

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3946 OF 2021

Pandurang Hanmant Yeranwad
Age: 19 years, Occu. Student,
R/o. Yedur, Post. Kunmarpalli,
Tq. Degloor, Dist. Nanded

... 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)
- ... Respondents

...

Mr. Anandsingh Bayas, Advocate for the petitioner.
Mr. S. B. Yawalkar, AGP for respondent Nos.1 and 2.
Mr. S. N. Lale, Advocate for intervener.

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 11-10-2022

JUDGMENT :- [Per Smt. Vibha Kankanwadi, J.]

. Rule. Rule made returnable forthwith. Heard learned
Advocates for the parties finally, by consent.

2. Claim of the petitioner for validating his caste as "Koli Mahadev" Scheduled Tribe is rejected by respondent No.2 by order dated 27.11.2020. Hence, this writ petition invoking the constitutional powers of this Court under Article 226 of the Constitution of India.

3. The brief facts leading to the petition are that the petitioner belong to Koli Mahadev - Scheduled Tribe as per presidential order. He has completed 12th standard and appeared for NEET examination for admission of medical course. His claim for issuing validity certificate was forwarded to respondent No.2 and along with his petition, he has attached various documents. The Scrutiny Committee then referred the claim of the petitioner to the Vigilance Cell and the report was submitted on 24.11.2020. The Scrutiny Committee, without calling original record of the school authority and stated to be in violation of the provisions of Rule 12(8) of the Scrutiny Committee Rule, 2003, proceeded further. Even in the report submitted by the Vigilance Cell, the school record of the petitioner stands as regards caste, as Koli Mahadev. There is no remark that it is in different handwriting or ink or any scoring is done or overwriting is done. However, the Vigilance Cell submitted one entry of a girl by name Sunita Hanmant and contended that she is the real sister of the petitioner. Though the petitioner has

sister by name Sunita, she never went to school and, therefore, that record does not belong to the petitioner's sister. There is no mention of surname to that record on which the Vigilance Cell relied. The other part of the report supports petitioner but only on the count that the residential place, occupation etc. does not match with the caste, the committee has ultimately rejected the claim of the petitioner. The petitioner's father being illiterate never went to school. In fact, the petitioner is the first person in his family to get education till 12th standard and, therefore, there are no such documents in the possession of petitioner which could indicate the caste. The petitioner's father, grandfather all are illiterate. Petitioner is having eight sisters. Out of them three are illiterate and five are literate. One of the sisters has expired at the age of seven years. By way of amendment to the petition, the petitioner has given further details about his family which were in fact before the Scrutiny Committee also in one or the other form. It is his categorical stand that his genealogy is different and the school record of the said girl by name Sunita Hanmant, whose birth date is shown as 13.12.1979 and date of admission in the school as 01.07.1985 is not his sister. His sister Sunita was born on 17.02.1981 and never entered the school. He has produced the birth certificate issued by Gramsewak, Grampanchayat Office, Yedur, Tq. Degloor, Dist. Nanded to support his contention. He has,

therefore, prayed for setting aside the impugned order dated 27.11.2020 passed by respondent No.2 and direct the committee to issue validity certificate.

4. Learned AGP representing the respondents strongly opposed the petition and supported the reasons given by respondent No.2. It has been contended that taking into consideration the fact that old documents has no reference about the caste of either petitioner or his father or any other family member, the recent documents cannot be taken into consideration. Further, there is intentional suppression of documents of Sunita Hanmant and the petitioner is unnecessarily claiming that his real sister is illiterate. The Vigilance Cell report has been duly considered.

5. In order to buttress his claim, the learned Advocate appearing for the petitioner has relied on the decision in ***Kumari Rutuja d/o Narsing Wanapwad Vs. The State of Maharashtra and Ors., [Writ Petition No.9061 of 2019]*** decided by this Court at the Principal Seat on 22.08.2019, wherein the settled law was considered that the person gets his caste by birth and the record therein shows that the petitioner's relatives i.e. grandfather, father and uncle were of the caste of 'Mannerwarlu' and missing letters 'LU' to the existing caste entry 'Mannerwar' will not be the ground to reject the tribe claim. Similar decision was taken in ***Omkar***

***Narsing Wanapwad Vs. The State of Maharashtra and others,
[Writ Petition No.2504 of 2019 with companion matters]***

decided by this Court on 06.12.2019.

Further, reliance has been placed on the decision in ***Mahesh Pralhadrao Lad Vs. State of Maharashtra and others, [2009(2) Mh.L.J. 90]***, wherein it has been held thus :-

" There is no requirement either under the Act or the Rules or the Judgment of the Supreme Court or of High Court that documentary evidence other than pre-constitution, pre-Presidential Notification or State Notification notifying caste or nomadic tribe to be excluded from being considered when a Committee considers an application for verification of Tribe/Caste status for the purpose of issuing a validity certificate. The procedure under the Rules is to enable the Committee if it is satisfied based on the documentary evidence of the claim to proceed to issue the validity certificate without conducting the Vigilance enquiry or asking the applicant to lead other evidence. It is only in that event that the committee is not satisfied from the documentary evidence produced on record about the genuineness of the claim the Committee then can call for the report of the Vigilance Cell. If the Committee still is not satisfied based on the Vigilance Report of the status of the applicant, then being given a show cause notice, it will be open to such applicant to lead other evidence. The burden lies on the applicant to

satisfy by evidence oral or documentary on the applicant being issued a show cause notice about his claim. In answer to the show cause notice, the applicant can submit his reply and also apply to lead further evidence as contemplated in terms of Section 9 read with Rule 12 of the Rules. Order of the Committee suffers from an error of law apparent on the face of the record inasmuch as the Committee has not considered the evidence available before it and consequently its order is set aside."

Further, reliance has been placed on the decision in ***Rajanna Ganganna Rashalawar Vs. State of Maharashtra and others, [2022(4) Mh.L.J. 283]***, wherein it has been held that :-

" When the forefathers of petitioner were illiterate and never visited school hence there was no possibility of producing any documents prior to independence. Petitioner and his brother were first to enter school for education and Vigilance Committee did not produce any material contrary to interest of petitioner. When the Scrutiny Committee ignored other documents produced by petitioner, then the impugned order deserves to be set aside."

Further, reliance has been placed on the decision in ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, [(2012) 1 SCC 113]***, wherein it has been held that :-

"Scope of enquiry by Vigilance Officer is not restricted to verification of documents. It includes affinity test in accordance with scheme of Act and Rules and is relevant and germane to determination of social status of claimant. Genuineness of caste claim is to be looked into broad perspective rather than mere verification of documents."

Further, reliance has been placed on the decision in ***Jaywant Dilip Pawar Vs. State of Maharashtra and others, [Civil Appeal No.2336 of 2011]*** decided by the Hon'ble Supreme Court on 08.03.2017, wherein it has been observed that :-

" The Scrutiny Committee has negated the claim of the appellants on the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential Order, 1956 and further they were not able to give any details of customs and traditions being observed by the said community.

In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to the community mentioned at Serial No.44 of part IX of Second Schedule of Act No.108 of 1976."

6. The learned Advocate for the petitioner has also supplied some article in respect of research by Tribe Research and Training Institute Maharashtra State and the documents received by that person under the Right to Information Act.

7. At the outset, it is to be noted that the facts of each case would govern the claim of a particular person that he belongs to a particular caste. Definitely, the caste of the forefathers would be carried by the petitioner and therefore, he was supposed to place on record all those documents, which can be said to be in his possession and or he could fetch from various authorities before the Scrutiny Committee to support his claim. Accordingly, he has produced various documents as well as he has produced the affidavits stating that the father and other elder members of his family never went to school. The age of the father of the petitioner on the date he sworn the affidavit on 21.09.2020 was 67 years. He has specifically stated that none of his family members has received validity certificate. Under such circumstance, there was less possibility of having a document prior to independence. The genealogy was also given by the sister of the petitioner. It is then to be noted that thereafter the sister of the petitioner i.e. Ujwala Hanmant Yeranwad appears to have received the validity certificate, which was certified by Caste Scrutiny Committee, Aurangabad by Outward No.2015 of 2013 dated 25.08.2015. She is the married sister of the petitioner, but it appears that the validity certificate is in her maiden name. Definitely, this document ought to have been considered properly by respondent No.2. Affidavit to that effect has been produced by her on 06.10.2020. Reference to that effect is

taken at Sr. No.19 in the impugned order. The said document has been discarded on the ground that the said document is not a supporting evidence. In fact, it is one of the good document to support the claim of the petitioner. Since the girl was married it appears that the father has stated that from his paternal side since nobody has received the validity certificate, he has given such kind of affidavit.

8. As regards the other documents, especially school record of the petitioner, it consistently states that the caste of the petitioner is Mahadev Koli. Much has been said about the suppression of document of another sister of the petitioner regarding her school record, however, if we consider that document, then it stands only in the name of Sunita Hanmant and no surname has been written. Now, after the amendment it can be also seen that the documents are on record regarding birth certificate of the real sister of petitioner that she was born on 17.02.1981, whereas the girl by name Sunita Hanmant appears to have been born on 13.12.1979 and was admitted to school on 01.07.1985. It would be the petitioner who can deny his relationship with another person and his documents would definitely show that the girl mentioned in that record appears to be different. It has been consistently stated by the petitioner that out of his eight sisters, three never went to

school and Sunita was one of those three. Under such circumstance, there is no question of having a record in any school in her name. These factors appears to have been not considered properly by respondent No.2. Another fact that is also required to be noted is that the Scrutiny Committee as well as the Vigilance Cell are insisting that some other persons are the family members of the petitioner, when the petitioner had denied by giving a genealogy. It appears from the record which was before the Scrutiny Committee and which is not placed before this Court also that the Vigilance Cell visited the school record and collected certain documents from the school and it is stated that those persons are the relatives of the petitioner, but then the Vigilance Cell has not taken care to record the statements of those persons in order to ascertain as to whether really they are the relatives of the petitioner or not. The affinity test is not to be carried out in such a manner. The concerned authority i.e. Vigilance Cell had every power to record the statements in order to ascertain the truth behind the documents and, therefore, the observations in **Anand (Supra)** would be applicable here.

9. As regards the other points are concerned that the petitioner does not belong to the area, we would rely on the decision in **Jaywant Pawar (Supra)**. When the blood relative i.e. the real

sister had received the validation certificate and even at that time there was Vigilance enquiry, then the said fact ought to have been considered and those documents being available with the committee should have been looked at by respondent No.2. The rejection of the claim of the petitioner by respondent No.2 is not based on sound principles and decisions. It is not sustainable in the eye of law. Therefore, it deserves to be quashed and set aside. Hence, the following order :-

ORDER

- i) The Writ Petition stands allowed
- ii) The impugned order passed by respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee, Aurangabad dated 27.11.2020 is hereby quashed and set aside.
- iii) It is declared that the petitioner belongs to "Koli Mahadev", Scheduled Tribe.
- iv) Respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is directed to issue validity certificate to the petitioner within a period of six weeks from the receipt of the copy of this order.
- v) Rule is made absolute in the aforesaid terms.

vi) No order as to costs.

vii) Pending civil application stands disposed of.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm