

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8354 OF 2013

**NILESH DEVIDAS SAPKALE
VERSUS
THE SCHEDULED TRIBE CERTIFICATE SCRUTINY COMMITTEE,
NANDURBAR DIVISION AND ANOTHE**

...

Advocate for Petitioner : Shri Mahesh S. Deshmukh h/f Shri Patil Vijay B..
AGP for Respondents / State : Shri PS.Patil.
Advocate for Respondent 2 : Shri M.K.Goyanka.

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

DATE :- 10th July, 2017

PC.:

1 This petition was heard on the earlier occasion and even today. After a detailed hearing, we are proceeding to pass the final order.

2 On this petition, the notice was issued on 14.10.2013. Thereafter, for some reason or other, the matter was adjourned. However, strong reliance is placed on the order passed on 13.10.2014 and that reads as under:-

"Mr.Bade Patil, the learned counsel appearing for the respondent No.1/ Committee shall also keep the record in respect of validation proceedings of the father of the petitioner before the next date. Stand over to 12.11.2014."

3 It is stated that though time was sought and repeatedly to

comply with the above reproduced order, the Scrutiny Committee and the counsel representing it, has failed to comply with the same.

4 Thereafter, we find that an order is passed by this Court granting time to the parties to file citations. The citations are then placed on record after which again the matter was adjourned for no rhyme or reason. We do not think that if the Advocates or parties are not ready with the detailed submissions and citations at the time of listing of the matter, then, indulgence be shown to them unless the Court wants to be careful and cautious that it does not miss out any judgment of the coordinate Bench on the point.

5 Be that as it may, after this enormous delay which has prejudiced the case of both sides, we had decided not to indulge the advocates and parties any further.

6 This petition filed on 25.09.2013 impugns the order passed on 25.06.2013 (Exhibit-F) terminating the Petitioner's services based on the Scrutiny Committee's order (Exhibit-E) dated 10.04.2013/ 05.06.2013.

7 If the Scrutiny Committee's order is upheld, then, the Petitioner's termination is valid.

8 The Scrutiny Committee was approached in the following facts and circumstances.

9 The Petitioner as a citizen of India claimed that he belongs to

“Tokare Koli”, Scheduled Tribe and recognized as such by the State. The competent authority issued the tribe certificate in favour of the Petitioner. The Petitioner, relying on this tribe certificate, came to be appointed against a reserved seat by the Maharashtra State Road Transport Corporation, Division Ratnagiri (Respondent No.2 herein). This caste/tribe certificate was thereafter, forwarded for verification and scrutiny of the claim on 27.12.2010. This Court, in an earlier round vide order dated 16.02.2012 in Writ Petition No.910/2012, directed that a provisional appointment order be issued to the Petitioner. Thereafter, the Petitioner was appointed on 09.03.2012. Subsequently, the Petitioner appeared before the Scrutiny Committee. The Petitioner produced number of documents before the Scrutiny Committee. The Scrutiny Committee called upon the Vigilance Cell to hold vigilance inquiry and submit its report. That inquiry was done and the report was submitted. A notice to show cause was addressed to the Petitioner in terms of the Rules seeking his reply and explanation on the contents of the Vigilance Cell's report and thereafter, the Petitioner placed his version before the Scrutiny Committee. The Petitioner's claim was invalidated by the impugned order and resulted in his termination. Hence, this petition.

10 The contention raised before us by Mr.Deshmukh, learned Advocate appearing for the Petitioner, is that firstly, the Scrutiny Committee's order is vitiated by non application of mind. Secondly, the

Scrutiny Committee has ignored and brushed aside an authentic and legal evidence without recording any finding or it's satisfaction for this course. Thirdly, it is submitted that the probative value is not lost unless the Scrutiny Committee records a clear finding that the certificates of validity obtained by close relatives on the paternal side, are vitiated by fraud or misrepresentation. There is no such finding recorded.

11 Our attention is invited to the fact that the documents at Sr.Nos.14, 15 and 16 are the caste certificate, validity certificate and service book of the Petitioner's father. The Petitioner's father was granted the certificate of validity. It is, therefore, perverse and unreasonable to reject the son's claim and without requisite satisfaction in the above terms. It is in these circumstances that the validity certificates issued to the Petitioner's blood relatives on the paternal side have to be accepted. Based on that, a certificate of validity could have been issued even to the Petitioner. Thus, terming this order wholly perverse, it is submitted that the Writ Petition be allowed.

12 Finally, it is urged that an adverse inference be drawn against the Scrutiny Committee for not producing the records in relation to the claim of the Petitioner's father which stands allowed. The very documents which were relied upon to grant the certificate of validity to the Petitioner's father, have now been disbelieved and rejected. Such approach of the Scrutiny Committee and it's inconsistent findings, therefore, make

out a case for interference by this Court under Article 226 of the Constitution of India.

13 Heavy reliance is placed upon the order passed by this Division Bench on 15.06.2017 in Writ Petition No.801/2014 (Tushar Pandurang Baviskar vs. The State of Maharashtra) along with Writ Petition No.8058/2013 (Rohan Ganesh Sonawane vs. The State of Maharashtra).

14 On the other hand, Mr.Patil, learned AGP appearing for the Respondent/ Scrutiny Committee, supports the order of the Scrutiny Committee and particularly the reasoning which would indicate that right from the grandfather of the Petitioner, the entry in the column pertaining to the caste has been “Koli”. If that is recorded as such, then, in the subsequent documents pertaining to the family, particularly their school records, there is tampering and interpolation or subsequent insertions. These may have been made by the statutory authority, namely, the Education Officer, Zilla Parishad, Jalgaon, but that is after 30 to 63 years. In these circumstances that the Scrutiny Committee found that the claim is not substantiated, but is vitiated by a clear misrepresentation. Therefore, the order under challenge requires no interference.

15 We have, with the assistance of the learned advocates, perused the petition and all annexures thereto. True it is that this Court has consistently held and if any reference is required, it may safely be

made to the Writ Petition No.1504/2010 (Nagpur Bench) (Apoorva Vinay. Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1, Nagpur) decided on 27.07.2010, that the certificates of validity issued to close relatives / blood relatives are strong piece of evidence. They can be relied upon and safely to allow the progeny's claim. It may be that a different view can be taken on facts, but that is no ground to discard them. In Apoorva's case (supra), however, the Division Bench has cautioned that if the Scrutiny Committees are of the view that earlier certificates of validity are obtained by fraud, they are not bound to follow the earlier certificates and they are entitled to refuse the caste claim to progenies and in addition, they can initiate the proceedings for cancellation of the earlier orders.

16 In the present case, the Petitioner produced as many as 34 documents before the Scrutiny Committee. The Petitioner's documents such as his caste certificate, school leaving certificate, age and nationality, so also, domicile certificate, all carry the entry as "Tokare Koli" in the caste column. However, document No.5 is an extract of birth register of Eka Bhoju Dagdu, grandfather of the Petitioner, wherein the caste is recorded as "Koli" in the caste column. This entry is made in the birth extract/ birth register on 28.01.1935. Thereafter, from Sr.Nos.7 to 12 there are school leaving certificates of the father, real uncle and aunt. There is an affidavit of the father regarding his validity certificate and relationship with the

Petitioner. It is relying upon these materials and including the certificates of validity issued to the distant cousins from the paternal side, it has been urged that all of them have been certified as belonging to “Tokare Koli”, Scheduled Tribe. These are the certificates of validity issued from 2005 upto 2010. This is a reason, according to the Petitioner, for which the documents from Sr.Nos.20 to 34 were relied upon.

17 Pertinently, in some of these documents which are very old and pre-constitutional, there were blanks in the column pertaining to the caste. In the Vigilance Cell inquiry, the Vigilance Cell Officer verified the school record and found that the caste entries in respect of the Petitioner's relatives have been corrected much after the entry to the school. The orders to that effect have been passed on 03.03.1999/ 22.03.1999 by the Education Officer. The Vigilance Cell Officer verified the birth record and found that the caste column in respect of the Petitioner's grandfather contains a remark “Koli”.

18 It is in these circumstances that the Scrutiny Committee finds that when the Government records are placed in proper custody and produced before it, reveal inconsistencies and contradictions, then, it would not be safe to rely upon them. The Scrutiny Committee's reasoning on these lines has been very carefully perused by us as it pertains to the career of the Petitioner.

19 The Scrutiny Committee has taken all care as the Petitioner

obtained employment on provisional basis. Thereafter, the Scrutiny Committee was directed to dispose of the claim in a stipulated time period by this Court. Hence, all records including the Vigilance Cell's report were duly placed for perusal of the Petitioner. An opportunity was given to the Petitioner to meet the contents of the same. The Scrutiny Committee forwarded certified true copies of the same to the Petitioner. That is how the reply to the Vigilance Cell's report was taken on record. The Petitioner appeared along with his father and their oral statements were recorded. One of the points framed by the Scrutiny Committee is whether, the certificates of validity issued to the Petitioner's father and near relatives can be believed. It recorded a negative finding on this point.

20 In doing so, the Scrutiny Committee observed that the document at Sr.No.5 is the copy of birth extract of the Petitioner's grandfather where his caste is recorded as "Koli". Entry pertains to the year 1935 which is the oldest one. It has great probative value. Thus, this is sufficient enough to show that the Petitioner does not belong to "Tokare Koli", Scheduled Tribe. This is not a finding recorded only relying on this birth extract, but also consistent with his claim of being "Tokare Koli", the Scrutiny Committee found that the Petitioner has miserably failed in the affinity test.

21 As far as other documents placed on record, the Scrutiny Committee at page 108 found that documents at Sr.Nos.2, 3, 6 to 11 and

12 are the copies of the school records in respect of the Petitioner, his father and his relatives wherein the caste entries are recorded as “Tokare Koli”, “Tokare Koli Anusuchit Jamati”, “Tokare Koli She.Tra.". All these entries have been verified by the Vigilance Cell Officer during the course of the inquiry wherein he found that alterations have been made in all these entries by the letter dated 03.03.1999 issued by the Education Officer, Zilla Parishad. Earlier entries recorded as “Koli” and “Suryawanshi Koli” have been erased and subsequent entries as “Tokare Koli” have been made. The relevant entries have been corrected after lapse of 30 to 63 years. It may be that the Scrutiny Committee has relied upon the Secondary School Code and therefore, an argument is raised by Mr.Deshmukh before us that such entries can be corrected by the officials empowered by the Secondary School Code at any time. It is not necessary that such entries have been made deliberately and with any ulterior motive. Assuming that these entries are non-est and cannot be relied upon, still corrections by themselves do not mean that a certificate of validity has been granted to the Petitioner's father without any application of mind. The whole argument is based on this very document, namely, the certificate of validity granted to the Petitioner's father.

22 We are not in agreement with Mr.Deshmukh for more than one reason. The words “fraud” and “misrepresentation” may not be employed by the Scrutiny Committee while passing such orders. They may

not be aware of the legal connotation and meaning of these words "fraud" and "misrepresentation" for they do not have any judicial background or legal training. However, in this case, there was a misrepresentation or a false account given, when the Scrutiny Committee issued the certificate of validity to the Petitioner's father. It should have been cautious and careful and in the backdrop of the birth extract pertaining to the Petitioner's grandfather, where the entry in the caste column is "Koli". This is a pre-constitutional and very old document, the contents of which cannot be easily discarded. If they are placed side by side along with recent documents, the subsequent insertions, alterations even made by the statutory bodies and authorities, make the claim doubtful. Whether, these statutory authorities like the Education Officer have power to effect such changes and alterations or otherwise. They may as well possess such powers. However, when an attempt is made by the candidates like the Petitioner to establish and prove his tribe claim relying on subsequent entries in the relevant documents, then, to say the least such claim is highly doubtful and suspicious. There is no reason to make such entries long after the student leaves the school. The old records have been changed and altered to enable the progeny to derive benefits of the Scheduled Tribe community. If the father of the Petitioner knew very well that his own father, namely, the Petitioner's grandfather was not born as "Tokare Koli", but as "Koli" and shown and described as such in the birth

extract of 1935, then, that document and recent ones which have been altered are not consistent. When people like the Petitioner's father were admitted, their entries recorded in the caste column were "Koli" and "Suryawanshi Koli". They match with the birth extract of the Petitioner's grandfather.

23 In these circumstances this subsequent alteration is an clear attempt to mislead the Scrutiny Committee and misrepresent the claim. These may not be the exact words in which the conclusion is recorded. However, if the reasons are perused as a whole, there is no iota of doubt that the Scrutiny Committee has rightly come to the conclusion that such claim which is dubious and doubtful cannot be upheld. We do not think that the Scrutiny Committee has acted perversely or it's finding is vitiated by non application of mind. In writ jurisdiction, we cannot reappraise and reappraise the same factual material to arrive at a different conclusion. There has to be a clear case of perversity or error apparent on the face of the record enabling us to interfere in our writ jurisdiction, else we would be acting as a further appellate court.

24 The Division Bench order in Writ Petition Nos.801/2014 and 8058/2013 (supra) is clearly distinguishable. There, the Scrutiny Committee may be dealing with "Tokare Koli", Scheduled Tribe, however, the certificate of validity, which was issued and heavily relied upon by the progeny, was discarded not on the above grounds, but simply because

earlier Committee issuing such certificate of validity has not considered the claim on merits. That was an attempt to sit in judgment over the earlier committee's findings and conclusions. Merely because the earlier order was not as elaborate as the subsequent Committee rendered, that is no justification to hold that earlier claim has not been upheld on merits. It is for that reason and reminding the Committee of it's obligation not to contravene, but to abide by the dictum in Apoorva Nichale's case (supra) that this Court set aside the order of the Committee and allowed the petition. Such is not the position emerging from the records of the present case. Hence, this decision is clearly distinguishable on facts.

25 As a result of the above discussion, the Writ Petition is dismissed. All consequences in law shall now follow. However, we do not impose any costs.