



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

WRIT PETITION NO. 12410 OF 2024

RUSHIKESH DAGADU KALKUTE UNDER GUARDIANSHIP OF NATURAL
GUARDIAN AND FATHER DAGADU SHAHAJI KALKUTE
VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND ANOTHER

...
Advocate for Petitioner : Mr. Omgashad B. Boinwad
AGP for Respondents : Mr. A. S. Shinde
...

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATE : 28-02-2025

PER COURT:-

1. Heard both sides finally at the admission stage considering the exigency in the matter.
2. The petitioner is assailing the judgment and order dated 18.10.2024 passed by respondent No.2/scrutiny committee invalidating his tribe certificate.
3. There is no validity to support the petitioner. He is relying on revenue record of the great grandfather Laxman Mahadu in respect of Survey No.217/1 and birth record of Shahaji Laxman showing the caste as Koli Mahadev. Both these entries are per-constitutional having greater probative value.

4. The learned counsel for the petitioner submits that vigilance inquiry was conducted and old record was verified by the committee and no doubt was expressed by the Vigilance Cell. The Vigilance Cell has not taken into consideration school record which he placed before it and the tribe claim was rejected, which was subsequent in time. As the old entries are having greater probative value, he would submit that the petitioner is entitled to validity certificate.

5. The learned counsel for the petitioner has placed on record the order of the Co-ordinate Bench in the matter of ***Pankaj s/o. Bharat Bhimbarwad and another vs. The State of Maharashtra and another, Writ Petition No.7454 of 2024, dated 27.08.2024.*** The following observations paragraph Nos. 6 and 8 are relevant;

“6. Obviously, this being a tribe claim, pre-constitutional record will have its own importance. Naturally, the petitioners are relying upon pahani patrak of 1347-48 Fasli which corresponds to the year 1937-38 A.D. There is no dispute about the fact that the original pahani patrak from the office of Tehsildar, Mudhol, District - Nirmal of Telangana state, was personally inspected by the vigilance officer by approaching that office. Admittedly, the impugned judgment and order has been passed by the committee solely basing its conclusion on what was reported by the vigilance officer after going through the original revenue record. Independently, the committee had not

called upon the original record for its own inspection. Admittedly, a coloured photocopy of the relevant page of the register was collected by the vigilance officer and the committee had an occasion to peruse it. We find that the learned counsel for the petitioner is justified in referring the judgment.

....

8. To repeat, this per-constitutional record is coming forth from the concerned Tehsil office, genuineness of which comes with a presumption about having been maintained in the ordinary course of the official business. A perfunctory inference by the committee, readily subscribing to the inference drawn by the vigilance officer, is unbecoming of the office which has been conferred with the powers in such serious matters.”

6. Mr. Shinde, learned A.G.P. supports the impugned judgment and order. He tenders on record the original record of the petitioner. He would point out that the committee has dealt with the incompatible revenue record of petitioner’s great grandfather Laxman and great grandmother Raubai Rama indicating caste as Koli. It is vehemently submitted that these two entries are per-constitutional and, therefore, the tribe claim is rightly rejected by the committee.

Our attention is also adverted to the school record of Vishwambhar Eknath Kalkute, who is cousin uncle of the petitioner. His school record of 29.07.1970 is found to have been tampered;

As it is before imposition of area restriction, it would carry significance.

7. The learned A.G.P. would further submit that the petitioner would not withstand affinity test. There is consistent incompatible school record since 1964, and therefore, the petitioner's claim is doubtful and no validity can be granted. He would submit that the committee has dealt with the material in proper perspective. In the alternative, he would also submit that if the matter is remanded, then fresh verification can be conducted in respect of the revenue record of great grandfather and birth record of the grandfather of the petitioner.

8. We have considered the rival submissions and gone through the relevant papers. There is no validity in the family of the petitioner. We have gone through the vigilance report. The pre-constitutional record of grandfather Shahaji is of 1355 Fasli 1945 AD, indicating caste as Koli Mahadev and the revenue record of petitioner's great grandfather is of 1951.

9. The revenue record of great grandfather Laxman of 1951 and birth record of Shahaji of 1945 were verified by the vigilance cell and in the vigilance report, no doubt was raised against those entries. It is clearly mentioned that the caste is mentioned as Koli Mahadev. The birth record of grandfather is of pre-constitutional period. It has greater probative value. The pre-constitutional record

having greater probative value corroborates the tribe claim. Interestingly, though there is vigilance report in favour of those entries, the scrutiny committee did not deal with these two entries. There is no reason assigned by the committee for not considering those entries. The learned A.G.P. is also unable to satisfy us as to why there is no comment by the committee in respect of these two entries.

10. It is pertinent to note that the relationship of the persons whose names are in the entries have also not been disputed in the entire judgment. We are of considered view that it is abdication of power. The committee should have independently verified those entries or at least remark given by the vigilance cell should have been dealt with.

11. The learned A.G.P. adverted our attention to the school entry of the Vishambhar which is of 1970 found to have been tampered based on the report of Headmaster disclosing tampering of entry. However, we do not find coloured copy. Normally, in such a case it is possible to place on record a coloured photocopy. No reason is forthcoming as to why that exercise has not been done.

12. The learned A.G.P. would rely on the old revenue entry of great grandfather Laxman Mahadu and great grandmother Raubai Rama indicating caste as "Koli". Those pertain to revenue record of Survey Nos.127/A and 127/B. The committee dealt with those

two entries, but surprisingly the other revenue entries of self-same grandfather in respect of Survey No.270/1 was not dealt with. We find that the committee is selective in exercising the power to deal with the record. This is not expected from quasi-judicial committee which is fact finding forum. When the committee is armed with vigilance cell and the competent officer to verify the record, all entries should have been considered and dealt with in the impugned judgment. We find that there is a grave error of jurisdiction of the committee.

13. So far as the entry of birth extract of great grandfather Shahaji is concerned, there is presumptive value under Section 30 of the Evidence Act. This aspect has not been dealt with by the committee. When there is clinching evidence, the findings recorded by the committee on the affinity does not carry significance. The argument in respect of area restriction also does not convince us. The submission of the learned A.G.P. to remand the matter to the scrutiny committee cannot be accepted. The learned A.G.P. is unable to satisfy us as to why the committee could not conduct the verification in respect of the entries which were before it.

14. We find that the learned counsel for the petitioner is justified in referring the judgment in the matter of **Pankaj s/o. Bharat Bhimbarwad** (supra).

15. In that view of the matter, we are of the considered view that the petitioner has made out a case. The impugned judgment and order are unsustainable. We, therefore, pass the following order :

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned judgment and order is quashed and set aside.
- (iii) Respondent No.2/Scrutiny Committee shall forthwith issue tribe validity certificates of "Koli Mahadev" - Scheduled Tribe to the petitioner.
- (iv) The petitioner shall not claim equities.

**[SHAILESH P. BRAHME]
JUDGE**

**[S. G. MEHARE]
JUDGE**

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