

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

WRIT PETITION NO. 2515 OF 2021

Nilesh s/o Dilip Sapkal ... Petitioner
Age : 26 Years, Occu.: Education,
R/o. At & Post: Sapkalwadi, Tq. Sillod
District : Aurangabad

VERSUS

1. The State of Maharashtra ... Respondents
Through its Secretary,
Higher Education Department
Mantralaya, Mumbai – 32
2. The Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Member Secretary.
3. The Commissioner & Competent Authority,
Commissionerate & Common Entrance Test Cell,
Government of Maharashtra
8th Floor, New Excelsior Building
A.K. Naik Marg, Fort, Mumbai 32.

Mr. Boinwad Omgashad B. Advocate for the petitioner
Mr. K. N. Lokhande, A.G.P. for Respondents 1 & 2/State.
Mr. S. G. Karlekar, Advocate for respondent No.3.

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

DATE : 12th February, 2021

ORDER (Per Shrikant D. Kulkarni, J.):

1. Being aggrieved by the impugned order passed by respondent No.2 / Scheduled Tribe Certificate Verification Committee, Aurangabad (hereinafter referred to as "the Committee") thereby invalidating caste claim of the petitioner as belonging to " Koli Malhar" Scheduled Tribe, the petitioner has approached this Court by invoking writ jurisdiction under Article 226 of the Constitution of India.

2. Factual matrix of the case is as under:

The petitioner is exploring possibility of admission to professional course. His proposal for verification of tribe certificate was referred to the Committee. The petitioner has produced necessary documents in support of his tribe, so also validity certificates of his blood relatives including father and mother. The Committee has invalidated the tribe claim pertaining to the petitioner and his cousin Mr. Sunil Bhaurao Sapkal by common judgment dated 18.01.2021. In that background, the petitioner is before us.

3. We have heard Mr. Mr Omgashad Boinwad, learned counsel for the petitioner, Mr. K. N. Lokhande, learned A.G.P. for the respondent Nos.1 and 2 and Mr. Karlekar, learned Advocate for respondent No.3/Common Entrance Test Cell.

4. Mr. Boinwad, the learned counsel for the petitioner vehemently submitted that the Committee has completely overlooked the important aspect that the Scrutiny Committee has issued near about 28 validity certificates to the close blood relatives of the petitioner considering the documentary evidence and upon satisfaction with the affinity test. The observation of the Committee regarding non-migration from Scheduled area is incorrect. The Committee has wrongly inserted some irrelevant names in the impugned order as paternal relatives, whose names were not mentioned in the vigilance report. The Committee has relied upon so called adverse entry in respect of cousin grandfather Bhaurao Mainaji

Sapkal of the year 1963 which was placed before the Committee in case of his son Anil Bhaurao Sapkal, cousin uncle of the petitioner. The Committee, after considering all the relevant entries including the subject entry has issued validity certificate of Koli Malhar, Scheduled Tribe to Anil Bhaurao Sapkal.

5. Mr. Boinwad, the learned counsel further invited our attention that the petitioner's close blood relative Mr. Prakash Daulatrao Sapkal is issued with the validity certificate in view of the judgment and order passed by Division Bench of this Court in Writ Petition No. 1665/1996 dated 22.04.1997. The learned counsel further invited our attention that tribe claim of Pratik Kiran Sapkal and Rutuja Kiran Sapkal who are blood relatives of the petitioner were invalidated by the Committee. Both of them have challenged the order of the Committee before the Principal Seat of this Court at Bombay. The Division Bench at the Principal Seat, under judgment and order dated 21.08.2019 in Writ Petition No. 9164/2019, was pleased to quash and set aside the order of the Committee and directed the Committee to issue tribe validity certificates of Koli Malhar, Scheduled Tribe to them. The learned counsel submitted that the Committee has not disputed the genealogy placed on record by the petitioner and as such, the validity certificate issued to the blood relatives of the petitioner is a relevant fact and needs to be relied and acted upon in view of the judgment of this Court in case of *Apoorva Nichale Vs. Divisional Caste Scrutiny Committee reported in (2010) 6 Mh.L.J. 401*. The learned counsel submits that affinity test is not a litmus test by placing reliance

on the decision of the Apex Court in case of *Anand Vs. Committee for Scrutiny and Verification of Tribe claim and ors.* reported in *(2012)1 SCC 113*. He submitted that the impugned order passed by the Committee is bad in law and liable to be quashed and set aside.

6. Mr Lokhande, the learned A.G.P. for the respondents/State, per contra, submitted that the Committee has considered the documentary evidence placed on record by the petitioner. The Committee has also considered the tribe validity certificates relied upon by the petitioner. The Committee, after examining all the documentary evidence, vigilance report and report of the Research officer, arrived at the conclusion that the petitioner has failed to prove his tribe claim as " Kolhi Malhar " Scheduled Tribe. There are contra entries which were suppressed while obtaining earlier caste validity certificates. The learned A.G.P. submits that the validity holders relied by the petitioner have suppressed the contra entries and obtained the validity certificates from the Committee. Now the Committee has taken decision to issue show cause notice to the validity holders relied by the petitioner. The Committee has rightly considered the said entry as contra entry. The findings recorded by the Committee are well reasoned. It is not a fit case to interfere with the decision of the Committee.

7. Mr. Karlekar, the learned Advocate for respondent No.3 supported to the stand taken by the learned A.G.P.

8. We have considered the argument advanced by the learned

counsel for the petitioner, the learned A.G.P. and learned counsel for respondent No.3 /CET cell.

9. It is evident from the record that there are about 28 validity certificates issued in the family of the petitioner from paternal side. The petitioner has given the details of those validity holders. It is the stand of the State that validity holders relied by the petitioner had suppressed certain contra entries and obtained validity certificates from the Committee. However, it is evident from the record that those contra entries were also subject matter while issuing validity certificates to the concerned validity holders. It is true that there were contra entries in the school record of the close blood relatives of the petitioner as "Koli" and no old record prior to independence is placed on record by the petitioner. Be that as it may, there are about 28 validity certificates in the family of the petitioner from paternal side. The genealogy is also not disputed by the Committee. The father and mother of the petitioner namely Dilip Ramchandra Sapkal, Shakuntala Dilip Sapkal are issued with validity certificates on 20.09.2008 and 23.07.2010. Ashwini Dilip Sapkal who is real sister of the petitioner is also issued with tribe validity certificate of Koli Malhar-Sahceudled Tribe dated 22.05.2009.

10. Prakash Daulatrao Sapkal who is close blood relative of the petitioner had applied for tribe validity certificate of being Koli Malhar-Scheduled Tribe. His tribe claim was rejected by the Committee. Prakash Dulatrao Sapkal has challenged the order of the Committee by filing writ

petition No.1665/1996 before this Court. The Division Bench of this Court at Aurangabad, by judgment and order dated 22.04.1997 was pleased to quash and set aside the order passed by the Committee and directed the Committee to issue tribe validity certificate of Koli Malhar - Scheduled Tribe to Prakash Daulatrao Sapkal.

11. Pratik and Rutaj Kiran Sapkal are also close blood relatives of the Petitioner. Both of them have applied for caste validity certificate. The Committee has invalidated their tribe claim. Pratik and Rutuja have filed writ petition No.9164/2019 before the Principal Seat at Bombay. The Division Bench of this Court at Principal Seat, by judgment and order dated 21.08.2019, was pleased to quash and set aside the order passed by the Committee and directed the Committee to issue tribe validity certificated to the Pratik and Rutuja of Koli Malhar- Scheduled Tribe.

12. The petitioner's father, mother and real sisters are issued with the validity certificates. Those validity certificates are yet not cancelled by the Committee, even though it is contended by the State that they have obtained the validity certificates by suppressing contra entries. The Committee has now taken decision to issue show cause notice to the validity holders relied by the petitioners. But the validity certificates relied upon by the petitioner still hold the field. In view of the decision in the case of **Apoorva** (Supra), the validity certificate issued to the near paternal relative is a relevant fact. The petitioner is entitled to get validity certificate of Koli Malhar- Scheduled Tribe, when petitioner's

father and real sister are issued with the validity certificate and when there is no legal impediment. It is for the Committee to take further steps if so desire for issuing show cause notice to the validity holders, relied by the petitioner. As on today, the tribe claim of the petitioner as belonging to Koli Malhar cannot be denied in view of the fact that number of persons in the family of the petitioner including father, mother and real sister are issued with the validity certificates of Koli Malhar- Scheduled Tribe.

13. The Committee has also observed that the family of the petitioner is not migrated from tribal area. That observation made by the Committee is erroneous. The Parliament has enacted "The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976". It is precisely to overcome the difficulties of the tribals. After that amendment, it is not permissible to rely on the area restrictions placed by the order of 1950. They are removed in order to enable the persons not residing in the five districts to claim benefits. That view is expressed in the decision rendered by the Division Bench in case of **Mayuri Sunil Thakur Vs. State of Maharashtra and Ors.** (Writ Petition No.8738 of 2019 dated 09.08.2019 at principal seat Bombay). As such, the observations made by the Committee regarding absence of migration of petitioner's family are certainly erroneous.

14. Now coming to the another finding recorded by the Committee regarding failure to prove the affinity test. The genuineness of a caste claim needs to be considered not only by way of detail examination of the documents but also on the affinity test, which would include the

anthropological and ethnological traits etc. of the petitioner. The affinity test is not a litmus test. We would like to place reliance in case of *Anand* (supra), wherein it is observed by the Hon'ble Supreme Court that affinity test may not be regarded as a litmus test. The affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

15. In view of the above, the findings recorded by the Committee are found erroneous. The impugned order passed by the Committee invalidating tribe claim of the petitioner needs to be quashed and set aside. The petitioner is entitled to get the tribe validity certificate. With these reasons, we conclude and proceed to pass the following order.

ORDER

- (i) The Writ petition is allowed.
- (ii) The Committee shall issue validity certificate to the petitioner of "Koli Malhar" Scheduled Tribe, immediately.
- (iii) In case, the Committee seeks review of the order passed by this Court dated 22.04.1997 in Writ Petition No. 1665 of 1996 then the respondents are at liberty to take steps against the present petitioner.
- (iii) No order as to costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)