

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11943 OF 2023

Leena Rajendra Sonawane

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through Tribal Development Department,
Mantralaya, Mumbai
- 2] The Scheduled Tribe Certificate
Scrutiny Committee, Dhule,
Through its Member Secretary

.. Respondents

AND

WRIT PETITION NO. 11944 OF 2023

Bhushan Rajendra Sonawane

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through Tribal Development Department,
Mantralaya, Mumbai
- 2] The Scheduled Tribe Certificate
Scrutiny Committee, Dhule,
Through its Member Secretary

.. Respondents

...

Advocate for petitioner in both petitions : Mr. Balaji S. Shinde
AGP for the respondent – State : Mr. A.S. Shinde

...

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

DATE : 26 SEPTEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

The petitioners are the siblings who are challenging the common order passed by the scrutiny committee invalidating their certificates of Koli Mahadev scheduled tribe.

2. The learned advocate for the petitioners submits that apart from anything else, the petitioners' father possesses a certificate of validity and the petitioners should have been granted the benefit of this validity. He would submit that the proposal of the petitioners' father Rajendra was similarly rejected by the then scrutiny committee. He had challenged that order in writ petition no. 1576 of 1989. By order dated 11.06.2003, the writ petition was allowed and the matter was remanded back to the scrutiny committee for decision afresh. After such remand, the scrutiny committee undertook a fresh enquiry and by a detailed order dated 23.06.2004 granted a certificate of validity to him.

3. The learned advocate would submit that the committee could not have, in the peculiar circumstances, refused to extend the benefit of fathers' validity to the petitioners. In any case, even if the committee has the jurisdiction and power to undertake a fresh enquiry in his matter, till the time the certificate of validity issued to him is not confiscated and cancelled by resorting to due process of law, petitioners cannot be deprived of the benefit of his validity.

4. The learned advocate for the petitioners would then submit that the petitioners are ready to run the risk of facing the consequences as contemplated in the matter of ***Shweta Balaji Isankar Vs. State of Maharashtra and others (writ petition no. 6320 of 2017)*** and be granted the certificates of validity subject to the final outcome of father's matter which the committee now intends to re-open.

5. The learned advocate for the petitioners would then submit that the appreciation of the so-called contrary entries relied upon by the committee to discard the claim is perverse and faulty. Merely because the entries in the old record read "Hindu Koli", as has been observed in the matter of ***Mr. Yatin Nilkanth Bastav Vs. Executive Magistrate and others; 2003(4) ALL. MR 621***, "Koli" would describe a genus and in case of its specie "Mahadev Koli", cannot be treated as a contrary entry.

6. The learned AGP supports the order. He submits that the committee has meticulously assigned the reasons why it has decided to re-open the enquiry in respect of the validity granted to petitioners' father. None of the contrary entries which could be traced in the present enquiry were available when his claim was decided. Relying upon the observations of this Court while remanding the matter to the scrutiny committee, he was granted a certificate of validity. The

petitioners are not entitled to derive the benefit of such validity granted to their father.

7. The learned AGP would submit that the committee could trace pre-constitutional contrary entries wherein petitioners' blood relations were described as Hindu Koli in the school record. He would submit that Koli comes under the OBC category whereas Koli Mahadev is a scheduled tribe. The committee has rightly applied the affinity test and has rightly discarded the claims.

8. We have carefully considered the rival submissions and perused the papers.

9. The committee is relying upon the entries in the school record of the petitioners' great grandfather, grandfather, cousin grandfather, paternal uncle as contrary entries wherein they have been described as "Hindu Kolis" right from the year 1914 to 1967. However, as a co-ordinate Bench of this Court in the matter of **Yatin Bastav** (supra) has observed, "Mahadev Koli" being a specie of genus "Koli", such entries as "Kolis" cannot legally be considered as contrary entries.

Observations in paragraph 8 of that judgment read as under :-

"8. The Scrutiny Committee has discarded the documents Nos. 1 to 4 and 13 solely on the ground that the petitioner's father's caste is shown as 'Koli' and not 'Mahadev Koli' in the birth extracts of the petitioner's father and also as 'Suryavanshi' in his school record. These documents pertaining to the petitioner's father and his uncle which are at serial Nos. 5 and 9 are extracts of the birth register obtained in 1993. The Scrutiny Committee has rejected the documents at serial nos.

1, 2, 4 and 13 namely School records of the candidate and his cousin sister showing their caste as "Mahadev Koli", ST solely on the basis of the birth extracts and school leaving certificates Exhibits 5 and 9, wherein the petitioner's father's caste and uncle's caste is shown as 'Koli' and not 'Mahadev Koli'. It appears to us that the approach of the Scrutiny Committee is highly erroneous. The Scrutiny Committee has failed to appreciate that merely because the caste was generally described as Koli that by itself does not exclude the possibility of the caste of the petitioner's father and uncle being 'Mahadev Koli'. The general description of the genus, caste does not exclude any particular, specie such as 'Mahadev Koli. On the contrary it is an inclusive description. There is nothing on record to exclude the petitioner's father and uncle belonging to the caste 'Mahadev Koli. On the other hand the petitioner has produced sufficient documentary evidence in support of his caste claim in the form of document Nos. 1 to 4 and 13 which show the petitioner's and petitioner's cousin sister's caste as 'Mahadev Koli'. This Court has in a similar matter taken the view that the candidate cannot be denied of the caste certificate of 'Mahadev Koli' merely on the ground that originally the caste has been mentioned as 'Koli'."

10. In view of such observations by the co-ordinate Bench, the approach of the committee in treating the "Koli" entries as contrary to the claim of "Koli Mahadev" will not be sustainable.

11. Admittedly, the proposal of the petitioners' father Rajendra was rejected by the scrutiny committee. The order was challenged by him. The matter was remanded by this Court and it is thereafter, after conducting further enquiry by the then scrutiny committee had validated his tribe certificate. The submission of the learned AGP that he was granted certificate of validity only because of the order of this Court, is not factually tenable. The last paragraph of that order reads as under:-

"In the instant case after taking into consideration the directives of the Hon'ble High Court in said Writ Petition, the findings of the Vigilance Officer mentioned in the enquiry report, the statement of the applicant recorded by the Vigilance Officer during the enquiry, the replies given by the applicant during personal hearing, the validity certificates issued in favour of the applicant's relatives and after verifying the school record of Eknath Jalam Sonawane, the Scrutiny Committee has come to the conclusion that the applicant Rajendra Chindhu Sonawane belongs to Mahadeo Koli, Scheduled Tribe and therefore the validity certificate is issued to him by the Scrutiny Committee."

The above mentioned conclusions of the committee are sufficient to dispel the submission of the learned AGP that he was granted the certificate of validity only because of the observations of this Court.

12. Without expressing anything about the jurisdiction and power of the committee to re-open the case of the petitioners' father Rajendra, suffice for the purpose to observe that till the time the certificate of validity granted to him is not confiscated and cancelled by following the due process of law, the petitioners cannot be deprived of deriving its benefit.

13. In the result, the following order:-

- (i) The writ petitions are partly allowed.
- (ii) The impugned order dated 19.09.2022 is quashed and set aside.
- (iii) The Scrutiny Committee shall immediately issue tribe validity certificates to the petitioners as belonging to "Koli Mahadev"

scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matter which the Committee has decided to reopen.

(iv) The learned AGP to communicate this order to the Committee immediately.

(v) The father of the petitioners shall co-operate with the Scrutiny Committee in early decision of the reopened matter.

(vi) The petitioners shall not be entitled to claim equities.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/