

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11798 OF 2018

Harshada Dattatray Vagare

...Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

.....

Ms Madhavi Ayyapan i/b Talekar & Associates for the Petitioner.

Mr. N. C. Walimbe, AGP for Respondent No. 1 to 4.

**CORAM : S.C. GUPTA AND
SURENDRA P. TAVADE, JJ.**

DATE : 14 JANUARY 2021

P.C. :

. Heard learned counsel for the Petitioner and learned AGP for the Respondent-State.

2. Rule. Rule taken up for hearing forthwith by consent of parties.

3. This petition challenges an order passed by Respondent No.2- Scheduled Tribe Certificate Scrutiny Committee, Pune Division on 16 August 2018. The impugned order of Respondent No.2 appears to be based on a vigilance report dated 17 July 2018. The vigilance report *inter alia* takes into account information from school register concerning some relatives of the Petitioner. The Petitioner does not accept that the persons mentioned in the vigilance report are her relatives. Learned counsel for the Petitioner submits that in some cases even the names are not very clear. Be that as it may, some of these relatives are indeed shown as Mahadev Koli, whilst some others are described as Koli, Marathi, Hindu Maratha, Hindu Koli, Hindu Koli Mhadev, Hindu Maratha Koli and Maratha Koli. Since some of these so

called relatives of the Petitioner are not described as Mahadev Koli or Koli Mahadev and since there has been no pre-constitutional record describing the Petitioner's relatives as Mahadev Koli or Koli Mahadev, the committee has not accepted the Petitioner's tribal claim. The second reason cited by the Scrutiny Committee is that on the touchstone of cultural affinity, the Petitioner's claim of belonging to the Schedule Tribe of Mahadev Koli has not been established. The third reason purportedly before the Vigilance Committee, which is reflected in the vigilance report, is that the original place of residence of the Petitioner, namely, Velhe in District- Pune has not been restricted area of the Schedule Tribe of Koli Mahadev or Mahadev Koli.

4. The Petitioner has produced material before the Court to show pre-constitutional entries concerning her relatives from Zilla Parishad school at Velhe, District- Pune, describing their caste as Mahadev Koli. Apparently, this material was not before the Scrutiny Committee. The Petitioner's case is that, there was no reason why this pre-constitutional record could not be accessed by the Vigilance Cell whilst preparing its vigilance report.

5. Besides these entries, which, as we have noted above were not before the Scrutiny Committee, there are two crucial documents produced by the Petitioner, which were before this Scrutiny Committee, and which have a material bearing on the Petitioner's tribal claim. The first document is a gazette notification of 29 October 1956 of the Schedule Castes and Schedule Tribes lists (Modification) Order, 1956. As mentioned in this order, in Pune district of the State of Bombay, the place called Velhe Mahal was indeed a restricted area of the tribe of Koli Mahadev or Dongar Koli. It is submitted that Velhe Mahal was the original name of Velhe, where the Petitioner comes from. The second document is the revenue record in the form of 7/12 extract in respect of land at village Velhe held by the great grandfather of the Petitioner. The landholder is shown as a tribal. Learned counsel for the Petitioner submits that this material establishes that the

Petitioner hails from Village Velhe, which has been a notified restricted area of the tribe of Koli Mahadev or Mahadev Koli and her immediate paternal relations are described as tribal landholders in the village record. Learned counsel submits that this important material has been completely disregarded by Respondent No. 2 Committee whilst passing the impugned order.

6. The long and short of the foregoing discussion is that whereas the Scrutiny Committee has considered, on the basis of a vigilance report, some descriptions of so called blood relations of the Petitioners in their school records, some other records, which are pre-constitutional, have not been brought to the notice of the Scrutiny Committee. Secondly, two important documents bearing on the Petitioner's tribal claim have been omitted in its consideration by the Scrutiny Committee. Thirdly, the ground that the village or area where the Petitioner hails from has not been a restricted area of the tribal community to which the Petitioner belongs, is found to be demonstrably wrong.

7. Considering that some important and germane material has been disregarded by the Scrutiny Committee and some other material was actually not available to it, we deem it fit to quash the impugned order and remit the Petitioner's application for a Tribe Validity Certificate to Respondent No. 2 Committee for a fresh consideration in accordance with law.

8. Rule is accordingly made absolutely and the petition is allowed by quashing and setting aside the impugned order of Respondent No. 2 Scrutiny Committee dated 16 August 2018 and remitting the matter to Respondent No. 2 for a fresh consideration in accordance with law and having regard to the present order. The Committee shall hear the Petitioner and consider the matter and pass its order within a period of eight weeks from today.

9. In the meantime, pending fresh inquiry by the Scrutiny Committee, present interim relief granted in favour of the Petitioner in terms of prayer clause “a” shall continue.

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)