

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

WRIT PETITION NO.10607 OF 2017

Bhalchandra Ramchandra Baidu	.. Petitioner
V/s.	
The State of Maharashtra & Ors.	.. Respondents

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Mr.Kamalakar L. Koli, Advocate for the Petitioner.
Mr.Prashant P. More, AGP for Respondent Nos.1 to 4.

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**CORAM : S.C. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATED : SEPTEMBER 22, 2017.

P.C. :

The petitioner applied for issuance of a caste certificate/tribe certificate certifying him as Koli Mahadeo Schedule Tribe.

2 That request has been rejected on 26th October, 2015 by the competent authority.

3 An appeal in terms of the Act No.23 of 2001 to the Scrutiny Committee, Konkan Division, Thane has also met with dismissal on 13th December, 2016.

4 Hence, this writ petition.

5 We have heard the learned advocate for the petitioner and learned AGP appearing on behalf of the respondents. With their assistance we have perused the order under challenge.

6 The petitioner submitted his application for issuance of caste certificate before the 3rd respondent initially on 29th July, 2013. An inquiry was made into this application and after that an order passed on 20th November, 2013, rejecting the application.

7 The petitioner states that he filed Appeal before the Scrutiny Committee and that appeal was also rejected on 15th May, 2014.

8 Thereafter, he filed a writ petition in this Court and this Court on 2nd September, 2015 allowed that writ petition, quashed both orders and directed the Sub-divisional Officer, Shrivardhan Division, to reconsider the application and pass a fresh order.

9 After that this fresh order has been passed but of dismissal of the application.

10 The argument of the petitioner's advocate is that the impugned orders are vitiated by non application of mind and they are contrary to law.

11 He would submit that at the stage of issuance of caste certificate an elaborate and detailed inquiry is not warranted and necessary in law namely the Act and the Rules. It is only a satisfaction about the genuineness of the claim which is required and which according to the counsel in the case of the petitioner is indeed bonafide and genuine. In the sense, the petitioner produced number of documents of which reference has been made in the impugned orders, but, each one of them has been commented upon as not demonstrating that the petitioner belongs to Koli Mahadeo Scheduled Tribe.

12 It is submitted that the very approach which was criticized and commented upon by this Court in its order passed on 2nd September, 2015, has been repeated.

13 On the other hand, the learned AGP would submit that the application was rightly rejected. The application was rejected by assigning cogent and satisfactory reasons. It is not clear whether the petitioner is a Son Koli, Macchimar Koli or Mahadeo Koli and, therefore, the orders under challenge require no interference. The petition be dismissed.

14 What we have on record is a report, copy of which is at page 17 of the Tahashildar Mhasla. He communicated to his superior namely the Sub-divisional Officer Mahad, Division Mahad that the petitioner's application for issuance of the caste certificate can be granted. Thereafter, what we have is that the petitioner being informed that his request cannot be granted.

15 The petitioner had pointed out in his application that he belongs to Koli Mahadeo Scheduled Tribe. He has been referred to as such in the School Leaving Certificate, copy of which is at page 26 of the paper book.

16 It has also been pointed out by the petitioner that there are other documents in which the petitioner's close

relatives from the paternal side have been shown to be belonging to this Koli Mahadeo Scheduled Tribe. In that regard our attention has been invited to one of the documents at pages 34 to 37 of the paper book. It has also been urged before us that the Division Bench of this Court directed that all these documents and which are supporting the claim should be taken on record and their contents verified.

17 It is claimed by the petitioner in his affidavit, copy of which is at page 44 of the paper book that he resides at village Turumbadi, Post Mendani, Taluka Mhasla, District Raigad. Petitioner relied upon the certificate issued to his cousins and from paternal side. The petitioner in his affidavit has referred the family tree. The petitioner also produced certain other documents.

18 The copy of this affidavit and which is at pages 50 to 65 of the paper book together with other documents were before the Division Bench of this Court.

19 We find that in the earlier order passed on 20th November, 2013, identical reasons have been assigned as are

assigned now to refuse the certificate. That order, copy of which is at page 84 was challenged before the Scrutiny Committee, but, on 15th May, 2014, even the scrutiny committee dismissed the appeal and it assigns the very reasons which it has in its earlier order.

20 In Writ Petition No.7250 of 2014 filed by the petitioner, this Court in paragraph 3 of its order passed on 2nd September, 2015, invited the attention of the respondents to the Act and specifically Rules 4, 5, 9 and 12. This Court held that detailed and conclusive inquiry is not necessary, but ,only a *prima facie* view of the matter has to be taken. The Court opined that there are 6 to 7 documents which *prima facie* have supported the case of the petitioner. The letter of Tahasildar dated 29th November, 2013 was taken as an additional factor and for all this the earlier orders were set aside and the competent authority was directed to reconsider the petitioner's application.

21 The competent authority has repeated the same mistake according to us and equally the scrutiny committee.

22 Both fell in error in holding that the High Court order

obliges the petitioner to submit further and additional documents. However, the petitioner has only forwarded his entries in relation to his great grandfather. But, in that document against the caste column the entry is Koli. If the petitioner's father is shown as Son Koli but his cousin is stated to be Mahadeo Koli, then, such documents cannot be accepted in the view of the Scrutiny Committee. Then, the scrutiny committee says that the petitioner has failed to produce a pre-constitutional document and certifying him as Koli Mahadeo Scheduled Tribe.

23 We are unable to sustain this approach for there is nothing in the pre-constitutional documents and rather it cannot be certifying somebody as Koli Mahadeo Scheduled Tribe. The Indian Constitution only came into effect in 1950. Thereafter the schedule came to be prepared. That too when the constitutional provisions were inserted namely Articles 341 and 342 therein. The entries, therefore, would not be in terms of the schedule. In such circumstances, what the committee requires the petitioner to produce and equally the competent authority is not clear to us at all. In the facts and circumstances of the present case, we do not think that the impugned orders can be sustained, as they are contrary to the

specific directions of this Court and equally the materials placed on record. For illustration, we had given a reference to the learned AGP to several documents which have been produced, but, the committee refers to them selectively. There are certain documents from serial nos.3, 5 and 7 which would indicate together with the report of the Tahasildar that the petitioner is entitled to his Caste/Tribe certificate.

24 For the foregoing reasons, we quash and set aside the impugned orders. We allow the petition. We direct that within one week from the receipt of copy of this order, a caste certificate shall be issued to the petitioner by the competent authority namely the Sub-divisional officer Shrivardhan.

25 All concerned to act upon an authenticated copy of this order.

26 Needless to clarify that this order does not mean that the petitioner's claim is finally accepted. If the law requires, the claim to be verified and scrutinized and the caste certificate thereafter forwarded to the scrutiny committee for verification and scrutiny in terms of the law, then, our orders and

observations shall not preclude the competent scrutiny committee from scrutinizing and verifying the claim in accordance with law. The committee while scrutinizing this claim shall not be influenced by the above observations.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)