

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
8 WRIT PETITION NO. 8133 OF 2013**

Atmaram s/o Babulal Jadhav
Age 56 years, Occu. Service, working
As Naib Tahsildar, in Collector office
at Jalgaon, Dist. Jalgaon ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Region,
Nandurbar.
3. The Collector,
Jalgaon. ..RESPONDENTS

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Mr. S. R. Barlinge, Advocate for the Petitioner.
Mr. K. S. Patil, AGP for Respondent-State.

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**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.
DATED : 03rd DECEMBER, 2018.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. Rule. Rule made returnable forthwith.
With consent of the parties, matter is taken up for
hearing at admission stage.

2. The caste claim of the petitioner as
belonging to 'Tokare Koli', Scheduled Tribe was
referred to the committee. The committee
invalidated the caste claim of the petitioner.
Aggrieved thereby the present petition.

3. Mr. Barlinge, learned counsel for the petitioner submits that the committee failed to consider the old documents of pre-independence era. The copy of the purchase deed made by Dhangu in Modi language and translated in Marathi of the year 1908 records caste of Dhangu as 'Tokare Koli'. That Dhangu is the great grandfather of the petitioner. The learned counsel further submits that the caste on the death extract of the grandfather of the petitioner Gangaram records caste as 'Tokare Koli'. The said document is dated 21.11.1949. The learned counsel submits that the birth extract of the real paternal aunt of the petitioner Narmada of the year 1931 records caste as 'Tokare Koli'. The school record of the petitioner in the caste column records magasalela. The learned counsel submits that the same cannot be said to be a contra entry. The committee on the basis of these isolated entry has invalidated the tribe claim of the petitioner. The learned counsel submits that even answers are rightly given by the petitioner. More over, when there are pre-independence documents having more probative value, the affinity test would loose its significance. The affinity test is not the litmus test to arrive at the conclusion of a particular caste. The same can only be a corroborative one. The learned counsel relies on the judgment of the Apex Court in a case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.** reported in **AIR 2012 SC 314.**

4. The learned counsel further submits that the Government has issued circular dated 18.10.1968 to the effect that when admission is taken in the school, the particular caste should not be recorded, however, only magasalela or bigar magasalela ought to be recorded.

5. The learned A.G.P. submits that in the death extract of Gangaram the word 'Tokare' appears to be inserted subsequently, as the entry is 'Koli Tokare' and not 'Tokare Koli'. The learned counsel submits that the school record of the petitioner records magasalela in the caste column. The caste is not specifically recorded. The same would be a contra entry. The said entry is in both the school record of the petitioner. The learned A.G.P. further submits that the validity certificates relied by the petitioner of the cousin are distant one separated by four generations. The learned A.G.P. further submits that the petitioner could not prove the affinity test.

6. We have considered the submissions canvassed by the learned counsel for the respective parties. We have also gone through the record and the judgment of the committee.

7. After the matter was referred to the committee, the committee directed vigilance to be conducted. The vigilance was conducted. The vigilance did not find any suspicion in the genealogy submitted by the petitioner. On perusal

of the genealogy, it appears that Dhangu is the great grandfather of the petitioner. Gangaram is his son that is grandfather of the petitioner and the father of the petitioner is Babulal. Whereas, Narmada is the real paternal aunt of the petitioner. We have gone through the evidence produced by the petitioner. The vigilance did not find any discrepancy in the documents such as the birth extract of Narmada Gangaram dated 04.03.1931 recording caste as 'Tokare Koli'. The vigilance also did not find any suspicion with the documents by virtue of which Dhangu the great grandfather of the petitioner and the father of Gangaram had purchased the property and the said purchase deed of the year 1908 records caste of Dahngu as 'Tokare Koli'. The death extract of Gangaram the grandfather of the petitioner dated 21.11.1949 records caste as 'Koli Tokare'. Only because Tokare is written after word Koli, it cannot be presumed that the word Tokare is added subsequently nor the same has been found by the vigilance in the enquiry.

8. It is well settled that the pre-independence documents will have more evidential and probative value. All these documents are old documents from year 1908 to 1949. Certainly, they will have more probative value. The school record of the petitioner does not record a particular caste, but in the caste column it is recorded as Hindu Magasalela meaning backward. The same cannot

be *ipso facto* considered as a contra evidence. We could have understood, if in the caste column some other caste of the petitioner is recorded, however, that is not the fact.

9. It has been held by the Apex Court that the affinity test is not the litmus test. With the passage of time and urbanization, the persons may not follow the traits as has been held by the Apex Court in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.** (supra). The affinity test at the most can be considered to be a corroborative one, when the evidence is shaky. However, in view of the old documents having more probative value and no contra evidence on record, the committee committed an error in negating the caste claim of the petitioner.

10. In light of the above, the impugned judgment and order is quashed and set aside. The committee shall issue validity certificate to the petitioner of 'Tokare Koli' within a period of six (06) weeks.

11. Rule accordingly made absolute in above terms. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE