
(2020) 12 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 8088 Of 2020

Mayuri

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 18-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 12 BOM CK 0056

Hon'ble Judges : S. V. Gangapurwala, J; Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : Vivek U. Jadhav, P.K. Lakhotiya, S.G. Karlekar

Final Decision : Disposed Of

Judgement

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Shrikant D. Kulkarni, J",,,

1. Rule. Rule made returnable forthwith. With the consent of both sides, heard finally at admission stage.",,,

2. Feeling aggrieved by the order passed by respondent No. 2/Scheduled Tribe Certificate Scrutiny Committee, Aurangabad (hereinafter referred to",,,

as 'Committee'), thereby invalidated caste claim of the petitioner belonging to 'Koli Mahadev - Scheduled Tribe', the petitioner has knocked the door of",,,

this Court by invoking writ jurisdiction under Article 226 of the Constitution of India.,,,

3. The brief facts for adjudication of the petition are as under :-",,,

3(i) The petitioner is a student and exploring possibility to take admission in health science course for the academic year 2020-2021 from scheduled",,,

tribe category. She has received caste certificate of 'Koli Mahadev - Scheduled

Tribe' from Sub Divisional Officer, Nilanga and same was referred to",,,
the Committee for caste validity certificate along with documentary evidence including caste validity certificate issued in favour of her uncle. The,,
vigilance enquiry was conducted. She has filed reply in response to the show cause notice issued by the Committee. She has produced stock of,,
evidence in support of her tribe claim as 'Koli Mahadev'.,,,

3(ii) The Committee has invalidated the tribe claim of the petitioner as 'Koli Mahadev - Scheduled Tribe' by impugned order dated 21.11.2020.,,,

3(iii) According to the petitioner, the caste validity certificate issued in favour of her blood relatives even not considered by the Committee by stating",,,

that said caste validity certificates are obtained by suppressing the fact that tribe claim of Angad is invalidated by the Committee. It is contended by,,,

the petitioner that Committee has completely overlooked the important fact that there are nine valid caste validity certificates granted in her family.,,,

While granting the validity certificates to them, the Committee had considered all the relevant record and also accepted their statements and issued",,,

validity certificates. According to the petitioner, the Committee has given undue weightage to the fact that the claim of Angad Laxman Pandhare was",,,

invalidated on 29.12.1995 and same invalidation is also not challenged by him. According to the petitioner, the caste validity certificates issued in",,,

favour of her father and other eight blood relatives are still intact as on date and the Committee should not have discarded the same on flimsy grounds.,,,

It is contended by the petitioner that the findings recorded by the Committee are contrary to the law laid down by the Apex Court and the Bombay,,,

High Court. The Committee has completely overlooked the important documentary piece of evidence produced by the petitioner in support of her tribe,,,

claim.,,,

4. Heard Mr Vivek U. Jadhav, learned Counsel for the petitioner, Mr P.K. Lakhotiya, learned Assistant Government Pleader for respondent Nos. 1 to",,,

3/State and Mr S.G. Karlekar, learned Counsel for respondent No. 4. Perused the impugned order passed by the Committee, vigilance report, report",,,

submitted by the Research Officer and other papers.,,,

5. Mr Jadhav, learned Counsel for the petitioner vehemently argued that the Committee has given unnecessary importance to the invalid tribe claim of",,,

Angad Laxman Pandhare. The Committee ought to have considered the fact that the tribe validity certificate issued in favour of petitioner's father,,,

and other eight blood relatives are still intact. The Committee has discarded the same. The reasons given by the Committee are incorrect. The,,,

petitioner has produced cogent documentary evidence in support of her tribe claim as 'Koli Mahadev - Scheduled Tribe' and the Committee has not,,,

considered the same properly.,,,

6. Mr Jadhav, learned Counsel for the petitioner has placed reliance in case of Anand Vs. The Committee for Scrutiny Verification and others",,,

reported in (2012) 1 SCC 113 and submitted that the affinity test is not a litmus test. The affinity test may be used to corroborate the documentary,,,

evidence and not a sole criteria to establish the link of the applicant with a Schedule Tribe. The approach of the Committee to discard tribe validity,,,

certificates of blood relatives is unfair only because the tribe claim of Angad Laxman Pandhare has been invalidated by the Committee. He submitted,,,

that there are no contra entries to disbelieve the documentary evidence produced by the petitioner. No contrary evidence is collected by Vigilance,,,

Officer during vigilance enquiry. Mr Jadhav, learned Counsel for the petitioner urged to quash and set aside the impugned order rendered by the",,,

Committee and prayed to issue validity certificate of the caste of the petitioner belonging to 'Koli Mahadev - Scheduled Tribe'.,,,

7. Mr Lakhotiya, learned Assistant Government Pleader per contra, submitted that the Committee has taken into consideration all the relevant",,,

documents and validity certificates issued in the family of the petitioner. The Committee has also considered vigilance report and the report submitted,,,

by the Research Officer. It is found in the enquiry that the tribe claim of petitioner's cousin uncle namely, Angad Laxmanrao Pandhare was",,,

invalidated on 29.12.1995 by the Committee. Mr Lakhotiya, learned Assistant Government Pleader submitted that Dinesh Ranghath Pandhare and",,,

Manisha Rangnath Pandhare, who are cousins of the petitioner have obtained the validity certificate from the Committee by suppressing the fact that",,,

tribe claim of their cousin uncle namely, Angad Laxman Pandhare being 'Koli Mahadev - Schedule Tribe' is invalidated by the Committee on",,,

29.12.1995. It is suppression of material facts from the Committee while obtaining the validity certificate by Dinesh Pandhare and Manisha Pandhare,,,

and therefore, tribe validity certificate issued to Dinesh and Manisha cannot be relied upon." ,,,

8. He further submitted that tribe validity certificate granted to another cousin of the petitioner namely, Balaji Pandhare was also invalidated on" ,,,

30.09.2005. He submitted that Vrushali Pandhare and Sumitra Pandhare who are blood relatives of the petitioner, their tribe validity certificates have" ,,,

been obtained by suppressing the fact of invalidation of the tribe claim of Angad Laxman Pandhare and Balaji Laxman Pandhare. The same is the ,,,

case of validity certificate granted to Vinayak Pandhare, Balaji Pandhare, Nikhil Pandhare and Jagannath Pandhare. He submitted that the findings" ,,,

recorded by the Committee are well reasoned and as per the decisions of the Hon'ble Supreme Court and the Bombay High Court. The petitioner has ,,,

failed to prove that she belongs to 'Koli Mahadev - Schedule Tribe'. She has failed to prove affinity test. The tribe validity certificate issued in favour ,,,

of blood relatives of the petitioner have been obtained by suppressing material fact of invalidation of tribe claim of Angad Laxman Pandhare. The ,,,

decision rendered by the Committee does not suffer from any legal error. It is not a fit case to interfere in the decision rendered by the Committee. ,,,

9. Mr S.G. Karlekar, learned Counsel for respondent No. 4 echoed the argument advanced by the learned Assistant Government Pleader." ,,,

10. We have considered the arguments advanced by learned Counsel for both the sides. ,,,

11. On careful scrutiny of the impugned order passed by the Committee dated 21.11.2020, it is noticed that the Committee has rendered common" ,,,

order in respect of the petitioner and one Ketan Pandhare, who is from the same family. The Committee has invalidated tribe claim of the petitioner as" ,,,

'Koli Mahadev - Scheduled Tribe' on following three grounds :- ,,,

(i) The petitioner has failed to prove her tribe claim by way of documentary evidence. ,,,

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The relationship of the petitioner with the above said validity holders is not disputed.,,,

another Committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle,,,

the Committee dealing with the subsequent caste claim to reject it. There is, however, no doubt that if a Committee is of the view that the earlier",,,

certificate is obtained by fraud, it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in",,,

addition initiate proceedings for cancellation of the earlier order.,,,

20. Whatever disputed entries pointed out by the learned Assistant Government Pleader were also subject matter while granting earlier validity.,,,

certificates in the family of the petitioner. In the earlier validity proceedings, the vigilance seems to have conducted and tribe validity certificates have",,,

been issued. In the above premise, we do not find any merit in the submissions of the learned Assistant Government Pleader." ,,,

21. Remaining nine tribe validity certificates issued in the family of the petitioner need to be relied upon as of today and benefit needs to be extended.,,,

to the petitioner, who is from the same family, in view of legal position made clear in case of Apoorva (supra)." ,,,

22. The petitioner has placed on record sufficient documentary evidence and established that there are consistent entries of "Koli Mahadev" ,,,

Scheduled Tribe" right from the year 1977. No contra entries are found to disbelieve that piece of documentary evidence.,,,

23. In the above background, the findings recorded by the Committee against issue Nos. 1 and 2 appear to be erroneous." ,,,

24. Now, coming to the affinity test, the Committee has recorded the finding that the petitioner has failed to prove affinity test. The genuineness of the",,,

caste claim need to be considered not only by way of detailed examination of the documents, but also on the affinity test which would include the",,,

anthropological and ethnological traits etc. of the petitioner. The affinity test is not a litmus test. We would like to place reliance in case of Anand Vs.,,,

Committee for Scrutiny and Verification of Tribe claim and Ors. reported in (2012) 1 SCC 113, wherein it is observed by the Hon'ble Supreme",,,

Court, which read thus :-",,,

"The genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but,,,

also on the affinity test, which would include the anthropological and ethnological traits, etc. of the applicant. However, it is neither feasible nor",,,

desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, the following broad parameters",,,

could be kept in view while dealing with a caste claim:,,,

(i) While dealing with documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of",,,

probative value to the declaration of status of a caste, as compared to post-independence documents. In case the applicant is the first generation ever",,,

to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact,",,

the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that",,,

in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be",,,

afforded to the applicant.,,,

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A",,,

few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a",,,

determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt",,,

new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test",,,

for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is",,,

entitled to the benefit extended to that Tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar",,,

anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the",,,

affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim. Burden to prove lies upon",,,

applicant." In case material produced by applicant does not prove his claim, Committee cannot gather evidence on its own to prove or disprove his",,,

claim.â??",,,

25. On careful scrutiny of the genealogy coupled with documentary evidence produced by the petitioner right from the year 1977 make out a clear",,,

picture that caste of the petitioner's family is recorded as â??Thakurâ?. In the above background, no more weightage can be given to the affinity",,,

test. It is further observed by the Committee that the family of the petitioner is not migrated from the hilly area. That observation appears to be",,,

improper and incorrect. The parliament has enacted â??The Scheduled Castes

and Scheduled Tribes Orders (Amendment) Act, 1976. It is",,,

precisely to overcome the difficulties of the tribals. After that amendment, it is not permissible to rely on the area restrictions placed by the order of",,,

1950. They are removed in order to enable the persons not residing in the five districts identified as permanently inhabited by Thakurs to claim benefits,,,

and concessions so also relaxation in Government employment and elections. That view is expressed in the decision rendered by the Division Bench in,,,

case of Mayuri Sunil Thakur Vs.,,,

State of Maharashtra and Ors. (Writ Petition No. 8738 of 2019) dated 09.08.2019 at Principal Seat, Bombay). As such, the observation made by the",,,

Committee regarding absence of migration of petitioner's family is certainly erroneous.,,,

26. In view of the legal position, the observations made by the Committee are found contrary to the Act of 1976 as well as contrary to the decision",,,

rendered by the Division Bench of this Court at Principal Seat referred above.,,,

27 Having regard to the above reasons and discussion, it is clear that findings recorded by the Committee are erroneous. The Committee has not",,,

properly considered the documents which are more than 30 years old and which have more probative value. There are no contra entries to throw,,,

away the tribe claim of the petitioner.,,,

The vigilance report also does not speak about the contra evidence. The claim of the petitioner cannot be denied only because one tribe validity,,,

certificate granted earlier in her family has been invalidated by the Committee. There are nine tribe validity certificates in her family which still hold,,,

the field and supports to the tribe claim of the petitioner. As such, it would be appropriate to issue tribe validity certificate to the petitioner subject to",,,

the decision of the enquiry re-opened relating to validity holders relied upon by the petitioner. The impugned order rendered by the Committee,,,

invalidating tribe claim of the petitioner needs to be quashed and set aside. The petitioner is entitled to get tribe validity certificate. With these reasons,",,

we conclude and proceed to pass the following order :-,,,

ORDER,,,

(i) The order/decision rendered by the respondent No. 2 "The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad dated 21.11.2020 is",,,

hereby quashed and set aside.,,,

(ii) Respondent No. 2 - The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, shall issue validity certificate to the petitioner of being a",,,

member of "Koli Mahadev" Scheduled Tribe" to the petitioner forthwith.,,,

(iii) The said validity certificate shall be subject to the decision that would be taken by the Committee in the cases re-opened of the validity holders,,,

relied upon by the petitioner.,,,

(iv) Rule is made absolute accordingly.,,,

(v) The writ petition is disposed of. No order as to costs.,,,