

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6357 OF 2022

Ganpati S/o Vishwanath Yenchewad, **Petitioner**
Aged 48 years, Occ. Service, R/o.
Tekamandwa, Tahs. Jivati, District
Chandrapur.

-Versus-

1. Scheduled Tribe Caste Certificate Scrutiny **Respondents**
Committee, Through its Member,
Secretary, Chandrapur, Tq. & Dist.
Chandrapur.
2. Zilla Parishad, Chandrapur, through its
Chief Executive Officer, Zilla Parishad,
Chandrapur.

Mr. M. V. Bute, counsel for the petitioner.
Mr. N.S.Rao, AGP for the respondents-State.

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 3RD JULY, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

Heard.

2. Rule. Rule made returnable forthwith. Though respondent No.2 is served, none appears on its behalf. The petition is heard finally with the consent of the learned counsel appearing for the parties.

3. The writ petition challenges the order dated 12/09/2022, passed by the respondent No.1-Scheduled Tribe Certificate Scrutiny Committee, Chandrapur (hereinafter referred to as "Committee"), whereby the caste claim of the petitioner was invalidated.

4. The petitioner claims that he belongs to caste Koli Malhar, which is recognized as a Scheduled Tribe. The petitioner was appointed by the respondent No.2-Zilla Parishad on the post of Assistant Teacher reserved for Scheduled Tribe category. The petitioner submitted his caste claim before the Committee for verification. By the impugned order, the Committee invalidated the caste claim of the petitioner as 'Koli Malhar'. Feeling aggrieved by the impugned order, the petitioner has filed the present petition.

5. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for respondent No.1. We have gone through the record of Case No.सआ/अजप्रतस/गड/III50/34/2020.

6. It is contended on behalf of the learned counsel for the petitioner that the petitioner belongs to caste 'Koli Malhar'. He has submitted various documents showing the caste of the petitioner as 'Koli Malhar'. In spite of mentioning of the caste of the petitioner in documents, the Committee directed for vigilance enquiry. By relying on the vigilance enquiry, the Committee held that affinity test of the petitioner does not match with the caste "Koli Malhar". Relying on the affinity test, the Committee erroneously invalidated the caste claim of the petitioner. He submits that the High Court and the Hon'ble Apex Court has time and again held that affinity test is not a litmus test to decide the caste claim. According to him, the Committee ought not to have invalidated the caste claim of the petitioner and the order of invalidation is required to be set aside.

7. Learned Assistant Government Pleader Mr.Rao appearing on behalf of respondent No.1 submits that there are contra entries in the pre-constitutional documents of the relatives of the petitioner showing the caste as “Koli” and not “Koli Malhar”. According to him, the Committee rightly referred the matter to Vigilance Cell for enquiry and was found that the affinity test of the petitioner does not match with the caste “Koli Malhar”, the Committee rightly invalidated the caste claim of the petitioner. He prays for dismissal of the writ petition.

8. Perusal of the record of the Committee shows that the petitioner has filed documents of himself and his nearest relatives showing the caste as “Koli Malhar”. All these documents are post-constitutional documents. We have gone through the report of the Vigilance Cell, where the pre-constitutional documents of relatives of the petitioner have been collected and which are mentioned in the order of the Committee. The Committee found that in these documents the caste of cousin uncle, father, cousins show their caste as “Koli” and not “Koli Malhar”.

9. Needless to mention that it is not open for the petitioner to claim that “Koli” is also part of cast of “Koli Malhar”, which is not mentioned in the Presidential Order. In the cases of *B. Basavalingappa Vs. D. Munichinnappa* [AIR 1965 SC 1269] and *Bhaiya Lal Vs. Harikishan Singh* [AIR 1965 SC 1557], it is held that no inquiry at all is permissible and no evidence can be led into find out and decide that if any tribe/community is included within the scope and meaning of the entry concerned in the Presidential Order when it is not so expressly included.

10. Therefore, the entries of the caste in the documents is to be read as it is, which is mentioned in the Schedule of recognized Scheduled Tribe. There shall not be subtractions, suffix or prefix of any word, then mentioned in the relevant entry of the Scheduled Tribe. Finding inconsistent documents, the Committee rightly referred the matter to Vigilance Cell for enquiry.

11. It will be relevant to mention here the decision of the Hon’ble Supreme Court in the case of *Maharashtra Adiwasi*

Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra [(2023) 2 Mh.L.J. 785], wherein the Hon'ble Supreme Court has held that affinity test is not a litmus test to decide the caste claim. If the Committee finds doubt in the documents filed by the petitioner, it can refer the matter to Vigilance Cell enquiry for affinity test.

12. No doubt, the affinity test is not a litmus test, but it is one of the determination factors in deciding the caste claim of a claimant. Since, the Committee found inconsistent entries of the caste in the pre-constitutional documents of close relatives of the petitioner and relied on the affinity test of the petitioner which does not match with the caste "Koli Malhar". The Committee rightly invalidated the caste claim of the petitioner. Therefore, no interference is required in the impugned order dated 12/09/2022 passed by the Committee. The writ petition fails and accordingly it is dismissed.

13. Rule stands discharged. No order as to costs.