



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

WRIT PETITION NO. 8702 OF 2019

Yogesh Madhav Makalwad .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri R. K. Mendadkar, Advocate a/w Shri S. S. Phatale and V. G. Gangalwad, Advocates for the Petitioner.

Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 1 to 4.

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

**CLOSED FOR ORDER ON : 15.07.2024
ORDER PRONOUNCED ON : 23.07.2024**

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

. Heard both sides finally.

2. The petitioner is assailing judgment and order dated 27.06.2019 passed by the Scrutiny Committee confiscating and invalidating the tribe certificate of the petitioner for the Scheduled Tribe 'Koli Mahadev'. Though petition was filed by father and son, subsequently petitioner No. 2 father of the petitioner No. 1 was permitted to withdraw the petition. We are considering petition to the extent petitioner No. 1 Yogesh Madhav Makalwad.

3. Learned counsel Mr. Mendadkar for the petitioner submits

that, the school record of his father Madhav and uncle Venkat shows caste as Koli Mahadev and school record of his grandfather Jalba, which is of 10.10.1943 also indicates caste as Koli Mahadev. In view of this clinching evidence, the scrutiny committee committed perversity in discarding it. He would further submit that scrutiny committee made undue haste in deciding the matter when extract of the school record of petitioner's grandfather was referred for reaching opinion of handwriting expert and the opinion was awaited. The report is placed on record by way of additional affidavit. It is submitted that subsequent to filing of the petition the report of the handwriting expert was received and it also does not show any manipulation.

4. It is further submitted that scrutiny committee should have issued validity certificate to the petitioner considering pre independence record of petitioner's grandfather which is having greater probative value. In the alternative, learned counsel would pray to remand the matter to the scrutiny committee as report of handwriting expert was not before the committee and the petitioner had no opportunity to deal with the report.

5. Per contra, learned Additional Government Pleader Mr. P. S. Patil supports impugned judgment and order. He has produced on record original papers of petitioner. He would submit that though the report of handwriting expert was awaited at the time of impugned decision, the vigilance enquiry was conducted in respect of school record of Shahubai, Venkat and

Madhav which was indicative of manipulation of the record and falsehood of the claim of the petitioner.

6. Learned Addl. G. P. strenuously would point out from coloured photographs of the school record of Madhav, Venkat and Jalba that there was manipulation and the entries are unreliable. He would also point out contrary entry of Koli of Shahubai, who is cousin paternal side aunt of the petitioner's father. For that purpose a genealogy is also referred to by the learned Addl. G. P. It is further submitted that, the report of the handwriting expert is not conclusive and does not support petitioner. The vigilance enquiry of the school record of the grandfather would indicate that entire page was manipulated one. Therefore, the pre-independence record of petitioner's grandfather would be of no assistance to the petitioner.

7. We have considered rival submissions of the parties and have also gone through the relevant papers. We have carefully examined the original papers especially coloured photocopies of school record of petitioner's father, uncle and grandfather. It reveals that petitioner's claim is not based upon any validity certificate issued to the paternal side relatives. The foundation of claim is school record of petitioner's father Madhav, uncle Venkat and grandfather Jalba. The contrary entry of Shahubai was discovered in the vigilance enquiry. The genealogy which is part of original papers would indicate that Shahubai is petitioner's father's cousin aunt, a paternal side relative. Her school record indicates caste as Koli.

8. Impugned judgment and order was passed on 27.06.2019. The school record of petitioner's grandfather Jalba was verified during vigilance enquiry and the extract of the school register of Zilla Parishad school at Narangal, Tq. Degloor, Dist. Nanded was referred to the handwriting expert. However, after the impugned decision the report was received which is inconclusive. As there was direction issued by High Court to decide the matter before 28.06.2019, the committee was required to take the decision without waiting for the report.

9. Learned counsel for the petitioner has drawn our attention to the report which is produced along with the additional affidavit. The report dated 20.03.2020 is inconclusive, therefore, there is no point in remanding the matter to the scrutiny committee. The matter has to be decided by other documentary evidence. The first submission of the learned counsel that the report supports the petitioner cannot be accepted.

10. Entry in the school record of petitioner's grandfather is of 10.10.1943. It has a probative value if it is proved to be genuine. We have gone through coloured photo copy of the extract of the school register. Petitioner's grandfather's name is at Sr. No. 93 and in the caste column words Koli Mahadev are scribed. We have our reservations for the entry of caste considering handwriting and ink. The finding recorded by the scrutiny committee that the handwriting and the ink of column No. 1 to 18 are in same handwriting cannot be faulted with.

11. Additionally, we noticed glaring inconsistency in the column No. 11 as compared to column No. 1. Column No. 1 is a sequence of the students. Column No. 11 is about date when a student was admitted in the school. There are entries from Sr. No. 89 to Sr. No. 97 appearing on the extract. There is tampering in the year of admission of student at Sr. No. 89 to 92, especially last figure of the year. From 93 to 97 no such tampering is noticed. The student at Sr. No. 89 is shown to have been admitted on 20.07.194___. The student at Sr. No. 90 is shown to have been admitted on 16.06.193___. Petitioner's grandfather who is at Sr. No. 93 is shown to have been admitted on 07.07.194___. It is in comprehensible as to how the student at Sr. No. 89 is shown to have been admitted prior to the student at Sr. No. 90. We further find over writing in column No. 11 of Sr. No. 95 and 96. The tampering of the record is apparent. No reliance can be placed on entry of Jalba Malba of 10.10.1943.

12. We have also gone through the coloured photocopies of school entries of petitioner's father Madhav and uncle Venkat. In both the entries word Mahadev appears to have been inserted subsequently in different ink. The vigilance cell has rightly reported that there is manipulation in the school record. We have no reason to deffer from the finding recorded by the scrutiny committee in respect of Venkat and Madhav.

13. If this is the situation, the submissions of the petitioner fall on ground all course. The school record of the relatives of the

petitioner is neither reliable nor competitive to the claim of the petitioner. Under these circumstances, we do not find that the scrutiny committed has committed any perversity in rejecting the caste claim. So far as finding regarding affinity test is concerned, Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others reported in *2023 SCC Online SC 326* has held that it is not a conclusive test or litmus test. Considering these aspects of matter, we do not find substance in the petition and pass following order.

O R D E R

- I. Writ petition is dismissed.
2. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/July 24