

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

WRIT PETITION NO. 6553 OF 2009

Hitendra s/o Ashok Chavan,
Age 20 years, Occu. Student,
through his father Ashok
s/o Motiram Chavan, Age 50 years,
Occu. Service, R/o Mehunbare,
Taluka Chalisgaon, District Jalgaon

.. Petitioner

Versus

1. The State of Maharashtra,
through its Secretary,
Tribal Development
Department, Mantralaya,
Mumbai
2. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
Division, Nandurbar
3. The Competent Authority and
Director of Technical Education,
Maharashtra State, having its
office at 3, Mahapalika Marg,
Dhobi Talao, Mumbai
- [4] The Principal, }
Sardar Patel Institute of } Deleted as per Court's
Technology, Bhavan's camp, } order dated 3.11.2017
Morshi Naka, Andheri (West), }
Mumbai }

..Respondents

Mr S.R. Barlinge, Advocate for petitioner
Mr S.G. Karlekar, A.G.P. for respondents no.1 to 3

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVAL, JJ**

DATE : 2nd February 2018

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

1. The tribe claim of the petitioner as 'Koli Mahadev' – Scheduled Tribe is invalidated.
2. Mr S.R. Barlinge, learned Advocate for petitioner submits that real brother of the petitioner has been issued with the validity

certificate bearing No.94/2007 of 'Koli Mahadev' - Scheduled Tribe. The cousin paternal uncle of the petitioner namely Bapu Daulat Chavan has been issued validity certificate under the directions of this Court in Writ Petition No.3187 of 1994 dated 10th October 1994. The grandsons of Bapu Daulat Chavan, namely Pranav Rajendra Chavan, Siddharth Jitendra Chavan are issued validity certificate under the orders of this Court dated 15th October 2012 in Writ Petition No.1134 of 2010 and connected writ petitions. The validity certificate in favour of Siddharth Jitendra Chavan is issued on 17th December 2012. According to the learned Advocate, the entire evidence before the Committee in the petitioner's case was also considered when the validity was issued to the real elder brother of the petitioner. The Nasik Committee had issued validity in favour of real elder brother of the petitioner and the Nandurbar Committee in case of petitioner has taken different view. There are documents on record showing his tribe as Koli Mahadev.

3. Mr Karlekar, learned A.G.P. submits that there are old documents showing the case being recorded as 'Koli'. In the father's record also initially the caste was recorded as Koli and after receiving the tribe certificate, tribe was recorded as 'Mahadev Koli'. According to the learned A.G.P., even in respect of grandfather of the petitioner, the caste is recorded as 'Koli'. Learned A.G.P. submits that even the petitioner could not prove the affinity test. The Committee has rightly considered these aspects.

4. We have considered the submissions advanced by learned Advocate for respective parties and we have gone through the judgment.

5. It is a matter of record that real brother of the petitioner is issued with the validity certificate of 'Koli Mahadev' – Scheduled Tribe in the year 2007. The cousin paternal uncle of the petitioner Bapu Daulat Chavan is issued with the validity certificate under the orders of this Court. So also, the grandsons of Bapu Daulat Chavan, namely Pranav and Siddharth are issued with the validity certificates under the orders of this Court in Writ Petitions referred to above.

6. It would be seen that the entire evidence on record in the case of petitioner was also before the Scrutiny Committee at Nasik while considering the tribe claim of real brother of the petitioner Kiran Ashok Chavan.

7. Considering the fact that the entire evidence involved in the present matter was also subject matter of consideration, while considering the case of real elder brother of the petitioner, so also the validity certificate issued to the paternal cousins of the petitioner under the orders of this court, the petitioner also deserves to be given the same treatment.

8. As far as affinity test is concerned, in **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors.**, reported in **(2012) 1 SCC 113**, the Apex Court has observed that because of migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe.

9. The school record of the petitioner records caste as 'Mahadev Koli'. The school record of the father of the petitioner initially had recorded as caste 'Koli' and subsequently as 'Mahadev Koli'.

10. Considering the overall record and the validity certificates issued in favour of the real elder brother of the petitioner and paternal cousins under orders of this Court, we set aside the impugned order passed by the Committee. The Committee shall issue the validity certificate to the petitioner of 'Koli Mahadev' - Scheduled Tribe expeditiously, preferably within six weeks.

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

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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