

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

WRIT PETITION NO. 7570 OF 2021

Gauri Vijay Jamadar U/g

Vijay Govind Jamadar

.. Petitioner

Versus

The State of Maharashtra and another

.. Respondents

Shri D. S. Bagul, Advocate h/f Shri Anandsingh Bayas, Advocate
for the Petitioner.

Mrs. M. A. Deshpande, Addll.G.P. for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

DATE : 28TH OCTOBER, 2021.

FINAL ORDER :

. The tribe claim of the petitioner as belonging to 'Koli Mahadev' (Scheduled Tribe) is invalidated.

2. It is submitted by the learned advocate for the petitioner that, cousin grandfather of the petitioner namely Deelip S/o Vishwanath is issued with the validity certificate under orders of this Court in Writ Petition No. 972 of 1984 under judgment and order dated July 29, 1986. The father of the petitioner has been issued with the validity certificate of Koli Mahadev (S.T.) in the year 2005. Seven other paternal relatives of the petitioner are issued with the validity certificates of Koli Mahadev (S.T.). The contra entries relied by the petitioner were also subject matter of consideration when validity was issued to the father of the petitioner.

3. The learned Additional Government Pleader for respondents/State submits that, cousin grandfather of the petitioner namely Deelip S/o Vishwanath is issued with the validity before the Act came into force and at that time vigilance was not conducted and as such contra entries were not brought on record. Actually the petitioner therein suppressed the entries. Though the said order is confirmed by the Apex Court, the Apex Court had kept open the point as to whether Commissioner is Appellate Authority of Scrutiny Committee. The father of the petitioner is issued with the validity only on the basis of judgment of this Court in the case of Deelip S/o Vishwanath. As such contra entries are not considered by the Committee in the said proceeding. The same is fact in respect of validities granted to other paternal relatives of the petitioner. The petitioner has also failed in the affinity test. All these aspects are rightly considered by the Committee.

4. The relationship between the petitioner and Deelip S/o Vishwanath is not disputed. The validity certificate is directed to be issued to Deelip S/o Vishwanath by the Division Bench of this Court under order dated July, 29, 1986. The said judgment is confirmed by the Apex Court by a speaking order in Civil Appeal No. 2811 of 1987.

5. The father of the petitioner is also issued with the validity certificate. The contra entries considered by the Committee were subject matter of consideration and also vigilance in the validation proceeding of the father of the petitioner. After

considering the same, validity is issued to the father of the petitioner. There are seven cousin paternal relatives of the petitioner who are issued with the validity certificates of Koli Mahadev (Scheduled Tribe). Same is relevant fact. Reliance can be placed on the judgment of this Court in a case of Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others reported in *2010(6) Mh. L. J. 401*. The affinity test is not a litmus test as is held by the Apex Court in a case of Anand Vs. Committee reported in *(2012) 1 SCC 113*.

6. It is submitted that, show cause notices are issued to the father of the petitioner and other paternal relatives of the petitioner.

7. In the light of the above, we pass the following order.

8. The impugned order is quashed and set aside. The Committee shall issue validity certificate to the petitioner of 'Koli Mahadev' (Scheduled Tribe) immediately. The same shall be subject to the decision in the validation proceedings reopened of the validity holders relied by the petitioner.

9. The writ petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]