



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

WRIT PETITION NO. 1547 OF 2024

RAHUL SANJAY SONWANE

VERSUS

**SCHEDULED TRIBE CERTIFICATE SCRUTINY COMMITTEE
THROUGH ITS MEMBER SECRETARY AND ANOTHER**

....

Mr. S. S. Phatale a/w Mr. V. S. Bholankar, Advocates for Petitioner
Mr. S. B. Narwade, AGP for Respondent – State

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 08.02.2024

PER COURT :-

1. By a common judgment delivered by the Committee dated 31.08.2023, the claims of belonging to “Tokre Koli” Scheduled Tribe category put forth by the present Petitioner Rahul and his biological first cousin brother Aakash, were rejected. Aakash approached the coordinate Bench of this Court. By order dated 14.12.2023, the coordinate Bench of this Court allowed Writ Petition No. 12109 of 2023 preferred by Aakash. Prior thereto, the coordinate Bench delivered an order dated 20.09.2023 and allowed Writ Petition No.11746 of 2023 filed by Bhushan, who is

the biological brother of Aakash. Paragraph Nos. 3 to 8 of the judgment delivered in Bhushan, read as under:-

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.”

2. We have perused the genealogy placed before the Committee on an affidavit by the Petitioner which is not disputed. Aakash and Bhushan are biological brothers. Pravin is their biological

father. The father of the present Petitioner Rahul, namely Sanjay is the biological brother of Pravin.

3. Considering the law laid down in ***Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others – 2010 (6) Mh.L.J. 401*** and paragraph Nos. 22, 23 and 24 of the judgment delivered by the Hon'ble Supreme Court in ***Civil Appeal No. 2502 of 2022*** in the matter of ***Maharashtra Adivasi Thakur Jamat Saurakshan Samiti Vs. State of Maharashtra and Others***, decided by judgment dated 24.03.2023, **this Writ Petition is partly allowed.** The impugned order is quashed and set aside. The Respondent Scrutiny Committee shall issue a validity certificate for Tokre Koli Scheduled Tribe to the Petitioner, within 30 days from today.

4. Considering the law laid down in ***Shweta Balaji Isankar Vs. State of Maharashtra and others – MANU/MH/4098/2018***, if any issue of fraud or misrepresentation crops up, the Petitioner would not take a defense that we have passed these orders.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]