

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9268 OF 2013

Ashwinkumar C. Anturlikar

..Petitioner

Vs.

State of Maharashtra and Others

..Respondents

Mr. R. K. Mendadkar, for the Petitioner.

Mr. A. B. Vagyan, Govt. Pleader a/w Mr. C. P. Yadav and Mr. V. N. Sagare, AGP., for the Respondent Nos. 1 to 4.

CORAM :- S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

DATE :- DECEMBER 2, 2016.

P. C.:

The Petitioner is aggrieved and dissatisfied with an order passed by the 2nd Respondent Committee invalidating the Schedule Tribe Certificate.

2 This Writ Petition is pending in this Court from 2013. Since it concerns the employment and livelihood of the Petitioner, we have very carefully gone through the record.

3 The Petitioner obtained a certificate on 20th October, 2007, copy of which is Annexure-B certifying him as belonging to Tokare Koli Schedule Tribe. It is urged that this certificate was granted after due enquiry by Respondent No.4. On the strength of such a Caste Certificate, the Petitioner was selected for appointment to a reserved post in the services of Zilla Parishad, Sangli.

4 The Petitioner laid a claim to a reserved seat and that is why the Petitioner's Tribe Certificate and other documents were scrutinized by the Caste Scrutiny Committee (2nd Respondent). Since several documents were forwarded, after due scrutiny and verification of the same, the Caste Scrutiny Committee came to the conclusion that the Petitioner could not substantiate and prove that he belongs to Tokare Koli Schedule Tribe.

5 During the pendency of the Writ Petition, the Petitioner applied to the Collector, Sangli pursuant to an Advertisement dated 19th June, 2015. That Advertisement invited applications from interested candidates for making appointment

to the post of Talathi reserved for Schedule Tribe. The Petitioner applied under the reserved category. After going through a selection process, he was selected and his name was duly inserted in the select list at Sr. No.1. From the record it appears that the Respondent No.5 to this Writ Petition addressed a letter dated 7th December, 2015 directing the Petitioner to remain present for verification of various documents in his office before issuance of order of appointment. Accordingly, the Petitioner appeared before the 5th Respondent for verification of the documents on 21st December, 2015 and on scrutiny, the Petitioner was informed that he does not have a Caste Validity Certificate. The Petitioner pointed out that this Writ Petition is pending as the Caste Validity Certificate is denied on flimsy and untenable grounds. That is why the Petitioner was directed to get suitable directions in the pending Writ Petition. It is therefore claimed that only because of the order of the Caste Scrutiny Committee and impugned in this Writ Petition that the Petitioner's chances of obtaining public employment and appointment to a public post, are defeated.

6 This court heard this Petition on several occasions. On one such occasion, namely, on 3rd October, 2016 the court noted

the principal contention raised by Mr. Mendadkar. That was duly considered. Mr. Mendadkar's argument was that the Caste Scrutiny Committee while scrutinizing and verifying the claim missed a vital document. It did not take that into consideration at all. That was a relevant piece of evidence in as much as the Petitioner relied upon the school leaving certificate of his grandfather. A copy of this is at page 30 of the paper book. The Division Bench perused the copy of that certificate and found that it indicates that the grandfather was admitted in the school in question on 11th May, 1940 and left that school on 30th November, 1942. It appears from the school leaving certificate that it was issued for the first time on 4th August, 2004. That is how a query was raised to Mr. Mendadkar by the Bench as to whether this document is a copy of the original or the original itself. Mr. Mendadkar submitted that this is the original document and not a copy.

7 The Division Bench, therefore, expressed shock and surprise that how a document namely a School Leaving Certificate of the grandfather of the Petitioner having entered the school and left it in 1942, certifies the admission and leaving for the first

time, after so many decades. Rather on the date of issuance, namely, 4th August, 2004, the vigilance report and which was on record of the committee contained an endorsement that the record of that school is in a torn and mutilated condition. That is how the Division Bench, not to cause any prejudice to the Petitioner, directed the Government Pleader to keep the original register present for perusal of this Court.

8 Then the Petition was adjourned but on 17th October, 2016 extensively heard, this Court perused the original book Nos.1 and 2 of General Register of the Zilla Parishad School, Navi Anturli, Taluka Shirpur, District Dhule. The School Leaving Certificate is stated to be a document at Sr. No.17 from the General Register. However, the particulars at Sr.No.17 of the General Register are different from the certificate placed on record of this Petition. The name at Sr. No.17 is Ganpat Khandu Koli having date of birth dated 19th July, 1946 whereas the name in the school leaving certificate produced by the Petitioner is Atmaram Zaga Koli, born on 10th April, 1932. That is how this Court noted the argument of the Respondents that the Petitioner has perpetrated a fraud not only on the public but this Court.

9 The Petitioner denied these allegations. It is in these circumstances that an affidavit was called for and the matter was placed beyond vacation.

10 After this Court's order as above, an additional affidavit has been filed and that denotes that the documentary evidence produced before the committee by the Petitioner includes the one pertaining to Onkar Gadu Koli and Sitaram Zaga Ishi. The caste mentioned as against that column in the case of Onkar is Koli and as against Sitaram it is Hindu Koli. The date of admission / birth of Onkar is stated to be 1st September, 1917 and date of admission / birth in the case of Sitaram is 1st July, 1952. Both are cousins in the family. The first one is cousin great-grandfather and the other is the cousin grandfather. The Petitioner submitted a copy of the school leaving certificate in respect of his grandfather -Atmaram Zaga Koli wherein his caste was recorded as Tokare Koli. That is how the entire record came to be perused and the committee recorded the conclusions that in view of the present condition of the register it is unsafe to rely on any entries therein. It therefore rejected the claim.

11 Then, there is an additional affidavit of Mr. Prakash Zendu Ranadive. He is the In-charge Block Education Officer, Panchayat Samiti, Shirpur, District Dhule. He has filed an affidavit and stated that the School Leaving Certificate at page 30 of the Petition pertains to the grandfather of the Petitioner as claimed and issued by Zilla Parishad Prarthamic Shala, Navi Anturli, Taluka Shirpur, District Dhule. This officer personally visited the school and investigated the original general admission register no.1 available in the school. His comments on inspection of these documents make an interesting reading. The same are reproduced herein-below:-

“I say that after perusal of the said original general admission register No.1, I found that the Book No.1 and 2 are not maintained separately but it is combined. I have asked Smt Anjani Sadanand Bhavsar the concerned Headmistress of the school regarding the combined Book No.1 and 2. I say that the said H. M. has informed me that the said register is the oldest one and it is maintained combined as Book No.1 and 2. I say that I have carefully inspected the entry at Serial No.17 of the said Book No. 1 and 2, wherein I found the name of one Mr. Ganpat Khkandu Koli is record. Undoubtedly, at Serial No.17 of Book No.1 and 2 the name of the so called grandfather of the petitioner namely, Atmaram Zaga Koli is not at all recorded and found. I further say that, as far as the date of admission of the said so called grandfather in the said

school leaving certificate (page 30 of the petition) shown as 11.5.1940 is concerned, I say and submit that the oldest entry regarding date of admission of the pupil in the said school is found in the said Book No.1 and 2 is of the year 1952 and the entry of the year 1940 is not at all available in the general admission register No.1. I further clarify the position that the said school has maintained the general admission register book No.1 and 2 (combined), 3,4,5 and 6 during the year 1952 to 2016. Hereto annexed and marked as "Exhibit (colly)" are the docket of General Admission Register Book No.1 and 2 and extract of serial No.17 of Book No.1 and 2."

12 His further statements on oath in paragraphs 5 and 6 of this affidavit are equally important. They read as under:-

"5. I say that during my visit to the Zilla Parishad Prathamik Shala Navi Anthurli, Taluka Shirpur, District Dhule on 20.10.2016, I observed that the date of establishment of the said school is written as 9.1.1957 on the building of the school. I say that on further enquiry with the staff of the school and locals, I could not get the true and correct information regarding the exact date of establishment of the said school.

6. I say that as far as the extract of the school admission general register which was obtained by the Vigilance Officer of the Vigilance Cell, Scheduled Tribe Certificate Scrutiny Committee, Nandurbar having signature of one Mr. Bhimsing Karansing Raul, the then Headmaster of the said school, is concerned. I say and submit that it might have been issued on the basis of copy of the school leaving certificate at page 30 of

the petition issued to the grandfather of the petitioner namely Atmaram Zaga Koli, the record of which is not available in the said school. Hereto annexed and marked as "Exhibit-2 is the copy of the said extract."

13 This deponent further states that the signature on the School Leaving Certificate at page 30 of the Petition if carefully perused and noticed, the same is of one Yuvraj Totaram Patil, Assistant Teacher of the said school. In the year 2004, one Sadashiv Gopichand Sonawane was the Headmaster of that school. The Assistant Teacher has no authority to sign the School Leaving Certificate particularly when regular Headmaster is available. The name of the grandfather of the Petitioner does not appear in the available general admission register no.1 in the school.

14 Mr. Mendadkar appearing for the Petitioner submits that it would be unfair to the Petitioner if we only refer and reproduce the statements in the affidavits of the Respondents, more-so when the Petitioner has filed a rejoinder / additional affidavit on 21st October, 2016. He denies the statements in both affidavits. As far as Mr. Prakash Randive's affidavit is concerned, the Petitioner states that the same contains statements contrary to reality. The affidavit contains various irresponsible and false

statement. It is stated in the additional affidavit by the Petitioner that he does not admit any of the statements made by the said Prakash Ranadive, Block Education Officer. It is stated that the Petitioner was served with two affidavits, one of Sitaram T. Bhalekar and the other of the said Prakash. The Petitioner states that on 17th October, 2016 the said Prakash was not present in the Court. The learned AGP appearing for the Respondent produced original register titled as combined book nos.1 and 2. In the same book nos.1 and 2, the entries from book no.1 are totally smashed and kept in plastic folder. They are mutilated . They are in torn condition. In the same book, the entries from Sr No.11 are appearing but it is not clear whether they are from book nos.1 and 2. Thus, primary school admission register book can neither be called as book no.1 or 2. The records are not maintained by concerned school in the manner in which they are required to be maintained. Therefore, upon taking specific permission from this Court, the record was inspected by the advocate for the Petitioner. After inspection of the record, it was revealed that the Petitioner's advocate could locate a document showing the date of birth of the Petitioner's grandfather as 10th April 1932. That tallies with the entries in the document produced at page 30 of the paper book. It

is in these circumstances that it is denied that any fraud has been perpetrated. It is submitted that there are several entries in this register and as far as entries, remarks in the Caste column are concerned, on account of several social factors insertions therein could differ from candidate to candidate. However, when contemporaneous record including the family tree is produced, then, it is evident that it is the grandfather of the Petitioner who attended the school, he was admitted and the details filled in at the time of his admission have to be given more weightage. This is a pre-constitutional document. It is one of the oldest document and concerns the grandfather of the Petitioner from the paternal side. It is in these circumstances that Mr. Mendadkar would submit that we should direct the committee to consider the matter afresh. More-so, when it has missed a vital piece of evidence. That was totally omitted from consideration. The impugned order can therefore be termed as perverse.

15 With the elaborate exercise that this Court has undertaken and on several occasions only because of the Petitioner's pleas that he would loose his livelihood, the issue concerns his job and that is his source of livelihood, that this Court

called upon several authorities to clarify as to why the entries in the school record of the Petitioner's grandfather should not be considered as a vital piece of evidence.

16 Today also a sur-rejoinder affidavit has been filed and copy of which has been duly served. In that sur-rejoinder, the said Prakash Randive-Block Education Officer has stated that school record is stated to be produced in August 2004. However, there was one more document which would demonstrate as to how attempts are made to manipulate the entries and the records. The person signing the certificate at Rs. 30, namely Yuvraj T. Patil- Assistant Teacher besides having no authority, was on leave. It is therefore apparent that the document carries no weightage and has been rightly omitted from consideration. That is how it is reiterated that the petition be dismissed.

17 After having carefully gone through this entire record, we are unable to agree with Mr. Mendadkar that this matter deserves afresh consideration. It is common ground that the committee had before it all the documents including pertaining to Atmaram. These documents were carefully perused. When the

committee considered issue no.1, it found that the documents produced reveal the caste of Petitioner's elderly relatives as Hindu Tokare Koli, Hindu Suryavanshi Koli and Tokare Koli. The caste of petitioner's father is recorded as Suryavanshi Koli in his school record. The Petitioner's caste cannot be different from that of his father. It was found during the Inquiry that in school record of the Petitioner his caste earlier recorded is Hindu Koli. Thereafter, word "Tokare" is inserted between above words in different Ink and different handwriting. The committee found that all this would evidence that there is a genuine and bonafide dispute about the Petitioner's assertion. That assertion has not been proved by the materials produced before the committee. The committee has scrutinized the documents pertaining other persons bearing similar surname, namely, Ishi and it found that either there is an endorsement that they are belonging to Hindu Tokare Koli or simplicitor Tokare Koli or Hindu Koli. Merely because the certificate pertaining to Atmaram at page 30, now produced, is not referred or has not been taken into consideration, does not mean that this comment, remark and observation of the committee can be discarded.

18 Even with regard to the School Leaving Certificate it is found that it is issued by the school styled as Zilla Parishad School Anturli. The date of its issue is dated 4th August, 2004. However, it is claimed to have been issued on the basis of the entries made in Book No. 1 at Sr. No.17. That is concerning Atmaram Z. Koli. This person is stated to be the grandfather of the Petitioner. He is admitted to the school on 11th May, 1940. He is supposed to be leaving the school on 30th November, 1942. The reason for his leaving is that his family has left the village in the concerned taluka. It is pertaining to this document that above arguments are canvassed.

19 We have no doubt that if this was indeed a genuine document, then, it is not possible that as far as the Petitioner's father is concerned, the entry would be Hindu Suryavanshi Koli and as far as cousin uncle is concerned, he is Hindu Koli. Thus, the Petitioner's grandfather and while admitting the Petitioner's father in school would definitely state and inform something about his caste or tribe. That too in positive terms. He would have relied upon this very certificate copy of which is at page 30 pertaining to himself (Atmaram) and by producing the same asserted that even

the Petitioner's father is Hindu Tokare Koli. That does not appear to be the position emerging from the School Leaving Certificate of the Petitioner's father-Chatur.

20 It is in these circumstances that when the committee finds that it would not be proper but rather unsafe to rely on such materials that it rejected the claim of the Petitioner. Its findings of this nature do not suffer from any error of law apparent on the face of the record or perversity. We do not see how the Petitioner's assertion before this Court, that had the grandfather's school leaving certificate been taken into consideration, the Committee may have reached a different conclusion can be accepted. We do not see how the Petitioner's claim can be termed as genuine and bonafide given the nature of the allegations that are made and in the affidavits of public officials. The Block Education Officer on being called upon by this Court to give a explanation visited the school, inspected the entire record and has filed two affidavits. We cannot disbelieve his statements and which are based on the official records. He has no personal grudge or enmity against the petitioner. He was merely assisting the Court on being called upon to do so. He was called upon to give his explanation in

writing and he has been bold enough to file an affidavit. We have reproduced the statements made in his affidavits. They are made after a careful and proper inspection carried out by him. They are made with responsibility and before a Court of law. They are not only made once but reiterated on oath again. In the teeth of this overwhelming material what we have is only a denial of the Petitioner. The Petitioner's advocate may rely on the inspection carried out by him and of a certain book to assert that there is only one register or combined book nos.1 and 2. He may say so with some authority and once again assert that the inspection thereof would reveal that the record is in a proper condition. It may have been old and partly mutilated and torn but it is reflecting the date of birth with clarity. We are not concerned with the date of birth of the Petitioner's grandfather. We are really concerned with the entries and remarks in the caste column. Those not being reliable and worthy of acceptance that we do not find any fault with the order of the Scrutiny Committee.

21 As a result of the above discussion, the Writ Petition fails and it is dismissed. It is only because of the persuasion of Mr. Mendadkar and the elaborate process carried out pursuant to the

Court's earlier order that we do not impose any costs on the
Petitioner.

22 The Petition dismissed. No costs.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)