

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

974 WRIT PETITION NO. 1019 OF 2022

SHUBHAM HARI HIWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Pratap V. Jadhavar
Addl. GP for Respondent Nos. 1 and 2 : Mr. P.S. Patil
Advocate for Respondent No. 3 : Mr. M.D. Narwadkar

...
CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.

DATE : 9th FEBRUARY, 2022

PER COURT :-

1. The tribe claim of the petitioner as belonging to 'Koli Malhar' Scheduled Tribe is invalidated.
2. The learned counsel for the petitioner submits that father of the petitioner, namely, Hari Hiwale is issued with validity certificate of 'Koli Malhar' Scheduled Tribe and paternal uncle of the petitioner, namely, Bhikan S/o Pandurang is also issued with validity certificate as 'Koli Malhar' Scheduled Tribe, after conducting vigilance. Another paternal uncle of the petitioner, namely, Laxman Pandurang is also issued with validity certificate of 'Koli Malhar' scheduled tribe. All the documents which the Committee has found to be interpolated and relied by the petitioner in the present matter, were the subject matter for consideration in cases of father and paternal uncles of the petitioner. The vigilance did not find any interpolation when report is submitted by the Vigilance Cell Officer in the cases of father and uncles of the petitioner. Old mortgage deed of the year 1937 is placed on record along with its translation. In the vigilance report, the record in respect of

the grandfather of the petitioner shows the caste as 'Koli Malhar', therefore, according to learned Advocate, the petitioner deserves to be granted validity. The learned counsel for petitioner relies on the judgment of the Division Bench of this Court in the case of ***Apoorva d/o Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee and others*** reported in ***2010 (6) Mh.L.J. 401***.

3. The learned AGP submits that the Vigilance Cell has coloured photo copies of the record of paternal relatives of the petitioner, namely, father, paternal Aunt and paternal uncle. In the school record of these paternal relatives, the entry is either 'Magas' or 'Koli', subsequently the said entries are interpolated as 'Koli Malhar'. The same can be viewed from the Photo copies collected during the vigilance, which were placed on record. In the said documents, there appears to be interpolation. The mortgage deed, which is relied on in the case of the father of the petitioner is not produced by the petitioner. The father of the petitioner gave statement that he does not know where is the original and how he could get the photo copy of the same.

4. We have considered the submissions. We have also gone through the vigilance report in cases of the father of the petitioner and paternal uncle of the petitioner Bhikan. The entries in the present vigilance report found to be interpolated, were also subject matter for consideration in the earlier proceedings while granting validities to the paternal relatives. The vigilance report in the cases of uncle of the petitioner and father of the petitioner do not observe the entries are interpolated. There are two vigilance reports. The same are contrary to each other.

5. The photocopies which are placed on record in the present matter depict some kind of interpolation, but it does not show at what point of

time the same were interpolated, however, the fact remains that when vigilance was conducted in the cases of the uncle and father of the petitioner, the Vigilance did not find interpolation and found entries to be 'Koli Malhar'.

6. Considering the above and relying upon the judgment of the Division Bench of this Court in the case of *Apoorva (Supra)*, we pass the following order.

ORDER

- (i) The Committee shall issue the validity certificate to the petitioner of 'Koli Malhar', Scheduled Tribe.
- (ii) The said validity shall be subject to the decision that would be taken by the Committee in the proceedings reopened of the validity holders relied by the petitioner.

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

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE