

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 WRIT PETITION NO.8190 OF 2020

CHAITALI PANDIT SHELKE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. P. V. Jadhavar, Advocate for the Petitioner.

Mr. A. B. Chate, AGP for Respondents-State.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 11th DECEMBER, 2020.

PER COURT:-

1. The tribe claim of the petitioner as belonging to "Koli Mahadev", Scheduled Tribe is invalidated.

2. Mr. Jadhavar, learned counsel for the petitioner submits that the father of the petitioner namely Pandit is issued with the validity certificate of "Koli Mahadev", Scheduled Tribe. The committee had invalidated the tribe claim of real brother of the petitioner namely Prashant Pandit Shelke. The real brother of the petitioner Prashant filed Writ Petition bearing Writ Petition No.10304/2017 before this Court at it's Principal Seat at Bombay. The Division Bench at Principal Seat allowed the writ petition filed by the real brother of the petitioner Prashant and

directed the committee to issue validity certificate to the real brother of the petitioner of "Koli Mahadev", Scheduled Tribe by setting aside the judgment of the committee, still the committee has ignored the said judgment and invalidated the tribe claim of the petitioner.

3. The learned A.G.P. submits that the father of the petitioner obtained the validity certificate by practicing fraud. The entries of 'Koli Mahadev' in the school record of the cousin grandfather, cousin grandmother of the petitioner are interpolated. Even, there is a change of handwriting while recording tribe as 'Koli Mahadev' in the school record of the petitioner's father. The learned A.G.P. further submits that the petitioner has failed to prove the affinity test. The learned A.G.P. further submits that school record of many of the relatives of the petitioner demonstrates entry of 'Koli' only, the same is S.B.C..

4. The learned counsel for the petitioner submits that those persons referred to as relatives in the judgment of the committee are not even distant relatives from the paternal side of the petitioner.

5. The learned counsel further submits that all the documents referred by the committee in the instant judgment where a subject matter of

consideration while issuing validity certificate to the petitioner's father and also this Court while allowing the writ petition filed by the real brother of the petitioner.

6. We have considered the submissions canvassed by the learned counsel for the respective parties.

7. It is a matter of record that, the father of the petitioner is issued with the validity certificate of "Koli Mahadev", Scheduled Tribe. The real brother of the petitioner was denied validity certificate by the committee. The real brother of the petitioner filed Writ Petition bearing No.10304/2017 before the Principal Seat at Bombay. The Division Bench at the Principal Seat of this Court at Bombay under judgment and order dated September 25, 2017 allowed the writ petition filed by the real brother of the petitioner bearing Writ Petition No.10304/2017 and directed the committee to issue validity certificate to the real brother of the petitioner. The Division Bench of this Court at Principal Seat while allowing the writ petition of the real brother of the petitioner observed thus:

5. It is not in dispute that the petitioner's father Pandit Shamrao Shelke approached the caste scrutiny committee in the year 2007 seeking validity of the caste certificate issued to him belonging to the scheduled tribe 'Koli Mahadev'. It is also not in dispute that the said caste scrutiny

committee had invited a vigilance report and pertinently all the details including the details of residence as furnished in the said application which are similar to that of the petitioner were considered. Perusal of the vigilance report in relation to the proceedings relating to the validity certificate granted to the petitioner's father shows that the vigilance officer had listed the names of about eight relatives from the paternal side of the petitioner's father, all relatives were shown to belong to the 'Koli Mahadeo' / 'Mahadev Koli' tribe. The documents in regard to them pertain to the period between 1968 to 2006. A list of which has been annexed to the vigilance report and which can be found at page 77 of the paper book. The scrutiny committee in the case of the petitioner's father considered all these documents and a caste validity certificate came to be granted to the petitioner's father that he belongs to 'Koli Mahadev' Scheduled tribe. The only observation as can be found in the impugned order to discard the validity certificate granted to the petitioner's father was on a reasoning that there were contradictory entries in the documents considered by the vigilance cell, in the validity caste certificate proceedings of the petitioner's father, namely that the entries were of Mahadev Koli, M.Koli, Hindu Mahadev Koli, Hindu Koli Mahadev and therefore, though the validity was granted in favour of the petitioner's father, the same cannot be considered. This reasoning has been set out in answering issue no.3 as framed by the committee namely as to whether the validity certificate granted to the petitioner's father can be considered to grant a validity of the petitioner's caste certificate. We cannot accept the reasoning of the committee. This is for two fold reasons. Firstly that it appears that the scrutiny committee appropriately considered that there was no inconsistency in all these

documents which were considered by the said caste scrutiny committee wherein the nomenclature 'Mahadev Koli' or 'Koli Mahadev' was borne by the documents so considered. The nomenclature as indicated in the documents was not simplicitor 'Koli'. We are not shown any material which would persuade us to conclude that the validity certificate which has been granted to the petitioner's father was granted on any fraud being played or the committee having acted without jurisdiction or that the conclusion which has arrived at by the said scrutiny committee was based on such material that no reasonable body could reach such conclusion. We observe this as we have gone through the report of the vigilance cell in the proceedings pertaining to the petitioner's father caste certificate, and a caste validity certificate having being granted to the petitioner's father. We therefore see no reason as to why the committee should discard the said validity certificate granted to the petitioner's father and that too observing that the castes as interchangeably used as 'Koli Mahadev' or 'Mahadev Koli', on the different documents placed before the said caste scrutiny committee. In any case, the caste scrutiny committee if was to be of the opinion that there is some contradiction in some entries, then there ought to have been some discussion in that regard in the impugned order. In our opinion, there cannot be any contradiction in such interchanging. Law in this regard is well considered in the decision of the Division Bench of this court "Prakash Subhash Bhople Vs. Deputy Collector & Ors.(supra), wherein the Court held as under:

"6. There is a little doubt that 'Koli Mahadev' are referred as 'Mahadev Koli' and for years together certificates were issued by the competent authorities in favour of persons belonging to the tribal

community certifying their tribe as 'Mahadev Koli' and that such certificates have been validated by the Scrutiny Committees without raising the issue.

... ..

15. Further, in view of the judgment of the Supreme Court in the matter of State of Maharashtra Vs. Milind and others (Supra), referred to above, it will have to be concluded that although the Scrutiny Committee has referred to the discrepancy appeared in recording description of the tribe in the certificates issued by the competent authorities, in past, thousands of certificates have been issued and the Scrutiny Committee has also validated such certificates referring to the tribe at Sr.No.29, in Scheduled Tribes Order, 1950, as 'Mahadev Koli'. In the judgment of Madhuri Patil, reference to the tribe, admittedly, is as 'Mahadev Koli'. It is not a matter of dispute that in past tribe certificates have been issued referring to the tribe as 'Mahadev Koli' and those certificates have been validated by the Scrutiny Committees after observing the procedure prescribed in the matter of Madhuri Patil as well as Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Namadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act (23 of 2001). The caste certificates and tribe certificates issued in past, after observing due procedure and in case of issuance of validity certificates, after holding vigilance cell inquiry as well as on

consideration of affinity test, such certificates and validity certificates shall have to be treated as having been validly issued and shall be treated valid for all practicable purposes."

8. Thus, there can be no quarrel on the proposition that the place of residence being one of the factors to be considered by the caste scrutiny committee, when there is no other conclusive document to support the caste claim by the claimant. However, in the present case, we do not find that there are any cogent and acceptable reasons to discard the validity certificate which has been granted to the father of the petitioner. It is not the case of the respondent that the validity certificate has been granted by the caste scrutiny committee to the petitioner's father ignoring the documentary evidence so as to render the decision irrational or for that matter it has been granted by practising fraud.

9. In regard to the area restriction, it can be thus concluded that as the affinity test is one of the requirement, then, in the absence of any perversity on the part of the scrutiny committee in granting validity certificate to the petitioner's father, the petitioner, would be correct in contending that to defeat the claim of the petitioner on the ground of area restriction was not an acceptable exercise on the part of the committee.

8. For the reasons recorded in the judgment and order dated September 25, 2017 in Writ Petition No.10304/2017 by the Division Bench of this Court at it's Principal Seat at Bombay in the case of real brother of the petitioner Prashant, the present writ petition is allowed.

9. The impugned judgment and order is quashed and set aside.

10. The committee shall issue validity certificate to the petitioner of "Koli Mahadev", Scheduled Tribe immediately.

11. Writ Petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE