

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

WRIT PETITION NO. 1217 OF 2023

Sandeep Balasaheb Jadhav .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. S. Thombre, Advocate for the Petitioner.
Shri S. B. Pulkundwar, A.G.P. for the Respondent Nos. 1 to 3.
Shri Rajendra D. Hange and Shri Kishor D. Khade, Advocates
for the Intervenor.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 16TH MARCH, 2023.**

FINAL ORDER :

. The challenge in the petition is to the order passed by the respondent No. 2/The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad on 28th November, 2022, whereby the scheduled tribe claim after verification, as belonging to 'Koli Mahadeo' came to be rejected.

2. The facts necessary for deciding the petition are as under :
The petitioner, claiming to be belonging to Koli Mahadeo (Scheduled Tribe) in the State of Maharashtra contested election for the post of Sarpanch of Gram Panchayat Rameshwarwadi, Tq. Kaij, Dist. Beed.

3. Since the petitioner got elected on the said post from the

Scheduled Tribe category, it was incumbent for the petitioner to produce validity certificate. Accordingly, concerned Officer referred the tribe claim of the petitioner to the respondent no. 2 on July 20, 2021 for adjudication.

4. The petitioner so as to substantiate his claim of belonging to Scheduled Tribe category has relied on tribe certificate dated June 04, 2016, affidavit of one Sandeep Balasaheb Jadhav and his school documents, the tribe validity certificate issued to Vishnu Ganesh Jadhav allegedly cousin brother of the petitioner, his own caste certificate, school leaving certificate and aadhar card, in which the caste is mentioned as Koli Mahadeo. The petitioner has also placed reliance on certain documents of his father and himself so as to substantiate said claim.

5. After the receipt of the tribe verification claim, since the committee was not in agreement with the claim of the petitioner, same was referred to vigilance cell for conducting home enquiry.

6. In the home enquiry the vigilance cell has noticed certain adverse material in relation to caste entries of his blood relations and accordingly collected the same and placed before the research officer.

7. The research officer after considering same, the traits, customs and practices narrated by the petitioner in the application so also the family information of the petitioner recorded disagreement and accordingly placed the matter with

the entire material before the Committee.

8. The respondent No. 2/Committee having noticed that the material placed on record by the petitioner does not justify his claim for verification of tribe to be genuine, issued show cause notice and the petitioner's explanation was called vide communication dated June 14, 2022. The petitioner was called upon to attend the hearing before the Committee on 12th July, 2022. The petitioner thereafter submitted his explanation in response to the adverse material which was made available to him. The Committee after evaluating said material vide impugned order negated the claim. As such this petition.

9. Mr. S. S. Thombre, learned counsel appearing for the petitioner would urge that the respondent No. 2/Committee has committed an error of law in rejecting the tribe claim of the petitioner. So as to substantiate the said contention he has invited attention of this Court to Section 6 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 (for the sake of brevity hereinafter referred as to the "Act of 2000") and Rule 9 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 Rules, 2002 (for short "said Rules") framed thereunder. According to him by aforesaid statutory provision,

the Committee must consists of five members mentioned therein, whereas the tribe claim of the petitioner is decided by the committee consisting of only three members. Apart from above, he would urge that there is denial of opportunity of hearing as the petitioner on October 13, 2022 has applied to the committee for permission to cross examine certain witnesses whose statements were recorded by the vigilance cell at the time of conducting home enquiry. He would urge that the Committee has failed to decide said application, as such there is a denial of opportunity of hearing to the petitioner. Mr. Thombre, learned counsel appearing for the petitioner has taken us through the school record of the petitioner, record in relation to his father and other blood relations namely Vishnu Ganesh Jadhav and Dhananjay Sugriv Jadhav, who are cousin brothers of the petitioner so as to urge that aforesaid two cousin brothers who are holding tribe validity certificates i. e. belonging to Koli Mahadeo has been erroneously ignored/discarded. He would further urge that the statement of Vishnu Jadhav a validity holder and blood relation of the petitioner has kept himself away from the petitioner qua his relation as validity certificate issued to him was under the threat of committee of taking out proceeding for invalidation against him. In the aforesaid background, the contention of Mr. Thombre is, order impugned is not sustainable.

10. While countering aforesaid submissions, learned Assistant Government Pleader for respondent Nos. 1 to 3, supported by the learned counsel for the complainant/intervenor would urge that

order impugned is in tune with the provisions of the Act of 2000 and the Rules of 2002 framed thereunder. According to them even if Section 6 of the Act of 2000 provides for constitution of committee, minimum coram as prescribed under the statute have decided the tribe claim and as such the order cannot be faulted with on the aforesaid issue. Their further contentions are, the petitioner even if has taken out application for permission to cross examine certain witnesses, the statement or the evidence of such persons is at all not taken into account by the Committee for rejecting tribe claim even though such material was against the petitioner. Learned counsel for respondents thus would urge that the school record of the petitioner is having an entry in the tribe column and in the tribe certificate cannot be said to be supportive and conclusive evidence to the claim for grant of validity. In the aforesaid background, the learned counsel for respondents would urge that the Committee was justified in not only rejecting the claim, but also disbelieving the relationship of the petitioner with the validity holders. In this background a prayer for dismissal of the petition is sought.

11. We have considered the aforesaid submissions.

12. As regards the issue of constitution of the Committee is concerned, no doubt Section 6 of the Act of 2000 provides for verification of caste certificate by the scrutiny committee. However, Rule 9 of the Rules of 2002 framed under the aforesaid act provides for meetings and coram of the scrutiny committee.

The coram of the respondent/S.T. committee for hearing or sitting for decision is prescribed to be three members out of five members viz Chairman or Vice Chairman, Member Secretary and any other member. The coram prescribed under the rules particularly Rule 9 of the Rules of 2002 has permitted minimum coram of three officials as can be noticed and inferred. As such the order impugned cannot be said to be illegal as same was passed by *coram non judice*.

13. The provisions of Section 6 of the Act of 2000 provides for the powers of the Government to constitute by notification one or more Scrutiny Committees prescribing the function and the area of jurisdiction of each scrutiny committee.

14. Even if the constitution of committee under the said provision prescribes to be consisting of five members, however, the coram is prescribed under the rule. As such since from the impugned order it can be inferred that appropriate coram pursuant to Rule 9 of the Rules of 2002 has decided the tribe claim of the petitioner. It cannot be said that the order becomes illegal for want of appropriate coram or for illegal constitution of the committee.

15. As far the issue as regards non deciding the application dated October 13, 2022 seeking cross examination of the witnesses is concerned, the fact remains that the impugned order does not deal with the testimony of such witnesses for the purpose of negating or rejecting the tribe claim of the petitioner.

The tribe claim of the petitioner is negated basically on the point that the petitioner has failed to establish or discharge the burden as provided under Section 8 of the Act of 2000. As such, it cannot be said that by not deciding prayer for cross examination of the witnesses has caused prejudice to the petitioner or has resulted into denial of opportunity of hearing particularly when the petitioner has failed to demonstrate the injustice caused to him for non compliance. Even otherwise it is not the case of the petitioner that he wanted to examine the said persons as his witnesses as no such prayer of the petitioner was taken out by him.

16. This takes us to the documents which are considered by the Committee and sought to be discarded during the course of hearing of the present petition.

17. The fact remains that validity granted in favour of Vishnu Ganesh Jadhav is sought to be relied on the basis of the affidavit to that effect affirmed on or about 09th November, 2015. Said Vishnu Jadhav in his affidavit claims that he is related to the petitioner. However, subsequently before the Committee he has specifically stated that such affidavit is given by him pursuant to the directions of his father who has expired on August 11, 2020. He has also stated to the Committee that he disowns the said affidavit and he has also stated that he is disowning the family tree. The affidavit of the petitioner that the validity holder Vishnu Jadhav is his cousin brother, however, he has not mentioned the family tree therein. To the scrutiny committee

said witness has given his correct family tree to claim that the petitioner is not related to him and has given affidavit on 26th August, 2022.

18. As such, the petitioner has tried to take undue advantage of only common surname without there being any blood relation with the said validity holder. Similarly the respondent No. 2/Committee on facts has observed that the documents of the petitioner are of recent past and cannot be isolatedly considered for the purpose of validating the claim. The entries of the relations of the petitioner as reflected in the order impugned speaks either Hindu Koli, Koli, Hindu and not related to the Scheduled Tribe. The validity of Dhananjay Sugriv Jadhav will be hardly of any support to the petitioner, particularly when in the school record of the said validity holder there appears to be tampering and overwriting in the caste column.

19. Once the Committee has refused to rely on the said documents based on the overwriting or interpolation in the caste column particularly having regard to the failure to discharge the burden by the petitioner U/Sec. 8 of the Act of 2000, no illegality can be noticed in the impugned order.

20. Apart from the above, there are no convincing old documents/entries prior to the pre-constitution schedule tribe order so as to consider the claim of the petitioner and the Committee in this background was justified in rejecting the claim.

21. In view of the above, in our opinion, the order of the Committee is in tune with the provisions of the Act of 2000, which does not call for any interference in the writ jurisdiction. Petition as such fails and stands dismissed.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/March 23