

UNREPORTED**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.3140 OF 2016**

1. Ku.Mrunalini d/o Pradip
Sonawane, Age 24 years,
Occ.Student, R/o 144, Balaji
Peth, Jalgaon, Dist.Jalgaon.

2. Harshal S/o Pradip Sonawane,
Age 23 years, Occ.Student,
R/o 144, Balaji Peth,
Jalgaon, District Jalgaon.

3. Ku. Himani d/o Pradip
Sonawane,
Age 21 years, Occ.Student,
R/o 144, Balaji Peth,
Jalgaon, District Jalgaon. ... Petitioners.

Versus

1. The State of Maharashtra,
through its Secretary,
Tribal Development Deptt.,
Mantralaya, Mumbai-32.

2. The Scheduled Tribe
Certificate Scrutiny Committee,
Nandurbar Region, Nandurbar.

3. The North Maharashtra
University, Jalgaon,
through its Registrar. ... Respondents.

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Mr.S.R.Barlinge, advocate for the petitioners.
Mr.S.W.Munde, A.G.P.for the State.

Mr.A.B.Girase, advocate for Respondent No.3.

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**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 20.11.2017.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Rule. Rule returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing.

2. The tribe certificates of the petitioners herein as Tokre-Koli Scheduled Tribe were referred to the Committee. The Committee invalidated the tribe certificates. Aggrieved thereby, the present petition.

3. Mr.Barlinge, learned counsel for the petitioners submits that the father of the petitioner Pradip Sonwane, has been granted the validity certificate of Tokre-Koli - Scheduled Tribe on 3.10.2007. The learned counsel submits that all the documents which are placed on record in the present matter were before the Committee

which issued validity certificate in favour of the father of the petitioner. The validity certificate is issued to the father of the petitioner by Scheduled Tribe Certificate Scrutiny Committee, Nashik Division, whereas the Committee for Scrutiny and Verification of Tribe Claims, Nandurbar invalidated the tribe certificates of the petitioner.

4. Learned counsel submits that majority of the documents placed on record of the petitioner and his father record the caste as Tokre-Koli. Even the service book of the grand father of the petitioner records the caste as Tokre-Koli. According to the learned counsel, only on the ground that in Namuna No.1 the caste of the grand father of the petitioner Trimbak is shown as Hindu Koli and that of his cousin grand father as Hindu Koli, the Committee has given a contrary finding to the one given by the Committee at Nashik while validating the tribe certificate of the father of the petitioner. In some of the documents of the father the entry is recorded as Hindu Magaslela. The same would not

be a contra entry. The area restriction is removed. The same could not have been a ground to invalidate the tribe claim.

5. Mr.Munde, learned A.G.P. strenuously contends that the pre-independence record would have more probative value. The namuna No.1 of the year 1934 and 1929 records the caste as Hindu Koli in respect of the grand father and cousin grand father of the petitioner and the documents of the father of the petitioner and the uncle of the petitioner records caste as Hindu Magaslela (backward). The same would be considered as a contra evidence to the claim of petitioners of belonging to Tokre-Koli - Scheduled Tribe. The petitioners have also failed in the affinity test. The said finding is recorded by the Committee. Considering all these aspects of the matter, the Committee has rightly invalidated the tribe certificate of the petitioners though the tribe claim of the father of the petitioners was validated. The Committee at Nashik failed to consider and give importance to pre-independence documents.

6. With the assistance of the learned counsel for the petitioners and the learned A.G.P., we have gone through the judgment delivered by the Committee and the record of the petitioners' case. We had adjourned the matter on many occasions at the request of the learned A.G.P. for the record and proceedings of the father of the petitioner but the same was not received. We had asked for the said record only to consider whether the documents which are referred to in the judgment of the Committee, Nandurbar while invalidating the tribe claim of the petitioners were produced in the proceedings before the Nashik Committee while validating the tribe claim of the petitioners.

7. The impugned judgment records that the Committee has gone through the record of the validation proceedings of the tribe claim of the petitioners' father. It would appear that as per observations of the Committee in the impugned judgment, these documents were subject matter of the proceedings before the Committee, Nashik. In the impugned judgment, it is observed that

inspite of the fact that there were entries of Hindu Koli in the pre-independence documents, still the validity was given to the father of the petitioners on the basis of validity given to the cousin grand father and cousin brother of the petitioners' father.

8. Certainly, one Committee can not enter into the rigmarole of finding fault of the other Committee. Of-course if certain documents were suppressed while getting the validity in case of near relative, the said aspect would be certainly considered by the Committee deciding the validation proceedings. However, in the present case, all these documents which are relied in the validation proceedings of the petitioners were subject matter of validation proceedings of the father of the petitioners also.

9. It would appear that the document Gao-namuna No.1 of the grand father of the petitioners records caste as Hindu Koli. At the same time, the service book of the grand-father

of the petitioners record caste as Tokre-Koli. School record of the father of the petitioners records caste as Hindu Magaslela and Hindu backward class, meaning thereby that he belongs to a backward class. All the School record of the petitioners record caste as Tokre-Koli. Hindu Magaslela would only mean that he belongs to backward class and no particular caste is mentioned. All this record was considered while granting validity in favour of the petitioners father. The cousin grand father of the petitioners' father is issued with the validity certificate, so also the cousin brother of the petitioners' father is issued with the validity certificate of Tokre-Koli - Scheduled Tribe as is observed in para 7 of the impugned judgment.

10. Even the service book of the real grand father of the petitioners records caste as Tokre-Koli. The same is also old document. The said entry in the service book of Tokre-Koli - Scheduled Tribe in case of grand father of the petitioners is also an old entry. Isolated entry as against the various entries of Tokre-Koli -

Scheduled Tribe may not be sufficient to invalidate the tribe claim.

11. It has been held by the Apex Court in the case of **"Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others"** reported in **2011 AIR SCW 6559**, held that affinity test may not be regarded as a litmus test for establishing the link of the applicant with Scheduled Tribe. It is observed by the Apex Court that in the migrations, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe.

12. In the present case the affinity test is given by the father of the petitioners as petitioners were minor and while validating the tribe claim of the petitioners' father, the affinity test was also given by the father of the petitioners. The Committee at Nashik accepted the affinity of the father, whereas in the present case it rejected. The same affinity test

is considered in different manner by two Committees.

13. Considering the overall documentary evidence on record, so also considering the fact that on the basis of same documents on record the petitioners father has been issued the validity certificate after undergoing vigilance and affinity test, the present petitioners also deserve to be granted the validity certificates of Tokre-Koli - Scheduled Tribe.

14. In light of the above, the impugned judgment is quashed and set aside. The Respondent Committee shall issue validity certificates to the petitioners of Tokre-Koli - Scheduled Tribe, expeditiously, preferably within one (1) month.

15. Rule accordingly made absolute in above terms. No costs.

Sd/-

(S.M.GAVHANE, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

