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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10965 OF 2019

Parag Vishwasrao Padolse
Age – 19 years, Occ – Education,
R/o Talegaon, Taluka – Jamner
District – Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary,
Social Welfare Department,
Mantralaya, Mumbai-32

RESPONDENTS

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

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Mr. Balaji S. Shinde, Advocate for the petitioner
Ms. G. L. Deshpande, AGP for respondent - State

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[CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.]

DATE : 14th JANUARY, 2021

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

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.

2. The petition is moved challenging decision of respondent No. 2 – scheduled tribe certificate scrutiny committee, Nandurbar dated 18th July 2019, invalidating petitioner's claim to be belonging to "*Tokare Koli*", scheduled tribe, pursuant to tribe

certificate dated 24th November, 2017 issued in his favour and further directing to take action according to provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

3. Mr. Balaji Shinde, learned advocate appearing on behalf of the petitioner vehemently contends that despite three validity certificates of Rahul, Snehal and Manish, the close paternal relatives of the petitioner been issued by the committee, claim of the petitioner of being "*Tokare Koli*" scheduled tribe has been declined. On this occasion committee has considered that records of the relatives do not support claim of being "*Tokare Koli*", having regard to certain documents, wherein reference to them is to be *Koli, Hindu Koli, Suryawanshi Koli* etc.

4. He submits that these very documents had fallen for consideration in the cases of Rahulji, Snehal and Manish and were also appreciated by this court in its judgment and order dated 12th December, 2012 in writ petitions No. 8789 of 2010 and 9027 of 2010.

Learned advocate draws our attention to observations of

division bench deciding aforesaid writ petitions in paragraphs No. 10 and 11, reading, thus,

“10. We have perused the report of vigilance cell so also the explanation tendered by father of petitioners in respect of evidence collected by Vigilance Cell pertaining to close relatives of petitioners in the form of school record wherein entry has been recorded in respect of their caste as ‘Hindu Koli’. We have also perused the original record and documents produced by father of petitioners before the Scrutiny Committee in the matter of validation of his tribe claim. The father of petitioners had disclosed so called adverse entries appearing in his school record as well as school record of his near relations wherein entry in respect of caste is recorded as ‘Hindu Koli’ or ‘Koli’. At the relevant time, father of petitioners had also tendered explanation in respect of entries in his school record indicating caste as ‘Hindu Koli’ or ‘Koli’. The explanation tendered by father of petitioners was accepted by the Committee. The father of petitioners, while determination of his claim for issuance of validity certificate, had caused appearance before the Committee and deposed about traits and characteristics of the tribe. The Committee was satisfied in respect of truthfulness of claim of father of petitioners and after conducting home inquiry and field inquiry and on consideration of explanation tendered by father of petitioners, the Committee came to the conclusion that father of petitioners has established affinity to “Tokare Koli”, Scheduled Tribe. The explanation tendered by father of petitioners justifying the reasons as to how entries in respect of caste in his school record as well as record of his near relations have been made as “Hindu Koli” or ‘Koli’ (E.MA) while admitting their names in the primary school, was accepted by the Committee. The Committee has specifically observed in the judgment that the reasons adduced by the appellant

are convincing. The Committee, therefore, proceeded to issue validity certificate in favour of father of petitioners. While issuing validity certificate in favour of father of petitioners, the Committee had called for report of Vigilance Cell and the Vigilance Cell after conducting home and field inquiry, tendered a detailed report indicating therein that the traits and characteristics observed by father of petitioners, including surnames of his relatives, are akin to the traits and characteristics of Tokare Koli, Scheduled Tribe.

11. Once the Committee, while determining tribe claim of father of petitioners, on consideration of report of Vigilance Cell which was prepared after conducting home and field inquiry, recorded a finding that he (father of petitioners) had passed the affinity test and has established his linkage to the ethnic tribe, there is absolutely no reason to record a contrary finding in that regard. The material, on which reliance is placed by the Committee, while considering claim of petitioners, was also before the Committee, while the Committee had considered claim of father of petitioners. There is absolutely no reason to arrive at a contradictory finding based on the same set of evidence which was available with the Scrutiny Committee while tribe claim of father of petitioners was determined. It is to be noted that the reasons recorded by Scrutiny Committee, while answering the issue as to whether claim of petitioners sustain by way of affinity test, is totally unacceptable in view of the contrary findings recorded by same Committee on the basis of same set of evidence while determining tribe claim of father of petitioners.”

5. He submits that when relationship is not disputed and there are validity holders from the genealogy who are closely related to petitioner, negation of the petitioner's claim is improper. He submits that in such a scenario even though it is

being referred to that validity of father of Rahul, Snehal and Manish is being questioned, in the face of situation that there is a decision by high court and that it being endorsed by the Supreme Court, the situation about their validity is unlikely to be changed. He submits that when the record, which has weighed with the committee, while verifying claim of the petitioner, has already fallen for consideration of the high court and the high court had directed to issue validity to the claimants, approach of the scrutiny committee in the case of petitioner has been without any reflection on that there is decision by high court in aforesaid two writ petitions in respect of aforesaid paternal relations of the petitioners. He further purports to support his submissions with reference to judgment and order in the case of *“Apoorva Vinay Nichale V/s Divisional Caste Certificate Scrutiny Committee No.1 and Others”* reported in *2010 (6) Mh.L.J. 401* and an order passed by this court in writ petition No. 8277 of 2020 in the case of *“Prachi d/o Gokul Thakur V/s The State of Maharashtra and Another”* dated 18th December, 2020,

6. Learned AGP Ms. G. L. Deshpande contends that documents referred to by the scrutiny committee, during vigilance, show that those do not support claim of the petitioner of being *“Tokare Koli”*, those are in respect of elder relatives like

uncle, grand father and great grand father and having regard to the same, no fault can be found with the decision by the committee, especially, when validity given to Ramchandraj, referred to by the petitioner is being reconsidered. Besides petitioner could not establish ethnic linkage.

7. Although this is being so submitted, fact remains that relationship of petitioner with the validity holders has not been disputed nor genealogy has been in dispute.

8. It would have to be considered that there is no denial of the factual position that as on the date, committee has not invalidated certificates issued to petitioner's aforesaid relatives, *albeit*, it has been referred to that matter is under investigation and much progress has been made.

9. In the circumstances, it would be appropriate that we follow the course charted by various decision of division bench *viz.*, writ petition No. 5641 of 2020 (*Kum. Maseera Parvin d/o Mohd. Asfaque Shaikh and Another V/s the State of Maharashtra and Others*), writ petition No. 9056 of 2019 (*Ganesh s/o Sudhakar Bodhgire V/s The State of Maharashtra*) dated 21st August, 2019, and a judgment of the Supreme Court in the case of "*Raju Ramsing Vasave V/s Mahesh Deorao Bhivapurkar and Others*" reported in (2008) 9 SCC 54.

10. It has been referred to that if 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 decisions even refer to that certificate issued to the petitioner, would be subject to outcome of proceedings for cancellation of validity issued in favour of his blood relatives.

11. It is further to be noted that the courts have time and again considered to that ethnic linkage is not a litmus test and would hardly be determinative. A decision of the Supreme Court in the case of *“Anand V/s The Committee for Scrutiny Verification and Others”* reported in *(2012) 1 SCC 113*, may be taken into account for said purpose.

12. Having regard to decisions, facts and circumstances and forgoing discussion, it appears to be expedient to set aside the impugned order and direct issuance of validity certificate to petitioner, subject to decision in re-opened cases.

13. Impugned order dated 18th July, 2019 passed by respondent No. 2 Scheduled Tribe Certificate Scrutiny

Committee, Nandurbar is set aside. Respondent No. 2 Committee shall forthwith issue validity certificate to the petitioner as belonging to "*Tokare Koli*" scheduled tribe. The certificate would be subject to decision that would be taken by the committee in the proceeding stated to have been reopened of the validity holder Ramchandraji. In case, said certificate is cancelled, then the petitioner may not be in a position to claim any equities and it would be open for the committee, if the committee is of the view that validity certificate obtained by the validity holder is by playing fraud, then the committee may resort to action against the petitioner as would be available in law.

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

15. Parties to act upon authenticated copy of this order.

16. Needless to refer to that this order shall not influence proceedings reopened by respondent No. 2 committee.

[ABHAY AHUJA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE