

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

**89 WRIT PETITION NO. 9137 OF 2020
WITH
CIVIL APPLICATION STAMP NO. 256 OF 2021**

**VIJAYA GOVINDRAO MACHKURE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner: Mr. Sunil M Vibhute
AGP for Respondents No. 1 & 2: Mr. P. K. Lakhotiya
Advocate for Respondent No. 3: Mr. M. D. Narwadkar

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

DATE: 04th JANUARY, 2021

PER COURT:

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

2. Mr. Vibhute, the learned Counsel submits that real sister of the petitioner Varsha D/o. Govindrao is issued with the validity certificate of Koli Mahadev, Scheduled Tribe after conducting vigilance. The school entry of the father of the petitioner was also subject matter of vigilance by the scrutiny committee. In case of Varsha the vigilance did not find any interpolation. In the

present case, according to the committee, the word Mahadev is written in a different ink the same is illegal. The learned Counsel submits that there is no contra entry on record. The petitioner relies on the judgment of this Court in case of **Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others** reported in 2010 (6) Mh. L. J. 401. The learned Counsel submits that the affinity test is not the litmus test. Reliance is placed on the judgment of the Apex Court in case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** reported in (2012) 1 SCC 113.

3. Mr. Lakhotiya, the learned A.G.P. submits that the petitioner has failed in the affinity test. The grandfather of the petitioner Ddynoba is shown to have been admitted in the girls school. The same itself casts suspicion. According to the learned A.G.P., the school record of the father of the petitioner is also manipulated. The committee has considered all these aspects. Show cause notice has been issued to the real sister of the

petitioner as to why the validity should not be cancelled.

4. We have considered the submissions canvassed by the learned Counsel for respective parties.

5. The real sister of the petitioner Varsha is granted validity after the conducting vigilance. The school entry of the father of the petitioner was subject matter before the vigilance in the case of Varsha. The vigilance did not find any interpolation in the said entry. Even the school entry of the grandfather of the petitioner was also subject matter before the vigilance while granting validity to Varsha. Apart from the above, the contra entries could not be pointed out.

6. Considering the judgment in the case of **Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others** reported in 2010 (6) Mh. L. J. 401 (supra) we pass the following order.

7. The impugned order is quashed and set aside. The committee shall issue validity certificate to the petitioner of Koli Mahadev, Scheduled Tribe. The said validity certificate shall be subject to the decision that would be taken by the committee in the proceedings re-opened of the validity holders relied by the petitioner.

8. Writ Petition is accordingly disposed of. No costs.

9. In view of disposal of the writ petition, the civil application is also disposed of.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

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