

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11075 OF 2015**

Mr. Jayesh Gajanan Thanekar

..Petitioner

Vs.

**Scheduled Tribes Certificate
Scrutiny Committee & Anr**

..Respondents

Mr. G. M. Savagave for the Petitioner

Mrs. M. P. Thakur AGP for the Respondent No.1 and 2

**CORAM :R. M. SAVANT, &
K. K. SONAWANE, JJ
DATE : 7th SEPTEMBER, 2018**

P.C.

1 The above Writ Petition has been filed challenging the order dated 27-12-2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, by which order the Tribe claim of the Petitioner as belonging to the Mahadev Koli, Scheduled Tribe, came to be rejected.

2 The Petitioner herein was issued a caste certificate as belonging to Mahadev Koli Scheduled Tribe by the Executive Magistrate, Thane. The Petitioner it seems is working in the Police Department as a Constable. The caste certificate of the Petitioner was submitted to the Scheduled Tribe

Certificate Scrutiny Committee, through the Deputy Commissioner of Police, Heard Quarter-2, Mumbai, on 30-4-2004. In support of his Tribe claim, the Petitioner relied upon a host of documents which have been listed in the impugned order from Item No. I to Item No.XIII. As per the mandate of the Caste Act 2001 and the Rules framed thereunder, the Petitioner's case was handed over to the Vigilance Cell for conducting the school, home and other inquiry. The Vigilance Officer has accordingly submitted his report to the Caste Scrutiny Committee along with the record and certain information. Amongst the documents which were submitted by the Vigilance Officer was the genealogy of the Petitioner's family, extract from the school register of the relatives of the Petitioner from his paternal side namely in respect of his father, grand father and cousin grand father which entries were dating from 1920, 1926, 1942 and 1950 wherein the caste of the father was recorded as Hindu Suryavanshi Koli, the caste of the grand father was recorded as Hindu Koli and the caste of the cousin grand father was also recorded as Hindu Koli. Copy of the said enquiry report from the Vigilance Officer was forwarded to the Petitioner for his response. The Petitioner accordingly responded to the said Vigilance Cell Report. The Petitioner was also called for personal hearing on 20-11-2012, thereafter again on 18-6-2013 as the Petitioner did not remained present on the earlier date. However, on 18-6-2013 the Petitioner remained present along with his mother and the Learned Advocate who was representing him. The Scheduled Tribe Committee thereafter proceeded to

consider the documents on which reliance was placed on behalf of the Petitioner in respect of the relatives of the Petitioner's from paternal side whose caste was recorded as Mahadev Koli, Hindu Mahadev Koli, Suryavanshi Koli and Koli, the Committee observed that there were inconsistent entries in the school record of the Petitioner and his paternal relatives. The Committee further observed that though some of the documents may be supporting the Petitioner, the other were not and observed that the said issue would be discussed a bit later. The Committee in respect of the caste certificates which were produced in respect of the relations from the paternal side observed that in terms of Section 4(2) of the Caste Act, the caste certificate issued by the Competent Authority would be valid only subject to the verification and grant of valid certificate by the Scrutiny Committee and therefore did not given any credence to the caste certificate produced by the Petitioner in respect of his relations from paternal side. The Committee also discounted the birth certificate and land records which were produced as being not relevant in the context of the claim made by the Petitioner.

3 In so far as the order passed by the Additional Commissioner Konkan Division dated 21-3-1991 in respect of the uncle of the Petitioner one Bharat Thanekar, the Committee did not deem it appropriate to give credence to the said Appellate Order in view of the legal position then in existence, as on a technical ground of the caste certificate being issued by the Competent

Authority on 4-7-1973 i.e. prior to 29-10-1980 on which day the powers were vested with the Commissioner, the said certificate could not have been gone into. The Committee also observed that the Appellate Authority had passed the order without going through the elaborate exercise which came to be prescribed pursuant to the judgment of the Apex Court in Mahduri Patil's case. The Committee observed that a distinction would have to be made between the pre Madhuri Patil's decision and post Madhuri Patil's decision. The Committee further observed that in terms of the judgment of this court in Writ Petition No.2773 of 1990 dated 3-7-2003 in which judgment reliance was placed on the judgment in Madhuri Patil's case and it was observed that merely because of one of the family member's caste claim has been verified, would not by itself be the foundation for validation of the candidate's claim. The Committee further adverted to the judgment of the Apex Court in the matter of Raju Ramsing Vasave Vs/ Mahesh Deorao Bhivapurkar & Ors. Reported in 2008(9) SCC-54 and especially paragraph 27 thereof wherein the Apex Court has observed that if it is found that in granting certificate in favour of a member of a family vital evidence had been ignored, it would be open to the Committee to arrive at a different finding. It is in the context of the aforesaid exposition of the Apex Court that the Committee was of the view that the benefit of the Appellate Order in the case of the Petitioner's uncle could not be extended to the Petitioner.

4 The Committee by adverting to the fact that the entry in the school record in respect of the Petitioner's father, grand father and cousin grand father were pre-Presidential Order, was of the view that in terms of the law laid down by the Apex Court the same would have great probative value in so far as the claim of the Petitioner as belonging to Scheduled Tribe Mahadev Koli, is concerned. The Committee having regard to the said legal position was of the view that the same would militate against the Petitioner's Tribe claim. The Committee lastly considered whether the Petitioner had satisfied the affinity test. The Committee having regard to the broad parameters which have been laid down in so far as the affinity test is concerned, came to a conclusion that the Petitioner has failed to prove his affinity towards the Mahadevi Koli, Scheduled Tribe. The Committee was of the view that since the facilities are available to the Scheduled Tribe that the persons like the Petitioner are ready and willing to give up their original caste and claim that they belong to the Scheduled Tribe to avail of the said benefits available to the Scheduled Tribe. The Committee accordingly by the impugned order dated 27-12-2013 has rejected the Tribe claim of the Petitioner.

5 The Learned Counsel for the Petitioner would make three fold submissions, firstly that the Committee has not framed issues while deciding the Tribe claim of the Petitioner, secondly that the Committee has erred in not giving weightage to the fact that it has been held by the Appellate Authority

that the uncle of the Petitioner from the paternal side belongs to Mahadev Koli, Scheduled Tribe and lastly the documents from maternal side have not been considered.

6 We do not find any merit in the aforesaid contentions. The framing of the issues is only to facilitate the adjudication of a preceding. In the instant case non framing of the issues would make no difference as has considered all the material which was brought on record and thereafter has arrived at the conclusion which has been recorded in the impugned order. In so far as the second contention is concerned, the Committee has for reasons which are found in the impugned order did not deem it appropriate to give credence to the Appellate Order in respect of the uncle of the Petitioner. We find no fault with the Committee in that regard having regard to the judgments of the Apex Court which we have already adverted to in the earlier part of instant order. In so far as the last submission is concerned, it is trite that the person gets the caste from his paternal side and therefore the documents relating to the maternal side cannot be given weightage to unless by way of corroboration to the documents from the paternal side which prima facie indicate that the Applicant belongs to a particular caste or tribe such is not the case in the instant matter.

7 For the reasons aforestated, we do not find any infirmity or

illegality in the order passed by the Scrutiny Committee. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[K. K. SONAWANE, J]

[R.M.SAVANT, J]

Meera
Mahesh
Jadhav

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by Meera
Mahesh Jadhav
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