

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

WRIT PETITION NO. 14505 OF 2019

Ushabai Deoman Nikum
Age: 54 years, Occu. Household,
Sarpanch of Village Panchayat
Shivade – Rudane, Tq. Sindkheda,
District Dhule

... Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32

2. The Scheduled Tribe Certificate
Scrutiny Committee,
Nandurbar Division, Nandurbar,
through its Member Secretary

3. The District Collector,
Collectorate, Dhule
District Dhule

... Respondents

....

Mr. P. N. Nagargoje, Advocate h/f Mr. Dhananjay B. Thoke,
Advocate for petitioner
Mr. S. P. Sonpawle, AGP for respondents No.1 to 3

....

**CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.**

DATED : 29th OCTOBER, 2020

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

1. Rule. Rule made returnable forthwith. With consent of counsel appearing for respective parties, the matter is heard finally.

2. The petitioner questions propriety, legality and validity of decision of respondent No.2 dated 26-09-2019 in negation, on the tribe claimed by petitioner of being '*Malhar Koli*'. From the decision, it appears that the major thrust is on the documents referred to under the vigilance cell report. In respect of two of them referred to in the decision, namely, of Deochand Chindha Koli whose school leaving certificate as annexed to the petition shows him having born on 09-03-1917 and having taken admission in the school on 02-07-1994 and of the other person Tanku Avchit Koli in the decision is considered to have born on 10-04-1922 and taken admission in school in May 1921. Both these documents, therefore, have been scoffed at and considered illogical. The other documents, relating to the relatives, refer to as, "*Koli*" , "*Malhar Koli*", "*Suryawanshi Koli*" or "*Hindu Koli*", were considered would negate the claim of petitioner.

3. Going by the list, as appearing on internal pages No.2 and 3 of the decision, up to the birth document of Natha Avchit Koli of 1915, the persons are shown to be "*Koli*". Rest of the documents subsequent thereto show "*Koli*", "*Hindu Koli*", "*Malhar Koli*", "*Suryawanshi Koli*". Petitioner's father Deoman Barka Koli is shown to be "*Malhar Koli*" in school record. It may have to be referred to that, her father's as well as that of aforesaid Natha Avchit Koli's documents of 1923 and 1921 respectively show them to be "*Malhar Koli*".

4. Copy appended to writ petition indicates that petitioner's father Deoman Barka Koli had entered school in 1923 and had been removed from the school in 1924 on account of absenteeism being engaged in work. The other document as has been annexed at page No.16 of the writ petition, in respect of Tanku Avchit Koli, appears to have been completely misread. The same clearly shows that his date of birth is shown as 1922 and the date of entering the school is 1929 and school leaving date is 1931 and he also had been removed on account of absenteeism. But decision scoffs this considering school admission to be of 1921. The decision, does not at all make reference to the record of her father, showing him as "*Malhar Koli*". There is no discussion over the same, nor

it has been reasoned out as to why the same has not been considered. So is the case of Natha Avchit Koli among others. The documents in respect of two persons, apart from the father of petitioner, appear to have been not properly taken into account. No credence appears to have been given to the same nor its veracity is doubted. The petitioner's affinity has also been negated, *albeit*, it has also been observed that it is a corroboratory test.

5. Additionally, record shows that the vigilance cell report is of 24-09-2019, the same is received by committee on 25-09-2019 and petitioner was called by the committee on 26-09-2019 referring to that the petitioner had no e-mail facility and as this court had directed the committee to decide the proceedings on or before 27-09-2019. The committee has given decision in the matter, but, prescription under Rule 12(8) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, could not be adhered to.

6. From aforesaid glaring aspect emerges in the matter that, there is no adherence to prescription under Rule 12(8) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, which reads thus;

"(8) If the Scrutiny Committee, on the basis of the Vigilance Cell report and other documents available, is not satisfied about the claim of the applicant, the Committee shall issue a show cause notice to the applicant and also serve a copy of the report of the Vigilance Officer by registered post with acknowledgement due. A copy shall also be sent to the Head of the Department concerned, if necessary. The notice shall indicate that the representation or reply, if any, should be made within fifteen days from the date of receipt of the notice and in any case not more than thirty days from the date of receipt of the notice. In case the applicant requests for adjournment or extension of the time-limit, reasonable time, may be granted."

7. It clearly emerges that the petitioner could not get adequate opportunity to advance her case before the committee.

8. Having regard to aforesaid, the decision of respondent No.2 is deficient on consideration of vital aspects involved in the matter, rendering the same untenable.

9. In view of foregoing discussion, impugned order dated 26-09-2019, deserves to be set aside and it is accordingly set aside. The matter stands remanded to respondent No.2 – The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar, for reconsideration of the claim of petitioner by following proper procedure, verifying the claim of petitioner including the documents, *inter-alia*, of father, two grand-uncles of petitioner referred to above. The tribe claim of petitioner be verified and decided on, preferably within a period of three months from the date of receipt of writ of this order.

10. Rule is made absolute in aforesaid terms. The petition is disposed of.

[R. G. AVACHAT, J.]

[SUNIL P. DESHMUKH, J.]

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