

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

WRIT PETITION NO. 1936 OF 2018

1. Ku. Rupali d/o Sanjay Shinde,
Age : 20 years, Occu. Student,
R/o. N-9, M-2, R/26,
House No. 367, Raigadnagar,
Aurangabad, Dist. Aurangabad.

2. Akshay S/o Sanjay Shinde,
Age : 22 years, Occu. Student,
R/o. N-9, M-2, R/26,
House No. 367, Raigadnagar,
Aurangabad, Dist. Aurangabad.

Petitioners...

Versus

1. The State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.

2. The Scheduled Tribe Certificate Scrutiny Committee,
Aurangabad Division, Aurangabad.

3. The Principal,
Government Engineering College,
Aurangabad.

Respondents...

.....
Mr S. R. Barlinge, Advocate for the petitioners
Mrs M. A. Deshpande, AGP for respondent/State
.....

**CORAM : R. M. BORDE &
A. M. DHAVAL, JJ.**

DATE OF RESERVING THE JUDGMENT : 3RD JULY, 2018.

DATE OF PRONOUNCING THE JUDGMENT : 13TH JULY, 2018.

JUDGMENT (PER A. M. DHAVALA, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.

2. The petitioners, by this writ petition, assail the order passed by Scheduled Tribe Certificate Scrutiny Committee, Aurangabad (R-2) on 10.01.2018, whereby the tribe claim of the petitioners as members Koli Mahadev, a Scheduled Tribe, was rejected and consequential orders were passed.

3. Shri. S. R. Barlinge, learned advocate for the petitioners submits that, petitioner no. 1 has passed NEET examination and seeks admission in technical course whereas; petitioner no. 2 is studying in Government Engineering College at Aurangabad on the seat reserved for Scheduled Tribe. He further submits that, the petitioners' father, real uncle and real aunt have been granted validity certificates after following the due vigilance enquiry. He submits that, there are catena of judgments which lay down that, when validity certificates are issued in favour of the close paternal relatives of the petitioners, the petitioner should get validity certificate unless there is a case of fraud in obtaining validity

certificate by the paternal relatives. He criticized the judgment of the Scrutiny Committee, which has placed reliance on the word Mahadev recorded after the word Koli in different ink in the school admission certificate of the petitioners' father. He submitted that, the original registers were not seen and there were two vigilance inquiries earlier in which no suspicion was expressed in respect of the said entries that those were made by alteration. He also relied on the judgment in a case of Sayanna Vs. State of Maharashtra & Ors. reported in 2010(1) ALL MR 957 to submit that, there should be positive material to show that the alteration was made at the behest of the petitioner. It is not the case in the matter in hand. He argued that, the children inherits caste or tribe from their father and it is not acceptable that the father belongs to Scheduled Tribe while the children are declared not belonging to Scheduled Tribe. He placed reliance on the judgment in the case of Apoorva Nichale and several other cases.

4. Per contra, Mrs M. A. Deshpande, learned Assistant Government Pleader supported the judgment of the Scrutiny Committee. She pointed out that the petitioners have produced the documentary evidence of recent past and not the old one. The old record collected during vigilance disclose that the tribe of the petitioners' forefather as Koli Mahadev was not recorded in the past.

There are contra entries in the school record of the forefather of the petitioners for the period prior to 1976. Mrs. Deshpande also argued that the petitioners have failed to show that they were originally resident of localities notified as tribal area and they are subsequently migrated to non-tribal areas. There is alteration in the school record of the father of the petitioners. The word 'Koli' has been recorded by ink-pen while word 'Mahadev' has been recorded by Ball-pen. The affinity test also did not support the claim of the petitioners. The Committee has considered all the factual aspects and also placed reliance on the several judgments to arrive at a correct finding and, therefore, no interference is called for and the same finding cannot be re-appreciated like the appellate court. Hence, the writ petition be dismissed.

5. The points for our consideration with our findings thereon are as follows:

Sr. No.	Points	Findings
1	Whether the impugned order of the Scrutiny Committee invalidating the claim of the petitioners and the consequential order are passed after following the proper process?	..In the negative.
2	Whether any interference is called for in the impugned judgment?	..In the affirmative.

REASONS

6. Petitioner No 1 is sister of petitioner no. 2. They claim that they belong to Koli-Mahadev, a scheduled tribe, and have relied on several documents including tribe validity certificates issued in favour of their father-Sanjay dt. 18.03.2004, uncle-Sunil dt. 16.09.2006, their aunt-Ragini (father's sister) dt. 16.09.2006, the record of 1943 of their mother's father Gopinath Shankar and other school record of themselves and their relatives.

7. The Scrutiny Committee rejected the claim on following grounds.

- (i) The petitioners or their forefather's are not shown to be residing in areas identified as tribal areas.
- (ii) In the school record of the father of the petitioners - Sanjay dt. 17.09.1976, the word Mahadev is written after the word Koli in Ball-pen whereas; the word Koli is written by Ink-pen. In the old record of great-grand uncles and aunts, the tribe Koli Mahadev was not recorded. Only Hindu has been recorded.
- (iii) The vigilance report discloses that the affinity test and the home enquiry did not tally with the persons of Scheduled Tribe - Koli Mahadev.

- (iv) The grand-father, grand-uncle and grand cousin-uncle were educated and their school record of 1955, 1965 & 1974 disclose their caste as Hindu only. However, the petitioners showed their grand-father by name Uttam Shinde as illiterate. This fact and the addition of word Mahadev in the school record was not before the earlier Committees. The Committee relied on number of rulings which will be considered in due course.

8. It is beyond dispute that, a person inherits his caste or tribe from his father. When the father, real uncle and father's sister have been granted validity certificates, one must proceed with presumption that the petitioners also belong to the same Scheduled Tribe and the Committee has a discretion to take a contrary view and hold that the children are not belonging to the scheduled caste or scheduled tribe as claimed in special circumstances. In such matters, it must be clearly demonstrated that the father or other relatives of the petitioners had obtained the validity certificates either by playing fraud or the certificates are issued without holding proper enquiry or without affinity test or the vital evidence was ignored or suppressed at the relevant time or that the validity certificates were issued without specifying any reasons. In this regard, the learned Advocate Shri. Barlinge has relied on several judgments.

- (i) Mukesh Pandurang Bastav and anr. Vs. State of Maharashtra & Ors. (WP No. 3134/2009) decided by Principal Seat of this Court on 23.11.2017.

- (ii) Dheeraj S/o Dnyaneshwar Salunke Vs. The State of Maharashtra & Ors (WP No. 8207/2016) decided by this Court on 05.05.2017.
- (iii) Kirti d/o Baburao Thakur Vs. The State of Maharashtra & Ors. (WP No. 6170/2013) decided by this Court on 14.06.2017.
- (iv) Tushar S/o Pandurang Baviskar Vs. The State of Maharashtra (WP No. 801/2014) decided by this Court on 15.06.2017.
- (v) Poonam Omprakash Rathod Vs. The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad & Ors. (WP No. 4575/2012) decided on 24.07.2017
- (vi) Swapnil Gopal Thakur Vs. The State of Maharashtra & Ors (WP No. 2478/2013) decided by this Court on 27.07.2017.
- (vii) Rajendrasingh Pundliksingh Sisodiya Vs. The State of Mah & Ors. (WP No. 4005 of 2012) decided on 31.07.2017.
- (viii) Madhura Bhaskar Gaikwad Vs. The State of Maharashtra & Ors. (WP No. 7125/2016) decided by this Court on 9th November, 2017.
- (ix) Ku. Mrunalini d/o Pradip Sonawane & Ors. Vs. The State of Maharashtra & Ors. (WP No. 3140/2016) decided by this Court on 20.11.2017.

9. In *Vaishali Chatarsingh Ingale (Thakur) Vs. Committee for Scrutiny and Verification of Tribe Claims, Amravati & Ors.*

reported in 2013 (6) Mh. L. J. 251, the Division Bench at the Principal Seat of this Court observed in para 5 and 6 as under:

5. In the judgment reported in 2011(2) BCR 824 (Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 & Others), identical issue fell for

consideration of this Court and the Division Bench has considered it in paragraph 9 as follows:

Para 9: ".....The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment (employment), and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. (underlining is by us).

Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner."

6. It is an admitted fact that the caste claim of Shri Chatarsing Narayan Ingale, the father of the petitioner, as "Thakur" Scheduled Tribe is validated by the Additional Commissioner, Amravati Division, Amravati, by the order dated 25.02.1989, who was the Appellate Authority at that time. The above referred order of the Additional Commissioner validating the caste claim of the father of the petitioner has become final. It is not the case of the respondent no.1-The Scrutiny Committee that the caste certificate and the order validating the caste certificate have been obtained by the father of the petitioner by fraud or misrepresentation.

10. In Balvant S/o Vithal Jalgaonkar Vs. State of Maharashtra & Others reported in [2004(3) Mah L R 687], the

Division Bench of this Court held that, an order passed in favour of a near blood relation by competent authority which has attained finality, cannot be brushed aside lightly and has to be considered as a weighty piece of evidence. Such an adjudication prior in point of time which has attained finality would bind subsequent authorities while adjudicating claims of near blood relations unless same is shown to have been tainted with fraud or misrepresentation. It is further observed that, collective impact of all the circumstances should be taken into consideration.

11. In *Sanjay Pralhad Pardeshi Vs. State of Maharashtra & Ors.* reported in 2014 (4) Mh.L.J. 101, it is observed that, when a Committee has given a finding of validity of caste of a candidate, another committee ought not to refuse the same status to a blood relative, who applies. A mere different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it.

12. *In Monika d/o Satish Thakur Vs. The State of Maharashtra & Ors.* (Writ Petition No. 10123 of 2010) decided on 04.05.2018, the Division Bench of this Court observed that the validity certificate issued in the name of near relatives will not be

binding in following cases.

- (i) If it is found that, the vital evidence has been ignored in granting certificate in favour of a member of a family, it would be open for the Committee to arrive at a different finding. (Reliance on Raju Ramsing Vasave v Mahesh Deorao Bhivapurkar reported in (2009) 1 Mh.L.J. 1).
- (ii) When contra evidence is noticed which was not available in the previous proceedings. (Pournima Pawar v State of Maharashtra reported in AIR 2013 SC 1508).
- (iii) When the previous validity certificate was obtained by fraud. (State of Maharashtra and Others vs Ravi Prakash Babulalsing Parmar and another reported in (2007) 1 SCC 80).
- (iv) If the previous validity certificates were issued without following proper enquiry like vigilance, affinity test and satisfaction of the Committee.

13. The main thrust for invalidation is on the ground that, some alteration was noticed in the school admission certificate of the petitioner's father dt. 17.09.1976. We have gone through the record of both the petitioners as well as the records of the proceeding of their father, uncle and aunt. We find that the Scrutiny Committee has not called the original record of the school to verify whether the alteration was suspicious or not.

14. The Vigilance Officer in his report has disclosed this fact but has not expressed that it was a forged document. In this regard, Mr Barlinge relied upon the judgment in the case of Sayanna vs. State of Maharashtra (supra), wherein there was alteration by addition of a word 'lu' after the word 'Mannervar'. While Mannervar is not a scheduled tribe. 'Mannervarlu' is a Scheduled Tribe. The Apex Court observed that, there was no vigilance report that it was a forged one. It was issued on the basis of certificate issued by President of Kundalwadi Municipality. The statement of President was not recorded by the Vigilance Officer. There cannot be conclusion that 'lu' word was interpolated at the behest of the petitioner. No opportunity was granted to the petitioner to explain the same. In the present case, the original record of school is not before us. It was not seen by the Scrutiny Committee. Xerox copy brought on record shows an endorsement below it that the word 'Koli' is in fountain pen ink whereas; the word Mahadev is written by the Ball-pen. We, however, find that, there is no difference in the handwriting. The entire certificate is having the same handwriting. Besides, in the proceedings of the petitioners' father, he had produced school leaving certificate of 1982, which is also showing the same tribe as Koli Mahadev. Then it is certain that, such addition must

have been done before 1982. The members of the Scrutiny Committee relied on the judgment of the Division Bench of this Court in *Balaji Mohan Madewad Vs. State of Maharashtra & Ors.* (Writ Petition No. 7934 of 2006) decided on 17.10.2017, wherein it was observed that, if basic documents militate against the tribe or caste claim set up by the candidate, the validity granted to a relative, no doubt by a duly constituted scrutiny committee would not supersede the basic documents of the concerned candidate. Here in that case, Mahadev word was not only in different ink but also in different handwriting and it appeared that it was subsequently written at different point of time. In the present case, we don't find any material to infer that it is in different handwriting or that it was made at different point of time. Hence we hold that the scrutiny committee should not have given undue importance to ignore the three validity certificates issued in favour of father, uncle and aunt of the petitioner.

15. Again reliance is placed on the judgment of the Division Bench of this Court at Nagpur in the case of *Laxmikant Nitaram Kumre Versus Scheduled Tribe Certificate Verification Committee and Ors.* decided on 08.12.2016, wherein there was no vigilance enquiry and affinity test and the decision was given in great haste.

The matter was remanded to the Committee. Reliance was also placed on the judgment in the case of Narayan Dindaji Jambhule Versus Scheduled Tribe Certificate Verification Committee & Ors (PIL No. 102/2013) decided on 15.04.2013, wherein it is observed that, when the validity certificate is granted without following the procedure as prescribed by law, then merely because validity is granted to the family member of a candidate, it would not bind the Committee to grant validity to other members of the family. In this regard, we find that, in all the three matters, the vigilance enquiry was held and the affinity test was also held and those supported the claims made by father, uncle and aunt of the petitioners'.

16. When the vigilance report or the affinity test is held to be supporting the claim of any person, it is difficult to understand how in a subsequent proceedings the subsequent committee can hold that the said vigilance report as well as the affinity test were against them. We find that, there was same material before the same Vigilance Officer and same facts were considered for the affinity test.

17. In Ku. Madhuri Patil Versus Additional Commissioner, Thane and others reported in AIR 1995 SC 94, it was held that, affinity test and home enquiry with regard to anthropological

moorings and ethnological kinship affinity (sic) gets genetically ingrained in the blood are very much relevant for determining the tribe of a person.

18. In the light of the acceptance of previous vigilance report and affinity test and in absence of any specific grounds to show how those were wrong, the Committee could not have ignored the validity certificates issued in favour of the petitioners father, uncle and aunt only on the basis of its opinion about the affinity test and vigilance report.

19. Reliance is also placed by the Committee on the fact that 'the petitioners' father claimed that his father was illiterate' whereas; he had attended school and, therefore, there was material suppression of the said fact. We do not find substance in this fact. We find that the tribe of petitioners' grand-father was recorded in the school record as Hindu. It is not a caste or tribe but it is a religion. It means the record did not show any caste or tribe. In such case, it will be a suppression but not suppression of material facts.

20. The Committee has relied on the record of caste as Hindu in case of the petitioners' grand father, grand uncle and grand cousin-

uncle in 1955, 1965 and 1974. We find that, this is not a contra entry. Hindu is not a caste but a religion. In Madhuri Patil's case (supra), caste Hindu Koli was recorded and it was held as contra entry to the claim of the petitioners that they belong to Koli Mahadev. The said case can be distinguished on the facts. Here we find that, the old school record did not note the caste of the petitioners.

21. There was also reliance on the fact that the petitioners did not disclose that they belong to areas recognized as tribal areas and, thereafter, their forefathers migrated to the non-tribal area. This ground could have been considered had it been the first claim in the family of the petitioners. But, there were three previous claims. The petitioners father, real uncle and real aunt have been given tribe validity certificates. Those were not challenged and have become final. In this situation, the main focus should have been whether those certificates were wrongly issued or not. We do not find any material to hold that, those certificates were wrongly issued. It was also not proper on the part of the committee to expect pre-presidential record and at the same time hold that the admission of grand-father of petitioners in school was indicative that they were educated and not belonging to the backward scheduled tribe.

22. We make it clear that, appreciation by scrutiny committee for tribe verification in normal case would be different from the same in cases where there are validity certificates issued in favour of close paternal relatives including the father of the claimants which have attained finality. In such cases, the Committee has to assume that the petitioners must be belonging to the caste or tribe of their father and other close paternal relatives, and should find out whether there is any strong material to disbelieve the validity certificates issued in favour of near relatives which have attained finality.

23. We, therefore, hold that the impugned orders of the scrutiny Committee are not sustainable. Both the petitioners have established that they belong to Koli Mahadev and their claims should have been allowed. Hence, we pass the following order.

ORDER

- (i) The order passed by respondent No. 2 dt. 10.01.2018 is quashed and set aside.
- (ii) Respondent No. 2 - Committee is directed to issue tribe certificate of Koli Mahadev (with correct spelling) in favour of the petitioners No. 1 & 2 at the earliest before 1st August, 2018.

24. Rule is made absolute in the above terms with no order as to costs.

[A. M. DHAVALE]
JUDGE

[R. M. BORDE]
JUDGE

Punde