee on 23rd May 2015, the Committee once again enquired with the Petitioner about the proof of her claim. Thereafter, it scrutinized the available material and on the issues framed at page 22 of the paper-book, it proceeded to answer them. The answer and opinion of the Committee is based on thorough scrutiny and verification of the Petitioner's claim. None of the certificates, which had been forwarded, placed before the Committee could inspire confidence. In fact, at running page 24 of the paper-book, the Committee's findings are eloquent enough. They would read as under:

"It seems that in the school record of Applicant's uncle Shivaji Kadu Gangurde, Sahebrao Popatrao Gangurde and Nanaji Gangurde, the caste status has been intentionally changed as Mahadev Koli to grab the concessions meant for the Scheduled Tribe Community.

It seems that the Applicant is well aware about this school record of her father and the caste entry in the birth extract of her cousin grandfather and grandmother and cousin

uncle and therefore, she intentionally avoided to produce before the Scrutiny Committee along with her proposal. The Applicant has purposely produced such a school records in respect of her cousin uncle wherein the caste is recorded as Mahadeo Koli and mislead the Scrutiny Committee. The birth extract in respect of Applicant's real uncle Krushna Shankar Koli shows the caste entry as "Hi.M." and the said entry pertains to period of 1960. This caste entry also does not establish that the Applicant belongs to Mahadev Koli. Moreover, in the said record the surname of the Applicant's real uncle was shown as "Koli" and not as "Gangurde".

On the contrary, the school record which is obtained by the Police Vigilance Cell in respect of the Applicant's father and birth extract in respect of cousin grandfather and grandmother and cousin uncle etc. clearly establishes the original caste status of Applicant's family as "Koli".

8. It is on these findings that we enquired from Mr. Mendadkar as to how in writ jurisdiction can this Court interfere with the impugned order, particularly after being convinced that these conclusions are not perverse or vitiated by any error of law apparent on the face of record.

9. Mr. Mendakar would submit that it is incorrect on the part of the committee to deny and reject the claim when the Petitioner's father has been throughout resident of the tribal belt. The belt particularly of Kalwan Taluka, District Nashik is the area in which Mahadev Koli Scheduled Tribe and those carrying on traditional occupation have been found. Mr. Mendadkar relied upon paragraph 8 of the Writ Petition to urge that the original place of residence, namely, Ravlji is found in the area declared as scheduled area in the year 1956. The Bombay Reorganisation Act and the materials produced before the Vigilance Cell would reveal that persons styled as "Mahadev Koli" from this area were declared as Scheduled Tribe. Once there is widespread ignorance, illiteracy and merely because the entry is not correctly reflected in some school records does not mean that the Petitioner's immediate relatives or blood relations do not belong to this Scheduled Tribe.

10. We are not convinced with this explanation for the simple reason that in each and every matter the Committee cannot be said to have erred itself in undertaking the exercise commented upon. Evidently, the Act of 2001 requires the Committee to verify and scrutinize the claim. The burden is squarely on the Petitioner and the candidate. Even if the younger generation is not entirely familiar with the traditions, customs and practices of the particular Tribe, yet, it is evident that the Cell visits the area and the village. The Vigilance Cell interviews and meets elder persons in the community and finds out from such residents of the area whether

they are adhering to the customs' practices or are familiar therewith. Based on the answers and the conclusions neither the Vigilance Cell or the committee invalidates or denies the claim straightaway. Both are also aware that the younger generation having moved out from these areas for the purposes of education or jobs cannot be said to be acquainted with minute details. However, there familiarity with the relatives, their brothers and sisters, so also, the traits and characteristics of the community enable the Committee to arrive at a proper finding. In the present caste, the Committee has not proceeded to deny the Tribe claim perfunctorily but has assigned reasons for the same.

11. The records of the recent period could have been prepared and manipulated to show that they are consistent with claims of the candidates like the Petitioner. In preference to them the old entries are, therefore, given evidentiary value. We do not see that such an approach in all cases can be faulted. The Committee has found from the record that in the basic certificates issued by the school in relation to the Petitioner's father, birth extract of cousin grandfather and cousin uncle, the entries are as "Koli". The Police Vigilance Cell enquiry reveals that the school record furnished in respect of the Petitioner and her relatives, the changes have been made and it cannot be ruled out that they are made to avail of the benefits which are extended and the concessions meant for the Tribal communities.

12. The findings of fact, therefore, cannot be re-appreciated and reappraised in our writ jurisdiction. Once they are found to be consistent with all the relevant materials placed on record, then, the claim of the Petitioner cannot be upheld.

13. We see no merit in the Writ Petition and it is dismissed. It is also dismissed in the light of the clear assertions in the Affidavit in Reply, which are based on the documents which have been produced before the Vigilance Cell and which form part of its record. They have been extensively referred to from pages 18 onwards of the paper-book. The Committee has also found that the family tree and genealogy submitted does not match with the claim of the Petitioner. For these additional reasons as well, we do not interfere with the order passed by the Scrutiny Committee. The Petitioner is devoid of merits and is dismissed.

14. We have found from the record that the Petitioner has tried to mislead the Court by filing an Additional Affidavit purporting to inform that this Petition itself has wrongly been filed challenging an order passed by the Caste Scrutiny Committee. The impugned order dated 6th June 2013 invalidates the caste claim of the Petitioner. But though this order was received, the Petitioner was unaware of the fact that the website and the record of the Committee indicated that the Caste Scrutiny Certificate has been validated by the Respondent No. 2, Committee long time back.

15. The Additional Affidavit that is filed relies upon the website and the entry and insertion therein. On such specific statement being made on an Affidavit and on oath, the Research Officer of the Scheduled Tribe Certificate Scrutiny Committee, Nashik Division, Nashik has filed an Additional Affidavit in Reply denying any such validation. The Scrutiny Committee has committed an error in inserting this information or entry of validity. The position is otherwise and the Scrutiny Committee stands by the impugned order dated 6th June 2013.

16. Once a reasoned order invalidates the caste claim of the Petitioner, then, it was already clarified to Mr. Mendadkar on 8th February 2016 that we are not inclined to interfere with the impugned order. Mr. Mendadkar sought time to take instructions from the Petitioner, particularly on whether she is ready and willing to give up her claim as belonging to the Tribe in question.

17. However, when the matter was posted today at the request of both sides, both the Petitioner, Vaishali Shriram Gangurde, and her Advocate Mr. Mendadkar relied on the Additional Affidavit.

18. When we were about to dismiss the Petition and as already narrated above, the Petitioner sought continuation of her education by giving up the claim of belonging to Mahadeo Koli Scheduled Tribe. At this belated stage and in the light of the above finding of the Committee, the alternate request of Mr. Mendadkar that the

Petitioner be allowed to continue her studies as a non tribal candidate also does not merit and deserve any consideration. Sympathy cannot be extended in all cases and contrary to law. A discretionary and equitable relief is based on the conduct of the candidate and those espousing her claim before the Scrutiny Committee. Once their conduct has been found to be blameworthy and vitiated by mala fides, then, all the more this request cannot be granted. That is also rejected.

19. At this stage, Mr. Mendadkar prays that the order passed by this court on 30th September 2014 be continued for a period of eight weeks to enable the Petitioner to approach the higher Court.

20. This Court granted ad-interim relief in terms of prayer clause (e). Prayer clause (e) of the Writ Petition reads as under:

“Pending hearing and final disposal of this petition, the Respondent No. 5 University be directed to declare result of the first year of BAMS examination of the petitioner held in May, 2011 and to permit her to prosecute her further studies subject to result of this petition.”

21. The learned AGP is opposing grant of any relief or continuation of this order, purely because the Petitioner intends to challenge it in a higher Court.

22. We have found that the ad-interim protection was granted because it was reported that the results of the exam in which the Petitioner appeared were to be declared and her studies were allowed to be continued based on the outcome of the examination.

23. Since the Petitioner is now in the second year of the BAMS course and the exams are scheduled to be held in November 2016, in the event the Petitioner is unable to obtain any relief from the higher Court on or before 15th April 2016, this protection would come to an end and thereafter would not be extended for any reason.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)