



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13996 OF 2021

1] Yash Kishor Bagul
Age : 18 years, Occ. Student,
R/o Sarve, Tq. Sindhkheda,
Dist. Dhule

2] Divya Kishor Bagul,
Age : 20 years, Occu. Student,
R/o Sarve, Tq. Sindhkheda,
Dist. Dhule

.. Petitioners

Versus

1] The State of Maharashtra,
Through its Secretary,
Tribal Department,
Mantralaya, Mumbai – 32.

2] The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar
Through its Deputy Director (R)

3] The Tahsilar,
Tahsil Office, Sindhkheda,
Tq. Sindhkheda, Dist. Dhule

4] The Tahsildar,
Tahsil Office, Shirpur, Tq. Shirpur,
Dist. Dhule

5] The Commissioner & Competent
Authority, State CET Cell,
Maharashtra State, Mumbai – 1
8th Floor, New Exelsior Building,
AK Marg, Fort, Mumbai – 1
(Controller of Admission Process)

...

Advocate for petitioners : Mr. M.V. Thorat
AGP for the respondent – State : Mr. N.S. Tekale

...

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

**RESERVED ON : 24 OCTOBER 2024
PRONOUNCED ON : 11 NOVEMBER 2024**

ORDER (MANGESH S. PATIL, J.) :

Heard both the sides finally.

2. By way of this petition under Article 226 of the Constitution of India, the petitioners who are siblings, are taking exception to the judgment and order of the respondent – scrutiny committee in a proceeding under section 7 of the Maharashtra Act No. XXIII of 2001 and the Rules of 2003, framed thereunder, refusing to validate their ‘Tokre Koli’ scheduled tribe certificates.

3. Learned advocate for the petitioners refers to the genealogy substantiated by the petitioners’ affidavits under rule 11 of the Rules of 2003, in order to appreciate the relationship of the petitioners with the documents particularly the pre-constitutional documents of the ancestors. He would submit that older favourable record of Gorakh Bapu Nathu from the birth and death register maintained in form no. 14 dated 28-12-1935, referring to him as ‘Tokre Koli’ and even that of Daga Nathu Punju of 18-09-1912, referring to him as ‘Tokre Koli’ which is of the oldest period having greater probative value, has been discarded by the committee illegally and subsequent contrary entries of ‘Koli’ have been relied upon to discard the claims.

Such approach of the committee is perverse and arbitrary. The committee failed to consider the fact that in all probability, description as 'Koli' in the pre-constitutional record ought to be appreciated as referring to a common noun that was being used by making reference to 'Koli'. It could not have been treated as contrary entry. Even the vigilance enquiry was not conducted by the committee as is contemplated under rule 10. The research officer was not a part of the vigilance cell. It was conducted by a Police officer alone. Even the research officer did not express any opinion in respect of anthropological and ethnological traits in the light of the responses given to the questionnaire. Even the committee failed to appreciate this lapse. Sufficient and proper explanation was assigned by the petitioners in the reply to the vigilance report. The committee has failed to objectively consider it. The petition be allowed by quashing and setting aside the impugned judgment and order and the committee be directed to issue certificates of validity.

4. Per contra, learned AGP would take us through the original files maintained by the committee and particularly, the photocopies of the birth record. He would submit that as indicated in the judgment under challenge, both the entries of Daga Nathu Punju of 1912 and Gorakh Bapu Nathu of 1935 have been rightly discarded by the committee with a specific observation that except the entries in respect

of these two years i.e. 1912 and 1935, rest of the pages from this birth and death register were maintained in *Modi* script. The entries for these two years were recorded at once, creating a serious doubt about its genuineness. In fact, two entries of birth have been traced out in respect of Gorakh Bapu Nathu, one showing him to have been born on 08-05-1934 and the other of 28-12-1935. The former being 'Koli' and the latter as 'Tokre Koli' which could not have been possible and the latter entry certainly creates a doubt about its genuineness.

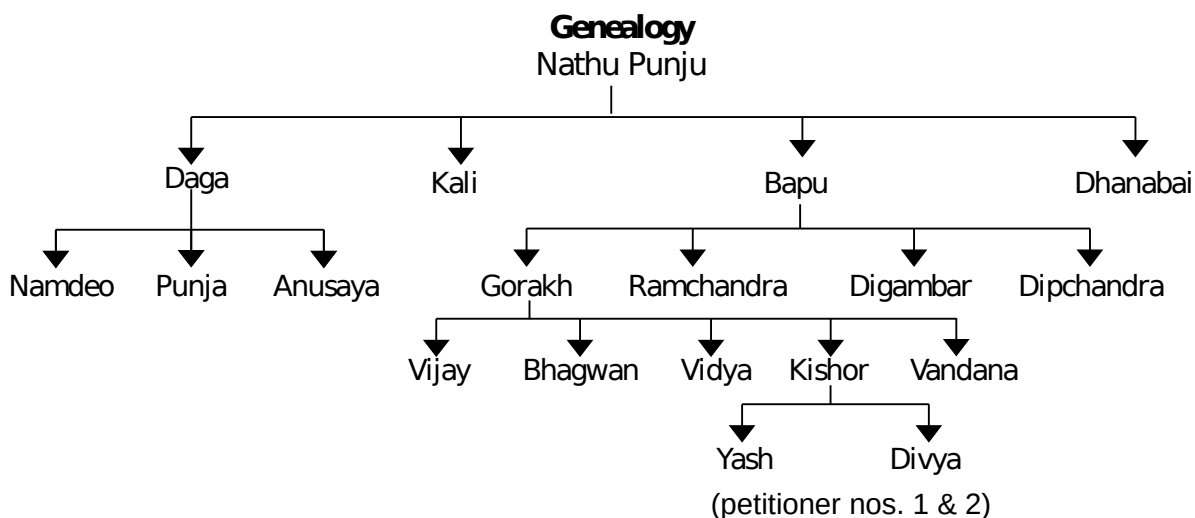
5. Learned AGP would further submit that even the argument of learned advocate for the petitioners that the research officer was not a part of the vigilance enquiry, is factually incorrect. The vigilance report, copy of which is annexed to the petition which was served to the petitioners, itself would demonstrate that there is a specific remark of the research officer expressly opining that the replies given by the petitioners were not compatible with 'Tokre Koli' tribe which has been further endorsed by the Police officer of the rank of Deputy Superintendent of Police before it was submitted to the committee.

6. Mr. Takale would further submit that apart from the above state-of-affairs, the committee could recover few contrary entries in the school record as well as birth and death record of the blood relatives wherein they were described as 'Koli'. The very fact that the caste 'Koli' was notified as Other Backward Class (OBC) whereas 'Tokre Koli'

is a scheduled tribe clearly demonstrates that except similarity in the use of word 'Koli', the two are distinct and separate. The former cannot be treated as generic name of which the latter is a specie. Besides, as is expressly remarked by the committee in the impugned judgment, in fact while admitting to the school on 10-04-1940, petitioners' grandfather Gorakh Bapuji Koli and cousin grand father Namdev Daga Koli were expressly described as 'Hindu Kunbi Patil' and uncle Ramchandra Bapu Koli as 'Hindu Koli' on 02-05-1945, respectively and letter 'Kunbi' was scored off in the two former entries. He would, therefore, submit that no fault can be found with the committee in refusing to recognize the petitioners as belonging to 'Tokre Koli' scheduled tribe. In fact, there is an attempt at manipulation of the school record in respect of Gorakh Bapuji Koli and Namdev Daga Koli wherein word 'Kunbi' was replaced by word 'Koli'. In the light of such an attempt at manipulation, no fault can be found with the observation of the committee. There is no perversity or arbitrariness and the petition be dismissed.

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

8. In order to appreciate the evidence, it would be apposite to bear in mind the genealogy followed by the documentary evidence which has been collated by the committee, as under :



Sr. No.	Particulars of documents	Name of the person on the documents	Relation with the Applicant	Caste recorded	Admission date
01	School evidence	Gorakh Bapuji Koli	Father	Koli Hindu Kunbi Patil	10.04.1940
02	School evidence	Namdev Daga Koli	Cousin Uncle	Koli Hindu Kunbi Patil	10.04.1940
03	School evidence	Ramchandra Bapu Koli	Uncle	Hindu Koli	02.05.1945
04	School evidence	Kishor Gorakh Bagul	Applicant no. 1	Hindu Koli (Tokre Koli)	13.07.1979
05	School evidence	Divya Kishor Bagul	Applicant no. 2	Hindu Tokre Koli	15.06.2006
06	School evidence	Yash Kishor Bagul	Applicant no. 3	Hindu Tokre Koli	17.06.2008
07	Village Namuna 14	Daga Bap Nathu Va Punju	Cousin Grandfather	Tokre Koli	18.09.1912
08	Village Namuna 14	Nathu Punju Koli	Cousin Grandfather	Koli	04.11.1931
09	Village Namuna 14	Narmadabai Mard Nathu	Grandmother	Koli	29.09.1933
10	Village Namuna 14	Gorakh Bapu Nathu	Father	Koli	Birth entry 08.05.1934
11	Village Namuna 14	Gorakh Bapu Nathu	Father	Tokre Koli	Birth entry 28.12.1935
12	Village Namuna 14	Gorakh Bapu Natha	Father	Koli	Death entry 22.10.1934

9. It would be appropriate to understand the above favourable and contrary record in juxtaposition to the stand being taken by the petitioners in their reply dated 10-11-2021, filed to the vigilance report. So far as the entries in the school record as 'Hindu Kunbi Patil' wherein word 'Kunbi' has been scored off and replaced by word 'Koli', the stand of the petitioners in their replies is to the effect that there is

nothing in the vigilance report to demonstrate that the initial entries were made pursuant to the information furnished by the petitioners' ancestors. It could be an error. However, conspicuously, the fact of there being scoring and manipulation in the caste column, has not been specifically denied by the petitioners. Meaning thereby that even if, as is being submitted by the learned advocate for the petitioners that the description as 'Koli' being generic reference, is accepted for the sake of arguments, the fact that there has been a manipulation wherein word 'Kunbi' has been scored off and replaced by 'Koli' cannot be treated as a favourable entry. It is a clear manipulation and the petitioners being the ultimate beneficiaries, cannot shirk off the responsibility on the spacious plea of it being the school record maintained by the school and coming from the custody of headmaster.

10. Besides, the very argument of the learned advocate for the petitioners and their stand to treat 'Koli' as generic name and 'Tokre Koli' as a specie, is liable to be discarded for the simple reason that ethnologically and anthropologically, 'Koli' was enlisted in OBC whereas 'Tokre Koli' is a scheduled tribe since inception. Therefore, even if the petitioners forefathers were being described with 'Koli' surname, one cannot treat them as belonging to 'Tokre Koli'.

11. For the same reason, the aforementioned 'Koli' entries even in the school record and the birth and death register of the pre-

constitutional period describing the petitioners' ancestors as 'Koli' would belie their claim.

12. So far as the two favourable entries of Daga Nathu Punju of 1912 and Gorakh Bapu Nathu of 1935, wherein they have been described as 'Tokre Koli', we cannot take exception to the observations of the committee with reference to the entire birth and death register of the relevant time inspected by it wherein except the entries of the year 1912 and 1935, rest of the entries were found maintained in *Modi* script and these two entries can be found on the pages with identical handwriting in *Devnagari* script. The very fact that entry in the birth register of Gorakh Bapu Nathu of 08-05-1934 described him as 'Koli', and another entry of 28-12-1935 stated to be of the same individual described him as 'Tokre Koli', indeed creates a serious doubt about the latter entry, more so, in the absence of specific stand by the petitioners in their reply to the vigilance cell report. Even the petitioners seem to have attempted to mislead the committee by producing an additional document in the form of extract of birth and death register in form 14 of Gorakh Bapu Nathu stated to be of 22-10-1934, showing the individual to have died on that day which cannot be possible since he was petitioners' grandfather.

13. To begin with the objection as regards composition of the vigilance cell, the vigilance report served to the petitioners and copy of which is annexed to the petition at **Exhibit – C** clearly reveals that there is a specific endorsement of the research officer expressly opining that the description / replies given by the petitioners are not compatible with the traits of 'Tokre Koli' scheduled tribe. It cannot therefore be accepted that vigilance report pursuant to the vigilance enquiry, was faulty on this count.

14. In the light of above state-of-affairs, we cannot accept the submission of the learned advocate for the petitioners that the observations and conclusions of the committee are perverse or arbitrary. It has taken a plausible view, which cannot be interfered with the limited jurisdiction under Article 226 of the Constitution of India.

15. Considering the observations of the Supreme Court in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***, in the absence of documentary evidence, the affinity test would come into play. We cannot undertake objective scrutiny of the observations of the committee based on the opinion of the research officer, who is one of the three members of the committee, as regards the affinity test, wherein it has been expressly mentioned that except few replies, rest

of the replies given by the petitioners do not disclose similarity with the traits of the 'Tokre Koli' scheduled tribe and they do not belong to it.

16. In the light of above, there is no merit in the petition and it is liable to be dismissed and is accordingly dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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