

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6420 OF 2019

Vikas S/o Ankush Koli,
Age : 23 years, Occu. : Student,
R/o. At Rachannawadi,
Post. Shelgaon, Tq. Chakur,
Dist. Latur

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.
 - 2] Scheduled Tribe Certificate
Verification Committee,
CIDCO, Aurangabad
Aurangabad, Dist. Aurangabad
Through its Joint Director and Member,
 - 3] The Maharashtra Council of
Agricultural Education and Research,
Pune, Tq. and Dist. Pune
Through its Director
 - 4] The Registrar,
Vasantrao Naik Marathwada
Agricultural University,
Parbhani, Tq. and Dist. Parbhani
 - 5] The Principal,
Late Ambadasrao Warpudkar
College of Agriculture,
Warpud, Tq. and Dist. Parbhani
- .. Respondents

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Mr. C.R. Thorat, Advocate for petitioner
Mr. N.K. Tungar, Advocate for respondent no. 5
Mrs. M.A. Deshpande, AGP for respondent - State

...

CORAM : SUNIL P. DESHMUKH &
R.G. AVACHAT, JJ.
DATE : 08-12-2020

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.
2. The petition questions propriety, legality and validity of order dated 26-03-2019 passed by respondent no. 2 – Scheduled Tribe Certificate Verification Committee, Aurangabad, invalidating tribe claim of petitioner to be of '*Koli Mahadev*' scheduled tribe.
3. Petitioner's father has been issued tribe validity certificate on 11-10-2011 of being '*Koli Mahadev*' scheduled tribe. The petitioner's father in his tribe claim had relied on the same record, as has been relied on tribe in validity proceeding of the petitioner.
4. While petitioner had submitted several documents; documents from 2004 to 2012 depicting his tribe to be '*Koli Mahadeo*' were not relied on by respondent no. 2 – Scheduled Tribe Certificate Verification Committee, referring them to be of recent origin.

Reference in the decision has been made to school record of the year 1959 and 1965 of claimed relatives of petitioner, namely, Khandu Naga Koli, Bhanudas Manohar Koli, showing them to be '*Koli*'.

Whereas, school record of his father's admission entry of 1981 has been suspected to be interpolated adding word '*Maha*' before word '*Koli*'.

5. Entry of petitioner's grandfather, namely, Manohar Nagorao Koli showing his school admission on 08-07-1952 has been declined to be taken into account since vigilance cell on 19-03-2019 could not lay their hands on the record of school which had been established in 1948, as headmistress of school had referred to that record from 1948 to 1952 had not been handed over to her while she had assumed charge as headmistress in 2018. She had referred to entry at serial no. 38 of year 1955, showing name of Jagannath Ramrao Potdar and not that of petitioner's grandfather - Manohar Nagorao Koli. A statement to aforesaid effect had been recorded by vigilance cell in 2019.

Vigilance cell has also referred to that while a person named Laxman Jadhav had recorded his statement, he had stated that he had not heard of Manohar Nagorao Koli from Holi.

6. The committee purports to decline claim, referring to above and considering that petitioner could not prove affinity.

7. After hearing learned counsel for appearing parties, it emerges that during vigilance cell visit in respect of claim of father in 2011, the officer has specifically recorded that he himself had

inspected school record of 1952, finding that there is entry in the name of Manohar Nagorao Koli of 1952 (grandfather of petitioner). In the vigilance which had taken place in petitioner's case in 2017, as well, vigilance cell has recorded that there is entry of Manohar Nagorao Koli - grandfather of petitioner in the admission register showing him to be '*Hindu Mahadev Koli*' and birth date to be 14-04-1943 and admission date is 08-07-1952.

8. It, thus, emerges that twice vigilance cell had seen record of school depicting his grand-father's (Manohar Nagorao Koli) admission entry of 1952, showing him to be '*Mahadev Koli*'.

9. Learned counsel for petitioner, Mr. Thorat particularly refers to paragraph no. 4 of decision dated 19-07-2019 of a division bench of this court in writ petition no. 8681 of 2019 (page no. 12), reading, thus;

“ 4. We have considered the submissions. It is not disputed that the father of the petitioner is issued with the validity certificate of 'Koli Mahadev' Scheduled Tribe. The paternal cousin Ramesh is also issued with validity certificate of 'Koli Mahadev' Scheduled Tribe. The school entry of the petitioner, his father and grandfather records caste as 'Mahadev Koli'. The vigilance has not found any interpolation in the said record. The Committee has relied on the school record of Dnyandeo and Rama where the caste is recorded as 'Koli'. Dyandeo and Rama appear to be sons of Nathu, however, they are not shown in the genealogy produced by the petitioner. ”

and submits that affinity test also has been erroneously decided in the negative and goes on to submit that in any case, it is not determinative.

10. Learned AGP purports to rely on the original record which is stated to be made available which according to her, shows interpolation and some record depicting that relatives of petitioner from genealogy are referred to as '*Koli*' and also submits that affinity test also has not been passed by petitioner.

11. While petitioner during course of hearing had been emphatically relying on the record relied on by his father, intriguingly, committee had directed re-vigilance visit.

12. Neither on the first occasion while vigilance in the case of petitioner's father had taken place nor in the vigilance enquiry of 2017 during validity claim proceeding of petitioner, interpolation of tribe had been suspected in register/record in respect of petitioner's father's entry in the school. However, in the year 2019, vigilance cell doubted the entry to have been interpolated by word '*Maha*'.

13. It is not the case that earlier on, the inspection had not taken place or entry had not been seen by vigilance cell. Impugned order is silent as to why re-vigilance visit had been resorted to while earlier vigilance was already in place before the committee and as to why committee had not been satisfied with the same. It transpires that during vigilance of 2019, present incumbent - headmistress had given statement during such vigilance visit that concerned registers from 1948 to 1952 were not handed over to her

and that entry no. 38 is in respect of one Jagannath Ramrao Potdar and not Manohar Nagorao Koli and is of the year 1955.

14. The Apex Court in the case of *Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others (2012) 1 SCC 113*, observed that the affinity test is not a litmus test. The claimant cannot be denied of the benefit of being belonging to Scheduled Tribe on the ground that his present traits do not match with that of his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, etc.

15. It would have to be considered that there is no denial of the factual position that as on the date, committee has not invalidated certificate issued to petitioner's father, it has been referred to that matter is under investigation. *Albeit*, it is being claimed petitioner's father's validity is being re-scrutinized and reviewed.

16. This court in similar circumstances in writ petition No. 5641 of 2020 (*Kum. Maseera Parvin d/o Mohd. Asfaque Shaikh and another vs. the State of Maharashtra and others*), while it had been contended on behalf of the State that proposal has been moved for reopening of the proceedings against the family members of petitioners, who were granted validity certificates by the committee, issued directions to the committee to issue validity certificates to

petitioners therein and in case of review of judgment/s in the petition/s, it was kept open for respondents to proceed against petitioners in accordance with law.

17. In the decision in writ petition No. 9056 of 2019 (*Ganesh s/o Sudhakar Bodhgire vs. The State of Maharashtra*) dated 21st August, 2019, wherein taking into account the decision of division bench of this court in the case of *Apporva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others*, reported in 2010(6) Mh.L.J. 401, which was based upon the Supreme Court judgment in the case of *Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and others*, reported in (2008) 9 SCC 54, the division bench has considered it expedient to follow the suit of the same and directed to issue tribe validity certificate to the petitioner therein forthwith. The decision further refers to that if the proceedings for cancellation of caste validity holders are answered against such certificate holders, it would be open for the committee to issue show cause notice to petitioner, as to why validity certificate granted to him should not be cancelled and keeping it open for the committee to take those proceedings to its logical end. The decision further particularly refers to that certificate issued to the petitioner, would be subject to the outcome of proceedings for cancellation of validity issued in favour of his blood relatives.

18. In the scenario, having regard to decisions and facts and circumstances in foregoing discussion, it appears to be expedient to set aside impugned order and direct issuance of validity certificate to petitioner, subject to decision in case of his father's validity, if it is re-opened.

19. Thus, the impugned order dated 26-03-2019 passed by respondent no. 2 – Scheduled Tribe Certificate Verification Committee, Aurangabad is set aside. Respondent No. 2 shall forthwith issue validity certificate to petitioner of him being "*Koli Mahadev*" scheduled tribe. The same would be subject to the decision that would be taken by the committee in the proceedings if his father's validity certificate case is re-opened. In case, the validity certificate issued to petitioner's father is cancelled, then the petitioner may not be in a position to claim any equities and it would be open for the committee to take recourse as per law.

20. Writ petition is disposed of. Rule is made absolute accordingly.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/