

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7527 OF 2018

1. Saurabh Ashok Jadhav
 2. Nikhil Ashok Jadhav
Both R/at Post Pimparkhed
Taluka.Nandgaon, District-Nashik
- ...Petitioners**

V/s.

1. State of Maharashtra
Through the Secretary,
Tribal Development Department
Mantralaya, Mumbai- 400 032.
2. Scheduled Tribe Certificate Scrutiny
Committee, Nashik
through its Member Secretary
having its office at Adivasi Vikas
Bhavan, 2nd Floor, Old Agra Road,
Nashik, District-Nashik.
3. Directorate of Technical Education
3, Mahapalika Marg, Dhobi Talao
Mumbai – 400 001
4. Government Polytechnic
through its Principal, having its
Office at Tamangaon Road, Nashik
District-Nashik.
5. K.K. Wagh Polytechnic
through its Principal, having its
office at Panchavati, Nashik Road,
Nashik, District-Nashik

...Respondents

Mr.R.K. Mendadkar for the Petitioner.

Mr.B.V. Samant, AGP for Respondent-State.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

RESERVED ON : 08th AUGUST 2018

PRONOUNCED ON : 10th AUGUST 2018

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1. Rule. Rule made returnable forthwith.

2. By this petition filed under Article 226 of Constitution of India, the petitioners have prayed for Writ in the nature of Certiorari, for quashing and setting aside the order dated 30-05-2018 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nashik thereby rejecting the claim of the petitioners as belonging to Mahadev Koli, as Scheduled Tribe. Direction is also sought to the committee to issue certificate of validity, thereby validating the Caste Certificate dated 16-07-2015 issued in favour of the petitioners and declare them to be belonging to Koli Mahadev, Scheduled Tribe.

3. The petition is filed by two petitioners who are brothers and claim to be belonging to Koli Mahadev, Scheduled Tribe. The petitioners have been granted caste certificates in the prescribed

form on 16-07-2015 by the Sub Divisional Officer, Malegaon declaring them to be belonging to Koli Mahadev, which is recognized as Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950. Being desirous of persuading their higher education from the reserved category of Scheduled Tribe, the petitioners approached the respondent No.2-Committee for verification of the certificates of Scheduled Tribe and laid their claim before the said committee, by tendering documentary evidence. The documentary evidence included the validity certificate in favour of their father by the Nashik Committee in the year 2008 and cousin brothers from the paternal side as well as maternal side. The claim of the petitioner was taken up for scrutiny and by an order dated 30.05.2018 the claim came to be rejected on the ground that the petitioner's have not been able to prove their claim of belonging to Koli Mahadev, Scheduled Tribe by documentary evidence and also they were not successful in establishing their claim on the parameters of affinity test and did not establish ethnic linkage towards "Koli Mahadev Scheduled Tribe" appearing at entry 29 in the list of Scheduled Tribes in Maharashtra. Resultantly, the claim of both the petitioner's were found to be unsustainable and declared invalid and the caste certificates issued in their favour came to be cancelled and confiscated.

It is this order which is impugned in the present Writ Petition.

4. When the matter was listed before this Court on 19.07.2018, copy of the petition served upon the learned Assistant Government Pleader Shri.Samant, so as to enable him to peruse the papers. By the same order, this Court directed that the admission of the petitioners be not distributed if they are admitted in respondent No.5-College and are pursuing their education in Engineering Course.

Today the matter was listed and we have heard the learned counsel for the petitioner and the learned AGP who had also procured the record from the respondent No.2-committee and the matter was heard finally by consent of both the parties considering the fact that it involved the career of the petitioners.

5. In support of the petitioners, Advocate Shri.Mendadkar, would submit that the petitioners have staked their claim on the basis of the several documents and the committee in the impugned order has referred to all those documents in paragraph No.2 of the said order. According to Shri.Mendadkar, the documentary evidence included the validity certificate issued in favour of their

father and also two validity certificates issued in favour of his two cousin brothers from maternal side issued by the Committee at Nashik. The documents also included a school leaving certificate of the applicants cousin grandfather Shri.Bhaskar Sonu Jadhav issued by Zilla Parishad Prathamik Vidyamandir, Nimgaon, Taluka-Malegaon, District-Nashik wherein the date of admission is recorded as 1958 and the caste is recorded as Mahadev Koli. Shri.Mendadkar, would submit that apart from the said document, reliance was also placed on the school leaving certificate of the applicant's uncle Shri.Rajendra Trimbak Jadhav wherein the date of admission is recorded as 15.06.1978 and the caste is recorded as Mahadev Koli. He would submit that the blood relatives of the petitioner's have consistent entries of Mahadev Koli in several documents including the school registers, revenue records etc. Shri.Mendadkar, would submit that in ignorance of the validity certificate granted in favour of his father, the committee has only relied upon a document in form of the school record in favour of his grandfather Shri.Trayambak Sonu Jadhav, reflecting the date of birth as 04.04.1944 the date of admission in school as 02.04.1951 and in the caste column the caste is recorded as Hindu Koli. Shri.Mendadkar would submit that assuming that it is the only document pertaining to the pre-constitutional period and having

great probative value, the committee derived an inference that the petitioner do not belong to Koli Mahadev, Scheduled Tribe since the earliest document in favour of the grandfather of the petitioner records the caste as Koli Mahadev. As far as the issue of affinity is concerned Shri.Mendadkar would submit that the committee in its usual sprite without analysing and dealing into ethnological and anthropological traits of Koli Mahadev community, has reached a conclusion that the traits and the characteristics features stated by the applicants before, it did not match with those of the Mahadev Koli, Scheduled Tribe. He would submit that committee has recorded a general finding and on vague assertion and rejected the claims.

6. Shri.Mendadkar would thus submit that the approach of the committee is highly arbitrary and is reflective of total non-application of mind on part of the committee and inspite of authoritative judicial pronouncements, directing the committee to adhere to the settled principles, the committee has again acted as per its own whims and fancies and rejected the claims of the petitioner.

7. We have scrutinized the impugned order in light of the submissions advanced by Advocate Shri.Mendadkar. The claims of

the petitioners were made over to the Scrutiny Committee, Nashik by the Principal Government Polytechnic Nashik, for education purposes. The petitioners relied on several documents and the oldest document being a copy of school leaving certificate of the applicant's cousin grandfather Shri.Bhaskar Sonu Jadhav issued by the Zilla Parishad Prathamik Vidyamandir, Nimgaon, Taluka-Malegaon, District-Nashik wherein the date of admission is recorded as 09.06.1956 and the caste is recorded Mahadev Koli. The petitioner relied on the three validity certificates but for the validity certificate of his father, issued by the Nashik Committee, the petitioner do not press into service the validity certificates issued in favour of his cousin brothers, since they are from the maternal side. However, the petitioners have relied upon the validity certificate issued in favour of his father on 03.05.2008 and by the very same Nashik Committee would submit that once the father has been declared as belonging to Mahadev Koli, Scheduled Tribe, the same benefit should be extended to them as the son takes the caste from his father and once when the father is declared to be belonging to Mahadev Koli, then the petitioners cannot be deprived of the same social status.

The Scrutiny Committee referred to the said validity certificate granted in favour of the father of the petitioner by the

very same committee on 03.05.2008. The committee recorded a finding that the validity certificate was issued to Shri.Ashok Trimbak Jadhav on his selection as sub-teacher, Nashik and at the time of the scrutiny of his claim he had submitted following documents :-

(a) School leaving certificate of ShriAshok Trimbak Jadhav's father namely Shri.Trimbak Sonu Koli issued by Zilla Parishad Prathamik Vidyamandir, Nimgaon, Taluka-Malegaon, District-Nashik wherein date of admission is 02-04-1951 and the caste is recorded as Koli.

(b) In case of Shri.Ashok brother of Shri.Shantram Trimbak Jadhav, committee passed an order where it was mentioned as Shri.Shantram is individually entitled to get benefit of Mahadev Koli, Scheduled Tribe Community.

The committee has also made a reference to the document of the grand father of the petitioners Shri.Trimbak Sone Jadhav which was revealed at the time of the Vigilance enquiry and the said document reflect the caste of the grandfather of the petitioners as Hindu Koli. The committee though granted validity infavour of the father of the petitioners, records that he had submitted the document of his father namely Shri.Trimbak Sone

Jadhav where the caste was mentioned as Koli and since it was a pre-constitutional document, and the caste was recorded as Koli, the claim of the petitioners that they belong to Mahadev Koli cannot be sustained.

8. The committee had referred the claim of the petitioners for Vigilance Enquiry and the Vigilance Cell report is placed by the petitioners at Exhibit-D. The Vigilance Enquiry refers to the documents relied upon by the petitioners to substantiate their claim and had relied upon a school leaving certificate in favour of Shri.Bhaskar Sonu Jadhav cousin grandfather where the date of birth is recorded as 02.06.1946 and the date of admission in the school is recorded as 09.06.1956. The petitioner had placed before the committee the genealogical tree, which reveals that the great grandfather of the petitioner was Shri.Sonu Manaji Jadhav who had two sons namely Shri.Trimbak Sonu Jadhav and Shri.Bhaskar Sonu Jadhav grandfather and cousin grandfather of the petitioners. The father of the petitioners is son of Shri.Trimbak and has been granted validity certificate, in spite of the fact that during scrutiny of the claim, the committee had noted the entry in favour of Shri.Trimbak Sonu Jadhav as Hindu Koli. The Vigilance Cell examined the said document and also referred to the entry in respect of the cousin

grandfather of the petitioner Shri.Bhaskar Sonu Jadhav, who is the real brother of Shri.Trimbak Sonu Jadhav. Admittedly Shri.Bhaskar Sonu Jadhav is younger to Shri.Trimbak Sonu Jadhav since date of birth of Trimbak is 04.04.1994 whereas Bhaskar's is 02.06.1946. Shri.Trimbak Jadhav who is grandfather of the petitioner was admitted in school on 02.04.1951 whereas Shri.Bhaskar Jadhav was admitted on 09.06.1956. In case of Shri.Trimbak caste is recorded as Hindu Koli whereas in case of Shri.Bhaskar caste is recorded as "Hindu Mahadev Koli" . The Vigilance Cell has reported about both these entries. In spite of an entry of Hindu Koli in the document belonging to the grandfather of the petitioner, the father of the petitioner came to be granted the validity certificate. The same committee is now refusing the claim of the petitioner as Mahadev Koli based on the said entry of Hindu Koli in case of his grandfather. However, it is apparent that during the Vigilance Enquiry the committee had procured a document reflecting the entry of caste as Hindu Mahadev Koli in favour of the cousin grandfather of the petitioner which is also a pre-constitutional document. In case of another brother of the petitioners father, that is Shri.Shantaram Trimbak, the committee had held that he was individually entitled to get the benefit of Mahadev Koli, Scheduled Tribe. It is not understood as to how committee could have made such an

observations. The Caste/Tribe is an identification bestowed upon a person which flows from his ancestors and is carried forward in the next generation. It has to run in continuity in the family and cannot be segregated at a particular stage nor can it be restricted to a particular member in a clan, if they follow a common ancestral lineage. The Vigilance Cell has clearly come out with a case that two different entries are recorded in two pre-constitutional documents in respect of two real brothers. The committee granted validity in favour of the father of the petitioner inspite of an adverse entry in respect of his own father and the said validity has been granted in the year 2008 itself. Cousin uncle of the petitioner Shri.Shantaram Trimbak has also been granted validity certificate with a restriction that he individually is entitled to get the benefit. However, the two petitioners who are sons of Shri.Ashok Trimbak who has been declared as belonging to Mahadev Koli tribe are denied the certificates on the basis of an entry in the school register of their grandfather Shri.Trimbak Sonu Jadhav being recorded as Koli. The reasoning given by the committee appears to be strange as the father of the petitioner is a Mahadev Koli but the petitioners have been refused the said claim and they have been refused the said status on the ground that on the basis of documentary evidence and by applying affinity test they could not establish their ethnic

linkage towards Koli Mahadev, Scheduled Tribe.

No attempt has been made to issue any show cause notice to the father of the petitioner who has been issued validity certificate by the said committee and the only reasoning while discarding the said certificate, which the committee gives is that it is not inclined extend the ratio of the validity certificates to the petitioners and it is not proper to carry forward the same mistake. However, if grant of validity certificate to father of the petitioner i.e. Shri.Ashok Trimbak Jadhav was a mistake it was open for the committee to initiate proper steps for reopening the validity conferred upon the Shri.Ashok Trimbak Jadhav. However, committee preferred not to follow the said path and merely refuses the validity certificates to the petitioners.

9. It is settled position of law that a stray entry cannot be decisive and cannot be relied on, in isolation of other documents in determining a claim of a particular claimant and if the pre-constitutional documents are to be construed as having great probative value then another entry in favour of the cousin grandfather of the petitioner which records the caste as “Hindu Mahadev Koli” cannot be completely ignored. It is upto the committee to take a call whether to further investigate and reopen

the claim of the father of the petitioner Shri.Ashok Trimbak Jadhav. However, we do not intend to suggest the course of action to be followed by the committee. However, since the committee has already granted validity in favour of the father of the petitioner, petitioner is also entitled for declaration that he belongs to the same tribe namely Mahadev Koli, recognized as a Scheduled Tribe and entitled for all the benefits flowing from such a status being conferred. However, if the committee at future point of time decides to follow the course of action of reopening the claim of the father of the petitioner, it is at liberty to do so. However, till that time the petitioners are entitled to enjoy the same status as their father Shri.Ashok Trimbak Jadhav as belonging to Mahadev Koli, a Scheduled Tribe.

10. In the aforesaid circumstances, the impugned order is quashed and set aside. The respondent No.2-committee is directed to issue validity certificates in favour of the petitioners as “Mahadev Koli” within period of 15 days from the date of receipt of the order. Rule is made absolute in the aforesaid terms.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)