

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO.402 OF 2022

KIRAN KAILAS NIKAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.P.V.Jadhavar, Advocate for the petitioner.
Mr.S.G.Karlekar, AGP for respondent Nos. 1 to 3.

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

DATE : JANUARY 31, 2023

PER COURT :

1. This case pertains to the claim of the petitioner for issuance of a Tokre Koli Scheduled Tribe Certificate.

2. On 28.11.2022, we had passed the following order :-

"1. This matter has been adjourned since 10 January, 2022 by the petitioner

2. The learned AGP submits that this is a case of fraud.

3. The learned advocate for the petitioner submits that he would place on record old documents indicating the social status of the ancestors of the petitioner as "Hindu Tokre Koli". He seeks two weeks time.

4. *List this petition on 13 December, 2022 in the "passing orders" category."*

3. On 13.12.2022, the following order was passed :-

"1. Pursuant to our order dated 28/11/2022, the petitioner has preferred an affidavit dated 07/08/2022 (sic. 07/12/2022) and has placed a photostat copy of Students Entrance Register of Zilla Parishad Primary School, Shirud Digar, Taluka Shahada, Dist. Nandurbar, which is issued on 05/12/2022. The learned A.G.P. submits that these documents need to be scrutinized by the Committee and a verification exercise is necessary because these documents appear to be forged.

2. Stand over to 09/01/2023, in the urgent category.

3. In the meanwhile, we direct respondent No.2 to take advantage of the Vigilance Cell and conduct a scrutiny/verification of the said documents. Let a report in a sealed envelope be placed before this Court on the next date.

4. Needless to state, until we see the report, we would not permit the petitioner to withdraw this petition."

4. The Police Inspector of the Vigilance Cell associated with the competent Tribe Committee at Nandurbar, tendered his report in a sealed envelope. After opening the envelope on 09.01.2023 in the Court, we had perused the report, and we had passed the following order on 09.01.2023 :-

"1. In pursuance to our order dated 13" December, 2022, a report dated 27 December, 2022 in a sealed cover, has been submitted by the Police Inspector of the Vigilance Cell associated with the competent Tribe Committee at Nandurbar.

2. We have opened the envelope cover in the Court. We have perused the report. A detailed narration of how interpolation and forging of the records has occurred in the case of Rupa Koli, great grandfather of the petitioner. So also, the manipulation of records with regard to Dongar Rupa Koli and Parbat Rupa, is also narrated. Based on the report, it appears that forging of documents has been done.

3. The report is marked as "X-1" for identification. There are 3 spreadsheets, which are colour photostat copies of general register from the Marathi school at Mauje Shirud Digar, Taluka Shahada, District Nandurbar. These three spreadsheets are collectively marked as "X-2" for identification. The copy of the communication dated 26 December, 2022 between the Police Inspector of the Vigilance Cell and the Headmaster of the said school, is marked as "X-3" for identification. The extract of the school general register No.1 dated 27 December, 2022 issued by the Headmaster of the school is marked as "X-4" for identical. The said envelope contains the documents viz "X-1" to "X-4".

4. All the documents viz "X-1" to "X-4" are placed in the envelop cover and handed over to the Registrar (Judicial) of this Court.

5. We deem it appropriate to grant liberty to the petitioner and the learned AGP, to collect copies of "X-1" to "X-4", from the learned Registrar (Judicial) of this Court, within one week. Thereafter, the petitioner would file an affidavit as a response to the same, on or before 27 January, 2023.

6. *Considering the above, we would not entertain a request from the petitioner to withdraw this petition.*
7. *List this petition on 31 January, 2023 in the "urgent orders" category."*

5. The report of the learned Registrar (Judicial) dated 17.01.2023 indicates that the learned Advocate for the petitioner appeared before him and by tendering an application seeking supply of copies of the documents X-1 to X-4, the said documents were supplied to him. He acknowledged the receipt of the said documents. The report of the learned Registrar is on record.

6. After perusing the documents, the learned Advocate for the petitioner pleads on instructions that the petitioner be granted the liberty to withdraw this petition. Considering the glaring facts and circumstances and taking into account that the petitioner had tendered an affidavit dated 07.12.2022 in this Court justifying his stand, that we are unable to permit the petitioner to withdraw this case. There appears to be a serious attempt of committing a fraud on Court.

7. In view of the above, we have considered this case in the light of

Section 340 of the Criminal Procedure, which reads as under :-

"340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, " Court" has the same meaning as in section 195."

8. We had kept the said provision in focus when we directed the Vigilance Cell to conduct a scrutiny/verification of the documents, which was, in effect, an inquiry. Having conducted such an inquiry and since the report has come before the Court, which is marked as X-1 and the documents are marked as X-2 to X-4, we are of the considered opinion that the compliance of sub section 1 u/s 340 has been made. Hence we deem it appropriate to refer this case to the learned Judicial Magistrate First Class, having jurisdiction in Taluka Shahada, Dist. Nandurbar to deal with this case u/s 340 and any such provision as may be applicable.

9. This petition is, therefore, dismissed.

10. We direct the learned Registrar (Judicial) to transmit the entire file of this writ petition, including the report of the learned Registrar (Judicial), the application filed by the learned Advocate for the

petitioner and the documents X-1 to X-4, to the court of the Judicial Magistrate First Class, Shahada, Nandurbar for appropriate action.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)