

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11215 OF 2019

Gayatri D/o Sunil Birhare
Age:- 18 years, Occ. Student,
R/o. Makaranpur, Tq. Kannad,
Dist. Aurangabad.

.. Petitioner

VERSUS

- 1] The State of Maharashtra,
Through it's Secretary,
Tribal Department,
Mantralaya, Mumbai – 32
- 2] The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad
Through its Deputy Director (R)
- 3] The Commissioner &
Competent Authority,
State CET Cell, Maharashtra State,
Mumbai.

.. Respondents

...
Mr. P.V. Jadhavar, Advocate for petitioners
Mr. S.K. Tambe, AGP for respondents no. 1 and 2 – State
Mr. S. G. Karlekar, Advocate for respondent no. 3
...

CORAM : SUNIL P. DESHMUKH &
R.G. AVACHAT, JJ.
DATE : 29-10-2020

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

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. Petitioner is before this court under present writ petition, questioning legality and sustainability of order dated 05-08-2019 passed by respondent no. 2 – The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, whereunder, petitioner's claim to be belonging to '*Koli Mahadev*' scheduled tribe has been invalidated.

3. Learned counsel Mr. Jadhavar appearing for petitioner submits that her father has been issued validity certificate of being '*Koli Mahadev*' scheduled tribe on 13-08-2010. Genealogy submitted by petitioner and its nexus to the validity holders has not been disputed. Petitioner's uncle as well as aunt from the genealogy have been issued validity certificate on 16-06-2009 and 12-09-2008, respectively. He submits that all relevant documents of her close relatives showing them to be '*Koli Mahadev*' have been declined and committee erroneously purports to refer to and rely on documents bearing same surname who are not related to petitioner's family being shown to be '*Koli*'. Their relationship with petitioner could not be brought forth nor has been established, yet, overwhelming importance has been given to same with a view to negate claim of petitioner to be '*Koli Mahadev*'. He submits that her relevant record as well as that of her father including the school and his service record do continuously indicate them to be '*Koli Mahadev*'. This has been the position for over thirty years. Whereas, the

committee has got obfuscated by documents referred to by vigilance cell and its opinion that the affinity could not be shown.

4. He submits that while her uncle's school record of 1972 refers to '*Koli Mahadev*', authenticity of the same has been suspected being considered to be interpolated and it has also been considered that father's school record of 1978 refers to '*Koli*', as could be seen during verification of claim of one Prajakta Sahebrao Birhare. It has been considered that entries in respect of persons referred to in the decision in respect of issue no. 1 are not consistent, some are shown to be '*Koli*', some are shown to be '*Mahadev Koli*', have been considered from their community, yet, only entries showing '*Koli*' have been relied on, and, therefore, claim of petitioner is not sustainable.

5. He further submits that the vigilance cell report had been given to petitioner on 27-07-2019 and decision has been immediately rendered on 05-08-2019 even before the expiry of period of notice, as vigilance cell report had been adverse to petitioner pursuant to Rule 12(8) of The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, decision has been rendered.

6. Mr. Jadhavar refers to clutch of decisions by division benches of this court, particularly dated 17-07-2019 in writ petition no. 8681 of 2019 and dated 19-07-2019 in writ petition no. 8093 of 2019. He submits that this court has considered that when father of petitioner has been issued validity certificate of 'Koli Mahadev' scheduled tribe, then petitioner ought not have been denied validity of their claim to be from 'Koli Mahadev' scheduled tribe.

7. He particularly refers to paragraph no. 4 of decision dated 19-07-2019 (*supra*) (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. ”

8. Learned Assistant Government Pleader Mr. Dande submits that claim of petitioners has been properly invalidated, for, there appears to be foul play at the instance of petitioners and/or their relatives to the tribe claim, for the word 'Mahadev' has been used later in most of the record and that the matters accordingly are being proceeded with against the validity holders, and the impugned order is accordingly justified.

9. It has been referred to by the committee that validity of father, Sangita Laxman Birhare, Manoj Laxman Birhare, Manojkumar Laxman Birhare and Archana Chagan Birhare appear to have been obtained keeping back Prakash Sitaram Birhare, his entry in school record has been interpolated and her father's entry of 1978 showing to be '*Koli*' and that validity holders had not given complete genealogy of relatives, as are referred to by the committee, namely, Kondiram, Suryakant etc. who are shown to be '*Koli*' and claim of Kiran Laxman Birhare had been invalidated by committee and writ petition by him had also failed.

10. It has further been referred to that taking into account observations of the High Court, it has been decided to re-open the cases of validity holders relied upon by petitioner and further that the affinity could not be proved by petitioner.

11. 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 petitioners' father and aunt and uncle shown in the genealogy, *albeit*, it has been referred to that matter is under investigation.

12. 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.

13. This court in similar circumstances in writ petition No. 5641 of 2020 (*Kum. Maseera Parvin d/o Mohd. Asfaq 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 are granted validity certificates by the committee, directions have been issued to 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.

14. 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.

15. 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 re-opened case.

16. Thus, the impugned order dated 05-08-2019 passed respondent no. 2 – Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is set aside. Respondent No. 2 shall forthwith issue validity certificate to the petitioner as belonging to "*Koli Mahadev*" scheduled tribe. The same would be subject to the decision that would be taken by the committee in the proceedings reopened of the validity holders relied upon by the petitioner. In case, the

validity certificates issued to the validity holders relied upon by the petitioner are 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.

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

[R.G. AVACHAT]
JUDGE

arp/

[SUNIL P. DESHMUKH]
JUDGE