

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

WRIT PETITION NO. 11746 OF 2023

BHUSHAN PRAVIN SONWANE
VERSUS
SCHEDULED TRIBE CERTIFICATE SCRUTINY COMMITTEE DHULE
THROUGH ITS MEMBER SECRETARY

...
Advocate for Petitioner : Mr. Bholankar Vasant S.
and Mr. Sagar S. Phatale
AGP for Respondents : Mr. S.B. Yawalkar

...
**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. The matter is not on board but it is mentioned by learned counsel for the petitioner disclosing urgency as the petitioner aspires to take admission for under graduation. Hence, taken up on production board for final adjudication.

2. Being aggrieved by the judgment and order dated 13.09.2023, passed by the Scrutiny Committee, invalidating the tribe certificate of 'Tokre Koli' and confiscating the same, the petitioner is approaching this Court. He seeks to rely upon validity certificates of Vinod, Amol and Sunita. He is also relying upon the pre-constitutional record of grandfather, cousin grandfather and great-great-grandfather. According to the learned counsel, the Committee has committed perversity in doubting the relationship of the petitioner with validity holder Amol.

3. Learned AGP supports impugned judgment and order. He would submit that there are contrary entries of the year 1937, 1939, 1944, 1967, and the caste claim is rightly rejected. He would submit that the Scrutiny Committee has rightly discarded the validity certificate of Amol. He would urge to dismiss the petition.

4. Our attention is invited to the genealogy which is at page no. 32. The validity certificate of Amol Bhagwan Sonawane is discarded because he is found to be not related to the petitioner. Amol Bhagwan Sonawane, a validity holder has executed affidavit which is on record at page no. 29. He has expressly stated his relationship with the petitioner by furnishing genealogy also. The genealogy is consistent with the genealogy stated on affidavit by Praveen Suvalal Sonawane. The Committee has overlooked this material and arrived at an erroneous conclusion. The validity certificate of Amol is supporting the petitioner's claim.

5. There is pre-constitutional record of Suvalal of 1933, Motilal of 1937, Govinda of 1941, Babulal of 1946 and Daga of 1947 which is enlisted at page no. 70. The vigilance enquiry of the pre-constitutional record was conducted and nothing adverse was found. The pre-constitutional record has greater probative value. We find that the petitioner has made out a case on the basis of clinching record. The Scrutiny Committee should not have rejected the caste claim.

6. Learned AGP has tried to persuade us on the basis of contrary record of pre-constitutional period. He would indicate such record of Surma 1937, Dwarka 1939, Babulal 1944. We find that record of Suvalal indicating caste 'Tokre Koli' is of 1933, the older one. The record of Motilal showing 'Tokre Koli' is of 1937. We find that oldest record indicates 'Tokre Koli' which is preferred.

7. Another circumstances why we are not with learned AGP is that there is inconsistent record of pre-constitutional period. The record showing 'Tokare Koli' pertains to birth or death registrations. The contrary record thus indicate 'Koli' or Dhor Koli'. There is no reason for the family members of the petitioner to intentionally claim a particular scheduled tribe before the independence. The persons at whose instance the caste was recorded might not have known the difference between 'Koli' and 'Tokre' Koli or Dhor Koli. We do not find any element of deception. The concerned tribe or caste had no recognition as a scheduled tribe before pre-independence. Therefore, we reject the submissions of learned AGP that old record is contrary.

8. We find that the impugned judgment and order is perverse and patently illegal. We, therefore, pass following order :

ORDER

- i. The Writ Petition is partly allowed.

ii. The impugned order is quashed and set aside. The respondent-scrutiny committee shall immediately issue certificate of validity to the petitioner of 'Tokre Koli' scheduled tribe. It shall be subject to the final outcome of the matters which the committee has decided to reopen.

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

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

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