

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2308 OF 2022

1. Sanket S/o Satish Nidebane,
 Age : 19 years, Occu. Student,
 R/o : Kavthala, Tq. Devni,
 District Latur.

2. Suyog D/o Satish Nidebane
 Age : 21 years, Occ. Student,
 R/o : Kawthala, Tq. Devni,
 Dist. Latur.

3. Ashwini D/o Narayan Nidebane,
 Age : 25 years, Occ. Student,
 R/o : Kawthala, District Latur

... PETITIONERS

VERSUS

1. The State of Maharashtra
 Department of Tribal Development,
 Mantralaya, Mumbai -32.
 Through its Secretary

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

3. The Commissioner & Competent
 Authority State Common Entrance
 Test (CET), Cell (Medical),
 Regional Office : CET CELL (DMER),
 Govt. Dental College & Hospital Building,
 St. George's Hospital Compound,
 Near CST, Mumbai -400 001

.... RESPONDENTS

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Mr. S.C. Yeramwar h/f Mr. Vivek U. Jadhav, Advocate for Petitioners
 Mr. S.P. Tiwari, AGP for Respondent Nos. 1 and 2
 Mr. S.G. Karlekar, Advocate for Respondent No. 3

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WITH
CIVIL APPLICATION NO. 2387 OF 2022
IN
WRIT PETITION NO. 2308 OF 2022

Origanasation for Rights of Tribal
Mr. Aditya Indrajit Gambhire,
Age : 20 years, Occ: Student,
R/o : Sangamner, Tq. Sangamner,
District : Ahmednagar.

.... APPLICANT
(Intervenor.)

VERSUS

1. The State of Maharashtra
Through its 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
A.K. Marg, Fort Mumbai -1.
4. Sanket Satish Nidebane,
Age : Major, Occu: Student,
R/o:

.... RESPONDENTS

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Mr. S.N. Lale, Yelwatkar, Advocate for applicant.
Mr. S.P. Tiwari, AGP for Respondent Nos. 1 and 2
Mr. S.G. Karlekar, Advocate for Respondent No. 3
Mr. S.C. Yeramwar h/f Mr. Vivek U. Jadhav, Advocate for Petitioner

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

DATE : 18th FEBRUARY, 2022

ORAL JUDGMENT : (PER : S.G. Dige, J.)

1. **Rule.** Rule made returnable forthwith. With consent of parties the matter is taken up for final hearing at the admission stage.
2. The present petition is entertained to the extent of petitioner No. 1-Sanket S/o Satish Nidebane. So far as petitioner Nos. 2 and 3 are concerned, the learned counsel for petitioners submits that they may file separate proceedings.
3. By this petition, the petitioner is challenging the impugned decision dated 17th November, 2021 of the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad - respondent No. 2 (for short “the Scrutiny Committee”) invalidating the tribe claim of the petitioner as belonging to “Koli Mahadev” Scheduled Tribe community.
4. The brief facts of the case are as under-

The tribe certificate of the petitioner as belonging to ‘Koli Mahadev’, Scheduled Tribe was referred to respondent No. 2 - Scrutiny Committee for verification through the College of petitioner along with the documentary evidence of oldest entry of school record and service record of petitioner’s father, namely, Satish Dnaynoba Nidebane of the year 1969 to 1988, school records of petitioner’s real uncle Shyam Nyanoba Nidebane and real Aunts, namely, Sangita and Sunita from

year 1982 and validity certificate issued in favour of petitioner's uncle Narayan Vithoba Nidebane. The Scrutiny Committee had referred the matter for vigilance inquiry. After receiving vigilance cell report, the Scrutiny Committee served copy of report of the vigilance cell to the petitioner directing to submit reply to it. Petitioner had submitted reply to the vigilance report. However, the Scrutiny Committee invalidated the Tribe claim of the petitioner vide the impugned order. Hence, this petition.

5. It is the contention of learned counsel Mr. Yeramwar, for the petitioner that the Scrutiny Committee overlooked documentary evidence since 1969 showing the social status of the family of the petitioner namely as 'Koli Mahadev', Scheduled Tribe. The caste validity certificate is issued in favour of the petitioner's uncle. The Scrutiny Committee has discarded the evidentiary value of the validity certificate. The validity certificate has been granted by the Scrutiny Committee that too after considering all aspects of the matter, but while invalidating the claim of present petitioner, it was not considered by the Scrutiny Committee. The learned counsel for the petitioner relied upon the judgments in the cases of *Anand V. Committee for Scrutiny and Verification of Tribe Claims and others*, reported in *2011(6) Mh.L.J. (S.C.) 919* and *Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 and others* reported in *2010 (6) Mh.L.J. 401*.

6. Mr. Tiwari, learned AGP for respondent -State submitted that while passing the order the Scrutiny Committee has considered the documents produced by the petitioner and validity certificate issued in the family of the petitioner. After considering all documents, Scrutiny Committee has come to the conclusion that the petitioner has failed to prove his tribe claim as 'Koli Mahadev' scheduled tribe. The petitioner's relatives have shown their caste as "Koli". There are contra entries. The petitioner failed to prove affinity test. Hence, the order passed by the Scrutiny Committee is legal and valid.

7. The learned counsel Shri S.G. Karlekar for respondent No. 3 supported the arguments of learned AGP.

8. We have considered the submissions of the learned counsel for the parties and perused the record.

9. The petitioner is claiming that he belongs to "Koli Mahadev". There are documents produced on record which show caste of close blood relatives of petitioner as 'Koli Mahadev.' There are contra entries on record. Petitioner has denied the relationship with the relatives having contra entries. The respondents have not produced reliable evidence to prove the contra entries. The Scrutiny Committee has issued validity certificate to uncle of the petitioner, namely, Narayan Vithoba Nidebane. It also appears from the record that in the paternal family five caste validity certificates have been issued by the Scrutiny Committee. In

impugned order, the Scrutiny Committee has observed that the same are obtained by suppressing the material facts. The Scrutiny Committee has decided to review said orders, as caste validity of “Koli Mahadev” scheduled tribe is issued to close blood relatives of petitioner. Reliance can be placed on the judgment in the case of *Apoorva (Supra)*, this Court has observed that validity granted to the close blood relatives would be a relevant fact. The Scrutiny Committee in order has observed that the petitioner has failed in the affinity test. Five caste validities have been issued in family of petitioner including uncle of the petitioner. While granting caste validites all aspects were considered. In respect of affinity test, the Honourable Apex Court has held in *Anand’s case* (supra) that a cautious approach has to be adopted, and 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. It holds that the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. The affinity test is to be used to corroborate the documentary evidence and it is not to be used as a sole criteria to reject a claim.

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

ORDER

- (I) The Scrutiny Committee shall issue validity certificate to the petitioner of the “Koli Mahadev”

Scheduled Tribe.

(II) The said validity certificate 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.

(III) Rule is made absolute in aforesaid terms.

11. Writ Petitions are disposed of. No costs.

12. In view of disposal of writ petition, present civil application also stands disposed of.

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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