
(2002) 03 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 5196 of 2000

Aruna Kashinath Koli

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-03-2002

Acts Referred:

Constitution of India, 1950 — Article 341, 342

Citation : (2002) 5 BomCR 745

Hon'ble Judges : A.B. Naik, J

Bench : Single Bench

Advocate : A.S. Golegaonkar, for the Appellant; M.S. Deshmukh and A.B. Bajpai, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

A.B. Naik, J.—The above writ petition is placed for admission and with the consent of the learned Counsels appearing for the respective parties, the petition is heard finally at the admission stage itself.

2. Rule. Rule is taken up for final hearing with the consent of the parties.

3. The petitioner is challenging the order passed by the Committee for Scrutiny & Verification of Tribe Claims, MS. Nasik (hereinafter referred to as "the Committee").

4. The petitioner-Miss Aruna Koli, through the Principal, Maharashtra Higher Secondary Science College, Nilanga, applied for verification of her tribe claim, as she intended to prosecute further studies claiming herself as belonging to "Mahadeo Koli" Scheduled Tribe. The petitioner, admittedly is the resident of village Dabka, Taluka Nilanga, District Latur. The family of the petitioner originally resident of Ausa Taluka & District Latur. After receipt of the application of the petitioner, the Committee noticed the petitioner and directed her to remain present for personal hearing on 29-5-1999 and also on 10th June, 1999. On these two occasions, the petitioner has not produced any documents in support

of her tribe claim. The Committee, therefore, referred the tribe claim for investigation to the Vigilance Cell. Accordingly, the Vigilance Cell team visited the native place of the petitioner. During the course of investigation, the Vigilance Officer approached the Head Master, Zilla Parishad Primary School, Nandurga, Taluka AUSA where the petitioner's father was admitted 7-7-1967. The vigilance team found that the entry in the school register in respect of the petitioner's father is recorded as "Koli". The vigilance team also conducted investigation and contacted the petitioner's mother and recorded her statement. Thereafter the Vigilance Officer visited Nandurga as it is revealed that the petitioner's father is resident of Nandurga. It revealed that he is in service of Postal Department at Nitoor, Taluka Nilanga, District Latur. The Vigilance Officer noticed that in the school register where the petitioner has studied i.e. Prathmik Vidya Mandir, Nilanga, the entry regarding caste shows "Hindu M. Koli". The Vigilance Officer noticed from the statement of the mother that is recorded during the investigation, the customs and festivals etc. do not tally with, "Mahadeo Koli" Scheduled Tribe. Accordingly, on 17th April, 1999, the Vigilance Officer submitted his report to the Sub-Inspector Vigilance Cell, Nasik who then endorsed accepting the report. Accordingly, the said report came to be submitted to the Committee. After receipt of the report of the Vigilance Cell by the Committee, the same came to be forwarded and served on the petitioner and the petitioner, through her father. Shri Kundlik K. Koli submitted the reply/explanation, to the report of Vigilance Cell. He gave detailed explanation admitting the visit of the Vigilance Officer to his village, schools etc. He also admitted the fact that the Vigilance Officer has recorded statement of his wife. He also accepted the fact that in the school record, the caste "Hindu Koli" is recorded. To this he tendered an explanation stating that as his parents were uneducated and illiterate the caste is not mentioned as per their say, but the teacher in-charge has recorded caste "Hindu Koli" in general nomenclature of "Mahadeo Koli" as Koli. He contended in the reply that "Koli Malhar", "Koli Mahadeo" and "Tokre Koli" are the sub-tribes of Koli and they are generally known as "Koli". It contended that prior to 1976 because of the area restrictions the persons belonging to "Koli Mahadeo" in Marathwada area were not getting the benefit of reservation of Scheduled Tribe. Therefore, there was no occasion for him to mention the caste as "Mahadeo Koli". While seeking admission in the school, it was contended that the tribal development department has accepted the position that prior to 1976 as there were area restrictions hence the community people who were residing or falling in scheduled area were considered as tribals. It was stated that as the entry in the school register was prior to 1976 and in view of the removal of area restrictions by Scheduled Castes and Scheduled Tribes (Amendment) Order, 1976, the caste was mentioned as "Koli". But in fact, he belongs to "Koli Mahadeo". He placed reliance on the judgment of this Court in the case of Subhash Kagde v. State of Maharashtra, Writ Petition No. 438/1985 and contended that the entry in the school register may not be given any importance. It is contended that the caste which is mentioned in the school register is because of illiteracy of his father and because of area restriction. Therefore, the

entry of caste "Koli" in the school record cannot affect the right of the petitioner to claim that she/he belongs to "Koli Mahadeo" Scheduled Tribe.

5. During the hearing, the petitioner along with her father, submitted and filled in the questionnaire that was supplied by the Committee. The Committee, on the basis of submission/reply filed by the petitioner's father, also the documents that are placed before the Committee by the Vigilance Cell and considering the fact that neither the petitioner nor her father co-operated with the Committee for getting the Scheduled Tribe claim decided. With this backdrop, the Committee placed reliance on the certificate issued by the Headmaster of the School, which shows that in the year 1967 the petitioner's father was admitted in the said school and entry in column meant for caste/tribe, the caste "Koli" is shown. This document being old one i.e. of 1967 it invalidated the certificate issued by the Deputy Collector and Rehabilitation Officer, Latur being No. 99/MISC/1010 dated 19th June, 1999, certifying that the petitioner belongs to "Koli Mahadeo" Scheduled Tribe. The Committee, further directed the petitioner to surrender the said certificate within eight days to the Deputy Collector and Rehabilitation Officer and directed the said Officer to confiscate the same.

6. The order passed by the Committee on 23rd June, 1999 is challenged in this writ petition.

7. The petition was circulated for admission on 17th July, 2001 and thereafter the petition was twice adjourned at the request of the learned Counsel for the petitioner. On 17th October, 2001 the petition was placed, again, for admission. On that day, the petitioner sought leave from this Court to amend the petition and to add a ground about non-inclusion of Research Officer in the vigilance team. Accordingly, the petition was amended and the petitioner has added the grounds challenging the validity of the report submitted by the Vigilance Cell, on the ground that as per the direction contained in Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, , where the Apex Court has directed that along with the Vigilance Cell one Research Officer/Tribal Development or Social Welfare Officer would be associated in finding the social status of eligibility of the candidate.

8. After amendment of the petition, the petitioner was again heard for more than one occasion. The petitioner also submitted an undertaking that in case the matter is remanded to the Scrutiny Committee for re-trial, the petitioner will not take any benefit of the certificate till the Committee decides the claim.

9. The petition is opposed by the Committee by filing affidavit-in-reply. The said affidavit is verified by Shri Sakharam Bhanudas Pungle Research Officer, Scrutiny Committee, Aurangabad and supported the order passed by the Committee. It is contended that the tribe certificate which has been issued by the Deputy Collector and Rehabilitation Officer, Latur in favour of the petitioner on 16-9-1999 is issued violating the procedure and instructions that are laid down in the Government Resolution dated 29th October, 1980. It is contended that the entry

which is made in the school register in 1967 was not challenged and corrected by petitioner's father the certificate which was issued in favour of the petitioner by the authorities without following the procedure was rightly invalidated by the Committee. It was contended that the tribe certificate which is issued in favour of the petitioner cannot be treated to be valid one as the said certificate runs contrary to the old entries made in the school record. It was further contended in respect of the added grounds in the petition that non-accompaniment of Research Officer with the Vigilance Cell will not by itself render the information and the report that is supplied by the Vigilance Officer to the Scrutiny Committee to invalidate the order passed by the Committee. It is contended that the report is based on the documents that were collected by the Vigilance Cell during the investigation by visiting the school in which the father of the petitioner was admitted in the year 1967. Therefore, it is contended that non-presence of Research Officer is not fatal to the present case. The record maintained by the Zilla Parishad Primary School, Nandurga shows that the caste of petitioner's father is recorded as "Hindu Koli" which is not a Scheduled Tribe. It is contended that the Kolis in Maharashtra previously were other Backward Class and now they are included as Special Backward Class. With these contentions, the Committee supported the order.

10. Shri A.S. Golegaonkar, the learned Counsel appearing on behalf of the petitioner, has made the following submissions:

(I) The petitioner hails from Ausa i.e. Marathwada region, which was part and parcel of erstwhile Hyderabad State. Hyderabad State became part of Indian Union in 1948. In erstwhile Hyderabad State caste "Koli", according to the Counsel, is called as "Koya" which was included in the list of Scheduled Tribes in Scheduled Tribes Order, 1950 published on 6th September, 1950.

(II) The word "Koya" in Telugu means "Koli" in Marathi and this caste is recorded in the register maintained by the Zilla Parishad Primary School, Nandurga, Taluka Ausa, District Osmanabad (now Latur).

(III) The Census of India 1941 Vol. XXI HEH Nizam's Dominion, published in 1945, there is Appendix I which is an essay by Christoo Von `er Haimendorf Ph.D. on "Tribal Populations of Hyderabad Yesterday and Today". Which states that Kolis in Hyderabad State are known and recognised as Scheduled Tribe and the "Kolis" in erstwhile Hyderabad State on re-organisation of State, will continue as Scheduled Tribe. At this stage, it will be appropriate to refer to the said essay where the reference is made to "Koya" and "Koli":

"Compared to the millions of aboriginals in the Central Provinces and Bear and in the romantic highlands of the East Godavari Agency, Bastar and Orissa, the number of aboriginals in H.E. II, the Nizam's Dominions is not large. Among the 678-149 persons recorded in 1941 as members of tribes there are 404, 614 Lambaras, Banjaras and Mathuras, who are the recent immigrants from the north, and the combined strength of the trial aboriginal tribes such as Gonds,

Koyas, Bhils, Kolams and Chenchus exceeds only slightly one quarter of a million."

".....and Koyas numbering 31, 994 are found all along the Godavari in an area fifty miles west of the river, here and there interspersed with groups of Naikpods."

".....In many respects similar to the position of the Andhs is that of the Kolis, who in 1941 have for the first time been reckoned among the aboriginals, but the figure of 237 Kolis for the dominions can bear no relation to the true strength of the tribe. The 1931 census recorded 52572 and the 1911 census even 266.840 Kolis, who were then classed among the Hindu Castes. Most Kolis are no doubt largely Hinduized, but some section of the tribe, such as, certain Kolis in Adilabad, still retain some connection with forest life and engage in the collection of wild fruits and other jungle produce for sale."

(IV) The learned Counsel has relied on the extract of judgment of Karnataka High Court delivered in the case of one Vaijanath's, Election Petition No: 16/1983 decided on 15-1-1985 to substantiate his contention that tribe "Koya" used in the Constitution (Scheduled Tribes) Order, 1950 dated 6th September, 1950, Part IX in relation to Hyderabad State Entry No. 7 as "Koya" means and include "Koli". The learned Counsel has emphasised that term "Koya", in Marathi is Koli and word "Koya" is synonymous to the word Koli and that has to be read in Entry No. 7 in the Presidential Order, 1950, which has been accepted by the Karnataka High Court in the election case.

(V) The learned Counsel also placed reliance on Schedule 8 of Bombay Re-organisation Act, 1960, Entry No. 8 has to be read along with section 27 of the Bombay Re-organisation Act, 1960, which deals with amendment of Scheduled Tribe Order as from the appointed day Constitution (Scheduled Tribes) Order, 1950 which shall stand amended as directed in VIII Schedule. The learned Counsel contended the same entry is carried forward in Bombay Re-organisation Act, 1960 and that Schedule is relevant for the present purpose to find out whether "Koya" (ST) includes Koli, which is Scheduled Tribe. The learned Counsel contended that there is no dispute that this position remained till 1976, when the Scheduled Tribes Order came to be amended exhaustively in 1976 and in that list for the first time "Mahadeo Koli" is included in Scheduled Tribes. Therefore, the learned Counsel contended that the term Koya used in the initial Presidential Order which is carried forward and made applicable to the erstwhile Hyderabad area (Marathwada) by virtue of section 27 of the Bombay Re-organisation Act.

(VI) The learned Counsel further contended by placing reliance on Census Report of 1921 i.e. Census of India 1921 Vol. XXI Hyderabad State, Part I. The learned Counsel specifically relied on the following portion in the said report:

"Koli 39, 819: A group of cultivators and fishermen of mixed descent numerous in the Warangal and Aurangabad districts. The Kolis are divided into several endogamous sub-tribes but only two of those viz. Malhar Koli and Mahadeo Koli are to be found in these dominions. The Malhar Kolis are also known as

Panbharis or Chunbis, because they are employed as members of the ballots and supply water to villagers. The Mahadeo Kolis call themselves as Raj Kolis and are most numerous in the State. They are dark-complexioned and short of stature, but strong and muscular. They are divided into 24 exogamous sets each of which is further sub-divided into a number of sections. A man may not marry outside the tribe or inside the sect to which he belongs. Marriage with the daughters of one's maternal uncle is allowed. Instant as well as adult marriages are practiced. The bride price varies from Rs. 15 to 30. Widow marriage is permitted, but the widow should give up her children by her into husband to his family members. Divorce is also permitted with the sanction of the caste panchayat, their tutelary deity is Mahadeo. They pay reverence to Bhairoba or Sonari (Ahmednagar) Devi of Tuljapur in the Osmanabad District and Khandoba of Jejuri, Poona. They pay homage to other minor gods and to the spirits of their ancestors. They have a strong belief in spirits and sorcery. Brahmans are employed on religious and ceremonial occasions. The Kolis eat fowl, fish, mutton and venison and indulged in spirituous and fermented liquors. The dead are buried in a lying posture, with the face upwards and the head pointing to the north. The Kolis have taken to agriculture, but they are less painstaking and less skillful in the management of crops than the Kunbi. Many of them are village headmen holding service and while others work as day-labourers."

(VII) The learned Counsel brought to my notice in order to substantiated his claim that Kolis are treated as tribe, the treatise written by Syed Siraj-Ul-Hassan. The said work of the learned Author is under chapter "castes and tribes" of the Nizam's Dominion. The learned Counsel has brought to my notice the chapter "Kolis" which is referred to in the said Article. The said paragraphs runs as follows:

"Koli, Taru, Dhimar (Sansk Dhivar) a boating and fishing tribe many of whom are engaged as village watchmen and water carriers. The Kolis are numerous near Naldurg, along the Balaghat range on the western frontier of the Nizam's territory extending eastwards to the districts of Nanded and, Nizamabad and also to the tract of country lying between the Godavari and Hyderabad."

(VIII) The learned Counsel further placed reliance on the publication of Cosmo Publication that is under the caption "Hindu Tribes and Castes together with an Account of Mohammedan Tribe of North Western Frontier and all the Aboriginal Tribes of the Central provinces". The learned Counsel placed reliance on the word "Koli" tribe referred to in Chapter 17. In the said chapter 1st paragraph gave several names of "Koli" tribe and in first entry in the said tribe is Mahadeo Koli. The learned Counsel further contended relying on the said publication that Kolis are also found as referred to in that chapter near the boundary of Hyderabad territory. Therefore, the learned Counsel contended that in this publication also, the word "Koli" is referred to as tribe and that includes "Mahadeo Koli".

(IX) The learned Counsel contended that the Government of Maharashtra has approached to the Secretary to Government of India. Department of Social

Welfare with a request to include Kolis in Scheduled Castes and Scheduled Tribes Order (Amendment) Bill, 1967. He also invited my attention to the other communication dated 26-3-1979 on the same subject where request was made by the Government of Maharashtra to the Chief Legislative Officer, Lok Sabha Secretariat to include Koli into said bill. Therefore, the learned Counsel contended that looking into all aspects and considering the several reports submitted to the Government from time to time and also considering several articles written by the scholar/experts which are brought to my notice in the present petition. "Koli" in Marathwada area are Scheduled Tribe and not O.B.C. as declared by the Government of Maharashtra.

(X) The learned Counsel has brought to my notice unreported judgment of this Court delivered by my Brother R.M.S. Khandeparkar, J., in Writ Petition No. 3578/2000 in Apoorva Kumar Jadhav v. State of Maharashtra. The learned Counsel contended that the learned Single Judge in Apoorva Kumar Jadhav's case has prima facie accepted the contention that Presidential Order of 1950 Kolis was declared as Scheduled Tribe in relation to State of Hyderabad. After the re-organisation in the year 1956, Marathi speaking area of Hyderabad region was included in Maharashtra in order to consider the effect of the State Re-organisation and the entries made in various orders. The learned Single Judge has remanded the matter to the Committee to consider all the aspects afresh. The learned Counsel, therefore, contended that I should also follow the same procedure and remand the matter to the Committee to consider the matter afresh whether the petitioner belongs to Mahadeo Koli, Scheduled Tribe.

(XI) The learned Counsel contended placing reliance on Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, . The learned Counsel contended that the State of Maharashtra approached the Apex Court to recall the judgment given in first Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . The learned Counsel contended that nearly all the prayers of the Government were rejected but the earlier order was modified and the Apex Court has accepted the contention of the Government that the Vigilance Cell should include one Research Officer/Tribal Development or Social Welfare Officer and he should be associated in finding the social status of the concerned. The learned Counsel contended in the present case undisputedly the Research Officer from Tribal Development or Social Welfare Officer was not associated when the Vigilance Cell conducted the investigation. The learned Counsel contended that by virtue of Article 141 of the Constitution of India, the law declared by the Apex Court is binding and the direction issued in 2nd Madhuri Patil's case being mandatory and the investigation is made by the Vigilance Officer in contravention and in defiance of the direction of the Apex Court in 2nd Madhuri Patil's case. Therefore, the learned Counsel contended that the entire report of the Vigilance Cell is to be discarded and on this ground as the Committee has relied on the said defective report, the judgment and order of the Committee also requires to be declared invalid and further requested that the matter may be remanded to the Committee, with a further direction to refer the

matter to properly constituted vigilance cell for further enquiry.

(XIII) It is further contended by the learned Counsel that it is undisputed fact that part of Marathwada was part of Nizam State which is known as Hyderabad State. In view of the States Re-organization Act, 1956 part of Hyderabad i.e. called Marathwada has become part of Bombay State. He contended that by virtue of section 41 of the State Reorganisation Act, authorises the President, to modify the Scheduled Castes and Scheduled Tribes Order etc. Therefore, the learned Counsel contended that pursuant to this provision no notification was issued. Therefore, the position which stands in relation to the Hyderabad State as on 6th September, 1950 will prevail and continue to operate to Marathwada area of Maharashtra State till the President issues necessary notification exercising the power conferred on him by section 41 of the State Reorganisation Act. The learned Counsel contended that Constitutional (Scheduled Tribes) Order, 1950 which was published on 6th September, 1950 Part IX which relates to Hyderabad State and Entry No. 7 of his Part IX refers to 9 Scheduled Tribes and Entry No. 7 refers "Koya" including Bhine Koya and Raj-Koya. The learned Counsel contended that Koya word used in the Scheduled Tribes Order of 1950 is Telugu word and Marathi meaning of the said word is Koli.

In order to substantiate this contention learned Counsel has placed reliance from an extract of a judgment delivered by the Karnataka High Court referred to in earlier part of this judgment in process of reasoning in that case, the Karnataka High Court stated that, "Koya as Scheduled Tribe in Karnataka. It is clear that there is no difference between terms Koya and Koli they are similar or equivalent to each other. Koli is a Urdu and Marathi terms : whereas Koya is a Telugu term. It is clear as Koli is Marathi term and Koya Urdu term in Hyderabad Karnataka area". It is very difficult to accept the contention of the learned Counsel in respect of the observations above. From the said observations it is not possible for me to adopt or follow the said reasons adopted by the Karnataka High Court as it is not clear from the extract of the order that what were the facts in that case, what were the submissions made and points raised and decided. Hence, with due respect to the Karnataka High Court, it will not be just and proper for me to follow the said reasoning. (It appears that the judgment of Karnataka High Court rendered in Election Petition on 15th March, 1986. As the full text of the judgment is not before me, it is not possible for me to make any comment on the said observation). I am dealing with the matter pertaining to Scheduled Tribes, the entries made in the Presidential Order being final and conclusive that is to be accepted as it is. The equivalent terms cannot be used to substitute or include in the said entry and to read it in the Presidential Order it is not possible for me to accept the contention of the learned Counsel that "Kolis" in Maharashtra mean Koyas of erstwhile Hyderabad State.

(XIII) Shri Golegaonkar in order to substantiate his contention about the inclusion of the word Koya as Koli has produced the Census Report published in the year 1921 and 1941 and also various writings and essays on the subject

which I have already made a reference at earlier stage. Therefore, he contended that the term Koya which is used in 1950 order for the purpose of considering the caste of the petitioner will have to be construed and include as Koli because he contended that Kolis were the Scheduled Tribe in Hyderabad State and that entry probably appeared in the school register in 1967. As in Hyderabad State and thereafter the term Koya is referred to in the Schedule of 1960 Act. Therefore, for all practical purposes, the tribe of the petitioner is to be construed as "Mahadeo Koli" Scheduled Tribe.

(XIV) The learned Counsel Shri Golegaonkar also made an alternative submission that the Kolis in Maharashtra are recorded as O.B.Cs., put that inclusion of Koli by the Maharashtra State is to be construed only to the area other than the Districts of Marathwada. This submission the learned Counsel based on the reports which he has pointed out to me. He further, brought to my notice, the correspondence between the Government of Maharashtra and the Deputy secretary, Lok Sabha Secretariat, New Delhi and Department of Social Welfare, Government of India, wherein a request was made to include Kolis as Scheduled Tribe because the Joint Committee of Parliament on Scheduled Castes and Scheduled Tribes has suggested to include Dhiwar, Koli, Bhoi and its sub-tribes in Scheduled Castes, Scheduled Tribe Order Amendment Bill, 1967. This letter is dated 5th August, 1968. The learned Counsel also brought to my notice the letter from the Government of Maharashtra addressed to Shri Sahay, Chief Legislative Committee Officer, Lok Sabha Secretariat, Parliament, House New Delhi. That letter was in respect of subject as Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1976. In paragraph V of the said letter, reference to the several representations that has been received by the Joint Parliamentary Committee regarding inclusion of Dhiwar Dhoomar Koli, Bhoi, Kevat, Kahar and Palewar in the Bill of 1967. Therefore, he contended that consistent efforts are being made by the authorities to include Koli in the list of Scheduled Tribes. Considering all the submissions and the documents which are produced by the learned Counsel at the time of hearing, one thing is clear that Koli is not included in the list of Scheduled Tribes uptill now. If the contention of the learned Counsel is to be accepted that Koya includes Koli, it was not necessary for the Joint Parliamentary Committee or the Government of Maharashtra to request for inclusion of caste Koli in Scheduled Tribes Order (Amendment) Bill, 1967. Therefore, it is not possible for me to accept the learned Counsel's contention about the fact that Koya means Koli and they are recognised as Scheduled Tribes since 1950. The learned Counsel has also stated that even the Census of 1921 and 1941 and the various articles in that behalf refers to Koli as Scheduled Tribes. He contended that considering all the aspects this Court may consider that the term Koya which is used in the Presidential Order since 1950 mean and includes "Koli" Scheduled Tribe.

(XV) Mr. Golegaonkar has contended that the Research Officer was not associated when the Vigilance Officer investigated the tribe claim of the petitioner and, therefore, the said report is not valid and required to be declared

invalid as the said is contrary to the guidelines laid down by the Apex Court in 2nd Madhuri Patil's case. He contended that as the vigilance report is not in conformity with the directions issued by the Apex Court and the order of the Committee based on that report is equally bad in law and the same is to be set aside and the matter may be remanded to the Committee with a direction to refer the claim of the petitioner to the Vigilance Cell and the said Vigilance Cell must consist of Research Officer, it is not possible for me to accept the above-said contention of the learned Counsel for the reasons stated hereinafter.

11. It is necessary to trace the background regarding the entries that are to be made in the Presidential Order. It is undisputed fact that till 1948 i.e. police action, the area known as Marathwada was part and parcel of ex-Hyderabad State. After the police action, Hyderabad State became part of India and later on it became part of Indian Union. After the commencement of the Constitution, the President notified and issued the Constitution Scheduled Tribes Order, 1950 issued Clause 1 of Article 342 of the Constitution. After consultation with the Governors and Rajpramukhs of the States, the order came to be published on 6th September, 1950. Part IX relates to Hyderabad where nine entries are shown indicating the tribes that are in existence in the Hyderabad State. This position continued even after the State Reorganisation Act. As I noticed earlier that section 41 of the State Reorganisation Act permits the President to issue notification to modify the Scheduled Castes and Scheduled Tribes Order on account of changes in the territories of States. The learned Counsel appearing for the parties were not able to make any positive statement as to whether after the commencement of the States Reorganisation Act any notification as contemplated u/s 41 was issued or not. The learned Counsel Shri Golegaonkar contended that Koli which is synonymous to Koya remained as Scheduled Tribe even after the Reorganisation of the State. After the States reorganisation then came the Bombay Reorganisation Act, 1960 which came into force on 16th April, 1960 and the appointed day under this Act was 1st May, 1960. Section 27 of the Bombay Reorganization Act deals with the amendment of Scheduled Tribes Orders. Section 27 reads as follows:

"As from the appointed day, the Constitution (Scheduled Tribes) Order, 1950 shall stand amended as directed in the VII Schedule."

In VIII Schedule, Item No. 6 relates area of Districts of Aurangabad, Parbhani, Nanded, Rajura, Beed and Osmanabad (erstwhile Hyderabad State area) in respect of these districts only seven entries are made as against nine entries in the original 1950 Order. Thus, the entries are:

- (1) Andh
- (2) Bhil
- (3) Gond including Naikpod and Rajgond
- (4) Kolam (including Mannerwarlu)

(5) Koya (including Bhinekoya and Rajkoya)

(6) Pradhan

(7) Thoti.

I have noticed from the above-said entries made in the 1950 Order, as modified as per the section 27 of the Bombay Reorganisation Act entry "Koya" remained as it was. The learned Counsel contention that Koya means Koli in Marathi. Therefore, Koli has to be read along with Koya. He contended that "Koya" is a Scheduled Tribe recognised in 1950 Order which is continued even in 1960 Act. At this stage, one aspect cannot be lost sight of that the entries made in 1950 Scheduled Tribes Order in relation to Hyderabad State, continued and remained as it is, even in Bombay Re-organisation Act, 1960. In 1976, when the list in the Scheduled Tribe order is exhaustively corrected and more tribes are added to the list, in respect of Andhra Pradesh, Karnataka and Maharashtra, since caste "Koli" is not included in the list of Scheduled Tribes. This fact being important one has to be considered in its proper perspective to judge the merit of the contention, not on the basis of the Census Reports, Articles, representations of some organisation and to some extent by State Government, but it has to be tested on the touchstone of Articles 341 and 342 of the Constitution of India as dealt with by the Apex Court in 2001(1) Bom.C.R. (S.C.)620 : 2001(1) S.C.C. 4, State of Maharashtra v. Milind and others.

12. Before proceeding further to deal with the merit of the contention of the learned Counsel it is to be noted that even after the Re-organisation of State in 1956 and Bombay Reorganisation Act, 1960, the entry remained as it is and the learned Counsel contended that "Koya" must be said to include "Koli" S.T. If the contention of the learned Counsel is to be accepted that "Koya" means "Koli" the entry made on first Presidential notification dated 6-9-1950 Schedule IX, Entry No. 9 and Schedule VIII, Entry No. 5 (Part 6) of Bombay Reorganisation Act, will have to be rewritten. In fact, there was an occasion for the Parliament to use Marathi word Koli when the entry came to be amended after Bombay Reorganisation Act as the entries that were made in 1950 Order stands amended only from 1st May, 1960. As the Marathi meaning of "Koya" as "Koli" is not included in the schedule as amended by virtue of section 27 of the Bombay Re-organization Act, it is very difficult to accept the contention of the learned Counsel that Koya means Koli. This contention of the learned Counsel that "Koya" the Telugu word should be read in the Schedule VIII of Bombay Reorganisation Act, as Marathi meaning "Koli" can be considered from another angle. By State Reorganisation Act, Marathi speaking area became part of Bombay State and then the Bombay State is bifurcated into Maharashtra and Gujarat. In spite of this background, the Parliament has not made any law to amend the 1950 Presidential Order after 1956 to substitute "Koya" to "Koli" i.e. the Marathi meaning, but the entries made in respect of "Koya" continued for the same right from 6-9-1950 to this day. As the Parliament in its wisdom has not inserted word "Koli" in the entry "Koya", it is not possible for me to accept the contention of the

learned Counsel that "Koya" in Telugu means "Koli" in Marathi, the contention stands repelled.

13. Shri M.S. Deshmukh, learned Counsel for the Scrutiny Committee respondent No. 2 and Shri A.B. Bajpai, learned A.G.P. for respondent-State who supported the order of the Scrutiny Committee. Shri Deshmukh, contended that the contention of the petitioner that Koya means Koli in Marathi and as Koya was Scheduled Tribes, the benefits of Scheduled Tribes should be extended to Kolis in Maharashtra. Therefore, Kolis in Marathwada region will be treated as Scheduled Tribes is not valid. The learned Counsel contended that the entries made in the Scheduled Tribe Order are to be read as it stands. He contended it is not permissible for this Court to interpret or to accept that Koya means Koli which will be outside jurisdiction of this Court. The entries as it stands has to be accepted as it is. In 1950 Order, there were 10 entries indicating Scheduled Tribes out of which Entry No. 7 relates to Koya which includes Bhine Koya and Rajkoya. The order is issued by the President under Article 342(1) of the Constitution after consulting the Rajpramukhs and Governors of the respective States. The learned Counsel relied on the para 2 of the Order which reads thus:

"The tribes of tribal communities, or parts of, or, groups within, tribes or tribal communities, specified in Parts I to XIV of the Schedule to this order shall, in relation to the States to which those parts respectively relate, be deemed to Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule."

Part IX relates to Hyderabad mentioned "Koya" which includes as "Bhinekoya" and "Rajkoya" and no more. Therefore, the petitioner's contention that Koya means Koli may not be accepted. The learned Counsel for the respondents placed reliance on Constitution Bench judgment of the Apex Court reported in 2001 I S.C.C 4, State of Maharashtra v. Milind and others. The learned Counsel relying on this judgment of the Apex Court contended that the notification issued under Article 341(1) or 342(1) cannot be altered by any notification issued by the concerned Government. The notification issued under Article 341 or 342 can be altered only by the law made by the Parliament. Therefore, the learned Counsel contended that by going through the Census Report or treatise, articles etc. which are relied on by the petitioner the entries which are made in the Presidential Order cannot be altered or read differently. The learned Counsel contended that the entries Koya which was in existence from 1st Scheduled Tribes Order, 1950 continued till this date. The learned Counsel contended that Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976 by virtue of section 4 of this Act, the Scheduled Tribes Order came to be amended as stated in 2nd Schedule of the said Act. Even in this 2nd Scheduled Koli is not included in the list of S.T. The learned Counsel therefore contended that the Koya and Koli are two different independent castes and they are neither synonymous to each other nor it is a sub-caste of "Koya". The documents which are relied on by the petitioner clearly shows that attempts were made to include Koli in the bill to

amend Scheduled Tribes Order which were introduced in 1967 and even after 1976 Act, Kolis are not included in the Scheduled Tribes. The learned Counsel brought to my notice the entries in 2nd Schedule of 1976 Act in relation of Andhra Pradesh, Entry No. 18 relates to Koya. Entry No. 18 shows Koya, Gond, Rajah, Rasha, Koya Lingdhari, Koya (ordinary) Kottakoya, Bhinekoya and Rajkoya.

14. The learned Counsel contended that in 1950 Order there were only three sub-tribes that are Koya including Bhinekoya and Rajkoya; but in 1960 more sub-tribes were added but Koli is not added in the list of Scheduled Tribes of Andhra Pradesh. The learned Counsel brought to my notice the entries made in respect of Karnataka State where Entry No. 22 refers to Koli and some other caste/tribe. So far Maharashtra is concerned, in the said list Koya also find place at Entry No. 18 and Entry No. 29 relates to Koli Mahadeo, Dongar Koli, Koli Malhar. The learned Counsel contended that considering all these aspects, the Governments of Maharashtra has recognised Kolis, initially, as Other Backward Classes and now as a Special Backward Class. Therefore, the learned Counsel contended that Kolis in Maharashtra which are Other Backward Classes cannot be considered to be Mahadeo Koli (S.T.).

15. The learned Counsel Shri Deshmukh placed reliance on the Division Bench judgment of this Court reported in Rajesh Yadavrao Shankpale Vs. State of Maharashtra and Others, . The Division Bench was dealing with the same which I am dealing. The Division Bench has ruled that Kolis have been declared to be O.B.C. in the State of Maharashtra Kolis are fishermen and they live mainly in coastal region of Maharashtra; whereas Mahadeo Kolis are not sub-castes of Koli. Mahadeo Koli were recognised as Scheduled Tribe even prior to 1976 as a consequence of Presidential Order, 1978. The Kolis in erstwhile region did not become Mahadeo Koli. The main intention behind passing the Order of 1978 was to remove area restrictions and not to correct caste structure from O.B.C. to Scheduled Tribes. The Division Bench relied on the judgment of the Apex Court in Madhuri Patil's case. I will now advert to both these judgments now.

16. In Rajesh v. State (supra), this Court was considering of case of a candidate who was claiming that he belongs to "Mahadeo Koli" (S.T.). The candidate was a permanent resident of Taluka Biloli, District Nanded. The Taluka Executive Magistrates, Biloli has issued a caste certificate in favour of Rajesh to the effect that he belongs to "Koli Mahadeo" which is recognised as Scheduled Tribes at Serial No. 29 of the Scheduled Castes & Scheduled Tribes Order (Amendment) Act. The candidate intended to get admission to the professional courses. Therefore, he approached the Scrutiny Committee for verification of his tribe claim. The Committee has considered the documents and the report submitted in connection with the enquiry of the candidate and the Committee invalidated the tribe claim of the candidate. Thereafter appeal came to be filed before the Additional Commissioner, Tribal Development Nasik which came to be dismissed on 30th March, 1989 and the order of the Scrutiny Committee came to be confirmed. Those orders were challenged by filing a writ petition. In that case, it

was contended before the Division Bench that as far as Marathwada region is concerned. Kolis reside in Marathwada region are Mahadeo Kolis. This submission is considered by this Court in Rajesh's case, in the light of the ratio laid down by the Apex Court in Madhuri Patil's case and considering the amendment made to the Presidential Order in 1976 the Division Bench of this Court held that the Kolis in Marathwada area cannot be treated as belonging to Scheduled Tribes Mahadeo Koli. This Court in Rajesh's case has an occasion to consider the relevant Government Resolutions passed by the Bombay Government in 1942; the Amendment Act, 1976. This Court has specifically negated the contention of the petitioner that in case that Kolis in Marathwada region are recognised as Mahadeo Kolis only after 1978. This Court, therefore, negated the contention of the petitioner in that case and held that Kolis in Marathwada region cannot be recognised as Mahadeo Koli. In this respect, useful reference can be made to a publication referred to as Contention No. (viii) supra. In fact this part of the publication runs contrary to the contention of the learned Counsel. The said Chapter XVII deals with "Koli" tribe. Several Sub-Division of tribes are mentioned. Each of the tribe has its sub-divisional clans. The principal tribe is that of the "Mahadeo Kolis". The learned author has given brief account of:

The Mahadeo Koli Tribe:

It is situated under this heading." This tribe inhabits the track of the country on the east of Sahyadri Mountains from Trimbak in north to Museh in South. They also found in Bombay and in some parts of the province of Konkan. The Rajah of Jawara belongs to this tribe. It is further stated that Mahadeo Koli is divided into twenty four clan. Their names are:

Twenty four Mahadeo Koli Clans:

1) Waman Pal 2) Kadam 3) Pawar 4) Kadam 5) Budiwant 6) Namdeo; Namdeo 7) Kshirsagar 8) Bhosla 9) Bhagiwant 10) Jagtap 11) Gaikwad 12) Suryawanshi 13) Puliwar 14) Utarada 15) Dalvi 16) Gauli 17) Aghasi 18) Chavan 19) Ujaji 20) Sagar 21) Shaikhacha Shesh 22) Kharad 23) Sirkhi 24) Shin.

Considering this, it is clear that "Mahadeo Koli" tribe does not exist in Maharashtra region. The learned Author has specifically given 24 clans of "Mahadeo Koli?". The petitioner's surname is "Koli" and not the 24 clans mentioned by the learned Author. As this Court has held in Rajesh's case that in Marathwada region there are no "Mahadeo Koli" get support from this publication.

17. The learned Counsel Shri Golegaonkar, tried to distinguish the Division Bench judgment of this Court reported in Rajesh Yadavrao Shankpale Vs. State of Maharashtra and Others, , before the Division Bench of this Court the identical question which arose in this petition was for consideration. This Court after considering the submissions made at the bar and considering the judgment of the Apex Court in the Madhuri Patil's case has ruled that Koli in Marathwada region cannot be equated or included to mean Mahadeo Koli this Court in paragraph 9 has dealt with the said contention. The learned Counsel contended

that the submission which was made before the Division Bench was in respect of removal of restriction of area on the ground that the Scheduled Tribe outside the areas which were in areas existence earlier also can have the benefit of reservation and in order to have uniformity the area restriction was removed in the year 1976. The learned Counsel contended that considering the facts stated and brought on record in this present petition Koyas are included as Scheduled Tribes in the first Presidential Order of 1950 and that continued till this date. However, this Court in Rajesh's case has observed that Koli Mahadeo are not sub-caste of Koli, as no detailed submissions were made before the Division Bench and as the Census Reports, articles written by the scholar/experts in the field were not brought to the notice nor the provisions of State Reorganisation Act and Bombay Reorganisation Act were brought to the notice of the Division Bench. The learned Counsel contended that the observation of the Division Bench of this Court now should be restricted only the facts and submissions these were considered by the Division Bench. Therefore, the learned Counsel contended that the observation made by the Division Bench that by the Presidential Order of 1978 the people in Marathwada region did not become Mahadeo Koli is not appropriate observation by the Division Bench.

18. Coming to the judgment of the Apex Court in Madhuri Patil's case, the Apex Court dealing with an identical situation. Madhuri Patil has obtained a certificate from the concerned Magistrate showing her as Scheduled Tribe. In an enquiry of her tribe claim it revealed that Madhuri Patil's grandfather was admitted in the school in 1943 and in the school admission register his caste was shown as "Hindu Koli". Admittedly, Madhuri Patil's family was resident of Thane. It was found by the Apex Court that Mahadeo Koli was recognised to be Scheduled Tribes by Bombay Province as early as 1933 and the President of India, declared it in 1950 under Article 342 in consultation with Government of Bombay. In an enquiry into the validity of the certificate obtained by Madhuri Patil. It was held that Madhuri Patil belongs to Koli and not as "Mahadeo Koli". The Committee enquired into the tribal claim of Madhuri Patil and has considered all the relevant documents and relevant entries and found that Kolis resides mainly on coastal area : Kolis have different sub-castes, such as Mahadeo Koli resides in hilly region, agricultural labourers and gathering of minor forest products and sell thereon. With this background the Committee rejected the claim of Madhuri Patil. The matter ultimately reached the Apex Court and the Apex Court on the evidence and the findings that were recorded by the Commissioner, the Committee negated the claim of Madhuri Patil. The Apex Court was considering, "whether Mahadeo Koli is a sub-caste of Kolis". The Apex Court found that Mahadeo Koli is not sub-castes of Kolis. In view of the ratio laid down by the Apex Court in Madhuri Patil's case and judgment by the Division Bench of this Court in Rajesh's case, it is very difficult for me to accept the contention of the petitioner that "Koli" includes "Mahadeo Koli" and it is sub-tribe of "Koli". The contention of Mr. Golegaonkar that the report of the Vigilance Cell is vitiated as the investigating team is not associated by the Research Officer cannot be

accepted as there is evidence i.e. extract of school register to show that the caste of petitioner's father is recorded in 1967 as "Koli" and this document is accepted by the Committee and the said document is acceptable to me also. In view of this fact, merely because the Vigilance Cell is not associated with the Research Officer the order of the Committee cannot be faulted. In this aspect, I accept the contention of Mr. Deshmukh, the learned Counsel for the Committee.

19. The learned Counsel, Shri Golegaonkar, has tried his level best to persuade this Court to accept the contention that Kolis in Marathwada region are Scheduled Tribes which is known as Koya in old Hyderabad State. For this purpose, the learned Counsel has relied on the articles and Census Reports to which I have already made a reference. Therefore, the question that has to be considered by me in this matter whether by reading the articles and the census reports which are produced before this Court whether "Koya" (ST) recognised in Hyderabad State can be "Kolis" in Maharashtra as Scheduled Tribe. Admittedly in the present case, the school record which was produced by the petitioner of the year 1967, shows that the petitioner's father caste is mentioned as "Koli" and caste of Koli has been declared by the Government of Maharashtra initially as OBCs and thereafter Special O.B.C. The learned Counsel contended that Marathwada region was part and parcel of Hyderabad State and even prior to the commencement of the Constitution Kolis are recognised and treated as Scheduled Tribes. As the learned Counsel has laid much stress on the articles which I have referred already where Kolis are mentioned as Tribes. In my judgment, in respect of interpretation of the entries in the Constitution Scheduled Tribes Order, 1950 is no more res integra in view of the judgment of the Apex Court reported in 2001(1) S.C.C.4, State of Maharashtra v. Milind and others. The question was "Whether Entry No. 19 in Part IX of the Constitution Scheduled Tribes Order, 1950 i.e. Halba/Halbi whether it includes Halba/Koshti or whether Halba Koshti is a sub-tribe of Halba". The Apex Court has held that the deletion or inclusion of entries in the Constitutional Scheduled Tribes Order are to be made only by the Act passed by the parliament. The courts or the Government has no jurisdiction to amend the Presidential order by relying on the literature or any other such material. The Apex Court ruled that the Scheduled Tribe Order must be read as it is and it is not even permissible to say that the tribe, sub-tribe part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribe Order if they are not specifically mentioned in it. In view of the law declared by the Apex Court in Milind's case, it is not possible for me to accept the contention of the learned Counsel that Koli in Marathwada region are Scheduled Tribes and they are Mahadeo Kolis, and since I have already traced the history. Applying the law declared by the Apex Court in Milind's case and the Division Bench judgment of this Court in Rajesh case it is very difficult to accept the contention of the learned Counsel and to record a finding that Koli is a Schedule Tribe is synonymous to Koya and the word Koli mentioned in school register should be treated as Mahadeo Koli. This contention cannot be accepted on any count. The Apex Court in Milind's case has also

considered the very correspondence relied on by Shri Golegaonkar regarding the suggestion to include the tribe in the Bill 1967 in respect of "Halba Koshti". The Apex Court has not accepted the said contention and did not give any importance to it.

20. One more aspect in this regard is that though not very much germane to the question but it can throw some light to judge and to test the contention of the learned Counsel qua and word "Koya" is "Koli" in Bombay/Maharashtra State. In erstwhile Hyderabad State HEH the Nizam Government has passed an Act i.e. Prevention of Agricultural Alienation Act No. 3 of 1349 fasli which received the consent of HEH Nizam on 29 Amardad 1349 fasli equivalent to 4-7-1940. The said Act deals with the law regarding alienation of agricultural land by which certain "agriculture class" was to be protected from the evil effects of land alienation. By section 3 of the said Act the Government is authorised to determine the agriculture class and their groups and to published it in Jarida (Gazette). The notification to that effect was issued on 10 Azur 1350 fasli i.e. 15-10-1940 in exercise of powers u/s 1 of the Act. The said notification also notifies the person, classes and groups. As per the entries in the scheduled "Hindu" is noted as Agricultural classes and also the agricultural group, which includes the agricultural classes. In this group "Koli" is mentioned as agricultural group. This Act was passed under the Nizam regime and it has referred to "Koli" and not "Koya". Considering this aspect of the matter and considering the fact that entry "Koya" was included in first Order of 1950 which continued even after reorganization and it is carried forward in Bombay State and also in 1976 Order, the caste koli is not at all included in any of those entries. Therefore, it is very difficult to accept the contention of the learned Counsel and considering the fact that Marathi word "Koli" is mentioned in the agricultural Alienation Act which I have referred to above, it cannot be accepted that "Koya" means "Koli". Though the Act is repealed on enforcement of the Hyderabad Tenancy and Agricultural Lands Act. I had referred it to test the merit of the contention of Shri Golegaonkar.

21. With the above observations and backdrop of legal provisions, it is not possible for me to accept the contention of the learned Counsel that the Division Bench of this Court has not considered the entire aspect of the matter. On the other hand the Division Bench has followed the law laid down by the Apex Court and it is not proper for me to make any observation in respect of the ratio laid down by the Division Bench. The learned Counsel had made this submission with full understanding that the Division Bench judgment is binding on the Single Judge. The learned Counsel has made his best efforts to show that the word Koya means Koli and entry Koya after 1976 is to be treated as Mahadeo Koli. But on the facts of the present case where the entry of caste of petitioner's father was recorded as Koli as back as in 1967, no attempts were made by the petitioner to correct the said entries. On the contrary, the petitioner has obtained caste certificate by not producing the extract of school register of her father before the Magistrate who has issued the certificate in favour of the petitioner,

indicating that the petitioner belongs to Mahadeo Koli Schedule Tribe. The Committee in its jurisdiction has rightly considered all the aspects and considered the fact that the specific contention is raised by the learned Counsel that the Kolis were Scheduled Tribes in Hyderabad State and the state of affairs continued even this date, it is not possible for me to accept the contention of the learned Counsel.

22. It is also not possible for me to accept the request to remand the matter to the Committee to record fresh findings on the basis of the unreported judgment of this Court referred to above. But with respect to the learned Single Judge, this is not a fit case to order re-trial. As I had followed the law declared by the Apex Court in Milind's case, Madhuri Patil's case and the judgment in Rajesh's case, the judgment of the learned Single Judge is not of any help to the petitioner.

23. For all the above said reasons and in particular the law declared by the Apex Court in (i) State of Maharashtra v. Milind and others, 2001(1) S.C.C. 4; (ii) Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, (iii) Rajesh Yadavrao Shankpale Vs. State of Maharashtra and Others, , the contentions raised in this petition required to be rejected and the same are rejected.

24. Accordingly, there is no merit in the petition, writ petition stands dismissed. Rule discharged, with no order as to costs.