

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

Writ Petition No. 9654 / 2019

1. Nileshe s/o Gulab Sonawane,
Age : 19 years, Occu. Education

2. Miss Priyanka d/o Gulab Sonawane,
Age : 18 years, Occ. Education

Both are r/o Sahur, Post Tavkheda,
Taluka Sindkheda, District Dhule.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.

2. The Scheduled Tribe Certificate Scrutiny Committee,
Nandurbar, through its Member Secretary.

3. Maharashtra State Council of Agricultural
Education and Research,
132/B, Bhamburda, Pune
Through its Director General.

4. Vasant Rao Naik Marathwada
Krishi Vidyapeeth, Parbhani,
Through its Registrar.

5. Kavayitri Bahinabai Chaudhari
North Maharashtra University, Jalgaon
Through its Registrar.

6. R.C. Patel College of Pharmacy,
Sirpur, Taluka Sirpur,
District Dhule,
Through its Principal.

...Respondents

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Mr. Barlinge S.R., Advocate for the Petitioners.

Mr. A. S. Shinde, AGP for Respondent No.1 & 2/State.
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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 11 OCTOBER 2023.

PRONOUNCED ON : 18 OCTOBER 2023.

FINAL ORDER [SHAILESH P. BRAHME, J.] :

. Heard both the sides finally at the admission stage.

2. The petitioners are challenging judgment and order dated 29.07.2019 passed by the respondent no.2/Scrutiny Committee invalidating their tribe certificates of 'Tokre Koli' scheduled tribe and confiscating the same.

3. The petitioners are relying upon the school record and the birth registration record. According to them following are the clinching documents to support their claim.

Sr. No.	Name	Relation	Record	Caste	Date
1	Avachit Kalu	Great grandfather	School record	Koli Dhor	01.03.1909
2	Daulat Kalu Jugru	Cousin great grandfather	School record	Dhor Koli	30.08.1913
3	Kesari Avachit Kalu	Father's aunt	Birth registration	Koli Tokre	30.05.1929
4	Rupi Avachit	Father's aunt	Birth registration	Koli Tokre	12.05.1931
5	Tanbhau Avachit	Grandfather	School record	Hindu Tokre	04.04.1941
6	Nanbhau Avachit	Cousin grandfather	School record	Tokre Koli	15.06.1947

. The above record is of pre-independence period and has greater probative value.

4. The learned Counsel for the petitioners would submit that the record indicating contrary entries is comparatively of the recent period. The record which is sought to be relied upon by the petitioners would prevail being older one. However the Scrutiny Committee committed perversity in preferring the contrary entries. The learned Counsel for the petitioners has emphatically insisted upon oldest record of Avachit Kalu indicating the caste Koli Dhor which is of 01.03.1909.

5. The learned Counsel for the petitioners has placed on record the vigilance report which is conducted in the matters of the petitioners. The old record was verified and vigilance officer found that the school record of Daulat Kalu Jugru of 1913 indicates caste as Dhor Koli, record of Kesari of 1929 and record of Rupri of 1931 indicate caste as Koli Tokre. This aspect of the matter according to the learned Counsel is lost sight of by the Committee which amounts to perversity.

6. The learned Counsel for the petitioners would submit that the entry no. 28 of Scheduled Tribe Order 1950 shows following caste :

Koli Dhor; Tokre Koli; Kolcha; Kolgha.

. There is no difference in the caste Tokre Koli or Dhor Koli. Therefore the finding recorded by the Committee for rejecting the caste claim of the petitioners that few entries would show caste as Koli Dhor whereas the claim of the petitioners of Tokre Koli is unsustainable. As

both the castes are at entry no.28, the record showing Koli Dhor can be said to be compatible with the tribe claim of the petitioners.

7. The learned AGP would oppose the claim of the petitioners. He would submit that the Committee has rightly considered the contrary entries of the close relatives of the petitioners indicating caste as Koli. According to him, following are the pre-constitutional entries which are incompatible with the claim of the petitioners:

Sr. No.	Name	Relation	Record	Caste	Date
1	Avachit Kalu	Great grandfather	Revenue record	Koli	
2	Dagdu Kalu	Cousin great grandfather	Revenue record	Koli	15.10.1915
3	Tanbhau Avachit	Grandfather	Revenue record	Koli	04.04.1941

8. The learned AGP submits that both the castes Tokre Koli and Koli Dhor are different and the claim of the petitioners is inconsistent which is correctly appreciated by the Committee. He would submit that the Scrutiny Committee has rightly relied upon the report of the vigilance officer in the matter of petitioner no.2/Priyanka. According to him, the record of Tanbhau Avachit is suspicious. Considering the record secured during the vigilance report, the caste of the petitioners is Koli which is non-tribal. He submits that the record of Nanbhau Avachit and Tanbhau Avachit is doubtful.

9. The learned AGP would support the findings recorded by the Committee that there is no linkage between the members of Tokre Koli

and Dhor Koli. The learned AGP supports the findings of the affinity test recorded against the petitioners. According to him, the petitioners have not produced satisfactory evidence to support their tribe claim. He would urge to dismiss the petition.

10. We have considered the rival submissions canvassed by the learned Counsel for both the sides. The learned AGP has produced on record the original file of the petitioners to show the entries from the record produced before the Committee.

11. The learned Counsel for the petitioners has referred to genealogy which is relevant to appreciate the relationship of the petitioners with the persons whose record is sought to be relied. The respondents have not disputed the relationship. The petitioners have relied upon the pre-constitutional entries indicating the caste of their paternal side relatives as Koli Dhor and Koli Tokre. Such entries are shown in the tabular form in paragraph no.3. As against this, learned AGP has also relied upon the contrary entries of pre-constitutional period which is reflected in above paragraph no.7.

12. We have compared the entries and the period. It transpires that entry of Avachit Kalu of 01.03.1909 is of Koli Dhor which is the oldest entry relied upon by the petitioners. Entry of Daulat Kalu indicating Dhor Koli is of 30.08.1913. These entries are prior in time than the entry of Dagdu Koli indicating caste as Koli of 15.10.1915, which is the contrary entry. The school leaving certificate of oldest entry of

01.03.1909 of Avachit Kalu is produced on record at Page No.49. The said entry was part of the vigilance enquiry and it is castigated being entry of Koli Dhor and not Tokre Koli. Except that we do not find any adverse remark for it. We are of the considered view that entry of Avachit Kalu would prevail which has greater probative value.

13. So far as the entry of Daulat Kalu is concerned of 30.08.1913, this is also prior to the contrary entry of Dagdu Kalu of 15.10.1915. The vigilance report placed on record by the learned Counsel for the petitioners during the course of argument shows due verification of entry of Daulat Kalu of 1913. There is absolutely no adverse remarks for it. This entry corroborates the claim of the petitioners. We are of the considered view that entries of Avachit and Daulat are clinching and decisive. In view of such entries, the contrary entries pressed into service by the learned AGP are inconsequential. We find that the Scrutiny Committee has committed perversity in discarding the entries of Daulat and Avachit. These two entries are not at all dealt with by the Committee.

14. The learned Counsel for the petitioners has invited our attention to entry no.28 of the Constitution (Scheduled Tribe) Order, 1950. Tokre Koli and Koli Dhor are included in the entry. There is combined record showing the caste of the relatives of the petitioners as Tokre Koli and Koli Dhor. Those were recorded during the period of pre-independence. It cannot be inferred that there was any oblique motive to record the caste. The reference of Koli Dhor or Tokre Koli cannot be treated to be

contrary entry. Both are scheduled tribes. The difference in nomenclature may not change social status as both the caste are included in one entry. The finding of the Scrutiny Committee is not sustainable.

15. We find that the record of Kesari and Rupi which is of 1929 and 1931 respectively shows caste as Koli Tokre. This record is also verified by the vigilance officer and there is no adverse remarks or any suspicion about these entries. The Committee has also not doubted the entries. We find that this is a pre-constitutional record and it corroborates the claim of the petitioners. We have no hesitation to record that the petitioners have made out a case for issuing validity certificates.

16. The petitioners have relied upon the pre-constitutional record which is verified during the vigilance enquiry and there are no adverse remarks against the entries. These entries are decisive and should enure to the benefit to the petitioners. A useful reference can be made to the decision of the Supreme Court in the matter of **Anand Versus Committee for Scrutiny and Verification of Tribe Claims and Others**, reported in (2012) 1 SCC 113. The findings of the affinity test may not assist the learned AGP. The Supreme Court in the matter of **Maharashtra Adavasi Thakur Jamat Swarakshak Samiti vs. State of Maharashtra & others** reported in 2023(2) Mh.L.J.785, has confirmed that the affinity test is not a litmus test and decisive.

17. We hold that the impugned judgment and order is unsustainable. We, therefore, pass the following order.

ORDER

- (i) The judgment and order dated 29.07.2019 passed by the Scrutiny Committee is quashed and set aside.
- (ii) The Scrutiny Committee shall issue tribe validity certificates of 'Tokre Koli scheduled tribe' to the petitioners forthwith.
- (iii) The writ petition is allowed in the above terms.

[SHAILESH P. BRAHME, J.]**[MANGESH S. PATIL, J.]**