



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13162 OF 2023**

Manisha d/o Madhavrao Wantekar
Age – 29 years, Occ: Student,

2. Mahesh s/o Madhavrao Wantekar
Age – 33 years, Occ: Student,
3. Omkar s/o Rajkumar Wantekar
Age – 20 years, Occ: Student,
4. Sanjeevani d/o Gangadhar Wantekar
Age – 22 years, Occ: Student,

All R/o. Ashoknagar, Mukhed,
Tq. Mukhed, Dist. Nanded.

..Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural and Tribal Development Department,
Aurangabad.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Kinwat Division at Aurangabad,
Add. Near Cidco Bus Stand,
N-2, Cidco, Aurangabad,
Through its Joint Commissioner.

..Respondents

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Mr. M. V. Thorat, Advocate for the Petitioners.

Mr. S. K. Shirse, AGP for Respondent Nos.1 and 2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATED : 15th JANUARY, 2024.

ORDER (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioners have approached this Court under Article 226 of the Constitution of India, thereby impugning the order dated 05.10.2023 passed by the Caste Certificate Scrutiny Committee,

Kinwat, Head Office at Aurangabad by which the claim of the petitioners for grant of validity of their tribe claims as belonging to '*Koli Mahadev*', Scheduled Tribe have been invalidated.

3. Mr. Thorat, learned Advocate appearing for the petitioners would submit that the petitioners are belonging to '*Koli Mahadev*', Scheduled Tribe. The Competent Authority i.e. Sub Divisional Magistrate, Nanded issued tribe certificates in their favour, which were forwarded for verification to the Committee. On 14.07.2022, the petitioners were called for hearing alongwith their reply to the vigilance report. On appearance before the Committee, the petitioners have filed reply. In support of the caste claims of the petitioners they have relied upon the school admission record of petitioner no.1's father dated 23.07.1970. Similarly, the school admission entry dated 16.06.1937 in respect of Hanmantrao Gyanoba Wantekar, who is grandfather of the petitioners. The petitioners have filed one more document i.e. certificate copy received from the Court of Gulbarga in C.C.No.131/1356F containing names of accused persons. The name of the petitioners' grandfather appears at serial no.5, which mentions his caste as '*Koli Mahadev*'. However, the Committee rejected all these old records including pre-Constitutional documents. Mr. Thorat would further submit that there are revenue documents in the name of his forefathers, which depicts that they are holder of the tribal lands in terms of Section 36 and 36-A of the Maharashtra Land Revenue Code. However, the Committee discarded the important piece of evidence on erroneous counts.

4. Per contra, Mr. Shirse, learned AGP appearing for the respondents would submit that the school admission entry of the year 1937 is found to be a manipulated record. The document obtained from Gulbarga Court could not be verified, since the old record is destroyed by the concerned Court. The school admission record of Madhav

Hanmantrao Wantekar i.e. father of the petitioners has been discarded observing that the word '*Mahadev*' has been interpolated subsequently and there are contra entries depicting caste to be '*Koli*' in respect of blood relations of the petitioners.

5. We have considered submissions advanced on behalf of the respective parties. We have perused the original record of the proceeding before the Committee. Apparently, the petitioners have relied upon the pre-Constitutional documents in support of their claims, which fetch greater probative value, as compare to the documents which are produced in later point of time. If the pre-Constitutional document is found to be reliable and acceptable, the subsequent contra entries would not be of any significance, particularly to discard the caste claim. From the observations of the Committee we could gather that the Committee has dealt with the said document at page no.18 (para no.vii). The Committee discarded the said document from consideration only on the ground that the original Fasali Urdu records have been destroyed as per order of the District and Sessions Judge, Gulbarga dated 27.02.1999. The learned Advocate appearing for the petitioners produced before us certified copy of the said document. It is the order of the Court, which refers to the names of the accused persons in the criminal proceeding. The name of the petitioners' grandfather appears at serial no.5, which refers to his caste as '*Mahadev Koli*'. The copy produced before us is duly certified by the concerned Court. It bears seal. The details regarding the documents tendered for certified copy and its delivery are clearly visible. The document is obtained before the date of destruction of the original record on 27.02.1999. The English translation of the said document is also placed into service by the petitioners, which shows date as '२ महेर १३५६ फ'. It bears the seal of 'Civil Judge Junier Divison & J.M.C. II Court Gulbarga'. It records that the case has been dismissed, which was registered for offences under

Sections 11, 119, 17 Arms 27. On *prima facie* consideration, we find that the certified copy possessed by the petitioners has been issued by the Competent Officer. The authentication of the document is coming from appropriate custody in appropriate manner. The Committee should not have mechanically dealt with such an important piece of the document and refused consideration only because original has been destructed by the said authority. Although we have not verified the correctness of the translation of the old document, *prima facie*, we find that the document would form important piece of material for determination of the caste claim of the petitioners. In that view of the matter, we are of the considered view that the Committee failed in patent error in discarding the aforesaid document from consideration while determining the caste claims of the petitioners. Resultantly, the impugned order deserves to be quashed and set aside. Hence, we pass the following order:-

ORDER

- a. Writ Petition is partly allowed.
- b. Impugned order dated 05.10.2023 passed by respondent no.2- Caste Certificate Scrutiny Committee, Kinwat, Head Office at Aurangabad in Application Nos.4/511/EDU/032019/114857, 9/511/EDU/072022/11983, 9/511/EDU/072022/11980 and 9/511/EDU/072022/11976 is quashed and set aside.
- c. The matter is remitted back to the Committee to consider the document of ‘२ महेश १३५६ क’, which is certified copy of the Gulbarga Court in relation to the C.C.No.131/1356F depicting name of the petitioners’ grandfather i.e. Hanmantrao Gyanoba Wantekar alongwith his caste as ‘*Koli Mahdev*’. The Committee is at liberty to verify the correctness of the translation and contents of the said document and pass the order afresh after appreciating entire material on record in light of the findings as regards to the said documents.

- d. Writ Petition stands disposed of in aforesaid terms.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/January-2024