

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO.132 OF 2023

Yogesh s/o Madhukar Deoraj,
Age-28 years, Occu-Nil,
R/o Plot No.108, Gut No.60,
Shiv Colony, Jalgaon,
Tal. and Dist. Jalgaon

-- PETITIONER

VERSUS

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

2. The Scheduled Tribe Certificate
Scrutiny Committee, Dhule Division,
Dhule, Through its Member-
Secretary

-- RESPONDENTS

Mr.S.R.Barlinge, Advocate for the petitioner.
Mr.S.G.Sangle, AGP for the respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : JANUARY 12, 2023

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by
consent of the parties.

2. The petitioner is a 28 years old student who has passed the MPSC examination and would now be appearing in the interviews. He is aggrieved by the impugned order dated 10.10.2022 passed by respondent No.2 / competent committee vide which his claim of belonging to "Tokre Koli Scheduled Tribe" has been invalidated.

3. We have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the record placed before us and the judgments cited.

4. The claim of the petitioner has been invalidated in the light of the decision of the Committee dated 21.07.2007 refusing to grant validity to Muktai d/o Gulab Deoraj. The said decision of the Committee was tested before this Court in WP No.8776/2010. Vide judgment dated 06.10.2010, the writ petition filed by Muktai was dismissed. It was held in paragraph No.6 to 10 as under :-

“6. The Apex Court, in the case of Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar & others, reported in 2009 (1) Mh.L.J. 1, in paragraphs 20 and 21, has observed thus:

20 “One of the questions which has been raised before us is as to whether the offer of

appointment made in favour of the respondent No.1 by the Maharashtra Pollution Control Board dated 16.03.1998 is final so as to attract the direction contained in paragraph 38 of Milind (supra).

Where factual foundation arrived at by a committee authorised in this behalf concludes that a person is not a member of the Scheduled Tribe would remain operative unless set aside by a superior Court. The judgment of the High Court in favour of the respondent No.1 was rendered on a wrong premise. The claim of the respondents may be that he belonged to the Halba tribe but, therefor, no factual foundation was placed before the High Court. The High Court relied solely on its earlier decision to hold that Koshti would come within the purview of the Scheduled Tribe of Halba or Halbi. The decision was rendered in 1988. The records maintained by the school where the respondent studied were not placed before the High Court. Only when the Caste Scrutiny Committee, a statutory committee, proceeded to enquire into the matter, the truth came out.

We do not mean to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed

out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another Committee while examining the case of other members of the family at some details. If it is found that in granting a certificate in favour of a member of a family, vital evidences had been ignored, it would be open to the Committee to arrive at a different finding.

21 We reiterate that to fulfill the constitutional norms, a person must belong to a tribe before he can stake his claim to be a member of a notified Scheduled Tribe. When an advantage is obtained by a person in violation of the constitutional scheme, a constitutional fraud is committed.”

7 It can, thus, be seen that the Apex Court has clearly held that if it is found that in granting a certificate in favour of a member of a family, vital evidence has been ignored, it would be open to the Committee to arrive at a different finding. It has also been observed that to fulfill the constitutional norms, a person must belong to a tribe before he can stake his claim to be a member of a notified Scheduled Tribe.

8. Undisputedly, caste of the petitioner's father, in his school record, has been noted as "Suryawanshi Koli"

on 06.06.1968. It is pertinent to note that the said entry is also post- Constitutional. It can, further, be noted that insofar as the entry in the service book of petitioner's father is concerned, the same was also initially "Suryawanshi Koll" and subsequently it has been rectified as "Tokare Koli". It is pertinent to note that the pre- Constitutional document i.e. entry regarding petitioner's father's father (grand father of the petitioner) in the Births & Deaths Register, has shown the caste as "Koli". It is not in dispute that "Koli" and "Suryawanshi Koli", both were recognised as the Other Backward Class in the State of Maharashtra. It appears that accordingly petitioner's father has entered into his school record the caste as "Suryawanshi Koli - magas varga" i.e. backward class. Not only that, but the entry pertaining to petitioner's father's real brother namely Vijay and Gopal have shown their caste in the school record as magasvargiya Koli' backward class Koli). In the light of these entries, it is clear that the entire documentary evidence was clear to show that petitioner's father belonged to either "Koli" or "Suryawanshi Koli", which were recognised as Other Backward Class and did not belong to "Tokare Koli", a Scheduled Tribe.

9. *We are not inclined to accept the contention raised by Shri M.S.Deshmukh, learned Counsel for the petitioner, that once the validity is granted to one*

member in the family, it should not be ignored unless it is found to be obtained by fraud or without jurisdiction. If the Committee issued the validity certificate by ignoring the vital documentary evidence, we find that the said decision would be termed as irrational, inasmuch as, the Committee has ignored to take into consideration the vital piece of evidence. In that view of the matter, we find that it will squarely be permissible within the scope of judicial review, permissible for this Court under Article 226 of the Constitution of India. We have no hesitation in holding that the Committee had erred in granting a validity certificate in favour of petitioner's father ignoring the vital documentary evidence showing caste of petitioner's father as "Suryawanshi Koli" and petitioner's father's father's caste as "Koli". Various Division Benches of this Court in the cases:

- (1) Hitendra Raghunath Mahale Vs. The State of decided on 5th December, 2009): Maharashtra & others (Writ Petition No.2151 of 2007*
- (2) Nikhil B. Deore Vs. State of Maharashtra & others. (Writ Petition No.7410 of 2008 decided on 5th November, 2009):*
- (3) Jaywant Dilip Pawar Vs. State of Maharashtra & others. (Writ Petition No.2152 of 2007 decided on 5th December, 2009):*

- (4) *Subhash More Vs. State of Maharashtra & others (Writ Petition No.1953 of 2007 decided on 22nd March, 2007);*
- (5) *Milind Ramdas Sonavane Vs. State of Maharashtra & others (Writ Petition No.1112 of 2007 decided on 5th April, 2007);*
- (6) *Zartar Zakir Hussain Abdul Gani Vs. State of Maharashtra & others (Writ Petition No.4835 of 2009 decided on 18th February, 2010):*
- (7) *Kum. Seema S. Bhadekar Vs. State of Maharashtra & others. (Writ Petition No.2175 of 2008 decided on 16th June. 2008):*
- (8) *Bhavana Atmaram Suryawanshi Vs. State of Maharashtra & another (Writ Petition No.5608 of 2008 decided on 23 September, 2008):*
- (9) *Prasad s/o Pralhad Ingle Vs. State of Maharashtra & another (Writ Petition No.5705 of 2009 decided on 13th November, 2009);*
- (10) *Baliram Babu Patil Vs. State of Maharashtra & others (Writ Petition No.5707 of 2008 decided on 17th June, 2009):*
- (11) *Pradeep Ramchandra Koli Vs. State of Maharashtra & others (Writ Petition No.1256 of 2003 decided on 23 July, 2010); and*
- (12) *Mohd. Hussain s/o Shaikh Abdul Rahman Vs. State of Maharashtra & others (Writ Petition No.2721 of 2007 decided on 22 February, 2008);*

have consistently taken a view that validity should not be granted to a candidate only on the ground that at an earlier point of time, validity certificate has been granted to a family member of such a candidate and that the Committee is within its jurisdiction to consider the claim of a particular candidate on its own merits.

10. *Since the Committee, by an impugned order, has found that while granting validity in the case of petitioner's father, the Committee had ignored vital documentary evidence showing the caste of petitioner's father and grand father as "Suryawanshi Koll" and "Koli" and that in view of the law laid down by the Apex Court in the case of Kum. Madhuri Patil, wherein it has been held that the said pre-Constitutional records have great probative value, we do not find that the Committee has committed any error in rejecting claim of the petitioner.*

5. It is, therefore, obvious that Muktai's claim of belonging to "Tokre Koli Scheduled Tribe" category was negated on the ground that her grand father and her father were belonging to Suryawanshi Koli Tribe.

6. The learned AGP has strenuously canvassed on this aspect of the case contending that the present petitioner's claim has been rejected on

account of invalidation of Muktai and the further confirmation of such invalidation by the judgment of this Court, having been suppressed by several other validity holders, who have subsequently received their validities. In the light of this statement, we turn to the family tree tendered by the present petitioner Yogesh Madhukar Deoraj. In this family tree, we find that the petitioner's biological sister Hemangi has been granted validity by the judgment of this Court dated 03.08.2021 delivered in WP No.7307/2021 (Coram : S.V.Gangapurwala and R.N.Laddha, JJ.). The father of the petitioner and Hemangi, namely Madhukar has been granted validity certificate in 2007 by the Committee. We make it clear that we are dealing with the family tree as is presented by the petitioner before this Court in connection with those branches in which we find validity holders. Madhukar's biological father is Chhagan who has been granted a validity certificate by the order of this Court dated 31.03.1998 delivered in WP No.2741/1991. As such, the petitioner's biological sister, their father Madhukar and the biological uncle Chhagan, have been granted validity certificates.

7. Chhagan Sitaram and Madhukar Sitaram are the sons of Sitaram Goba. Goba s/o Bhila had 3 biological children, namely Sitaram,

Tarachand and Pundlik. From Tarachand's branch, his grand son Ujjwal s/o Vilas, have been granted validity certificate under the order of this Court (Coram : S.V.Gangapurwala and Shrikant D.Kulkarni, JJ.) dated 13.01.2021 delivered in WP No.356/2021. Purnima d/o Chunilal Devraj who was granted validity certificate by this Court vide order dated 23.12.2021 in WP No.12362/2021 and Madhavraj Rupchand in WP No.8284/2021, are not mentioned by the present petitioner in the family tree that he has produced before the Competent Committee. In the family tree produced in the case of Muktai, Chunilal finds a mention. Muktai is the daughter of Gulab Magan Devraj. Chunilal is the s/o Bhaulal who in turn is the s/o Kashiram and Kashiram is the son of Motiram. From the family tree of Muktai, we noticed that it relates even to the earlier generation i.e. the father of Bhila and Raoji, namely Wedu s/o Thaka. Wedu's biological brother Devchand is another branch. Bhila's son is Goba. Bhila is shown as a great great grand father of the validity holders who are before us in connection with the case of the petitioner Yogesh.

8. In the above backdrop, we turn to the judgment delivered by this Court (Coram : S.V.Gangapurwala and S.V.Dige, JJ.) dated 23.12.2021

in the case of Purnima (supra) and Madhavrao (supra). The relevant paragraph Nos. 3 to 9 are reproduced as under :-

"3. The learned A.G.P for respondents/State submits that the petitioners did not bring it to the notice of the committee earlier that the tribe claim of one of the paternal relative of the petitioners namely Muktai d/o Gulab Deoraj was invalidated. She filed Writ Petition No. 8776 of 2010. Under order dated 06.12.2010 the Division bench of this Court dismissed the writ petition confirming the judgment of the scrutiny committee in view of the contra evidence on record. The committee has considered the contra evidence on record. In view of the contra evidence on record the committee has come to the correct conclusion. In addition, the petitioners have also failed in the affinity test.

4. The relationship of the petitioners with the validity holders is not disputed. The Division Bench of this Court in the year 1998 had directed the committee to issue validity certificate to one of the paternal relative of the petitioners namely Chhagan under judgment and order dated 31.03.1998 in Writ Petition No. 2741 of 1991.

5. There appears to be some contra entries on record. Some of the contra entries though not all were subject matter of vigilance in case of paternal relatives of the petitioners to whom validity certificates are issued. In case of Chhagan Sitaram Deoraj, Hemangi Madhukar Deoraj and Ujwal Vilas Deoraj the paternal relatives of the petitioners, the validity certificates are issued under the orders of this Court, whereas, under the orders of this Court the invalidation is confirmed in case of one paternal relative namely Muktai d/o Gulab Deoraj. The reliance is

placed on the judgment of the Division Bench of this Court in a case of Anil Shivram Bandawar in Writ Petition No. 8107 of 2019 dated 26.07.2021 to contend that failing to produce before the scrutiny committee the old records does not amount to playing fraud while seeking tribe validity certificate.

6. It is stated by the learned A.G.P that the committee is contemplating steps for review of the judgments of this Court wherein validities are issued.

7. Considering the three judgments delivered directing issuance of validity certificates i.e. the judgment prior to and subsequent to the invalidation in case of Muktai d/o Gulab Deoraj and particularly the orders passed in a case of Hemangi Madhukar Deoraj dated 03.08.2021 in Writ Petition No. 7307 of 2021 and order dated 13.01.2021 in Writ Petition No. 356 of 2021, we follow the same course and pass the following order.

8. The committee shall issue validity certificates to the petitioners of "Tokre Koli" (Scheduled Tribe).

9. In case, the judgment of this Court in Writ Petition No. 2741 of 1991 dated 31.03.1998 is reviewed and/or the claim of the paternal relatives of the petitioners is subsequently invalidated after reopening of the proceedings, then the committee may take appropriate steps against the petitioners."

9. This Court has, therefore, dealt with the invalidation of Muktai and in the light of the judgment delivered in Anil Shivram Bandawar (supra), has found that the failure to produce old records before the

Scrutiny Committee would not amount to playing fraud. Nevertheless, this Court has recorded that if the judgment of this Court dated 31.03.1998 in Chhagan Sitaram Deoraj is reviewed or any of the claims of the paternal relatives of the petitioner are subsequently invalidated after re-opening of the proceedings, the Committee would initiate the same action against the petitioners namely Purnima and Madhavrao.

10. In the above premises, we turn to the recent orders passed by this Court in Hemangi Madhukar Devraj (supra) and Ujjwal Vilas Devraj (supra). Taking into account these orders r/w the order of this Court in Purnima and Madhavrao considering the invalidation of Muktai, these petitioners have been granted validity certificates by this Court. None of the orders / judgments cited before us granting validity certificates to the paternal blood relatives of the petitioner have been subjected to a review or a challenge before the Hon'ble Supreme Court. In this backdrop, the law laid down in *Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and Ors. reported in 2010 (6) Mh.L.J. 401*, would be applicable. We are of the view that it would create uncertainty amongst the paternal blood relatives if we invalidate the claim of the petitioner. His biological sister Hemangi has

been granted validity certificate by this Court. Their biological uncle Chhagan has also been granted validity certificate by this Court. Therefore, father Madhukar has been granted validity certificate by the Committee. Wherever the Committee has granted validity certificates, notices for re-opening of their cases for re-scrutiny are yet to be issued, though, as is pointed out by the learned AGP, that a decision to re-open cases has been taken in Ujjwal, Hemangi and Chhagan.

11. The above fact situation leads us to the judgment delivered by this Court (Coram : S.C.Dharmadhikari and Bharati H.Dangre, JJ.), in **Shweta Balaji Isankar Vs.State of Maharashtra and others, in WP No.5611 of 2018, dated 27.07.2018**, wherein a similar controversy was considered in paragraph Nos. 2 to 4 and a conditional order was, therefore, passed in paragraph No.8. It is apposite to refer to paragraph Nos. 2 to 4 and 8 hereunder :-

"2. On the earlier occasion, we found that though the petitioner produced credible evidence in the form of certificates of validity issued to her real uncle Govind Sambhaji Isankar and which concededly has been issued way back on 5th December 2005 and another certificate of validity dated 5th September 2006 to his cousin uncle Ramdas Sambhaji Isankar, the Committee finds that the certificate of validity issued to the real uncle Govind, is not free from suspicion. It is held by

the Committee in the impugned order that a notice to show cause has been issued to said Govind on 14th September 2017, calling upon him to show cause as to why this certificate of validity should not be cancelled as its issuance is vitiated by fraud or suppression of material facts by the said Govind.

3. On such a finding being rendered by the Committee, we called upon the learned AGP on the earlier two occasions to produce the record. We also indicated to the learned AGP as to how the certificate of validity is denied to the petitioner though she has established her relationship with the said Govind and only on the ground that a show cause notice has been issued, but no proceedings in furtherance thereof came to be initiated till date. The learned AGP sought time to file an affidavit. Now, the Joint Commissioner, Schedule Tribe Scrutiny Committee, Aurangabad has filed an affidavit in reply. That is taken on record. The said affidavit admits that the certificate of validity has been issued to her real uncle and cousin uncle of the petitioner. The affidavit admits that the petitioner relies heavily on these two documents, but clarifies that there is a suppression detected from the original record of the certificate holder and that is how a show cause notice has been issued to Govind. The show cause notice could not be taken to its logical end on account of the huge pendency of cases before this Committee. In all, 7,000 matters were pending on the date when this Joint Commissioner took charge and he has reduced the pendency by 2500 cases being decided. In the circumstances, he says that appropriate orders and directions be issued by this Court.

4. We are not impressed by this explanation and the justification not to

proceed against a person who has perpetrated a fraud on the public. If it is a serious allegation and which is termed as fraud, then, it should have been taken to its logical end. Mere issuance of a show cause notice in the present case would not suffice for there are two certificates of validity relied upon. The only reason assigned in the impugned order to discard them, cannot be sustained. The justification in the above affidavit is also not enough to straightaway discard the certificates of validity issued in the family. It is conceded that other reasons assigned in the impugned order cannot be supported in law.

8. This order does not prevent the Committee from proceeding against Govind in accordance with law and needless to further clarify that in the event Govind's claim is invalidated, all the consequences shall be taken by the petitioner as well."

12. In view of the above, this petition is partly allowed. The impugned order dated 10.10.2022 is quashed and set aside. We direct the Committee to issue a Tokre Koli Scheduled Tribe validity certificate to the petitioner on or before 31.01.2023.

13. Akin to the orders passed earlier by this Court and in Shweta Isankar (supra), if the validity certificates of any of the paternal blood relatives on whom the petitioner has placed reliance, is subjected to re-opening of the case, and suffers invalidation and consequences flowing

therefrom, the same consequences would befall upon the present petitioner and the Committee would be justified in initiating appropriate steps in this regard.

14. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)