

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1665 OF 2022

Hamza Shamoon Mulla

...Petitioner

Vs.

State of Maharashtra through its Secretary

...Respondent

Mr. R. K. Mendadkar for the Petitioner.

Mr. N. C. Walimbe, Assistant Government Pleader for Respondent No.1 -
State.

Mr. Sameer P. Khedekar for Respondent No.3.

Mr. Vaibhav Rajam, Law Assistant for Respondent No.2-present.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATED : 20 DECEMBER 2022.

P. C. :

Heard.

2. The claim for grant of validity in favour of Petitioner as that of belonging to Kokani Scheduled Tribe is rejected vide order impugned dated 20/11/2020.

3. The Petitioner has applied to Respondent Committee for verification of his tribe claim for education purpose on October 2020 as against the caste certificate dated 11/5/2020 issued by the Sub-divisional Officer, Ulhasnagar.

4. In support of the said claim for validity, the Petitioner has relied on certain entries of his blood relations.

5. The scrutiny committee after having received the documents and having noticed that tribe claim of the Petitioner is suspicious, pursuant to provision of Rule 12(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 referred the claim to the vigilance cell. Vigilance cell officer submitted report dated 2/11/2020 to the scrutiny committee. Since the report was adverse to the interest of the Petitioner, the Petitioner was called upon to submit his explanation to the vigilance cell report. The Committee having noticed that the Petitioner has failed to satisfy not only from the documentary evidence but also failed to satisfy the affinity test, rejected the claim of the Petitioner. As such this petition.

6. So as to substantiate the contention, Mr. Mendadkar appearing for the Petitioner would urge that grandfather and cousin grandfather viz., Mulla Ahmed A. Kadir Khatib and H. Abdul Rahiman Mulla respectively were admitted to primary school at Ambarnath. According to him said record was spoiled in the flood and as such entries became faint. On the

original record the entries were rewritten and as such there is impression of interpolation which otherwise is not the case. According to him Headmaster of the school has already issued communication in favour of the Petitioner thereby specifically stating and certifying the aforesaid fact. He has drawn support from communication dated 30/1/2020 so also 3/2/2020 issued by the Headmaster of the said school, so as to substantiate his case. As such according to Mr. Mendadkar the pre-constitutional scheduled Tribe order entries of 1931-1932 supports the case of the Petitioner as that of belonging to Kokani Scheduled Tribe which the committee has failed to consider. As such he would urge that the order impugned is liable to be quashed and set aside.

7. Mr. Walimbe, learned Assistant Government Pleader has produced original record for perusal of the Committee based on the documents which were part of the proceedings. Mr. Walimbe would urge that besides entries of grandfather and cousin grandfather there are no other supporting documents so as to ensure that the Petitioner belong to Kokani Scheduled Tribe. He would urge that even the pre independent constitutional entries are also in cloud in view of the report of the Headmaster. As such he has sought dismissal of the petition.

8. The case of the Petitioner rests on the school record entries of grandfather and cousin grandfather viz., Mulla Ahmed A. Kadi Khatib and H. Abdul Rahiman Mulla respectively. In the school record, the caste and sub-caste entry in relation to both these students reflects as Musalman

(Kokani). During vigilance cell enquiry the aforesaid entries are certified to have been overwritten. The Headmaster thereafter certified that there is difference in serial number and name of old and new entries and there is difference in ink and handwriting of original and new entries.

9. It appears that since the Petitioner was made available aforesaid adverse material, the Petitioner has approached Respondent-Headmaster of the school and has secured two communications one addressed to Tahsildar on 30/1/2020 and another addressed to Vigilance Cell Officer thereby providing information as regards the original record being damaged in the flood and provided colour photo of the entries as are existing.

10. In the aforesaid background, if we appreciate the material which was placed before the Committee in the backdrop of section 8 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (the Act), the burden is on the Petitioner to prove that he belongs to Kokani Scheduled Tribe.

11. Once the objectionable material was placed on record of the committee and the same was made available to the Petitioner, it was for the Petitioner to demonstrate that the original entries which are overwritten are not affecting the claim of the Petitioner adversely as there is no insertion or

overwriting.

12. Apart from above, it was expected of him to examine the witness in support of his plea so as to establish the said material before the Committee which he has failed to.

13. Apart from above, if we examine the other record in relation to claim put forth by the Petitioner, subsequent entries in relation to his cousin grandfather which are of pre constitutional era reflects only Musalman (Kokani) as religion and there is no entry as to the caste of all the blood relations.

14. As such it cannot be said that the committee has erred in deciding and rejecting the claim of the Petitioner as that of belonging to Kokani Scheduled Tribe as the Petitioner has failed to discharge his burden under section 8 of the Act.

15. As such it can be inferred that the Petitioner has not substantiated his claim based on documentary evidence. In addition to above, the Committee has also applied affinity test and has noticed that the Petitioner has failed to specify that he belongs to Kokani Scheduled Tribe category.

16. In view of above, no error or material illegality is noticed in the impugned order passed by the scrutiny committee. The petition is

dismissed.

17. We have appreciated the claim of the Petitioner even from the explanation tendered to the vigilance cell report. The Petitioner has failed to substantiate his claim so as to infer that material collected during vigilance cell enquiry cannot be considered adverse to the interest of the Petitioner.

(SHARMILA U. DESHMUKH, J.)

(NITIN W. SAMBRE, J.)