

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10304 OF 2017

Prashant Pandit Shelke

...Petitioner

Versus

1.State Of Maharashtra , Through Its
Secretary , Tribal Development Dept.

2. Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division through its
Member Secretary

3. Directorate of Medical Education and
Research and Competent Authority, State
CET Cell, Maharashtra State.

4. Commissioner and Competent Authority
State Common Entrance Test Cell.

5. Topiwala National Medical College, through
its Dean.And Ors.

...Respondents

with

Civil Application No.2230 of 2017

Mr R.K. Mendadkar a/w Mr Bhangoji with Mr.Pratap Jadhavar, for the
Petitioner.

Mr A.A. Kumbhakoni, Advocate General a/w Mr.Ashutosh Gavnekar,
Special Counsel and Mr.Sandeep Babar, AGP for the State-Respondent.

**CORAM : SHANTANU S. KEMKAR &
G. S. KULKARNI, JJ.**

DATE : SEPTEMBER 25, 2017

ORAL JUDGMENT: (Per G.S.Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India challenges the order dated 2 September 2017 passed by respondent no.2 – Scheduled Tribe Certificate Scrutiny Committee (for short 'the Scrutiny Committee'), Aurangabad Bench whereby the Scrutiny Committee has invalidated the caste certificate of the petitioner as belonging to 'Koli Mahadev' Scheduled tribe falling under the Constitution (Scheduled Tribes) Order, 1950.

2. The case of the petitioner is that by birth he belongs to 'Koli Mahadev' Scheduled tribe. A caste certificate dated 28 July 2008 to that effect was granted to the petitioner by the competent authority. As the petitioner was aspirant to pursue higher education in the field of medicine, the petitioner had approached the Scrutiny Committee seeking validity of the caste certificate. The application for a validity certificate was made by the petitioner on 13 December 2010 through his Junior College which was supported by various documents which included caste validity certificate granted to his father – Pandit Shamrao Shelke. The petitioner had appeared for NEET 2017 examination. During the

verification of the documents, the competent authority for admission to the medical course directed the petitioner to file affidavit-cum-undertaking in regard to the caste claim of the petitioner as the proceedings for verification of his caste certificate was pending before respondent no.2-Committee. This affidavit was filed, and the petitioner was granted medical admission in respondent no.5 – Topiwala National Medical College. In pursuance of the orders passed by this Court (Aurangabad Bench) in Writ Petition No.8851 of 2017, provisional admission was granted to the students whose caste certificates were pending for validation before the scrutiny committee. The said order of this Court was being challenged before the Supreme Court in SLP NO.20210-20224/2017. By an order dated 18 August 2017, the Supreme Court directed all the caste scrutiny committees who were seised of the matters of the students seeking admission to the medical course to dispose of the proceedings. On 30 August 2017 the caste scrutiny committee issued a notice to the petitioner to remain present for hearing on 31 August 2017. The petitioner appeared for hearing and ultimately by the impugned order the caste certificate of the petitioner was invalidated. In assailing the impugned order, the learned Counsel for the petitioner has made the following submissions:-

(a) It is submitted that the scrutiny committee has discarded a vital

document namely the caste validity certificate which was granted to the petitioner's father - Pandit Shamrao Shelke.

(b) It is submitted that the certificate of validity was granted to the petitioner's father after following a proper procedure namely after a vigilance inquiry being conducted.

(c) It is submitted that there was no material to show that the petitioner's father had obtained validity certificate by practising any fraud or by misrepresentation or that the scrutiny committee had no jurisdiction.

(d) It is submitted that there are several documents to show that the relatives of the petitioner belong to 'Koli Mahadev' or 'Mahadev Koli' and therefore, considering the decision of this Court in “***Prakash Subhash Bhople Vs. Deputy Collector & Ors.***”¹, the Committee could not have reached to a conclusion that the petitioner did not belong to scheduled tribe 'Koli Mahadev'.

(e) It is submitted that the observations in regard to the place of residence of the petitioner being Taluka Bhokardan, District Jalana, that it is not the place of origin from where a 'Koli Mahadev' Scheduled tribe would find his roots, so as to grant the benefit of a caste certificate belonging to scheduled tribe, are erroneous inasmuch as the area restriction are no more relevant in view of Central Act No.108 of 1976.

1 2015(6) Bom.C.R.554

3. On the other hand, the learned Advocate General would submit that the order passed by the caste scrutiny committee calls for no interference, as the scrutiny committee has taken into consideration all the documents as presented on behalf of the petitioner as also has applied the correct principles of law to conclude that the caste validity certificate granted in favour of the petitioner's father cannot be accepted. It is submitted that the scrutiny committee has rightly observed that the place of residence of the petitioner is an area where the traditionally 'Mahadev Kolis' have no roots. The committee would thus be correct in its observation that the petitioner having failed to produce any documents to show that his linkage to the area where the root of the 'Mahadev Koli' or 'Koli Mahadev', tribe is found, the caste certificate of the petitioner cannot be granted a validity. In support of the submission, learned Advocate General placed reliance on the decisions of this Court in (i) "*Muktai d/o. Gulab Deoraj Vs. 1.Scheduled Tribe Certificate, Scrutiny Committee & Anr.*"², dated 6 December 2010; (ii) *Dattu s/o. Namdev Thakur Vs. State of Maharashtra & Ors*³; (iii) the decision of Full Bench Bench of this Court in "*Yogita d/o. Anil Sonawane Vs. State of Maharashtra*(supra).

4. We have heard the learned Counsel for the parties. With their

² Writ Petition no.8776 of 2010, decided on 6 December 2010

³ (2010)2 Mh.L.J. 494

assistance we have perused the impugned order as also the documents placed on record.

5. It is not in dispute that the petitioner's father - Pandit Shamrao Shelke approached the caste scrutiny committee in the year 2007 seeking validity of the caste certificate issued to him belonging to the scheduled tribe 'Koli Mahadev'. It is also not in dispute that the said caste scrutiny committee had invited a vigilance report and pertinently all the details including the details of residence as furnished in the said application which are similar to that of the petitioner were considered. Perusal of the vigilance report in relation to the proceedings relating to the validity certificate granted to the petitioner's father shows that the vigilance officer had listed the names of about eight relatives from the paternal side of the petitioner's father, all relatives were shown to belong to the 'Koli Mahadeo' / 'Mahadev Koli' tribe. The documents in regard to them pertain to the period between 1968 to 2006. A list of which has been annexed to the vigilance report and which can be found at page 77 of the paper book. The scrutiny committee in the case of the petitioner's father considered all these documents and a caste validity certificate came to be granted to the petitioner's father that he belongs to 'Koli Mahadev' Scheduled tribe. The only observation as can be found in the impugned

order to discard the validity certificate granted to the petitioner's father was on a reasoning that there were contradictory entries in the documents considered by the vigilance cell, in the validity caste certificate proceedings of the petitioner's father, namely that the entries were of Mahadev Koli, M.Koli, Hindu Mahadev Koli, Hindu Koli Mahadev and therefore, though the validity was granted in favour of the petitioner's father, the same cannot be considered. This reasoning has been set out in answering issue no.3 as framed by the committee namely as to whether the validity certificate granted to the petitioner's father can be considered to grant a validity of the petitioner's caste certificate. We cannot accept the reasoning of the committee. This is for two fold reasons. Firstly that it appears that the scrutiny committee appropriately considered that there was no inconsistency in all these documents which were considered by the said caste scrutiny committee wherein the nomenclature 'Mahadev Koli' or 'Koli Mahadev' was borne by the documents so considered. The nomenclature as indicated in the documents was not simplicitor 'Koli'. We are not shown any material which would persuade us to conclude that the validity certificate which has been granted to the petitioner's father was granted on any fraud being played or the committee having acted without jurisdiction or that the conclusion which has arrived at by the said scrutiny committee was based on such material that no reasonable body could

reach such conclusion. We observe this as we have gone through the report of the vigilance cell in the proceedings pertaining to the petitioner's father caste certificate, and a caste validity certificate having being granted to the petitioner's father. We therefore see no reason as to why the committee should discard the said validity certificate granted to the petitioner's father and that too observing that the castes as interchangeably used as 'Koli Mahadev' or 'Mahadev Koli', on the different documents placed before the said caste scrutiny committee. In any case, the caste scrutiny committee if was to be of the opinion that there is some contradiction in some entries, then there ought to have been some discussion in that regard in the impugned order. In our opinion, there cannot be any contradiction in such interchanging. Law in this regard is well considered in the decision of the Division Bench of this court "*Prakash Subhash Bhople Vs. Deputy Collector & Ors.* (supra), wherein the Court held as under:-

“6. There is a little doubt that 'Koli Mahadev' are referred as 'Mahadev Koli' and for years together certificates were issued by the competent authorities in favour of persons belonging to the tribal community certifying their tribe as 'Mahadev Koli' and that such certificates have been validated by the Scrutiny Committees without raising the issue.

... ..

15. Further, in view of the judgment of the Supreme Court in the matter of *State of Maharashtra Vs. Milind and others* (Supra), referred to above, it will have to be concluded that although the Scrutiny Committee has referred to the discrepancy appeared in recording description of the tribe in the certificates issued by the competent authorities, in past, thousands of certificates have been issued and the Scrutiny Committee has also validated such certificates referring to the tribe at Sr.No.29, in Scheduled Tribes

Order, 1950, as 'Mahadev Koli'. In the judgment of *Madhuri Patil*, reference to the tribe, admittedly, is as 'Mahadev Koli'. It is not a matter of dispute that in past tribe certificates have been issued referring to the tribe as 'Mahadev Koli' and those certificates have been validated by the Scrutiny Committees after observing the procedure prescribed in the matter of *Madhuri Patil* as well as Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act (23 of 2001). The caste certificates and tribe certificates issued in past, after observing due procedure and in case of issuance of validity certificates, after holding vigilance cell inquiry as well as on consideration of affinity test, such certificates and validity certificates shall have to be treated as having been validly issued and shall be treated valid for all practicable purposes.”

6. In regard to area restriction, we may refer to the decision of the Supreme Court in the case “*Kumari Madhuri Patil & Anr. Vs. Additional Commissioner, Tribal Development and Ors.*”⁴ where the Supreme Court has observed that by the Amendment Act of 1976, the area restrictions have been removed. A Division Bench of this Court in its decision in Writ Petition No.1316 of 1994 decided on 28 January 2003, speaking through Hon'ble Mr. Justice R.M.Lodha (as His Lordship then was) referring to the decision in “*Madhuri Patil*” (supra) made the following observations:-

“4. In *Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others*, (1994)6 SCC 241, the Supreme Court, with reference to the Amending Act, 1976 observed that by 1976 Amendment, there was no substantial change except removing area restriction. The Division Bench of this Court in Writ Petition No.3709 of 1998, *Shri.Dipak Krishna Sable Vs. State of Maharashtra & Ors.* observed thus:

“2. Invalidation of petitioner's tribe claim as belonging to Scheduled Tribe Mahadev Koli, is impugned in the present petition. The only ground set up for invalidating

4 (1994)6 SCC 241

the caste certificate is that the place of residence of the petitioner being outside the Scheduled Area, the Respondent No.2 Magistrate is not competent to issue caste certificate. The ground assigned can no longer be justified in view of the provisions of the Amending Act, 108 of 1976, which has removed the area restriction w.e.f. 27th July, 1977. In view of the aforesaid Amending Act, all Tribals whether residing in or outside the Scheduled Area are entitled for concessions privileges conferred on Scheduled Tribes. Moreover, there is no nexus between Scheduled Area as appearing in Article 244 of the Constitution and Scheduled Tribes as appearing in Article 342 of the Constitution.”

5. We find from the impugned order that the caste scrutiny Committee observed that the certificate has been issued by the Executive Magistrate of the area where the claimant is ordinarily resident, the place of such residence being outside the Scheduled Areas set out in the Constitutional Order No.9 of 26.01.1950 (Part “A” States) and the C.O. No.26 of 07.12.1950 (Part “B” States) and, therefore, in the result the caste certificate of the applicant was held to be invalid. The observations made, thus, by the committee in the impugned order with regard to area restriction are not justified and not in accord with the legal position. The matter, thus, requires reconsideration and in view thereof, we do not intend to deal with the matter further lest it may prejudice the consideration of the matter objectively by the Scrutiny Committee.”

7. In the decision of the Division Bench of this Court in “*Dinesh Ramesh Thakur Vs. The State of Maharashtra & Ors.*”⁵ this Court referring to the decision of the Full Bench of this court in “*Shilpa Vishnu Thakur Vs. State of Maharashtra & Ors.*”⁶ held that the scrutiny committee is not prohibited from applying the place of residence 'as one of the factors' to be considered in arriving at a decision for the validation of the claim of the claimant. These observations are also affirmed by the Full Bench of this Court in “*Yogita d/o. Anil Sonawane Vs. State of Maharashtra*”(supra)

5 Writ Petition No.9627 of 2011 decided on 28 March 2012

6 2009(5) AIR Bom (R) 478

8. Thus, there can be no quarrel on the proposition that the place of residence being one of the factors to be considered by the caste scrutiny committee, when there is no other conclusive document to support the caste claim by the claimant. However, in the present case, we do not find that there are any cogent and acceptable reasons to discard the validity certificate which has been granted to the father of the petitioner. It is not the case of the respondent that the validity certificate has been granted by the caste scrutiny committee to the petitioner's father ignoring the documentary evidence so as to render the decision irrational or for that matter it has been granted by practising fraud.

9. In regard to the area restriction, it can be thus concluded that as the affinity test is one of the requirement, then, in the absence of any perversity on the part of the scrutiny committee in granting validity certificate to the petitioner's father, the petitioner, would be correct in contending that to defeat the claim of the petitioner on the ground of area restriction was not an acceptable exercise on the part of the committee.

10. In the above circumstances, the petition is required to be allowed. The impugned order dated 2 September 2017 passed by

respondent no.2 – Caste Scrutiny Committee is quashed and set aside. The Caste Scrutiny Committee is directed forthwith grant to the petitioner a caste validity certificate that the petitioner belonging to “Koli Mahadev” scheduled tribe, on receipt of the authenticated copy of this order.

11. The petition is accordingly allowed. No costs.
12. As the petition is disposed of as aforesaid, the pending civil application does not survive. It is accordingly disposed of.

(G. S. KULKARNI, J.)

(SHANTANU KEMKAR, J.)