

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7262 OF 2011

Deepak Sahebrao Sapkale

.. Petitioner

VS.

The State of Maharashtra and others

.. Respondents

Mr. U.R. Awate, Advocate h/f Mr. S.B. Talekar, Advocate for the petitioner

Mr. S.B. Yawalkar, A.G.P. for the respondent/State

Ms. Godsay, Advocate h/f Mr. S.M. Godsay, Advocate for respondent nos. 4 and 5

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 06-06-2017

ORAL ORDER :

1. The petitioner states that a certificate of validity, certifying him as "Tokare Koli Scheduled Tribe" has not been issued and the claim of the petitioner as belonging to that tribe, is rejected.

2. During the course of arguments, the petitioner relied upon the certificate of validity issued to one Jagannath Namdeo Sapkale by the Scheduled Tribe Certificate Scrutiny Committee, Nasik dated 26/06/2007. There is affidavit sworn by real uncle of the petitioner from paternal side dated 09/03/2010. The family tree and genealogy was also placed before the committee which would

establish and prove that said Jagannath is the real uncle of the petitioner from paternal side.

3. Despite this overwhelming evidence, the committee seems to be of the opinion that original abode of the petitioner's family is Kasave, Tq. Yaval, District – Jalgaon and his relatives are mainly from Yawal, Raver, Chopda, Bhusawal and Jalgaon. The mother-tongue and dialect is somewhat distinct. The traditional occupation is collecting the skin and bones of dead animals. Name of the traditional Caste Panchayat and other characteristics, customs, rituals that the petitioner pointed out are not consistent with the "Tokare Koli Scheduled Tribe". Thus, the committee was of the opinion that no reliance can be placed on the certificate of validity issued to the real uncle of the petitioner. The argument of the petitioner is that claim has been negated by holding that the school record of the petitioner's father shows his caste as "Hindu Koli Magaslela". The caste is acquired by birth, therefore, the caste of his progeny cannot be other than Koli. Hence, this affidavit cannot be relied upon. As far as Jagannath's affidavit is concerned, finding is that on perusal of the original case file of Jagannath, it is observed that the Scheduled Tribe Certificate Scrutiny Committee has relied upon the certificate of validity of Jagannath's distinct relatives and issued validity certificate to him. Therefore, each and every case has to be decided on its own merits, facts and circumstances. Even

school record of the petitioner's father would not therefore be consistent with Jagannath's certificate of validity and his claim.

4. We have on umpteen occasions considered the soundness of such reasons assigned by the Committee. Each of the Committee functional in said field is required to hold scrutiny for validation of certificate on the basis of whatever documents are produced and though there is no dispute about their genuineness and authenticity, invariably such findings are rendered unmindful of the fact that the Committee has no powers other than in cases of established fraud or misrepresentation to ignore such certificates of validity. In other words, the certificate of validity issued to Jagannath could not have been omitted from consideration, unless it was established and proved that Jagannath has obtained the certificate of validity by perpetrating a fraud or misrepresenting the committee. No such proof or material is available on record in this case. The Committee indulged in pure speculation and guesswork.

5. In these circumstances, we do not think that the findings of the Scheduled Tribe Certificate Scrutiny Committee can be sustained in law. They are clearly vitiated by non-application of mind as also perversity. Once we arrive at this conclusion, there is no other alternative but to set aside the order impugned in this petition. Petition thus succeeds.

6. The committee shall issue certificate of validity to the petitioner within a period of two (2) weeks from the date of receipt of copy of this order.

7. Writ Petition stands disposed of accordingly.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/