

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

WRIT PETITION NO. 8619 OF 2023

DURGA SHARAD PATIL  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

...  
Advocate for Petitioner : Mr. Phatale Sagar S.  
and Mr. Bholankar Vasant S.  
AGP for Respondents : Mr. A.S. Shinde

...

**CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**DATE : 20 SEPTEMBER 2023**

**PER COURT ( PER : SHAILESH P. BRAHME, J ) :**

1. Heard learned counsel for both the sides finally.
2. The petitioner is assailing judgment dated 06.02.2023, passed by the Scrutiny Committee invalidating her tribe certificate of 'Tokre Koli' and confiscating the same. The petitioner is relying upon the validity certificate of her father and uncle. Besides that, she also seeks to rely upon the old pre-constitutional record.
3. Learned AGP supports impugned judgmental and order. According to him, the scrutiny committee rightly rejecting the tribe claim considering the contrary entries of Baliram of 1929, Deoram of 1935, Tukarm of 1938, Mankarni of 1951 which is pre-independence record. The validity certificate of the father of the petitioner is not

reliable and rightly discarded by the Committee because the contrary entries were not considered in his case.

4. We have considered the submissions of the rival parties. The genealogy which is at exhibit 28 is not disputed by learned AGP. Father of the petitioner and uncle Hemantkumar are the validity holders. The petitioner seeks to rely upon following record :

| Sr. No. | Name                      | Relation           | Document           | Caste            | Year |
|---------|---------------------------|--------------------|--------------------|------------------|------|
| 1.      | Shiva Mahadu Koli         | Grandfather        | Admission Register | Koli Tokre       | 1938 |
| 2.      | Pandit Vyankat Patil      | Cousin Grandfather | Admission Register | Koli Tokre       | 1949 |
| 3.      | Sharad Shivaji Patil      | Father             | Admission Register | Hindu Tokre Koli | 1977 |
| 4.      | Hemantkumar Shivaji Patil | Uncle              | Admission Register | Hindu Tokre Koli | 1984 |

5. Learned AGP has vehemently opposed the claim of the petitioner on the basis of following contrary entries :

| Sr. No. | Name                   | Relation           | Document               | Caste | Year |
|---------|------------------------|--------------------|------------------------|-------|------|
| 1.      | Baliram Mahadu Eka     | Cousin Grandfather | Birth Register         | Koli  | 1929 |
| 2.      | ..... Mahadu Eka       | Cousin Grandfather | Birth Register         | Koli  | 1932 |
| 3.      | Devram Mahadu Eka      | Cousin Grandfather | Birth / Death Register | Koli  | 1935 |
| 4.      | Tukaram Vyankat Pavaji | Cousin Grandfather | Birth / Death Register | Koli  | 1938 |

6. It is the matter of record that the entries relied upon by the petitioner and the so called contrary entries were verified. The contrary

entries were of pre-constitutional period and older than the entries relied upon by the petitioners. Two entries relied by the petitioners are also of pre-independence period. The entries of pre-constitutional period has greater probative value.

7. The learned counsel for the petitioner has invited our attention to the reply filed to the vigilance report. The petitioner has dealt with the contrary entries in para no. 10 of the reply. We find that there is some justification in it. It can be seen that the entries are recorded at the instance of his forefathers or close relatives of the petitioners. In the present matter, birth and death entries were recorded prior to 1939, pre-independence period. There is no reason for recording false entry of caste to grab the benefits of social reservation at the relevant time. There was no distinction between 'Koli' or 'Tokre Koli'. Caste 'Koli' might have been regarded as generic. The element of deception or misrepresentation appears to be absent when alleged contrary entries were recorded before independence.

8. Its a common knowledge that by the presidential orders of 1950 or 1960, the particular caste is recognized as scheduled tribe or scheduled caste. Till that period, the forefathers of the petitioner had no reason to deliberately claim themselves to be 'Tokre Koli'. The pre-independence entries might not have been subjected to interpolation or manipulation. We have noticed that there are consistent record of Tokre Koli after 1938. Under these circumstances, the petitioner cannot be non

suited for alleged contrary entries. The Scrutiny Committee committed perversity in rejecting the caste claim of the petitioner because of the contrary entries.

9. If there is any element of fraud or falsehood it is open for the Scrutiny Committee to undertake re-enquiry. Unless the earlier validity certificates are revoked, the petitioner cannot be denied the same social status. We find that ends of the justice would be met, if the petitioner is directed to issue validity certificate on certain conditions. In that view of the matter, we find that impugned judgment and order is unsustainable. We, therefore, pass following order :

### **ORDER**

- i. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The respondent - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Tokre Koli' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to reopen.
- ii. Considering the fact that today is the last date for submitting certificate of validity and since the matter is being heard and decided urgently, we request the learned AGP to communicate this order to the Committee immediately, since the law officer of the Committee is present in this Court.

iii. The petitioner shall not be entitled to claim any equities.

**[ SHAILESH P. BRAHME, J. ]**

**[ MANGESH S. PATIL, J. ]**

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