

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

WRIT PETITION NO. 1070 OF 2022

Mitali Pravin Jawalgekar,
Age-19 Years, Occ. Student,
R/o. Betjavalga, Tq.Omerga,
Dist. Osmanabad.

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through it's Secretary,
Tribal Department,
Mantralaya, Mumbai-32.
 - 2] The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Through its Deputy Director (R).
 - 3] The Commissioner & Competent Authority,
State CET Cell, Maharashtra State,
Mumbai
[Controller of Admission Process],
8th Floor, New Exelsior Building,
AK Marg., Fort, Mumbai-1
- .. RESPONDENTS**

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Mr.Pratap V. Jadhavar, Advocate for the petitioner.
Mr.S.P. Tiwari, AGP for the respondent–State.
Mr.M.D.Narwadkar, Advocate for respondent no.3-Absent

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**CORAM : S.V.GANGAPURWALA &
S.G.DIGE, JJ.**

DATE : 01.02.2022

JUDGMENT Per : S.G.Dige, J. :

1] Rule. Rule made returnable forthwith. With the consent of both the sides, heard finally at admission stage.

2] Being aggrieved by the impugned order passed by respondent no.2 – Scheduled Tribe Certificate Scrutiny Committee, Aurangabad [hereinafter referred to as ‘the Scrutiny Committee’], thereby invalidating the caste claim of the petitioner as belonging to ‘Koli Mahadev’ Scheduled Tribe. The petitioner has approached this Court by invoking writ jurisdiction under Article 226 of the Constitution of India.

. The factual matrix of the case is as under:

3] The Competent Authority issued tribe certificate in favour of the petitioner as ‘Koli Mahadev’ Scheduled Tribe. The petitioner’s tribe claim was forwarded to the Scrutiny Committee through the concerned Authority for verification with all necessary documents. The Scrutiny Committee referred the claim of the petitioner to the Vigilance Cell for enquiry. The Vigilance Cell submitted its

report to the Scrutiny Committee. The Scrutiny Committee issued letter along with vigilance report to the petitioner and directed to submit her reply to it. The petitioner submitted her reply to the vigilance report. Considering the documents produced on record by the petitioner and vigilance cell report, the Scrutiny Committee invalidated the caste claim of the petitioner by the impugned order. Against the said order, this Petition.

4] Mr.Pratap V. Jadhavar, learned counsel for the petitioner submits that the Scrutiny Committee invalidated the claim of the petitioner without considering valuable documents produced by the petitioner. The Scrutiny Committee has already issued validity certificates in favour of the father of the petitioner, namely, Pravin Maruti Javalgekar, aunt namely Pramila Maruti Javalgekar and uncle namely Prashant Javalgekar as belong to 'Koli Mahadev' Scheduled Tribe. But this fact was not considered by the Scrutiny Committee. Learned counsel for the petitioner has relied upon the judgments in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claim & others** reported in [2012] 1 SCC 113 and in the case of **Apoorva d/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee & others** reported in 2010 [6] Mh.L.J. 401.

5] Mr.S.P.Tiwari, learned AGP for respondent nos. 1 and 2 submitted that father, uncle and aunt of the petitioner had suppressed the material facts from the Scrutiny Committee while obtaining caste validity certificates. These are contra entries in school record of petitioner's close blood relative which shows caste as 'Koli'. The petitioner failed in affinity test. Hence the order passed by the Scrutiny Committee is legal and valid.

6] We have heard learned counsel for the petitioner and learned AGP for the respondent-State.

7] Perused the order passed by the Scrutiny Committee. It appears from record that the oldest entry of the petitioner's cousin grand father is of year 1955 which shows caste as 'Lee Koli'. The Scrutiny Committee has observed that in school record of petitioner's close blood relatives the caste is mentioned as 'Koli' which are contra entries. But by providing false information, the petitioner is seeking benefit of Mahadev Koli. In school record of petitioner's father, sister, aunt and uncle, caste entry is mentioned as Koli Mahadev. In some of the petitioner's family members school record the caste is mentioned as Koli, M. Koli and Hindu Koli. Caste certificate of Mahadev Koli is issued to the petitioner's father, aunt and uncle by the Scrutiny Committee. At the time of issuing these caste certificates, all aspects were considered. Caste validity is

given to the cousin uncle of the petitioner under the order of this Court. The said order is not reviewed. Other caste validities are issued by following due procedure by Scrutiny Committee. The reliance can be placed on the judgment in the case of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Scrutiny Committee and others [supra]** and in the case of **Anita Atmaram Gaikwad Vs. State of Maharashtra & others** in Special Leave to Appeal [Civil] No.23081/2010 [Civil Appeal No.3881/2013] wherein it has been observed that the caste validity certificate issued in favour of close blood relative that too by following due procedure cannot be discarded by the Committee as it is substantive documentary evidence.

8] While recording negative finding in respect of affinity test, Scrutiny Committee has observed that surname of close blood relatives of the petitioner's family is Jamadar etc. This type of surname does not find in 'Koli Mahadev' Community. It is significant to note that out of four caste validity certificates issued in family of petitioner, one validity holders' surname is Jamadar. Moreover surname cannot depict any one's caste.

9] The genuineness of a caste claim needs to be considered not only by way of detail examination of the documents but also on the affinity test, which would include the anthropological and ethnological traits etc. of the

petitioner. The affinity test is not a litmus test. In this context, it may be useful to place reliance in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claim & others [supra]**, wherein it is observed by the Hon'ble Supreme Court, which reads thus :-

“22. It is manifest from the afore-extracted paragraph that the genuineness of a Caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, the following broad parameters could be kept in view while dealing with a caste claim :

(i) While dealing with documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-independence documents. In case the applicant is the first generation ever to attend School, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which

an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that Tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be sole criteria to reject a claim."

In the present case, caste validities are given to the close blood relatives of petitioner, including his father. The said orders are not reviewed.

10] In the light of above, we pass the following order:

ORDER

. The impugned order of the Scrutiny Committee is quashed and set aside. The scrutiny committee shall issue validity certificate to the petitioner of 'Koli Mahadev' (Scheduled Tribe).

2. The said validity certificate shall be subject to decision that would be taken by the committee in the proceedings re-opened of the validity holders relied by the petitioner.

3. Writ Petition is disposed of. No costs. Rule made absolute in above terms.

[S.G.DIGE, J.]

[S.V.GANGAPURWALA, J.]

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