

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

WRIT PETITION NO. 3472 OF 2022

1. Aditi Ganesh Koli
Age : 20 Yrs, Occu : Education,
2. Kirti Govind Sonawne
Age : 26 Yrs, Occu : Education

R/o. Chorgaon,
Tq. Dharangaon, Dist. Jalgaon

...Petitioner

Versus

1. Schedule Tribe Certificate
Scrutiny Committee,
Nandurbar,
through its Member Secretary.
2. Municipal Corporation of Greater Mumbai
Nair Hospital Dental College, Mumbai
through its Dean.
3. The Maharashtra University of Health
Sciences, Nashik,
through its Registrar.

...Respondents

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Mr. Mahesh S. Deshmukh, Advocate for the Petitioners.
Mr. K.N. Lokhande, AGP for respondent/State.
Mr. K.C. Sant, Advocate for Respondent No.3.

...

**CORAM : R.D. DHANUKA &
S.G. MEHARE, J.J.**

DATED : 14th MARCH, 2022

ORAL JUDGMENT (PER S.G. MEHARE, J) :-

1. Rule. Learned AGP waives service of notice for respondents.

2. Rule made returnable forthwith. By consent of the parties, heard finally.

3. The petitioners are cousins. They belong to 'Tokre Koli' Scheduled Tribe and have impugned the order of rejecting their caste validity by the scrutiny committee/respondent no.1 by its common order dated 04.03.2022.

4. While pursuing studies in junior college, the Principal of the college referred their proposal for verification to respondent no.1. The petitioners have relied on the school records of their cousin grandfathers, namely Ziparu Parshuram Sonawane and Dhondu Babhatu Sonawane, who were admitted to the school on 14.08.1915 and 03.08.1918, mentioning their caste as Tokre Koli. Another old entry of school records relied upon by the petitioners was of their real grandfather, namely Rama Parshuram Sonawane, who was also admitted to the school on 01.12.1919 with the caste entry of Tokre Koli. The petitioners also relied upon the entry in the death register of their cousin grandfather, namely Ziparu, who died on 30.10.1970, mentioning his caste as Tokre Koli.

5. The vigilance cell conducted the inquiry on 16.10.2020 and 11.11.2020 and submitted its report to respondent no.1 on 26.11.2020. The vigilance inquiry conducted by the inspector has confirmed the blood relations of petitioners nos.1 and 2 as cousins.

6. Earlier, respondent no.1, by its order dated 29.11.2020, had

rejected the caste claim of petitioner no.1. She had challenged it by Writ Petition No.8472 of 2020. The High Court set aside the said order by order dated 06.01.2022 and issued the direction to the parties to appear before the caste scrutiny committee. A detailed reply was filed before the caste scrutiny committee by the petitioners. Respondent no. 1 did not expedite the inquiry. Hence, she was to file one more Writ Petition bearing No.2974 of 2022. By its order dated 02.03.2022, this Court directed the petitioner to remain present before the Committee on 03.03.2022. This Court also directed the Committee to decide the validation proceedings on or before 10.03.2022. Meanwhile, petitioner no.1 has been provisionally admitted to BDS in respondent no.2 college on 07.02.2022. Lastly, the Committee has passed the impugned order.

7. The learned counsel Shri M.S. Deshmukh for the petitioners has vehemently argued that the scrutiny committee has passed mechanical order without application of mind. The Committee has conveniently ignored the pre-independence documentary evidence. The Committee has assigned the incorrect reasons as regards the contra entry of different caste of the petitioners, their father and grandfather. The Committee has passed stereotyped order and wrongly made the case of Madhuri Patil applicable to the case at hand. The Committee has mixed two other caste or tried to interlink it in the caste of the petitioners, which are now fallen into Special

Backward Class since 1995. The learned counsel for the petitioners relied on the case of Anand Vs. Committee, (2012) 1 SCC 113 and the case of Rajnandini d/o Ramesh Jadhav and another vs The State of Maharashtra and others (Writ Petition No.1069 of 2022) decided by the coordinate bench of this Court on 27.01.2022. He prayed to allow the petition.

8. Per contra, the learned AGP submitted that the reasons assigned by the Committee declining the petitioners' claim are according to the settled law. The contra entries raise serious doubt about the scheduled tribe caste of the petitioners. The social status of the petitioners does not match/prove that the petitioner belongs to Tokre Koli Scheduled Tribe is also the correct observation of the Committee. He supported the impugned order.

9. Rule 12 of the Maharashtra Scheduled Tribe (Regulation and Issuance of Verification) Certificate Rules, 2003 ('Rules 2003' for short) prescribes the procedure to be followed by the scrutiny committee while verifying the scheduled tribe certificate. The Committee has to scrutinize the application received by it. It has to verify the information and documents furnished by the applicant. The application shall be registered in the register prescribed by the Chairman. Sub Rule 2 of Rule 12 further prescribes that if the scrutiny committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the applications to the

Vigilance Cell for conducting the school, home, and other enquiry. Sub Rule 3 imposes responsibility on the Vigilance Officer to go to the local place of residence and original place from which the applicant hails and usually resides, or in case of migration, to the town or city or place from which he originally hailed from. Under Sub Rule 4 of Rule 12, the Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or guardian, as the case may be. Sub Rule 5 of Rule 12 imposes a duty on the Vigilance Cell to examine the parents or guardian or the applicant to verify the tribe of the applicant. The enquiry report of the Vigilance Cell is subject to scrutiny by the scrutiny committee. Where the Vigilance Cell report favours the applicant and satisfies the scrutiny committee as genuine, the scrutiny committee may issue the validity certificate to the applicant. In case the scrutiny committee is not satisfied with the claim of the applicant on the basis of the Vigilance Cell and other documents available, it has to issue a show-cause notice to the applicant under Sub Rule 8 of Rule 12 along with the report of the Vigilance Officer calling upon reply or representation from the applicant. Then after the satisfaction with the genuineness of the claim, the Committee shall issue a caste tribe validity certificate.

10. The Rules discussed above clearly state that the scrutiny committee has to satisfy that the caste claim based on the document is

genuine. The satisfaction of the Committee is the basis to proceed ahead with the matter. If the Committee on the basis of material is not satisfied, then it may invite the Vigilance Cell to aid. The Vigilance Cell assists the Committee in collecting evidence of the genuineness of the documents and facts relied upon by the claimants. No doubt, the opinion of the Vigilance Cell is not binding, but it may help the Committee to arrive at a proper conclusion. Though the Vigilance Cell report is not binding on the scrutiny committee, it has some value for the satisfaction of the scrutiny committee.

11. The above rules indicate that the scrutiny committee must apply a judicious mind. Sub Rule 9A of Rule 12 is very specific that the scrutiny committee should satisfy regarding the genuineness of the claim and documents relied upon by the claimant. The Petitioner/ applicant has to file the documents as listed in Rule 11 of the above rules, and the Committee has to consider those documents for its satisfaction. Apart from the documents listed in Rule 11, the scrutiny committee shall also consider any relevant documents supporting the claim. Where a caste validity is claimed on the basis of a certificate of validity of a near relative, an affidavit of such person is also a legal requirement. The scheme for issuing validity certificates as provided under the Rules 2003 is a complete scheme, and the scrutiny committee shall not travel beyond the scheme.

12. The applicants have filed the school record of their cousin

great-grandfather and cousin grandfather along with the application before the Committee. Out of them, the school record entries of their grandfather and cousin grandfather are of the year 1915, 1918, and 1919, and the cousin great-grandfather was admitted to the school on 21.09.1948.

13. Regarding the pre-independence documents, respondent no.1 recorded the finding that in the cross-examination, the school headmaster deposed that in the school record of the grandfather and cousin grandfather of the year 1915, 1918, and 1919, there is no change and interpolation in the entries of the Tokare Koli caste. The vigilance report reveals the same facts. However, though there are entries of Tokre Koli, in the statement of the applicant, their father, grandfather, and other blood relation, the entries of Koli, Hindu Suryawanshi, and Hindu (OBC) are contra entries. Hence, the petitioners could not prove his Tokre Koli Scheduled Tribe claim.

14. In paragraph no.12 (iv) of the impugned order, the Committee further observed that petitioners by affidavit had denied the blood relation with the persons named at serial nos. 7, 8 and 10 in Vigilance report. However, though they have denied the relationship with those persons, the caste entries of Koli and Suryawanshi Koli in the name of petitioners, their grandfather and father found contra entries. The petitioners have not denied the entries though the blood relation with the persons named in column at page no.9 of the impugned judgment

at serial no.7, 8 and 10 have been denied by the petitioners, however, they have not denied their blood relations with the remaining persons in the same chart. Hence the documents filed by the petitioners and entries of Tokre Koli of the year before 1950 in Vigilance report are ineffective against the entries in the name petitioners' father and grandfather.

15. The Committee has to test the genuineness of the claim to its satisfaction. The satisfaction of the Committee is an essential factor to determine the caste validity claims. In legal parlance, 'satisfaction' means the discharge of an obligation by a party by complying with the requirement prescribed under any law for the satisfaction of an adjudicating authority. The term 'satisfaction' is a state of mind that sets brainstorming at rest, accepts the existence of facts as genuine, and removes all doubts and misconceptions about the facts. It gives confidence in given facts and circumstances; the facts exist. Under various laws, the litigant has to do the obligations for a particular thing. The burden to prove that the applicant belongs to a particular caste is on the applicant. In legal proceedings, the parties have to satisfy the Court or adjudicating authority by producing the documents, oral testimony and like. The term 'Proved' has been defined in Section 3 of the Evidence Act. The term 'Proved' properly means anything which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition,

and the proofs of matters of fact in general are our senses, the testimony of witnesses, documents, and like.

16. The procedure and practice prescribed under the various laws are the parameters for the satisfaction of the genuineness of a particular thing that helps the adjudicating authority arrive at a specific conclusion. For the satisfaction of the Scrutiny Committee regarding the genuineness of the caste claim, the Rules of 2003 have given a list of documents to be filed with the application. Sub-rule (4) of Rule 3 of the 2003 Rules provides that where no documents as mentioned in clauses (a) to (f) of Rule 3 are filled, and reasons are stated for failure to produce any one or more documents in the affidavit, the Committee may consider the same and after conducting an enquiry shall decide the claims on merit. Such vast powers are conferred on the Committee. In nutshell, the Committee has to satisfy legal requirements regarding the genuineness of the claim.

17. Under section 90 of the Evidence Act, a thirty year old document that comes from the proper custody is presumed to be genuine. Further, section 35 of the Evidence Act speaks that in the case of public documents, entries are made in discharge of public duty by an officer who is an authorized and accredited agent appointed for the purpose, itself a relevant fact. 'Genuine' means not fake or counterfeit, the authenticated. The records maintained by the schools and the Revenue department are maintained by authenticated public

officers. If the certified copies or original documents are produced, the Committee shall not doubt their genuineness at once since it has the presumptive value of its genuineness. The Committee should have borne in mind these legal provisions.

18. The reasoning given by the Committee in the impugned order in paragraph no. 12 (iv) raises a question, Whether the post-independence or new record make the pre-independence or old entries/record ineffective?

19. In Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Others, (2012) 1 SCC 113 in paragraph 18 (i), the Hon'ble Apex Court observed as under,

"18. (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 the 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 the 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."

20. In the present case, the pre-independence documentary

evidence filed by the petitioners is not doubted by the Committee nor alleged that it is a tampered document. In the absence of evidence in rebuttal, the presumption favours the appellants. What is contra evidence? Contra means a clear difference between the two things. So far as the enquiry under the caste claim, specific parameters have been provided in the Rules of 2003. In regard to the documents which should carry more evidential value, the Hon'ble Apex Court has in Anand's case cited supra in paragraph 20, observed thus :

“It is pertinent to note that some of these documents date back to the pre-independence era, issued to the appellant's grandfather and thus, hold great probative value as there cant be no reason for suppression of facts to claim a non-existence benefit to the 'Halbi' Scheduled Tribe at that point of time.”

21. In Anand's case, cited supra, the Hon'ble Apex court further observed in paragraph no. 19 as follows,

“19. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all requisite documents in support of his claim. The caste scrutiny committee merely performs the role of verification of the claim and, therefore, can only scrutinize the documents and material produced by the applicant. In case the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim.”

22. The role of the Committee, as observed above, has only to scrutinize the documents produced by the applicant and believe it if it satisfies it. One may doubt if the documents are tampered with or

appear fake. The documents filed by the appellants are thirty years old. Where the contemporary documents are contrary, it may be appropriate to doubt their veracity or truthfulness. It is inappropriate to compare the post-independence/old genuine documents with the post-independence documents and treat it contra evidence. The judicial pronouncements held that a pre-independence document has probative value then discarding such documents without justifiable reasons is contrary to law. The Committee did not consider the presumption of the genuineness of the thirty-year-old document and the record maintained by the Public Officer in due course.

23. It is a rule that the adjudicating authority has to read the evidence as a whole. The authority cannot pick and choose, the documents attached with the application for obtaining the scheduled certificate. The Committee did not record the findings that the documents filed by the petitioners were fake or tampered. The Committee has observed that the Headmaster deposed that the entries of the caste of grandfather and cousin grandfather of the petitioners of Tokre Koli are not tampered. It is also not the finding of the Committee that the witness is untrustworthy of credit. Hence the negative findings on the points are against the doctrine of appreciation of evidence. Evaluating the material placed before the Committee there appears no reason to disbelieve the claim of appellants.

24. The above discussion led us to hold that the Committee has not examined the documents and other material before it in proper perception and as per the rule of appreciation of the evidence. We are convinced that the claim of the petitioners was genuine and documents relied upon by, inspires the confidence.

25. For the reasons stated above, we are of the opinion that the impugned order warrants interference. Hence, we quash and set aside the impugned order dated 04.03.2022, passed by respondent no. 1 and pass the following order;

ORDER

- i) Writ Petition is allowed in terms of prayer clause “A” and “B”.
- ii) Respondent no.1-Committee to issue Validity Certificate in favour of the petitioners being “Tokre-Koli” Schedule Tribe within a period of one week from today.
- iii) Rule is made absolute in the above terms. No order as to costs.

(S.G. MEHARE. J.)

(R.D. DHANUKA, J.)

Mujaheed//