

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9026 OF 2018

RISHIKESH ANIL VAYKHINDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Chaudhari Deepak D.
AGP for Respondents No. 1 & 2 : Mr. V. M. Kagne
Advocate for Respondent No. 3 :
Ms. Ranjita Barhate h/f. Mr. Y. R. Barhate
Respondent No. 4 - served

...

CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.

DATE: 07th JUNE, 2019

PER COURT:

1. The tribe claim of the petitioners as belonging to 'Koli Mahadev', Scheduled Tribe has been invalidated.

2. Mr. Chaudhari, learned counsel for the petitioners submits that father of the petitioners is issued with the validity certificate of Koli Mahadev, Scheduled Tribe. The real paternal uncle of the petitioners is also issued with the

validity certificate of the Koli Mahadev, Scheduled Tribe. The school record of the year – 1953 of the grand father of the petitioners records caste as Mahadev Koli. The school record of the petitioners father of the year – 1977, the real paternal uncle of the year – 1969 and of the another real paternal uncle of the year – 1978 records caste as Mahadev Koli. The respondents are relying on the pre-independence entry of the year-1945 of the school record of the grand father of the petitioners. The claim cannot be invalidated on the basis of the isolated entry.

3. The learned A.G.P. submits that pre independence documents will have high probative value. The school record of the grand father of the petitioners of the year – 1945 records caste as Koli. The place where the petitioners reside also is not notified for Mahadev Koli tribe. The second / third distant cousins of the petitioners namely Shri Rajendra, Smt. Ratnamala have recorded their caste as Koli in the relevant record. All

these aspects have been considered. The petitioners also could not succeed the affinity test.

4. We have considered the submissions of the learned counsel, so also, we have gone through the judgment and the record. The school record of the petitioner Rishikesh records caste as Mahadev Koli. The said entry is of the year - 2004. The school record of the father of the petitioner Anil of the year - 1977 records caste as Mahadev Koli. The school record of the real paternal uncle of the petitioners Sunil of the year - 1969 records caste as Mahadev Kol. The school record of the another real paternal uncle of the petitioners Sanjay of the year - 1978 records caste as Mahadev Koli. One school record of the petitioners grand father namely Dattatray of the year - 1953 records caste as Mahadev Koli. There is one entry in the school record of the grand father of the petitioners Dattatray of the Zatpat Vidyalaya, Kopargaon recording caste as Koli. Except the said

isolated entry of the year - 1945 all the entries in the school record of the grand father of the petitioners, the father of the petitioners and the petitioners continuously records caste as Mahadev Koli. The father of the petitioners has been issued with the validity certificate by the committee on the same evidence. The real paternal uncle of the petitioners is also issued with the validity certificate of Koli Mahadev, Scheduled Tribe.

5. Considering the validities issued in favour of the father of the petitioners and the grand father of the petitioners and the consistent entries as discussed above except one isolated entry, the petitioners proved their caste as Mahadev Koli. It has been held by the Apex Court in the case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others reported in AIR 2012 SC 314 that affinity test is not the litmus test. It is a corroborative piece of evidence. There is consistent entry of the caste Mahadev

Koli in the school record of the grand father, father and petitioners.

6. The impugned order is quashed and set aside. The committee shall issue validity certificates to the petitioners of 'Koli Mahadev', Scheduled Tribe within a period of six (06) weeks from today.

7. The writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

marathe