



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6414 OF 2024

Tushar s/o Pradip Navasare,
Age 26 years, Occ. Education,
R/o. Khede, Tq. & Dist. Dhule

... Petitioner

VERSUS

Scheduled Tribe Certificate
Scrutiny Committee, Dhule,
Through its Member Secretary

... Respondent

...

Advocate for Petitioner : Mr. Mahesh S. Deshmukh i/b Mr. Sagar S. Phatale
and Mr. V.S. Bholankar.

A.G.P. for Respondent : Mr. K.N. Lokhande

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

RESERVED ON : 08.07.2024
PRONOUNCED ON : 12.07.2024

ORDER : (MANGESH S. PATIL, J.)

The petitioner is challenging the judgment and order in the light of the enabling provision under Section 2 of Section 7 of the Maharashtra Act, XXIII of 2001, whereby his Tokre Koli scheduled tribe certificate has been confiscated and cancelled by the respondent-scrutiny committee constituted under that Act.

2. The learned advocate Mr. Deshmukh for the petitioner would vehemently submit that the petitioner had submitted a preconstitutional school record of his cousin grandfather Jagan Rupchand Koli who was born in the year 1931, and in spite of having greatest probative value as laid down in the matter of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors; (2012) 1 SCC 113*, the committee has discarded it

without assigning cogent and concrete reasons. Even thereafter, there was a birth record of another cousin grandfather Sajan Rupchand Koli, describing him to be 'Tokre Koli', of the year 1939. But even that has been discarded without assigning any reason. There was no concrete contrary record, still the committee has entertained illfounded doubt about such old record. Even its conduct in discarding all the records by observing that the entries are inconsistent is illfounded. Entry of 'Hindu' or 'Hindu Tokre Koli' describing religion 'Hindu' cannot be regarded as contrary to the entry 'Tokre Koli', and the committee ought to have accepted it.

3. Mr. Deshmukh would also submit that contrary to the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samikti and Anr. Vs. State of Kerala and Anr (1994) 1 SCC 359**, the committee has applied the principle of area restriction. Even the committee has given unnecessary weightage to the affinity test, the scope of which is limited as laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Simiti Vs. State of Maharashtra and Ors; 2023 SCC Online SC 326***.

4. Per contra, the learned A.G.P. Mr. Lokhande would support the order. He would submit that no illegality has been committed by the committee in appreciating the evidence. There is an inconsistent record describing the petitioner's ancestor as 'Tokre Koli', 'Hindu' and 'Hindu Tokre Koli'. He could not get through the affinity test and the petition be rejected.

5. We have considered the rival submissions and perused the papers. It is a matter of record that the petitioner has been relying upon the two oldest entries in the form of the school record of his cousin grandfather Jagan Rupchand Koli and the birth record in Form 14 maintained by the Grampanchayat of another cousin grandfather Sajan Rupchand Koli of the year 1939. They were described as 'Tokre Koli'. The committee, without undertaking appropriate scrutiny has refused to rely upon these two oldest preconstitutional entries only on the ground and by referring to the

subsequent entries, which are 'Hindu' or 'Hindu Tokre Koli' stating that these are inconsistent entries. In the light of the decision in the matter of **Anand (supra)**, the oldest entries would carry greater probative value, more so in respect of preconstitutional entries. In our considered view, 'Hindu' being a religion, even if there are some entries which are 'Hindu' or 'Hindu Tokre Koli', there is no room for treating these entries as contrary or incompatible with the claim of 'Tokre Koli'.

6. As can be seen from the vigilance report, the committee seems to have refused to rely upon the birth record of cousin grandfather Sajan Rupchand Koli on the ground that during verification, no such record was traceable in the office of the Tahsildar. Accepting this to be a correct state of affairs, neither in the vigilance record nor even in the impugned judgment and order is there any such negative comment in respect of the entry of another cousin grandfather Jagan Rupchand Koli, which was recorded in the school record as 'Tokre Koli'. Even without entertaining any doubt, the committee could not have discarded it outrightly. When the papers collected during the vigilance enquiry expressly revealed that the petitioner's cousin grandfather Jagan Rupchand Koli, who was admitted in the Zilla Parishad school Kuve Tq. Shirpur, District Dhule, in the absence of any material much less to demonstrate that this record is manipulated, the conduct of the committee in readily discarding it even without assigning any reason is clearly perverse and arbitrary.

7. Even the committee could not have given undesired importance to the affinity test which is not regarded as a litmus test as laid down in the matter of **Anand (supra)**.

8. The aforementioned facts and circumstances and the evidence that was available to the committee clearly corroborates the petitioner's claim of being 'Tokre Koli'. The impugned judgment and order does not stand scrutiny of law and is liable to be quashed and set aside.

9. The Writ Petition is allowed. The impugned order is quashed and set aside. The committee shall issue tribe validity certificates to the petitioner of 'Tokre Koli' scheduled tribe immediately.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-