

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6384 OF 2018

Shamal Suryakant Kamale .. Petitioner
Versus
State of Maharashtra, through
its Secretary, Tribal Development
Department and others .. Respondents

...

Mr.R.K.Mendadkar with Chintamani Bhangoji for the
petitioner.
Mr.S.B.Kalel, AGP for the State.

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

DATED : 6th JULY 2018

P.C:-

1 By this petition under Article 26 of the Constitution of India, the petitioner challenges the order of the Caste Scrutiny Committee dated 8th September 2018.

2 Rule. Respondents waive service. By consent, Rule made returnable forthwith.

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3 Perused the original records in relation to the impugned order. The petitioner claims the following reliefs in this petition.

“(a) This Hon’ble Court be pleased to issue Writ of Certiorari and or any other Writ, Order or Direction in the nature of of Certiorari thereby quashing and setting aside the impugned judgment and order dated 8-9-2018 passed by the Respondent no.2 committee to issue certificate of validity in relation to caste certificate issued to the petitioner by the competent authority.

(b) That this Hon’ble Court be pleased to hold and declare that the caste certificate issued to the petitioner by the competent authority is valid, legal and subsisting”.

4 The petitioner has approached this Court through her natural guardian, her father, Suryakant Kamale. The petitioner states that the caste certificate was granted to her by the Competent Authority on 20th April 2013. On the strength of that certificate certifying her as belonging to 'Koli Mahadeo Schedule Tribe', she approached the authorities in-charge of granting her the admission to medical courses and requested that she be allowed to prosecute her studies as a reserved category candidate. However, a caste validity certificate is

required in terms of Maharashtra Act No.XXIII of 2001 and which certificate is granted only after a scrutiny and verification of the claim. It is in that regard that this caste certificate was forwarded to the competent scrutiny committee. That competent scrutiny committee, by the impugned order, has proceeded to invalidate the claim. The petitioner states that in the ongoing admission process for the medical course, she has been selected but her admission cannot be finalized as no college is allotted to her. That is because of want of her caste validity certificate. Since that certificate of validity has not been granted, that this petition has been filed.

5 We have heard Mr.R.K. Mendadkar appearing for the petitioner and learned AGP at great length. We called upon the learned AGP to produce the original records. As said above, we have perused the original records.

6 In the impugned order, the Committee has expressed an opinion that the petitioner supported her claim by relying upon certificates of validity granted to her second

cousin brother, sister, uncle, but the Committee holds that these certificates of validity may have been granted and are on record. These certificates of validity are not conclusive and decisive. That is because there is a large scale fraud and perpetrated on the public.

7 The Committee feels that it is this tribe which was instrumental in the Hon'ble Supreme Court of India delivering its judgment in the case of *Kumari Madhuri Patil Vs. Additional Commissioner* ¹. There are several persons who may be *kolis* but not all of them are 'Koli Mahadeo Scheduled Tribe'. There are several who are mere '*kolis*' or 'Hindu Kolis', but trying to pass themselves off as members of Koli Mahadeo Schedule Tribe. It is in these circumstances that the Committee gave instances of about 121 persons with more or less identical surnames. The surnames are either '*Kolis*' or '*Kamale*'. The petitioner is '*Kamale*'. In cases of these persons, the Committee expressed an opinion that there are interpolations or insertions or additions in the school records against the entry in the caste

¹ 1994(6) SCC 241

column. There is a space which is unfilled or vacant. On top, the entry is 'Hindu' and below it is written 'koli'. In the adjacent vacant space, the word 'Mahadeo' is entered in different ink and that is how these Kamales and Kolis are passing themselves off as 'Koli Mahadeo Schedule Tribe'. Hence, the claim is doubted. It is also doubted on the ground that the original place of residence of the petitioner's family is 'Bhandar kawathe, Taluka Solapur South, District Solapur. The surnames and the description with regard to the occupation, traits, gods and goddesses and the religious ceremonies do not tally with that of the Koli Mahadeo Schedule Tribe and ordinarily associated with it. It is in these circumstances that though Vishweshwar Namdeo Kamale has been granted a certificate of validity pursuant to an order of Division Bench of this Court dated 18th February 2008 in Writ Petition 5260 of 2007, the aforesaid facts and circumstances were not brought to the notice of this Court. Hence, the claim is not genuine and bonafide and deserves to be rejected.

8 Mr.Mendadkar would submit that as against the six certificates of validity issued to the relatives on the paternal side of the petitioner, the Committee takes instances of those who are not related to the petitioner, to invalidate the claim. The learned AGP, on the other hand, would submit that this is not correct. The petitioner relies upon certificate of validity granted to a distant cousin from the paternal side (second cousin) (Vishweshwar Namdeo Kamale). As far as Vishweshwar's predecessor-in-title Namdeo is concerned, it is stated that the entry in the caste column in the school record of Namdeo is 'Hindu Mahadeo Koli'. However, in the entry in the presidential notification is 'Koli Mahadeo Schedule Tribe'. Therefore, there is every possibility of over writing, cancellation, interpolation in the school records. Hence, the Committee's order be maintained.

9 After hearing both sides and perusing the order of the Committee impugned in the present petition, we are of the opinion that the Committee has expressed doubts about the claim of the predecessor in title of Vishweshwar Namdeo

Kamale. The Committee says, at internal page 10 running page 26 of the paper book that, as far as Namdeo Kamale is concerned, the school record show his date of birth as “1st June 1947”. However, the date of the entry in the school is “22nd June 1953”. The ordinary practice is that no student is enrolled on the date of his birth and there is, therefore, no question of any details in relation to his caste or tribe being entered in the school records on the date of the birth. Such entries are made on the date of admission to the school. Thus, this record has been prepared in the year 1953. It is, therefore, inconceivable that this is a pre-constitutional document. A pre-constitutional document is one which comes into being or existence prior to 26th January 1950. This is not a document, therefore, which can be termed as a pre-constitutional document. The entry in relation to caste is also therefore not a pre-constitutional entry but a post-constitutional one.

10 These and other reasons are assigned to discard the certificates of validity and to then hold that there is a suppression of material facts on the part of the said

Vishweshwar Namdeo Kamale. As far as other certificates of validity are concerned, they are based on Namdeo and Vishweshwar's certificates of caste/validity. In these circumstances, the Committee expressed an opinion that it is necessary to recall the certificates of validity issued to Vishweshwar Namdeo Kamale and others.

11 We find that there is no process which is initiated or if initiated, taken to its logical end insofar as the certificates of validity of Vishweshwar Namdeo Kamble and others. The certificates of validity are merely doubted. If such is the position, then, it was incumbent upon the Committee to have placed all these documents before the petitioner or his representative and sought an explanation of the petitioner, particularly her father. The petitioner relied upon an entry in the School Leaving Certificate of Mahadeo Pirappa Kamale. It is stated that Mahadeo is the grand father of the petitioner and father of Suryakant Kamale. Mahadeo Pirappa Kamale has entered a school on 14th August 1947. He was born on 1st December 1940. Insofar as the entry in the caste column is

concerned, it is Hindu Mahadeo Koli. Mr.Mendadkar would rely upon this document, copy of which is at page 62 of the paper book heavily, and particularly the insertion therein, that there are no over writings or any cancellations or erasures therein. Thus, this is the genuine document bearing the signature of even the Head Master. This is thus a pre-constitutional entry and could have been easily relied upon. *Prima facie*, we find substance in this argument of Shri Mendadkar. In comparison to other documents, why this is also discarded, has not been clarified with proper reasoning by the Committee. The Committee could not have taken into consideration any other matters or factors, particularly the area restriction. The area restrictions have now been removed after the Constitutional Amendment Act of 1976. In the circumstances, we deem it fit and proper to set aside the impugned order. We sent the matter back to the committee for an examination afresh. The scrutiny and verification shall be done afresh, uninfluenced by the earlier order. The Committee must take into consideration the evidence adduced by the petitioner, including his reliance upon the School

Leaving Certificate of the petitioner's grand father. All these materials be considered in the fresh exercise uninfluenced by any earlier reasoning.

12 Let a fresh order be passed as expeditiously as possible and before 31st July 2018.

13 Writ Petition is allowed in the above terms.

14 Let the petitioner appear before the Scrutiny Committee on 12th July 2018 at 11.00 a.m. Let the Scrutiny Committee allow the petitioner inspection of all the original records.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)