

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

WRIT PETITION NO.111 OF 2021

- 1 Aishwarya Shesharao Kabade,
Age 20 yrs., Occ. Student,
R/o At Post Togari, Tq. Udgir,
Dist. Latur.
- 2 Asavari Shesharao Kabade,
Age 18 yrs., Occ. Student,
R/o At Post Togari, Tq. Udgir,
Dist. Latur.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
- 2 The Scheduled Tribe,
Caste Certificate Scrutiny,
Aurangabad Division, Aurangabad.
- 3 Commissionerate Common Entrance Test
Cell, Mumbai 8th Floor, New Excelsior Building
A.K. Nayak Marg, Fort, Mumbai – 400 001.

... **Respondents**

...

Mr. A.B. Kale, Advocate h/f Mr. S.R. Avhad, Advocate for petitioners

Mr. S.B. Yawalkar, AGP for respondent Nos.1 and 2

...

**CORAM : SMT. VIBHA KANKANWADI
Y.G. KHOBRADE, JJ.**

**RESERVED ON : 17th OCTOBER, 2022
PRONOUNCED ON : 03rd MARCH, 2023**

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioners by invoking the inherent powers of this Court under Article 226 of the Constitution of India challenges the order passed by respondent No.2 Scrutiny Committee, Aurangabad on 20.11.2020, thereby invalidating their tribe claim as belonging to “Koli Mahadev”.

3 The facts leading to the petition are that the petitioners are sisters. Their father had applied for caste claim as they were minor at that time. It was with an intention that they should possess the certificate of 12th standard as well as NEET examination and thereby that would be helpful in seeking admission for the medical course to petitioner No.1. Petitioner No.1 secured 281 marks in NEET examination and as per the merit list she was allotted the respondent No.3 Dental college. As regards the petitioner No.2 is

concerned, she appeared for CET examination to secure admission for Law course and such certificate would be necessary for her admission to the Government Law College. The petitioners had submitted voluminous documentary evidence to support their claim. The oldest record of their grandfather Hanmant Gangaram Kabade was of 1349 Fasali, wherein his caste is shown as “Koli Mahadev”. The tribe claim of the father of the petitioners was forwarded to the Scrutiny Committee and after holding due scrutiny the validity certificate was issued to their father on 28.04.2006. Earlier also the petitioner No.1 had approached this Court by filing Writ Petition No.6521 of 2020 for directions that the Scrutiny Committee should decide her tribe claim in a time bound manner. After the directions were given by this Court the petitioner was served with inquiry report and the show cause notice dated 20.10.2020. When in fact, the validity certificate was already issued to the father there ought not to have been a separate inquiry in respect of daughters. Still the inquiry was held. Though some discrepancies are stated to have been noticed, it cannot be said that they were made by the petitioners. The approach of the Scrutiny Committee was wrong, so also it was not required for the Scrutiny Committee to reconsider the papers of issuing validity certificate to their father. The Scrutiny Committee has unnecessarily placed much reliance on the decision in **Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development**

and others reported in **AIR 1995 SC 94** when in fact, though such powers are available to the Committee, they are required to be used in judicious manner. The petitioners, therefore, contend that the impugned order is illegal and contrary to the provisions of law. They, therefore, pray for the setting aside the impugned order and directions to issue validity certificate in their favour.

4 The petition has been objected by respondent Nos.1 and 2 and he supports the reason given by the Scrutiny Committee. He is also heavily relying upon **Ku. Madhuri Patil** (supra) under which Hon'ble Apex Court has held that no person should unnecessarily receive the benefits under the pretext of similarity in the caste name. It is further submitted on behalf of the Government that each and every document was considered by the Scrutiny Committee and in many documents it can be seen that either word "महादेव" or word "म" has been written subsequently and the ink differs. Therefore, those documents can be said to have been tampered just to get benefit. The original file is made available in respect of both the girls. The petitioners have failed in affinity test. The petitioners ancestors are stated to be residing at village Togari, Tq. Udgir, Dist. Latur, which is not the place from where persons from 'Koli Mahadev' tribe were traditionally residing. The validity that was given to the father of the petitioners was based on false and fabricated documents and thus, it can be said that the said validity was

obtained by fraud. When the fact of playing fraud on the Committee has been transpired, then definitely the Committee has powers to take up the proceedings to recall its earlier order. Reliance has been placed by the Committee on the decision in **Rajeshwar Baburao Bone vs. State** [Writ Petition No.5160 of 2020] and therefore, the Committee decided to issue show cause notice to the father of the petitioners and hearing upon him the decision would be taken in respect of recalling. If now the present petition is allowed, it would affect the entire procedure in respect of review undertaken in respect of the caste validity certificate issued to the father of the petitioners. Learned AGP has relied on the affidavit of Laxman Vitthalrao Dapke, who is serving as Headmaster to the Zilla Parishad Primary School, Togari, Tq. Udgir, Dist. Latur, wherein he has stated that the original record shows the word 'ॠ' is subsequently added in different ink and handwriting in respect of the entries of the admission in respect of Kishan Hanmant Koli and Shivaji Maruti Koli. The said documents are perused by this Court. Learned AGP points out that the review petition in respect of validity issued to one Sunita Ganpatrao Kabade in the year 2020, in which the review of Judgment and order dated 11.08.1994 passed by this Court in Writ Petition No.2451 of 1994 is prayed. He has also submitted that similarly the review petition would be then filed by the Government in respect of review of the order passed granting validity to the father of the petitioners.

5 At the outset, we would like to take a brief account of the old documents, which were available before the Committee. Shesherao Hanmantrao Kabade, who is the father of the petitioners had received caste certificate on 28.05.1990. His validity certificate was granted on 28.04.2006. The petitioners had provided the admission register of their father to the school dated 17.06.1985, school leaving certificate dated 28.06.1978 and 29.09.1993 and photo copy of his service book 28.05.1990. These were the documents in respect of their father and as regards grandfather is concerned, there was Urdu document stating that Hanmant Gangaram Kabade i.e. grandfather of the petitioners had taken admission in the school on 25.08.1949 Fasli. It is told that said Urdu year is equivalent to 1939 as per Gregorian calendar. Thereafter there are documents in the form of school admission register of cousin brothers and sister dated 19.06.1984, 16.06.1996, 24.06.1998 respectively. All these documents show the tribe as “Koli Mahadev” and admittedly there is no interpolation or rewriting over the same except in admission/school leaving certificate of father dated 28.06.1978. It is said that there is insertion of word “महादेव” or “म” in the documents dated 02.07.1964 and 15.08.1965, which were in respect of cousin grand father and paternal uncle. Even if we brushed aside these documents, there was sufficient evidence which had no changes on the face of it raising any doubt.

6 Learned Advocate appearing for the petitioners is placing reliance on the decision in **Apoorva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others** reported in **2011 (2) Bom. C.R. 824** for the following observations.

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the Committee may grant such certificate without calling for Vigilance Cell Report. However, if the Committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.”

7 Interesting point to be noted is that the impugned order says that the Committee had called for the original file of the validity certificate issued to the father of the petitioners. Learned AGP could not point out the provisions under the Law under which calling for the original file of the earlier validity certificate when there was no complaint about playing any fraud upon the then Committee is made; such calling of the record can be supported. Therefore, we find that calling of the said original documents when there was absolutely no reason or complaint was illegal and unjustifiable act. In order to arrive at a conclusion that there is a fraud, either there has to be a complaint or on the face of the record the Committee

should find out that such fraud was played. If it is to be interpreted, where the Committee wants that it can take out the old files of those persons to whom the validity is granted, then it will lead to the chaos and rampant uncontrolled powers to the Committee. The present Committee cannot sit over the decision by the earlier Committee as if an Appellate Authority and then on its own review the decision. The earlier Committee would have also arrived at, as the presumption has to be raised, that such validity certificate would have been issued after adopting due procedure of law, then such due procedure cannot be allowed so to be discarded by the subsequent committee.

8 As regards the alleged corrections or interpolations or insertions are concerned, though the affidavit of the Headmaster Laxman Dapke has been produced, he does not dispute that those documents are old. The natural custodian of those documents was his own school. Who has made those interpolations or insertions has not been investigated or inquired by the Scrutiny Committee. Those documents were definitely not in the custody of the present petitioners, their father or any other relative. Therefore, the petitioners cannot be blamed for those interpolations or insertions. It would have been within the powers of the Scrutiny Committee to direct an inquiry to be made by the Vigilance Cell as to who has made those interpolations or

insertions. Without undertaking that exercise Committee cannot blame the petitioners and keep them away from grant of validity. Very recently in **Asra Fatema d/o Zakir Ali Ahmed vs. State of Maharashtra and another in Writ Petition No.920 of 2021** decided on 13.10.2022 this Court, Bench at Nagpur has also held that in absence of such investigation as to who has done an interpolation, the Vigilance Cell cannot be said to be based on any credible evidence and could not have been relied upon by the Scrutiny Committee. The said case is also relied by this Court in **Suryanarayan Anand Katewar vs. State of Maharashtra and others in Writ Petition No.11964 of 2021** decided on 21.10.2022.

9 The oldest document was of 07.11.1349 Fasali and it has been got confirmed that it is 1939 as per the Gregoran calendar. Though the said document was before the Scrutiny Committee, the impugned order has discarded the same on some flimsy ground and without any evidence it has arrived at a conclusion that all the entries are in one handwriting. The distance between village Chera and Togari is about 20 - 25 k.ms. Nobody was residing at village Chera, then got prepared by the petitioners with the help of school management, are the observations. The order does not reflect as to whether the said school authorities were called upon to make any explanation. The Committee should have considered the situation in the year

1939. The distance at that time was more, but still admission was taken. Therefore, there was absolutely no reason for the Committee to make such kind of observations without undertaking any investigation or inquiry. Similarly, copy of the another document which is stated to be the mortgage deed in Urdu which was of the year 1362 Fasli i.e. 1952, the Committee on its own whims has directly concluded that it is a fake document. Even the original was taken in custody by the Committee and then it is stated that in view of some erasers the Committee has taken decision to send it for the opinion of the handwriting expert. If that decision was taken, then why the Committee had not waited for that decision to come. Therefore, the decision now based appears to have taken in haste, which cannot be allowed to be sustained.

10 There were other documents also which were more than 20 years old and ranging till 1939 and still for some unreasonable grounds the validity appears to have been rejected in respect of both the petitioners and unnecessarily observations are made in respect of taking up the steps for review of the validity certificate issued to the father. In fact, in view of **Apoorva Nichale** (supra) there was absolutely no necessity for the Committee to order the re-inquiry or to have Vigilance Cell report circulation. We do not agree with the submissions on behalf of the Government that the decision of

this case would come in the process of the review petition. The first and the foremost fact is that in spite of the said decision by the Committee on 20.11.2020 till the matter was heard no steps were taken for filing of review petition. It has not been pointed out how Sunita Ganpatrao Kabade and Subhash Ganpatrao Kabade are related. If they want to rely on the family tree which was before the Vigilance Cell, then Subhash appears to be uncle of Shesherao i.e. the father of the petitioners. However, it is to be noted that in the Vigilance Cell Report apart from Subhash it was also written that one Balaji Ramesh Yamalwar, who is the real cousin of the petitioners, was also given validity certificate by the same Scrutiny Committee. The Scrutiny Committee is not making any kind of whisper in respect of a validity certificate issued by it to Balaji Yamalwar.

11 Another uncle of father of petitioners viz. Shivaji Ganpatrao Kabade was issued validity certificate on 09.07.1991 and the copy of the certificate of validity was also produced. At the costs of repetition, it has to be observed that the Scrutiny Committee has not followed the decision in **Apoorva Nichale** (supra).

12 In catena of Judgments it has been held by this Court as well as Hon'ble Apex Court that failure of the petitioners to the affinity test is not the

sole criteria to reject the certificate though in **Madhuri Patil** (supra) case of **Subhash Ganpatrao Kabade** was referred and it was relied by the side of the appellant therein, no force was found in the contention by the Apex Court. However, on the facts of the case the procedure that can be followed for issuance of a social status certificate, their scrutiny and approval was laid down in **Madhuri Patil** (supra). Said Subhash Ganpatrao Kabade appears to be the relative of the present petitioners. However, on the basis of those observations if the review petitions have been filed, their pendency will not affect the claim of the petitioners, which can also be considered independently, and as aforesaid, the two other relatives of the petitioners have also received the validity certificate, which are not in question as on today.

13 Therefore, taking into consideration all the documents and the various decisions cited as well as perusal of the original record the impugned order passed by the Scrutiny Committee appears to be illegal and illogical, which deserves to be set aside. Hence, following order.

ORDER

1 The Writ Petition stands allowed.

2 The impugned common order passed by respondent No.2 –
Scheduled Tribe Certificate Scrutiny Committee, Aurangabad Division,
Aurangabad dated 20.11.2020 is hereby quashed and set aside.

3 It is declared that the petitioners belong to “Koli Mahadev”
Scheduled Tribe.

4 Respondent No.2 – Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad is directed to issue validity certificate to petitioners
within a period of six weeks from the receipt of the copy of this order.

5 Rule is made absolute in the aforesaid terms.

6 Pending civil application, if any, stands disposed of.

7 No order as to costs.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)