

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

WRIT PETITION NO.8394 OF 2018

Shamal Suryakant Kamale,
R/at Post Bhandarkavthe,
Taluka.South Solapur,
Dist: Solapur

...Petitioner

V/s.

1. State of Maharashtra
Through the Secretary,
Tribal Development Department
Mantralaya, Mumbai- 400 032.
2. Scheduled Tribe Certificate Scrutiny
Committee, Pune Division
Thane through its Member Secretary
having its office at Kapil Towers
“C” Wing, 5th Floor, Near RTO
Office, Pune, District-Pune
3. Commissioner and Competent
Authority, State Common
Entrance Test Cell, Fort, Mumbai
4. V.M. Medical College through its
Dean, Solapur, District-Solapur

...Respondents

Mr.R.K. Mendadkar for the Petitioner.

Mr.S.B. Kalel, AGP for Respondent-State.

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

RESERVED ON : 02nd AUGUST 2018

PRONOUNCED ON : 03rd AUGUST 2018

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

1. Rule. Rule made returnable forthwith.

2. The petitioner, claiming to be belonging to Koli Mahadev Tribe which is notified as Scheduled Tribe by the Constitution (Scheduled Tribe) Order, 1950 has approached this Court praying for quashing and setting aside of an order dated 30-07-2018 passed by the Scheduled Tribe Certificate Scrutiny Committee, Pune Division thereby invalidating her claim as belonging to the said Tribe and confiscating the Caste Certificate issued in her favour. The petitioner has sought direction to the respondent-committee to issue certificate of validity in her favour as belonging to Koli Mahadev, a Scheduled Tribe. The urgency expressed by the petitioner to proceed with the petition is her aspiration to secure admission in medicine. The petitioner had submitted her claim to the committee through the junior college in which she was admitted and she had geared herself for seeking a seat in the Health Science Course and accordingly took the requisite steps but at the same time she was also dependent on her claim of belonging to Scheduled Tribe so as to gain access in the said medical course. The committee has passed the impugned order on 30.07.2018 and the petitioner has approached this Court by filing

the present Writ Petition on 01.08.2018. The said Writ Petition was mentioned before us on 01.08.2018 and we directed production of matter on 02.08.2018 at 11.00 a.m. We also directed the learned AGP to keep the records ready, in view of the urgency expressed by the petitioner and since we were satisfied about the same.

3. The learned counsel for the petitioner Shri.Mendadkar would take us through the impugned order passed by the Scrutiny Committee and he would submit that the petitioner has produced as much as 12 certificates of validity granted to her blood relatives from paternal side. The petitioner had also placed on record pre-constitutional documents to demonstrate that the ancestor of the petitioner is belonging to Koli Mahadev Tribe and the entries which were recorded clearly establish the said fact. Shri.Mendadkar would submit that in utter ignorance of the said documents produced on record clearly leading to an irresistible conclusion that the petitioner belong to Koli Mahadev, her claim has been rejected without application of mind by the committee. Shri.Mendadkar would submit that in the earlier round of litigation before this Hon'ble Court, in form of Writ Petition No.6384 of 2018, this very Division Bench was pleased to entertain the petition filed by the petitioner, assailing the order of the Caste Scrutiny Committee dated

08.09.2018 thereby rejecting the claim of the petitioner. Shri.Mendadakar would invite our attention to the earlier order passed by us when it was noted that though the committee had expressed doubt about the claim of the predecessor in title of Vishweshwar Namdeo Kamale and had observed that as far as Namdeo Kamale is concerned when the school record reveals his date of birth is 1.6.1947, however the date of entry in the school is shown as 1953, then this Court had observed that the ordinary practice is that no student is enrolled on his date of birth and/or therefore there is no question of mentioning anything in relation to the Caste and Tribe entry in the school record on the date of his birth and such entries are made only at the time of the seeking admission in the school. It was therefore held that it was inconceivable that was a pre constitutional document since that record was prepared in the year 1953. As far as the reasons assigned by the committee to discard validity certificate of the relatives of the petitioner, and a specific reliance placed on an entry in school leaving certificate of Shri.Mahadeo Pirappa Kamale, it is observed by this Court that Mahadeo is a grand father of the petitioner and father of the Suryakant Kamale and he has entered the school in 1947, being born on 1.12.1940 and in the caste column the entry is reflected as Hindu Mahadev Koli.

Shri.Mendadkar would submit that his argument that there is no overwriting or cancellation or erasures in this document and that it is genuine document and pre constitutional entry came to be accepted by the Court and this Court was satisfied that the committee did not cite the proper reason as to why the said document was discarded and remanded the matter back to the committee for an examination afresh and the committee was directed to take into consideration the evidence adduced by the petitioner including the school leaving certificate of the petitioner's grand father.

Shri.Mendadkar would submit that on remand of the matter from the Court, the committee had continued its earlier course of action and had again discarded the school record of the grand father showing caste as Koli Mahadev which is a pre constitutional document. Shri.Mendadkar would submit that the observation made by the committee that, on the basis of the statement of the Head Master a conclusion is derived that since the old original registers are not available, the validity certificates granted in favour of the 12 relatives of the petitioner are founded on misrepresentation is nothing but the adamant attitude of the committee to probe the claim of the petitioner with a prejudiced mind, though this Hon'ble Court on remand of the matter had

observed that the document should be re-looked without being influenced by the earlier observations.

Shri.Mendadkar would rely on the judgment of this Court in case of *Apoorva d/o.Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee and Others*¹ and he would submit that once the validity certificates have been granted in favour of the blood relatives of the petitioner, there is no justification for the committee to discard the said validity certificates unless and until they are found to be vitiated by forgery and misrepresentation of facts.

4. With the assistance of the learned counsel appearing for the petitioner and the learned AGP we have perused the records produced before us. The Scrutiny Committee on remand of the matter from this Court, forwarded the case of the petitioner to the Police Vigilance Cell for inquiry and obtained its report on 23.07.2018. The Vigilance Cell report which has been placed on record by the petitioner at Exhibit 'H' of the paper book would reveal that it had obtained the list of the blood relatives of the petitioners by personally visiting the office of the Tahasildar, South Solapur, District-Solapur and obtained the record of birth and death

¹ (2010-6-MLJ-401)

entries of the blood relatives from the office of the Tahasildar. Further, the information was also collected in respect of the blood relative as recorded in the school Register. The Vigilance Cell then makes a reference to an entry of one Shri.Mahadeo Virappa Kamale i.e. the grand father of the petitioner from a register maintained in Zilla Parishad Primary School, Bhandarkavthe, Taluka-Solapur, District-Solapur. The Vigilance Cell has referred to the following entry from school Register:-

Sr. No.	Register No.	Name of the Student	Caste/ Sub Caste	Date of Birth	Date of Entry in School	Date of Entry in School and Relationship with the applicant
1	29/5	Mahedeo Pirappa Kamale	Hindu Mahadev Koli	01/12/1940	01/06/1948 मा.र.नं.५०	Grand Father

5. The Vigilance Cell recorded that the entry was tried to be traced by referring to register No.50 in the General Register, Book No.4(New) and in the said register, the registration number of students from 1 to 85 is not recorded in Book No.4 and this was certified by the Head Master of the School. The statement of the Head Master Shri.Mahadeo Malkari Kamale came to be recorded wherein he had categorically stated that Zilla Parishad, Primary School, Bhandarkavthe was established in the year 1967 and from

its establishment the school General register Book No.1 is available in the school however, the entries which are recorded in book No.2 to 6 which were copied from the old original register Book No.226 and they were rewritten. However, the old original school register from which the new register has been rewritten is not available as on date. He categorically stated the new register in which entries were rewritten on the basis of the original register, there is an erasion in the column of Caste and in the registered number of the student which reflects irregularity. The Vigilance report also reveals that the Block Eduction Officer and Kendra Pramukh has scrutinized the school record and submitted a report in writing and according to the said report the students register came to be rewritten in the recent period and there was reporting of gross irregularity and even to the extent of misplacement of the registers prior to 1950 during the service period of the Head Master Shri.Amsiddha Kamale. A specific report is therefore submitted that the entries rewritten in the new register, as claimed to be on the basis of the entries in the old register were not verified by the Competent Officer and therefore they did not inspire any confidence.

6. The respondent No.2-Committee then proceeded to deal with the entries in the birth/death register of several blood

relatives of the petitioner where the caste is recorded as “Koli”. These entries are found by the committee as early as of the year 1931 and the committee concludes that a perusal of the entries prior to 1950 would reveal that the caste of the relatives whom the petitioner claims to his blood relatives was recorded as “Koli”. The Committee then proceeds on the basis that the petitioner has not denied his relationship with the said persons.

The petitioner was offered an opportunity to deal with the Vigilance Cell Report and he submitted his response to the same. It is specific case as set out before the committee that the entries were duly considered by the very same committee while granting caste validity certificate to as many as eight blood relatives from the paternal side. Though, the Vigilance Cell attached to the committee has now specifically relied on entries in respect of the Dharappa Sahebanna Koli and Lagmanna Parspa Koli, the said entries have been duly considered while granting validity certificate to the relatives after following due inquiry strictly in accordance with the procedure prescribed in the Maharashtra Scheduled Tribe (Regulation of Issuance of) Caste Certificate Rules, 2003.

7. On careful consideration of the stand of the petitioner, and on re examining the issue in light of the directions issued by this

Hon'ble Court, the committee had observed in clear terms that the blood relatives of the petitioner have been awarded with certificates declaring them to be Koli Mahadev, Scheduled tribe and the documents which were produced before the committee while granting validity to the blood relatives of the petitioner and also the documents which were produced before the Hon'ble High Court as well as the Hon'ble Supreme Court, they are the same documents which are being subjected to scrutiny by committee while examine the claim of the petitioner. However, the committee in terse terms observed that those documents which were spelt out and given a status of pre constitutional evidence, that evidence has infact being written lately, in the recent times afresh, and therefore to what extent reliance can be placed on this document was doubtful. The committee relied upon the statement of the Headmaster recorded on 19.07.2018 as well as the report of the Sub Divisional Officer, Panchayat Samiti, Solapur dated 19.07.2018 and considered them to be self explanatory. In the backdrop of the aforesaid material, committee recorded a clear finding that the school record which was considered to be an evidence prior to 1950 belonging to the blood relative of the petitioner and on the basis of which the validity certificates have been issued either by the committee or by the Hon'ble High Court/Hon'ble Apex Court, those records are not

record prior to 1950 but those records have been rewritten on the basis of the old records and the old records, as per the version of the headmasters are not available in the school. In such circumstances the committee observes that the validity certificate granted to the 12 relatives of the petitioner are based on misrepresentation and therefore, the benefit of the judgment of this Hon'ble Court in case of *Apoorva d/o Vinay Nichale's* case cannot be derived by the petitioner. The committee has also recorded a finding that since the validity was granted to the blood relatives of the petitioner and since it was based on misrepresentation, the show cause notices need to be issued to the said holders of the certificates and appropriate steps need to be taken.

The committee has also taken into consideration that one of the blood relative of the petitioner namely Shri.Vishveshwar Namdev Kamale, on invalidation of his claim has approached this Court by filing Writ Petition No.5360 of 2007 and the Hon'ble High Court on 18.03.2008 has allowed the said petition. The committee has observed that the petitioner therein had relied upon a school record of his father of 1953 and had passed it on as record of 1947 and against the said decision the jurisdiction of the Hon'ble Apex Court was invoked but the Special Leave Petition came to be dismissed. The Committee has however clearly recorded that the

judgment of the Hon'ble High Court as well as Supreme Court do not take into consideration the factual aspect of the matter which has now surfaced from the Vigilance Cell report, in light of the categorical statement made by the Head Master to the effect that the record of the entry in the school register of the Primary School Bhandarkavthe in favour of the Mahadeov Virappa Kamale i.e. grand father of the petitioner recording the caste as Hindu Mhadeo Koli is rerecorded in the new register and therefore it losses its significance as a pre-constiitutional document. The committee has therefore rejected the claim of the petitioner as belonging to Mahadev Koli.

8. On perusal of the record produced before us which includes the Vigilance Cell report and also the statement of Shri.Mahadeo Malkari Kamale the Headmaster of the Primary School Bhandarkavthe dated 19.07.2018, it is apparent that on being inquired about the details of student in register No.29/5 in respect of one Shri.Mahadeo Virappa Kamale and the column which records the school from which the student has entered the school an entry is recorded as register number “मा.र.नं.५०”. The Headmaster had categorically stated that when he sought to examine the General Register book No.4 and tried to trace the entry of the said

student, in book No.4 the register number from 1 to 85 are not recorded however there are only entries from serial No.86 to 430. He had made a categorical statement that there is no entry of the said candidate as recorded as “मा.र.नं.५०”. He had made a statement that the school General Register Book No.1 which is written in Modi Language but which is completely tattered. However, entries in book No.2,3 and 5 and 6 have been rewritten by the then Headmaster of Zilla Parishad School, Bhandarkavthe. However, the original registers from which the entries are recorded is not available in the school. In light of the said statement, the observations by the committee cannot be said to be unfounded. The observation of the committee is further fortified by a report which is forwarded by the Education Officer, Panchayat Samiti, Solapur to the Education Officer (Primary) Zilla Parishad, Solapur on 19.07.2018 who in turn has forwarded the said report to the Vigilance Cell. The said report refers to a special visit to the Zilla Parishad Primary School, Bhandarkavthe and the inspection of school records. It also records a statement of fact that the erstwhile Headmaster Shri.Amansidh Umanna Kamale though who was directed to remain present, conspicuously remained absent and he was avoiding to present himself for any inquiry. However, on inspection of the school register and specifically the entry recorded

of Mahadeo Virappa Koli in registration Book No.5 at Serial No.29, the Block Education Officer had recorded that as against the entry which was recorded at serial No.185 in Book No.2 on 13.05.2009 in respect of Dhareppa Sahebanna Koli, in the caste column there is an endorsement of “म. कोळी” however, the word 'म' is found to be written in a different ink and in outward No.302 dated 10.12.2009 while supplying information in respect of Dharappa Sahebanna Koli, the remarks to the following effect were found “since the old register is not available”, the outward No.185 dated 13.05.2006 which was given to the Vigilance Cell the information was supplied on the basis of the new register since the old register is not available. The Block Education Officer has therefore concluded that during the period 2006 to 2009 Shri.Amshida Kamale was discharging the duties as Head Master and the original register was misplaced during his tenure and while recording the entries in the new register, the truthfulness of the same has not been verified by any competent officer. The block Education Officer therefore has expressed his opinion that a detailed inquiry needs to be conducted into the said matter.

This report was relied by the committee and in our opinion, rightly so since the very basis on which the petitioner along with the blood relatives is claiming to be belonging to Mahadev

Scheduled tribe itself appears to be based on misrepresentation and it cannot be construed as a pre constitutional document to which great probative value can be attached.

9. The burden to prove social status is always on the person who proffers to seek constitutional, social and economical advantages flowing from such a status. The Scheduled Caste and Scheduled Tribes' who are largely governed by their own customary code of conduct regulated from time to time with their distinct culture, heritage, mode of worship and cultural ethos and traits peculiar to their own have been placed on different pedestal and have been permitted to enjoy certain protection, by the enabling power of the State conferred under Article 15(4) of the Constitution of India to make special provisions for their advancement. The State, which is enjoined under our constitution to provide facilities and opportunities for development of their educational advancement and economical improvement so as to grant equality of status and afford them life with dignity. It is also duty bound to ensure that the claims meant for this genuine Scheduled Caste/Scheduled Tribes which are so recognized are not snatched away by some usurpers.

The Hon'ble Apex Court in case of *Kumari Madhuri*

*Patil V/s. Additional Commissioner*² had observed that the admission wrongly gained or appointment wrongly obtained on the basis of social status certificate has the effect of depriving genuine Scheduled Caste and Scheduled Tribe or Other Backward Class, as the Constitution has conferred the benefits conferred on them. Their lordships have therefore expressed that the certificates issued be scrutinized at the earliest with utmost expedition and promptitude and issued directives to streamline the procedure for issuance of social status certificates, their scrutiny and their approval. The Hon'ble Apex Court had observed that the entries in school register preceding the constitution do furnish great probative value to the declaration of the status of the caste. The Apex Court had observed that the Hindu Social order, undoubtedly is based on hierarchy and caste was one of the predominant factors during pre-constitution period and persons were identified by the castes for one or the other reason and that is why the caste claim is reflected in relevant entries in the public records or school or college admission register at the relevant time and the certificates are issued on the basis of such entries. As regards the tribes, the anthropological moorings and ethnological kinship, is a piquant feature which distinguishes a particular tribe from others and also claimed a

2 AIR-1995-SC-94

recognition as “Scheduled Tribe”. The Apex Court had then directed constitution of committees so as to scrutinize the claims staked for social status and prescribe a mechanism to streamline the said procedure. The directives at a later point find place in the legislation and enactment of Act No.23 of 2001 in State of Maharashtra. The said enactment sets out a detailed procedure for issuance of Caste certificate and its verification by a prescribed procedure and rules have been framed in exercise of the powers conferred by the enactment in verifying the claims of social status. The candidates claiming and seeking privileges' exclusively provided for the Scheduled Tribe candidate with the help of fraudulent validity certificates and relying upon them not only amounts to its dilution but also amounts to denial of benefits to real tribals and it is in this background the matters are to be approached while verifying the claims.

10. The respondent No.2-committee undertook the exercise of verifying the claim of the petitioner as belonging to Scheduled Tribe and on scrutiny of the claim and after carrying out the Vigilance Cell Inquiry as contemplated under the Act No.23 of 2001 and the rules, have been able to unearth the documents which found the basis of grant of validity certificates in favour of the close

blood relatives of the petitioners. However, the very said document in the form of an entry in the school register of the grandfather of the petitioner is found to be misleading one and the committee has collected sufficient evidence to arrive at this conclusion. The Caste Certificate when it is taken for scrutiny and on verification is found to be fraudulently issued and the claim of belonging to particular caste/tribe is found to be false or spurious then the committee is empowered to cancel the said certificate by taking recourse to the provisions of Act No.23 of 2001. It is also empowered to cancel the certificate so issued since a candidate cannot take benefit of his own wrong if it is found that the claim for the social status was not genuine or it was doubtful or spurious or falsely or wrongly claimed. The benefits conferred on the persons belonging to the Scheduled Caste and Scheduled Tribe must extend only to those who really belonging to the said caste/tribes and are not meant for usurpers. The State which under the constitution has conferred facilities and opportunities for the development of the scientific temper, educational advancement and economical improvement of such caste/tribe so that they may achieve excellence, equality of status and are able to lead a life with dignity, would not permit the spurious claimants to derive the benefit.

The respondent No.2-committee on scrutinizing the

claim of the petitioner has recorded that the claim set out by him as belonging to Koli-Mahadev is not sustainable in light of the findings recorded by it in the impugned order and we are not in a position to take another view since the committee being a quasi judicial authority has analysed the documentary evidence placed before it and also applied the affinity test to the petitioner, being a tribe claim and has arrived at the conclusion that the petitioner does not belong to Koli-Mahadev Scheduled Tribe. The committee has rejected the claim of the petitioner and has confiscated the certificate issued in her favour. Though Mr.Mendadkar, learned counsel appearing for the petitioner would submit that the petitioner has secured a position of merit in the NEET-UG 2018 and has been provisionally admitted against the MBBS seat, we do not think that we could in any way assist the petitioner since her claim is rejected by the committee by a detailed reasoned order and the counsel of the petitioner was not able to persuade us to come to the conclusion that the said order is either arbitrary or perverse.

11. In such circumstances the petition is dismissed.

12. Rule is discharged. No order as to costs.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)