

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

WRIT PETITION NO. 936 OF 2023

1. Naresh Baliram Sonawane,
Aged 56 years, Occu. Farmer,
2. Chandrakant Baliram Sonawane,
Aged 61 years, Occu. : Pensioner,
3. Kiran Baliram Sonawane,
Aged 46 years, Occu. : Service,
4. Shamkant Baliram Sonawane,
Aged 59 years, Occu. : Farmer,
5. Baliram Toaram Sonawane,
Since deceased
Through its Legal Heirs
- a. Naresh Baliram Sonawane,
- b. Chandrakant Baliram Sonawane,
- c. Kiran Baliram Sonawane
- d. Shamkant Baliram Sonawane
6. Jitendra Sitaram Sonawane,
Aged 53 years, Occu. : Service,

All residing at 396, Jaykisan Wadi,
Navi Peth, Tal. Jalgaon,
Dist. Jalgaon.

.. Petitioner

Versus

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

Mantralaya, Mumbai – 400 032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Dhule,
Through its Member Secretary,
Having its office at Dist. Dhule.
3. Scheduled Tribe Certificate
Scrutiny Committee, Nashik,
Through its Member Secretary,
Having its office at Dist. Nashik. .. Respondents

Shri Mahesh S. Deshmukh, Advocate h/f Shri V. S. Bholankar,
Advocate for the Petitioners.

Shri D. R. Kale, Incharge G. P. for the Respondent Nos. 1 to 3.

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

CLOSED FOR JUDGMENT ON : 04.09.2023
JUDGMENT PRONOUNCED ON : 26.09.2023

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard learned counsel for the respective sides for final adjudication.

2. The petitioners' validity certificates are revoked by common judgment and order dated 30.06.2022 by the respondent No. 2/Scrutiny Committee and consequently their tribe certificates and validity certificates are confiscated. Being aggrieved they have preferred this writ petition.

3. The petitioner Nos. 1 to 4 are the sons of the petitioner No.

5. The petitioner No. 6 is their cousin brother. They claim to be

belonging to Tokare Koli (Scheduled Tribe). They were issued with the tribe certificates by the competent authority. Their tribe certificates were scrutinized on different occasions and they were validated by distinct orders. The details of the validity certificates are incorporated in tabular form in the impugned judgment at page No. 43 (internal page No. 19). They received validity on different dates from 2005 to 2006.

4. The tribe certificate of the daughter of the petitioner No. 1, Komal was invalidated on 15.07.2019. Against that she has preferred Writ Petition No. 11353 of 2019, which is *sub judice* in this Court. The petitioners were issued show cause notices with the vigilance report in the matter of Komal on 15.10.2019. The petitioners appeared before the scrutiny committee.

5. The documents produced by the petitioners were referred to vigilance enquiry. On 11.05.2022 a report was prepared considering the school, revenue and birth/death record of the relatives of the petitioner. The petitioners filed reply to the report on 27.06.2022.

6. After hearing following findings are recorded to revoke the validity certificates.

i) The petitioners suppressed contrary entries indicating caste as Koli Hindu, Suryawanshi Koli, Suryawanshi Kshtriya Koli, which is fraud.

ii) The school register entry of the year 1898 of Koli of Totaram Havasu is not compatible with his birth entry of 1887 of Tokare Koli.

iii) The history of residence of the petitioners and the affinity test to some extent is matching with the Tokare Koli, however, because of the contrary entries of Koli, Suryawanshi Kshtriya Koli and Suryawanshi Koli, the claims could not have been accepted.

iv) The school entries and the revenue entries of the petitioners of the year 1886, 1887, 1889, 1891, 1918, 1947 and 1949 show Tokare Koli. Few translated documents of modi script show Tokare Koli, however, they are pitted against contrary entries.

v) The petitioners were issued with the validity certificates suppressing the facts of the contrary entries and they did not come with clean hands.

7. The learned counsel for the petitioners has shown the old entries of 1886, 1887, 1889 and 1891 of petitioners forefathers showing Tokare Koli in the birth/death register extract. He would submit that the preconstitutional entries and that too the entries from the birth and death register have greater probative value and would prevail over subsequent entries. The learned counsel would further submit that the vigilance report is supporting them because the entries on which reliance is sought

by the petitioners have been verified and nothing objectionable was found by the vigilance officer.

8. The learned counsel for the petitioners would submit that the reply is filed to the vigilance report and the explanation is already tendered by them which is not taken into account. He would submit that it was within the discretion and the power of the scrutiny committee to conduct vigilance enquiry and verify the old record. Just because there are few entries indicating caste as Koli or Suryawanshi Koli does not make out a case of fraud. He would submit that there is consistent record of preconstitutional period indicating caste as Tokare Koli. He would submit that no case was made out for fraud and the impugned judgment and order is liable to be set aside.

9. The learned Government Pleader would submit that the scrutiny committee has rightly considered the contrary entries showing caste as Koli, Suryawanshi Koli and Kshtriya Suryawanshi Koli. He would submit that the petitioners have suppressed the contrary entries and by misleading the committee the validity certificates were obtained. He would submit that during the course of vigilance enquiry of daughter of petitioner No. 1 Komal the contrary entries could be revealed. The show cause notice was given on 15.10.2019. Thereafter, fresh vigilance enquiry was conducted. Thus after following procedure of law and extending due opportunity to the petitioners the impugned judgment was passed.

10. The learned Govt. Pleader would submit that validity certificate of the petitioner No. 05- Baliram was based upon the validity certificate of the relatives of the maternal side. Such a certificate was defective and void, which was relied in the matters of other petitioners. Thus, fraud is perpetuated and the scrutiny committee has rightly revoked the validity certificates.

11. We have considered the submissions of the parties and have carefully gone through the papers placed on record. The following are the school entries which are contrary entries and it is castigated by the scrutiny committee that those were suppressed by the petitioners :

Sr. No.	Name	Relation	Caste	Name of record	Date
01.	Totaram Havsu	Father	Koli	School	1898
02.	Baliram Totaram	Petitioner	Suryawanshi Koli	School	01.05.1946
03.	Vasant Totaram	Uncle	Koli Hindu	School	01.01.1948
04.	Naresh Baliram	Petitioner	Suryawanshi Koli	School	10.08.1977
05.	Sangita Baliram	Sister	Hindu Koli	School	31.07.1975
06.	Jitendra Sitaram	Petitioner	Hindu Koli	School	31.01.1975
07.	Rajendra Sitaram	Brother	Suryawanshi Koli	School	___07.1977

As against the above contrary entries the petitioners are relying on following older entries which are from the birth and death extract.

Sr. No.	Name	Relation	Document	Caste	Date
01.	Gunti Havsu Sonawane	Grandfather	Death Extract	Tokare Koli	22.03.1886
02.	Supadya Tanku	Cousin great grandfather	Birth Extract	Tokare Koli	09.11.1886
03.	Mohan Havsu	Cousin grandfather	Birth Extract	Tokare Koli	01.05.1886
04.	Totaram Havsu	Grandfather	Birth Extract	Tokare Koli	06.12.1887
05.	Motiram Shamrao	Cousin grandfather	Birth Extract	Tokare Koli	___05.1889
06.	Gotya Havsu	Cousin grandfather	Death Extract	Tokare Koli	21.01.1891

12. Pertinently, the birth and death extract entries relied by the petitioners are of the year 1886, 1887, 1889 and 1891 which are older than the entries which are castigated to be contrary i. e. the school record of 1898, 1946, 1948, 1977 and 1975. There is no dispute about the relationship of the petitioners with the persons whose entries are relied upon by both the parties. All these entries are preconstitutional entries.

13. We find that the entries of 1886, 1887, 1889 and 1891 are older entries than the contrary entries of 1898. The entries sought to be relied upon by the petitioners indicate consistently caste as Tokare Koli. Besides the entries relied upon by the petitioners in the above table, there are other school entries indicating the caste as Tokare Koli which are of Vanaji Aavsu Sonawane – 1918, Kitkul Lahanu Koli 1918, Jaywantabai Totaram Sonawane 1947, Gunttabai Totaram Sonawane 1947, Gangaram Kalu Sonawane 1949. These are also

preconstitutional entries.

14. All the entries relied upon by the petitioners were referred to the vigilance enquiry. Vigilance report supports the case of the petitioners and it indicates that the school and birth/death extract record is duly verified indicating to be Tokare Koli. When the record relied upon by the petitioners is duly verified by the vigilance enquiry we find that it is reliable and would enure to the benefit of the petitioners. It is older than the record of the contrary entries. The vigilance report does not spell out any adverse remarks of tampering. The record has a greater probative value and we have no hesitation to hold that the petitioners belong to Tokare Koli. We are fortified in our view by the judgment of the Supreme Court in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** reported in **(2012) 1 SCC 113**.

15. The learned counsel for the petitioners has invited our attention to the vigilance report which is produced on page No. 59 Exhibit – C. The report is supporting the case of the petitioners. Few documents were in the modi script. They were translated by the competent authority and the translated copies also denote caste as Tokare Koli. It is further recorded that the affinity test is not altogether against the petitioners. To some extent it is in consonance with the tribe claim of the petitioners.

16. The learned counsel for the petitioners has rightly submitted that the older record indicating caste as Tokare Koli is

of birth and death extract record. It has more probative value than the school record. There is adequate material placed on record in support of the petitioners' claim. We find that the validity certificates were properly issued to the petitioners.

17. The submission of the learned Govt. Pleader is that there is suppression of material record and therefore fraud is committed. The scrutiny committee has power and discretion to refer the record to the vigilance enquiry. The scrutiny committee could have unearthed the truth. Therefore, there is no point in saying that during the vigilance enquiry in the matter of petitioners daughter Komal the contrary entries were revealed. We have already held that the alleged contrary entries are of the subsequent period. The entries supporting the petitioners have greater probative value. In this situation we do not find that any case is made out to recall the validity certificates on the ground of fraud or misrepresentation. The scrutiny committee has committed patent illegality and perversity in revoking the validity certificates of the petitioners.

18. We have noticed that in the impugned judgment and order the scrutiny committee has recorded certain findings which are in favour of the petitioners. It has been held that the oldest entry of 1887 was from the birth extract which would prevail over the school entry of 1898. Similarly, it is recorded that the affinity test is supporting the claim of the petitioners to some extent. As against this only on the basis of contrary entries of a subsequent period it is recorded that the fraud has been proved.

We find that the findings recorded by the scrutiny committee are self contradictory. Those are unsustainable and totally fall short to prove the fraud.

19. The learned counsel for the petitioner has relied upon the judgment in the matter of **Devendra Gurunath Khedgikar Vs. Scheduled Tribe Certificate Scrutiny Committee, Pune** and another reported in **2009(3) Mh.L.J. 433**. It is useful to refer the following paragraphs, which reads thus :

17. The fraud is, essentially a question of fact, the burden of proof is upon him who alleges it. He who alleges fraud, must do so promptly. There is presumption of legality in favour of statutory order. The order of respondent No.1 Scrutiny Committee validating the tribe claim of the petitioner is presumed to be valid unless proved to be vitiated by misrepresentation or fraud.

18. If the order was obtained by fraud or misrepresentation by the party seeking it and if that comes to the notice of the judicial or quasi judicial authority and if such authority prima facie; forms an opinion that the process was abused then such order can always be interfered with and set at nought by the same authority exercising the very same power under which the original order was passed. This power is always retained by the authority or Court passing the order.

19. On the above canvass, it is clear that respondent No.1 while deciding the issue as to whether the certificate was obtained by misrepresentation or fraud will confine itself to the issue of misrepresentation and fraud alone and shall not review its order based on new material. Formation of a second opinion on the same material is not permissible. On merits, the order cannot be interfered with because that would amount to exercising power of review.

20. We respectfully agree with the ratio laid down in the above paragraphs. Applying the same to the case in hand, we find that the no case of fraud is made. The learned A. G. P. is unable to point out that process was abused by the petitioners. The contrary revealed subsequently is of no avail.

21. The learned counsel for the petitioner has relied upon another judgment of this Court rendered in the matter of Anil S/o Shivram Bandawar Vs. District Caste Certificate Verification Committee, Gadchiroli and another reported in 2021(5) Mh. L. J. 345. Para No. 7 of the judgment reads as follows :

"7. We may note that neither in the show cause notice nor in the impugned order cancelling the Caste Validity Certificate issued to the petitioner is there any reference made to "fraud" being practiced by the petitioner while obtaining the Caste Validity Certificate. It is however sought to be urged by the Scrutiny Committee that it exercised such power on the premise that the petitioner while seeking verification of his caste- claim had not referred to the old revenue records of 1920-24 and hence the same amounted to playing fraud. It may be stated that it was the Scrutiny Committee which was satisfied with the documents relied upon by the petitioner when he had sought verification of his caste-claim. The Scrutiny Committee did not deem it fit to obtain a report of the Vigilance Cell and instead proceeded to issue a Caste Validity Certificate to the petitioner. Such power of dispensing with an inquiry by the Vigilance Cell is vested with the Scrutiny Committee by virtue of Rule 17(6) of the Rules of 2012. The premise on which the Caste Validity Certificate issued to the petitioner has been cancelled is that the petitioner failed to bring before the Scrutiny Committee the old revenue records of 1920-24. In our view such alleged act of the petitioner failing to bring before the Scrutiny Committee the old revenue records can hardly amount to playing fraud while seeking the Caste Validity Certificate. In

this regard useful reference may be made to the observations in Shri Krishnan vs. The Kurukshetra University, Kurukshetra AIR 1976 SC 376 wherein the Honourable Supreme Court observed that it is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It would neither be a case of suggestio falsi or suppressio veri. In other words, it was open for the Scrutiny Committee while verifying the Caste Certificate of the petitioner to have conducted an inquiry by the Vigilance Cell. The Scrutiny Committee however did not deem it necessary to have such inquiry conducted by the Vigilance Cell. The Scrutiny Committee was thus in a position to discover the old revenue records of 1920-24 by exercise of due diligence which could have been done by holding an inquiry by the Vigilance Cell. It however did not choose to do so and thus it would not be legally permissible now for the Scrutiny Committee to urge that by not referring to old revenue records of 1920-24 the petitioner was guilty of practicing fraud. As stated above though the aspect of fraud was neither mentioned by the Scrutiny Committee in its show cause notice nor referred to in the impugned order we have dealt with said aspect as the impugned order was sought to be supported on that count before this Court."

22. The scrutiny committee could have discovered the truth by due diligence by referring the matter to the vigilance cell. The so called contrary entries upon which reliance is placed for revoking the validity certificates could have been revealed before issuing validity certificates to the petitioners. Therefore, it cannot be said that there is suppression of the facts by the petitioners. Besides that independently we have recorded the finding that the record upon which reliance is placed by the petitioners is older and having more probative value than the contrary entries pitted against them.

23. For the reasons recorded above we find that the impugned judgment and order is patently perverse and illegal. The same is unsustainable and therefore, we are passing following order.

ORDER

A. The writ petition is allowed.

B. The common judgment and order dated 30.06.2022 passed by the respondent No. 2/Scrutiny Committee revoking and confiscating the validity certificates of the petitioners is quashed and set aside.

C. The scrutiny committee shall restore the validity certificates of the petitioners as belonging to the Tokare Koli (Scheduled Tribe).

D. The rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 23