

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 2873 OF 2014

Shradha Chandrashekar Koli

... Petitioner

Vs

Schedule Caste Certificate Scrutiny
Committee

... Respondent

**WITH
WRIT PETITION NO. 9179 OF 2015**

Shraddha Chandrashekar Koli

... Petitioner

Vs

1. The Hon'ble Chancellor & Ors.

... Respondents

Mr. Anil V. Anturkar, senior counsel with Mr. Sugandh
Deshmukh for the Petitioners.

Ms. Sushma Bhende, AGP, for the Respondent No.1-State.

Mr. Rajendra Anbhule for the Respondent Nos.2 to 4 in WP
No.9179 of 2015.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKARJOSHI, JJ.**

THURSDAY, 5TH MAY, 2016

P.C. :

1. By this petition under Article 226 of the Constitution of
India, the petitioners challenge the order passed by the Caste

Scrutiny Committee and in this case styled as Scheduled Tribe Certificate Scrutiny Committee, Pune, dated 28th November, 2013.

2. The matter has a chequered history.

3. The petitioner is the daughter of one Chandrashekhar S. Koli. She made an application for issuance of a caste validity certificate for the simple reason that upon her caste certificate she was admitted by the Principal, Walchand College of Arts and Science at Solapur. The caste certificate as necessitated by the Maharashtra Act No.23 of 2001 was forwarded to the Scrutiny Committee for verification and scrutiny and, if satisfied, subsequent validation. The first order of the Committee was passed on 18th March, 2008. That was adverse to the petitioner. On 16th April, 2008, the petitioner's first Writ Petition No.3836 of 2009 was dismissed by this Court. Thus, the Committee maintains that its initial order dated 18th March, 2008, was not interfered with. However, the petitioner preferred a Review Petition being Review Application No. 73 of 2009. That was also dismissed on 28th July, 2009. The matter was carried to the

Hon'ble Supreme Court of India by way of Special Leave Petition. That was withdrawn with liberty to move the High Court again. A substantive writ petition being Writ Petition No.9498 of 2009 was filed, but the petitioner was informed by this Court on 13th November, 2001, that such a petition was not her remedy and she must revive whatever is her request and tenable in law, namely, Review recalling of the earlier order. That is how she moved a Civil Application No.212 of 2010 in Review Petition No. 73 of 2009. That was placed before the same Division Bench and which passed an order of remand to the Committee. Thereafter, the Committed rejected the claim by a fresh order dated 19th / 21st June, 2010 (Annexure-I).

4. This time the petitioner challenged that order by Writ Petition No.1160 of 2011 and that writ petition was disposed of by this Court and the result was quashing and setting aside of the Committee's order impugned in that writ petition. Thereafter, a fresh hearing before the Committee commenced. The Vigilance Cell was directed to submit a report which it submitted on 25th May, 2011. Based on that report, the Committee proceeded further and eventually only upon this Court being approached

once again, in Writ Petition No. 9769 of 2012 did the Committee on closure of hearing in 2011 and early 2012 passed an order on 29th October, 2012. That rendered Writ Petition No.9796 of 2012 infructuous.

5. The petitioner then filed another writ petition being Writ Petition No.629 of 2013, challenging the order dated 29th October, 2012, passed by the Committee. That was disposed of by this Court and resulting in another remand. Upon that remand, the order impugned in this petition has been passed.

6. Mr. A.V. Anturkar, learned senior counsel appearing for the petitioner submitted that the Committee ignored a very vital and material piece of evidence. In that, there was a validity certificate given and issued in favour of the sister of the petitioner - Snehal. That was relied upon and it was urged that in one family there cannot be one Scheduled Tribe and another a non Scheduled Tribe. The ancestor is common. It may be that the birth certificates of 1925 and 1927 could not be established and proved for their genuineness and authenticity, but this caste validity certificate in favour of the sister was a clinching piece of

evidence. For ignoring that and brushing it aside, the Committee should have reached a conclusion of fraud or suppression going to the root of the case. That is not the conclusion reached. However, the Committee invalidates the claim and by assigning a wholly untenable reason, namely, that Mahadev Kolis are to be predominantly found in Ahmednagar District - Akola, Rahuri, Sangamner talukas; in Kolaba Taluka - Karjat, Khalapur, Alibag, Mahad and Sudhagad; in Nashik District, Niphad, Sinnar, Chandor, Baglan, Igatpuri, Dindori and Kalwan talukas and in Thana District - Thana, Murbad, Bhivandi, Bassein, Wada, Shahapur, Dahanu, Palghar, Jawhar and Mokhada talukas. If, on 6th September, 1950, the ancestor of the applicant - petitioner are residents of Solapur District and which place is never mentioned as that of Koli - Mahadev Scheduled Tribe's residence, then, according to Shri Anturkar the Committee concluded that the petitioner's forefathers have migrated to Solapur District. Mr. Anturkar would submit that if there is a single State, namely, State of Maharashtra with effect from 1st May, 1960, then, within the State how could this be termed as migration has not been clarified at all. If for reasons such as search of livelihood, employment and rehabilitation or natural calamities such tribes

move out from their original place, then, this could be termed as migration and denying the claims of the nature raised ought to have been explained, according to Mr. Anturkar, with reference to any law. That having not been indicated he would submit that the Committee's order is vitiated by an error of law apparent on the face of the record and perversity. It therefore, should be interfered in writ jurisdiction.

7. In addition, it is submitted by Mr. Deshmukh appearing with Mr. Anturkar that sending the matter back to the Committee would serve no purpose. This Court can issue a prerogative writ for the authority has failed to act in accordance with law. If the power is conferred to act in accordance with law, but is not exercised in accordance therewith, then, what the Committee should have done ought to be done by this Court itself and in that regard reliance is placed on the judgment of the Supreme Court in the case of *The Controller and Auditor General of India, Gian Prakash, New Delhi and anr. vs. K.S. Jagannathan & Anr.*, AIR 1987 SC 537, the relevant paragraphs whereof read as under:

“18. The first contention urged by learned Counsel for the Appellants was that the Division Bench of the High Court could not issue a writ of

mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus. was the relief prayed for by the Respondents in their writ petition. What the Division Bench did was to issue directions to the Appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath v. Income-Tax Officer, Special Circle, Kanpur, and another, [1965] 3 S.C.R. 536, 540 (AIR 166 SC 81 at P. 84) this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and to mould the reliefs to meet the peculiar and complicated requirements of this country." In Hochtief Gammon v. State of Orissa, [1976] 1 S.C.R. 667, 676 (AIR 1975 SC 2226 at P. 2232) this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the Government or its officers.

19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a

writ of mandamus giving such directions. Almost a hundred and thirty years ago Martin, B., in *Mayor of Rochester v. Regina*, [1858] E.B. & E. 1024, 1032, 1034 said :

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That Court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute : Comyn's Digest, Mandamus (A) Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *The king v. Revising Barrister for the Borough of Hanley*, [1912] 3 K.B. 518, 528-9, 531. In *Hochtief Gammon's Case* (AIR 175 SC 2226) this Court pointed out (at page 675) that the powers of the Courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield v. Minister of Agriculture, Fisheries and Food*, [1968] A.C. 997 the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be

determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In Halsbury's Laws of England, Fourth Edition, Volume I, Paragraph 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

20. *There is thus no doubt that the High Courts in India exercising their jurisdiction under [Article 226](#) have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under [Article 226](#), issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.*

... ..

30. *What relevance the above decision has to the facts of the present case is also beyond us. It is not possible to equate the members of the Scheduled Castes with goods imported from abroad. They are human beings like all other human beings, the only difference being that for centuries a large number of their countrymen have not treated them as human beings but as sub-human creatures beyond the pale of society and even of humanity. William Blake in his poem "Auguries of Innocence" said:*

*"Every Night and every Morn Some to Misery
are Born.*

*Every Morn and every Night Some are Born to
sweet delight.*

*Some are Born to sweet delight, Some are Born
to Endless Night."*

The members of the Scheduled Castes were the children of the "Endless Night". Their birth-right was the badge of shame; their inheritance, the overflowing cup of humiliation; their constant and closest companion, degradation; the bride of their marriage, lifelong poverty; and their only fault, to be born to their parents. They were denied education. They were denied jobs except the lowest menial tasks. They were denied contact with persons not belonging to their castes for their touch polluted and even their shadow defiled, though the touch and the shadow of the animals did not, for men rode on horses and elephants and on mules and camels and milked cows, goats and buffaloes. They were denied worship and the doors of the temples were shut in their faces for their very presence was supposed to offend the gods. All these wrongs were done to them by those who fancied themselves their superiors. As the anonymous satirist said :

"We are the precious chosen few:

Let all the rest be damned.

There's only room for one or two:

We can't have Heaven crammed."

The treatment meted out to the members of the Scheduled Castes throughout the ages was an affront to Human Rights. It was in a spirit of atonement for the wrongs done to them and to make restitution for the injury and injustice inflicted upon them that the framers of the Constitution enacted [Article 16\(4\)](#) placing them in a separate class in matters relating to employment or appointment to any office under the State, formulated the Directive Principle embodied in [Article 46](#), and proclaimed the great Constitutional mandate set out in [Article 335](#).

31. It is equally not possible to equate the members of the Scheduled Tribes with goods imported from abroad. They too are human beings like other human beings with this difference that for centuries they have preferred to follow the primitive ways of their forefathers. Remote and almost inaccessible in their hilly vastness and secluded forests, civilization has passed them by. The benefits of high sophisticated technology is as unknown to them as its hazards OF noxious fumes and poisonous gases. Simple and naive, they have become a rich mine for exploitation by the human products of civilization. Their lands have been stolen from them by skulduggery and they have been tricked into selling the products of their craft and skill for a song. It was to protect them from such exploitation and to enable them to participate in the mainstream of the nation's life that they have been given special treatment by Articles 16(4), 46 and 335 of the Constitution."

8. We had placed this matter on the earlier occasion so as to enable Ms. Bhende to take instructions. She informs us today and very fairly that the Committee has not reached a conclusion

of the certificate of validity in relation to the sister being vitiated by fraud or suppression of any material and relevant fact. However, that was granted by not making proper enquiries. She would submit that the Committee will set right its error and, therefore, the matter should be sent back.

9. We are apprehensive and in complete agreement with Mr. Anturkar and Mr. Deshmukh for what the Committee will do again cannot be gauged. It is quite likely that some fourth or fifth reason would be invented and to deny the claim. The experience in this case is that when the matter went back and with the request of the petitioner to consider whether the reliance by her on the birth certificate of her ancestors of 1925 and 1927 can be accepted as a valid piece of evidence, the Committee held that there are differences in the handwriting. There are interpolations and, therefore, these are not reliable and trustworthy documents. They deserve to be discarded.

10. The argument of the petitioner is that discard them but do not discard a caste validity certificate issued in favour of the real sister has met with a conclusion and which is not of fraud or

suppression of any material or relevant fact by the sister or by the father of the petitioner or by the family. The finding is there was no proper and complete enquiry before the caste validity certificate was issued. Time and again this Court has clarified that this is no reason to discard certificates of validity issued to the family members and near and dear ones. There should be an established and proven fraud so as to discard them. We find none and emerging from the record of this case. Then, the reason is that the family resides in Solapur and that is why not worthy of such a certificate and which would denote them as Koli - Mahadev Scheduled Tribe. We do not find such a reason and to be traceable to any provision of law. If none could be pointed out to us by the respondents though the Committee's official is present in Court and when we have perused the lengthy affidavit-in-reply filed to this writ petition by the second respondent. There is no other valid and cogent reason to deny the claim.

11. As a result of the above discussion we do feel that this is a fit case where this Court ought to do what the Committee must do. It is futile now to send the matter back for sending the petitioner back and forth has resulted in such an impact on her that mid-

way and in her academic and educational pursuits she gave up the claim as belonging to Koli Mahadev – Scheduled Tribe. After her graduation, she completed her post-graduation studies as an open merit candidate. Now, she is pursuing her Doctorate or Ph.D. course. Her research, therefore, should not be impacted for in the family one sister is now Koli Mahadev Scheduled Tribe whereas the other is not. These state of affairs cannot be countenanced and should be an eye-opener for all.

12. In the peculiar facts and circumstances of this case and without this order being treated as a precedent, we direct the Committee to issue the caste validity certificate in the name of the petitioner, certifying her as belonging to Koli Mahadev Scheduled Tribe. Such certificate should be issued within a period of fifteen days from today. The writ petition is, accordingly, disposed of. Only because of the persuasion of Ms. Bhende, we do not award costs for this was a fit case to award personal costs on all the members of the Committee.

DR.SHALINI PHANSALKAR-JOSHI, J. S.C. DHARMADHIKARI, J.