

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

**WRIT PETITION NO. 8558 OF 2018**

Rikita Kashinath Ishi,  
Aged : 19 years, Occu. Student,  
R/o. Aachi, Tq. Shindkheda,  
Dist. Dhule.

...Petitioner

Versus

1. The State of Maharashtra,  
Through Secretary,  
Department of Tribal Development,  
Mantralaya, Mumbai-32.
2. Scheduled Tribes Certificate Scrutiny Committee,  
Through its member Secretary,  
Nandurbar Division, Nandurbar,  
District Nandurbar.
3. Grant Government Medical  
College & Sir J. J. Group of  
Hospitals, Mumbai.
4. The Maharashtra University of  
Health Sciences, through its Registrar,  
Dindori Road, Mhasrul,  
Nashik-422 004.
5. The Director of Medical Education and  
Research, Govt. Dental College and  
Hospital Building, 4<sup>th</sup> Floor, St. George's  
Hospital Compound, Fort, Mumbai-400 001. ...Respondents

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Mr N. L. Chaudhari, Advocate for the petitioner  
Mr P. S. Patil, AGP for respondent/State

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**CORAM : S. S. SHINDE &  
A. M. DHAVAL, JJ.**

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

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. The petitioner, a student, seeking admission for M.B.B.S. aggrieved by invalidation of her tribe claim as “Tokre Koli” by Scheduled Tribe Certificate Scrutiny Committee, Nandurbar, has preferred this Writ Petition.

3. Heard Shri. N. L. Chaudhari, learned counsel for the petitioner and Shri. P. S. Patil, learned Assistant Government Pleader for respondent/State.

4. The petitioner – Ritika obtained tribe certificate from Dy. Collector/Sub-Divisional Officer, Shirpur, dt. 24.05.2017 and submitted claim for validation before the Committee at Nandurbar. Her claim is mainly based on entries of her grandfather – Gojraj as 'Koli Dhor' and her grand-father's sister Amaribai as 'Tokre Koli' in pre-independence period and the caste certificate of her father, brother, herself and other relatives of recent period. The Scrutiny

Committee recorded the statement of her mother and sent the documents for verification through vigilance. They found that, the entries of caste/tribe of many of the relatives of the petitioner were recorded as 'Hindu Koli' and the entries of grand-father and sister of grand-father relied upon by the petitioner were unreliable as the original record was not traceable and there were alterations in the entries. The vigilance report was also against the petitioner and the petitioner did not satisfy the test of area restriction. Hence, by order dt.10.07.2018, her claim for validation of tribe certificate was rejected.

5. Shri. N. L. Chaudhari, learned counsel for the petitioner submitted that, it is well settled that pre-presidential order entries have great probative value. He relied on the judgment of the Apex Court in Sayanna vs. State of Maharashtra in Civil Appeal No. 6253 of 2009 dt. 15<sup>th</sup> September, 2009, to submit that there was no material collected to show that the petitioner was in anyway connected with the alterations in the record. The record was in possession of school authorities and the petitioner had no access. The entries thereof cannot be doubted. He submitted that, the vigilance report is incorrect inasmuch as the answers given by the petitioner and her mother were as per the customs and traditions of 'Tokre Koli' community and the expert has given no reasons to

disclose how the answers given by Ritika's mother did not tally with the customs and traditions of Tokre-Koli. He submitted that, area restriction has been removed and it is of not much significance. Mr Chaudhari, learned counsel for the appellant submitted that, by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1996, for the first time in 1976, Tokre Koli was recognized as a Scheduled Tribe for the State of Maharashtra. Tokre Koli and Koli Dhor and Kolcha Kolgha belong to one entry No. 28. Tokre Koli and Koli Dhor is one and the same tribe covered under a single entry in the presidential order. The entry as Dhor Koli is not contra to entry as Tokre Koli. Hence, he submitted that the decision arrived at by the Scrutiny Committee is perverse and needs to be set aside and the petitioner deserves to get validation certificate.

6. Per contra, Mr P. S. Patil, learned Assistant Government Pleader argued that, the Committee has properly applied its mind and considered several entries of the close relatives of the petitioner shown as 'Hindu Koli'. It is contra to the claim of Tokre Koli tribe. The entries in the school record relied upon by the petitioner are highly suspicious. The original records are not traceable and these are re-written recently. Those are not reliable and trustworthy. He argued that, the petitioner made a false claim at late stage that two validity holders Atul and Arvind were related to her but they are

noway related to her. Admittedly, nobody from the petitioner's side had taken any benefit of Tokre Koli, Scheduled Tribe, in the past for so many years. The vigilance report is against the petitioner. The petitioner is from Shindkheda where Tokre Koli has no origins. Considering all the facts, the Committee has taken a right decision and therefore no interference is called for.

7. The only point for our consideration is whether the decision of respondent No. 2 / Scrutiny Committee is perverse and whether it needs to be set aside? We answer it in the negative.

### **REASONS**

8. The original file of the proceeding is produced before us. In the light of the arguments advanced, when the original papers are seen, we find following material facts.

- (i) The claim of the petitioner is based on two entries of her grand-father Gojraj and his sister Amaribai in the school record in the year 1948 and 1951, respectively.
- (ii) The remaining documents produced by the petitioner are of recent period. Her father obtained caste certificate in 1984 and his caste was recorded as Tokre Koli tribe in the school leaving certificate dt. 01.07.1982. Those are of no assistance for determining her tribe.

9. We agree with Mr Chaudhari, learned counsel for the appellant that, Koli Dhor and Tokre Koli are synonyms of one tribe and Koli Dhor is not contra entry to Tokre Koli. However, Hindu Koli is not a tribe and entries as Hindu Koli are contra entries.

10. The Vigilance Officer has collected entries from Gaon Namuna (गाव नमुना) No. 14 in respect of the following persons.

- (i) Gojara Kashiram Devaji (father's cousin) January-1920.
- (ii) Pandit Kashiram Devaji (grand uncle) November-1922
- (iii) Godarash Bhojraj Kashiram (father's cousin) 14.08.1944.

. All these entries disclose the caste/tribe as Hindu Koli.

11. The Vigilance Committee has collected school record of close-relatives shown in the genealogy and the record of following close relatives disclose their caste/tribe as Hindu Koli.

- a] Ramesh Gojraj Ishi (father's real brother) dt. 25.06.1963.
- b] Sudam Bhojraj Ishi (father's cousin) dt. 19.06.1963
- c] Adhar Koli (father's cousin) dt. 13.07.1965.

12. It is needless to state that, the entries in the name of close-relatives as Hindu Koli are contra entries to the claim of Tokre Koli.

In this regard, reliance can be placed on the judgment in the case of

*Kumari Madhuri Patil and another Versus Addl. Commissioner, Tribal Development and others (AIR 1995 SC 94).*

13. The contention of Mr N. L. Chaudhari, learned counsel for the petitioner that, though they belong to Dhor Koli community as they were treated as untouchables, they disclosed their caste/tribe as only Koli, cannot be accepted. In the light of these contra entries, it is necessary to consider the entries relied upon by the petitioner with more caution. Those are as follows:

- (i) School Leaving Certificate of Gojraj Kashinath Ishi (Koli Dhor) dt. 29.09.1948.
- (ii) School Leaving Certificate of Ambaribai Kashinath Ishi (sister of grand-father) (Tokre Koli) dt. 18.12.1951.

14. Mr Patil, learned Assistant Government Pleader for State has relied on following judgments:

- i] This Court in exercise of writ jurisdiction cannot re-appreciate the facts and cannot sit as an appellate authority. (a) [*Pournima Suryakant Pawar Vs. State of Maharashtra & Ors.* reported in 2013 ALL SCR 1405 [Para 12] & (b) *Dharmendra Patil v. Scheduled Tribes Caste Certificate Scrutiny Committee & Ors.* reported in 2003(5) Mh.L.J. 785.
- ii] If the documents showing pre- presidential orders entries are produced, the vigilance enquiry about the genuineness of the documents, home enquiry and school enquiry is mandatory. *Mangesh Kashid v. Dist. Collector* reported in 2012(5) Mh.L.J. 473 [Para 50 & 55(3)].

- iii] Affinity test and area restrictions are relevant factors for the scrutiny committee while deciding the verification of tribe claim. *Yogita Anil Sonwane vs. The State of Maharashtra and others* in Writ Petition No. 6103 of 2010 delivered by Full Bench of this Court on 15.09.2016.
- iv] Entry as Hindu Koli is contra entry to the claim of Tokre Koli. (a) *Bhavana Suryawanshi Vs. The State of Maharashtra* in Writ Petition No. 5608 of 2008 (Aurangabad Bench) decided on 23<sup>rd</sup> September, 2008 & (b) *Milind Sonavane Vs. The State of Maharashtra* in Writ Petition No. 1112 of 2007 decided on 5<sup>th</sup> April, 2007 at Principal Seat by F. I. Rebello & R. M. Sawant , JJ.
- v] *Ankush Lad vs State of Maharashtra* reported in 2002(6) Bom.C.R. 201, wherein it is held that, when the father's school record was not produced it was a suspicious circumstance.
- vi] He also relied on *Pournima Suryakant Pawar Vs. State of Maharashtra & Ors.* 2013 ALL SCR 1405, to submit that, deliberate withholding of caste certificate of near relatives whose recorded caste is contrary to the caste/tribe claim of the petitioner is adverse circumstance.
- vii] He relied on *Jitendra Rajput vs The State of Maharashtra* [Writ Petition No. 12304 of 2016 decided on 27.04.2018, Aurangabad Bench] to which one of us A. M. Dhavale, J. was a party, to submit that, when the old record is forged one or when there are contra entries of relatives of the

petitioners, the vigilance enquiry is necessary. The Scrutiny Committee as held in Anand's case (supra), has to grant or reject the certificate as per the procedure prescribed in the rules.

viii] He also placed reliance on Smt. Monika Thakur Vs. The State of Maharashtra & Ors. (Writ Petition No. 10123 of 2010, decided on 4.5.2018, Aurangabad Bench) to which one of us A. M. Dhavale, J. was a party, wherein relying on Anand's case, it is held in para 23 that if the Scrutiny Committee is not satisfied with the documentary evidence, it shall direct vigilance cell inquiry into kinship and affinity of the applicant is not alien to the scheme but is relevant and germane to the determination of social status of the applicant. It is also held that affinity test though not decisive, but is relevant.

15. Coming to the facts of the present case, we find, when the Vigilance Officer went to School at Kamravad, Tq. Shahada, for verification of these entries, he found that, the original register of 1948 was not available and there was a new register rewritten recently in case of entry of Gojraj Kashinath Ishi dt. 29.09.1948. Similar is the case with the entry of Amaribai (sister of grand-father) dt. 18.12.1951. He has produced certified colour xerox copies of the said register. On verification of the said register, it is noticed that, entry of Gojraj Kashinath Ishi at Sr. No. 34 shows erasers and

overwriting at the place of name as well as the caste and the birth place. There is clear alteration in the said record.

16. Another material factor is, change of date of birth in two different certificates of grand-father Gojraj produced by the petitioner. The certificate produced at page 31 of the record and copy of school register at page 100 shows the date as 21.06.1931 both in words and figures but, the certificate produced at page no. 39 of the same person and of same school shows the birth date as 01.06.1932, both in words and figures. A person cannot have two different birth dates and the school cannot issue school admission certificates with two different birth dates. When the birth date in certificate at page No. 39 does not tally with the school register showing the date of birth as 21.06.1931, this alteration in name, in the caste and in the place of birth assumes vast significance.

17. Another very material circumstance which has gone unnoticed is the place of schooling. The record shows that, the petitioner and her fore-father's are originally resident of Acchi, Tq. Shindkheda, and they have never changed their residence except the petitioner's father who changed the residence recently due to employment. Her application shows that, her father studied initially at Zilla Parishad School at Acchi, Tq. Shindkheda and thereafter at

Zilla Parishad School, Malpur at Dondaicha, Tq. Shindkheda. The school leaving certificate at page 34 is of the petitioner's father issued by Malpur High School, Malpur, dt. 20.06.1984 which shows that, he had previously studied in Kisan Vidyalaya, Shindkheda. The school leaving certificate collected by the Vigilance Officer shows that, the petitioner's real uncle Ramesh and Shriram studied in Zilla Parishad school at Virdel, Tq. Shindkheda (page 13 and 14). Her cousin uncle Sudam and Adhar have also studied in the school at Virdel, Tq. Shindkheda. Their certificate shows that, school at Virdel was established in 1865. In such situation, the two certificates of grandfather Gojraj and his sister Amaribai are from Zilla Parishad Primary School at Kamravad, Tq. Shahada. When there is a school in the Shindkheda taluka itself, poor persons will not go for primary education to a school at Kamravad, Tq. Shahada. The certificate of Gojraj Kashinath Ishi shows that, he studied there only for three months in 3<sup>rd</sup> std. There is no certificate of his prior schooling. Similarly, Amaribai studied at Kamravad from 1<sup>st</sup> to 3<sup>rd</sup> std. from 1951 to 1954 when she was aged about 8 to 11 years. It is highly improbable that when there was a school at Acchi or in taluka Shindkheda, such a small girl will go to Kamravad, Tq. Shahada for primary education.

18. During the relevant period, the cousins of petitioner's father were studying in the local school at Acchi. The petitioner's father born in 1964 has also studied in Zilla Parishad School at Acchi, Tq. Shindkheda. However, the petitioner did not produce the school leaving certificate of her real uncle and father's cousins from the school at Acchi, Tq. Shindkheda and when the Vigilance Officer collected the certificate, the caste recorded therein is Hindu Koli. The petitioner's father was studied in school at Acchi as per the information supplied by the petitioner. There was no reason why his school leaving certificate of school at Acchi has not been produced.

19. Pertinently, in the information supplied by the petitioner, she had shown her relatives as uncle Shriram and Ramesh and aunt Janabai Bhojraj but in the affidavit of genealogy, her father has not disclosed the names of these close relatives, as their caste was recorded as Hindu Koli in the school records. If the petitioner is suppressing the material facts, it becomes a matter of suspicion.

20. It is also found that, the petitioner had specifically stated that no relative of her had obtained validity certificate to her knowledge but, later-on she produced the validity certificates of three persons by name Atul, Arvind and Pankajkumar. Their names do not appear in the genealogical tree filed by her. The Vigilance Officer

found that, they were not related to her. The validity certificates in their name are of no assistance to the petitioner. Besides, making of a false claim that these validity holders are her relatives, affects her credibility adversely.

21. The above referred facts by themselves are sufficient to discard the claim of the petitioner but, the Scrutiny Committee has also conducted vigilance enquiry and as per the vigilance report coupled with the expert opinion, the enquiry made by the Vigilance Officer with regard to the traits and culture followed by them do not match with those of Tokre Koli community. When the expert in this field has considered the traits and has given report that those do not match, this Court will not be in a position to re-appreciate the facts. This Court while dealing with the writ petition cannot sit as an appellate authority and cannot substitute its own opinion. It has to be considered whether the Committee has subjectively satisfied or not and whether the same is based on material according to well settled principles or not.

22. As held in Anand's case (supra), if the Caste Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other enquiry. Sub-rule (3) of

Rule 12 requires the Vigilance Officer to visit the local place of residence and the original place from where the applicant hails and usually resides (Para 19).

In para 20, it is observed, “it is evident that the scope of enquiry by the Vigilance Officer is broadbased and is not confined only to the verification of documents filed by the applicant with the application or the disclosures made therein. Obviously, the enquiry, supposed to be conducted by the Vigilance Officer, would include the affinity test of the applicant to a particular tribe to which he claims to belong. In other words, an enquiry into the kinship and affinity of the applicant to a particular Scheduled Tribe is not alien to the scheme of the Act and the Rules. In fact, it is relevant and germane to the determination of social status of an applicant.”

23. In Shilpa Thakur's case, the Full Bench of this Court noted, 'A person claiming to be belonging to Scheduled Tribe must prove that he belongs to the Nomadic Tribe, which is shown in presidential order as Scheduled Tribe. Mere fact that the document produced by a person reflects his surname as being synonymous with the name of designated tribe is not sufficient to establish that the applicant belongs to a Scheduled Tribe. Before a person can be regarded as belonging to a Scheduled Tribe, that person must demonstrably be a member of the tribe. It is also held that the vigilance enquiry is integral part of the scrutiny by the Scrutiny Committee.'

24. No doubt, the pre- presidential order documents have great probative value but those document should be free from suspicion. In the present case, the original record itself is not available and what was produced is not the original record but rewritten record. There is no material how that rewriting was done. There is no reliability to this record. Even the copies produced have erasion and alterations. True, there is no material to show that those alterations were made by the petitioner or at her behest, nonetheless the entries are not reliable. In such case, the scrutiny committee committed no mistake in going for vigilance enquiry and affinity test. There are contra entries in the name of near relatives of the petitioner as Hindu Koli, and affinity test and area restrictions also did not match.

25. Mr Patil, learned Assistant Government Pleader relied on the judgments of this Court in the cases of Nilesh Devidas Sapkale Vs. The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division and another in Writ Petition 8354 of 2013 (Aurangabad Bench) delivered on 10.07.2017 and Chhaya d/o Jasvantsing Hajari Vs. The Committee for Scrutiny and Verification of Tribe Claims, Amravati, Tq. and District Amravati in Writ Petition No. 4198 of 2005 (Nagpur Bench) delivered on 01.08.2018, wherein in similar facts and circumstances, it is held

that, the Scrutiny Committee committed no error in rejecting the tribe claim of the petitioner. In the light of these facts, we find no perversity in the order impugned. The scrutiny committee has applied its mind, considered all the record and given sound reasons for the conclusion arrived at. Hence, in exercise of the writ jurisdiction no interference is called for.

**ORDER**

. The writ petition is dismissed. Rule is discharged.

**[ A. M. DHAVALA ]**  
**JUDGE**

**[ S. S. SHINDE ]**  
**JUDGE**

Punde