

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15645 OF 2022

Vishnu Kondiba Dhumal

....Petitioner

Versus

State of Maharashtra
Through Secretary,
Tribal Development Dept. & Ors.

....Respondents

...

Mr. Chintamani Kamalakar Bhangoji for the Petitioner.

Mr. B. V. Samant, AGP for State

...

**CORAM: DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : 21 JUNE 2023.

P.C.:

Petitioner has filed present petition challenging the judgment and order dated 25 August 2022 passed by Scheduled Tribe Certificate Scrutiny Committee, Pune (**Committee**) rejecting his caste claim for 'Koli Mahadev Tribe'.

2. Perusal of the judgment and order of the Committee would indicate that the Committee has rejected Petitioner's caste claim essentially on account of rejection of caste claim of his second cousin Shri. **Mohan** Mahadev Dhumal by order dated 22 August 2008.

3. Mr. Bhangoji, the learned counsel appearing for Petitioner would submit that Petitioner had produced additional documents which were not considered while rejecting Tribe claim of **Mohan** Mahadev Dhumal. He would submit that petitioner produced pre-constitutional entries relating to his parental relatives which have been completely glossed over by the committee. That therefore the Committee ought to have taken into consideration the additional evidence so tendered while while deciding Petitioner's tribe claim rather than rejecting the same only on account of rejection of claim of **Mohan** Mahadev Dhumal.

4. *Per contra*, Mr. Samant the learned AGP would oppose the petition and support the order passed by the Committee. He would rely upon judgment of the Apex Court in **Apoorva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and Ors.** (2010) 6 Mh.L.J. 401 in support of his contention that since the order granting validity in favour of a close blood relative is a relevant factor, an order of rejection of Tribe claim of the close relative would also become a relevant factor. The Committee is therefore justified in rejecting Petitioner's tribe claim. He would submit that ***Apoorva Nichale*** cannot be selectively applied only for upholding tribe validity claims and that the principle

enunciated therein would equally apply to cases where tribe claim of a close relative has been previously rejected. Therefore the committee cannot turn a blind eye to order rejecting tribe claim of a close relative. He would submit that if this is not done, it would result in a situation where there would be no finality to determination of tribe claim of a family and the relatives would go on urging the Committees to take different views than the one taken previously in respect of other close relatives. He would therefore pray for dismissal of the petition.

5. Having heard leaned counsels appearing for the parties and after perusal of pleadings and documents on record it is seen that petitioner's Tribe claim is rejected by the Scrutiny Committee essentially on account of rejection of Tribe claim of his second cousine **Mohan Mahadev Dhumal** by order dated 22 August 2008. True it is that rejection of tribe claim of a close relative can be a relevant factor while deciding tribe claim of another relatives, but the same cannot be a sole factor.

6. Here the observations of the Apex Court in **Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar & Anr.**, (2008) 9 SCC 54 would be relevant, wherein it is held that in cases where vital evidences have been ignored while granting validity certificate to a relative, the Committee is entitle to take into consideration such evidence in subsequent proceedings. The Apex Court in paragraph No.27 held as under:

“27. We do not mean to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another committee while examining the case of other members of the family in some detail. If it is found that in granting a certificate in favour of a member of a family, vital evidences had been ignored, it would be open to the Committee to arrive at a different finding.”

7. Thus, the Committee is not necessarily bound its earlier decision and in the event of any additional evidence being produced while deciding subsequent tribe claim, the Committee is required to take into consideration and deal with the additional evidence.

8. In the present case, Petitioner has relied upon several pre-constitutional entries in respect of his father and brother. The Committee was required to record its finding in respect of those documents, which the Committee has failed to do in the present case.

9. Consequently the judgment and order of the Committee is set aside and the case remanded back to the Scrutiny Committee for fresh decision. Petitioner shall appear before the Committee on 10 July 2023 and it shall not be necessary for Committee to issue any notice to Petitioner. The Committee shall endeavour to decide Petitioner's tribe claim preferably within a period of 6 months from today.

10. Pending fresh decision of the Tribe claim of petitioner no coercive action would be taken against Petitioner only on account of pendency of his Tribe claim before the Committee. Writ Petition is accordingly disposed of. There shall be no order as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

Note : Corrections are carried in para 2, 3 and 5 of the order pursuant to speaking to minutes order date 10 July 2023.

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