

(2003) 04 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 497 of 1997

Mr. Yatin Nilkanth Bastav

APPELLANT

Vs

The Executive Magistrate, Shrivardhan, Chairman, Committee for scrutiny and Verification of Tribe Claims, The Secretary to the Government Tribal Development Department, Dean, Topiwala National Medical College and Directorate of Medical Education and Research

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Citation : (2003) 4 ALLMR 621 : (2003) 6 BomCR 334

Hon'ble Judges : R.M. Lodha, J;A.S. Aguiar, J

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; C.R. Sonawane, for Respondent Nos. 1 to 3 and 5, for the Respondent

Judgement

A.S. Aguiar, J.—By this petition the petitioner challenges the order of the respondent No. 2 dated 16.7.1996 bearing No. TCSC/ENG/COM/128/YNB whereby the said respondent No. 2, namely, the Committee for Scrutiny and verification of Caste Claims, Pune, held that the petitioner does not belong to the Mahadev Koli, Schedule Tribe Community thereby invalidating his claim of belonging to the said community.

2. In support of his claim the petitioner had produced before respondent No. 2 i.e. the Committee for Scrutiny and Verification of Tribes Claims, Pune, in all 15 documents. Interalia, documents at serial Nos. 5 and 9 which are birth extracts of the petitioner's father and uncle wherein their Caste is recorded as Koli. Both these documents pertain to the period 1941 to 1948 i.e. prior to the Presidential Order of 1950 notifying a schedule tribe. Document at serial No. 10 is the High School leaving certificate of the petitioner's uncle wherein he is shown as belonging to the Caste Mahadev Koli". However, the Principal of the School viz. Thakurwar High School had certified that the caste had been changed from

"Suryavanshi Koli" to Mahadev Koli" as per order No. A/36/L dated 12.12.1959 of the Education Inspector (at serial No. 12). The document at serial No. 15 is an order passed by this Honourable High Court on 3.11.1993 in Writ Petition No. 3017 of 1993 filed by Vivek, the uncle of petitioner whereby the Executive Magistrate was directed to issue the Caste Certificate to the petitioner. The documents listed at serial No. 1, 2, 4 and 13 are school records of the Candidate and his cousin sister in which the caste is mentioned as "Mahadev Koli" S.T.

3. It is argued in the said impugned order that if the caste, of the candidate's father and uncle is recorded as "Koli" in their birth extracts and in addition the caste of candidate's father is recorded as "Suryavanshi Koli" in the School records, the caste of the petitioner and his cousin sister cannot be different from that of the father and uncle's caste for the reasons that caste is acquired by birth. It is further noted that these documents are dated 1998, 1994 and 1991 respectively i.e. after the date of the Presidential Order of 1950 notifying the Schedule Tribes.

4. Further the Scrutiny Committee with reference to the traits, characteristics and customs and the documents produced by the petitioner has observed as follows:

"In brief whatever information is furnished by the candidate and his father about traditional occupation, god/goddess and surnames is not related to Mahadev Koli Scheduled Tribe. On the other hand the information is associated to Koli caste. The Mahadev Koli Scheduled Tribe which is quoted at r. No. 291 in Scheduled Tribe list and Koli caste which is included in O.B.C. list at Sr. No. 78 are totally different from each other. It is to be pointed out that the candidate has failed to establish tribe claim not only on documentary evidences but also affinity test.

In view of the above discussion, taking in view the clinching documentary evidence and also after considering all aspects related thereto. The Scrutiny Committee came to the conclusion that the candidate does not belong to Mahadev Koli Scheduled Tribe.

5. From the order it is seen that the claim of the petitioner based on documents list at serial No. 1 to 4 and 13, viz., the school records of the petitioner and his cousin sister in which the caste has been mentioned as "Mahadev Koli" S.T. has been discarded by the Committee in view of the birth extracts of the petitioner's father and uncle showing their castes as "Koli" and also father's school records showing his caste as "Suryavanshi Koli".

6. Petitioner has challenged the said order mainly on two grounds namely:-

(i) That the petitioner and his father were interviewed/heard by only two members of the Committee and not all the three members of the scrutinising Committee as required by the Apex Court and therefore, the said impugned order passed by only two members is not in conformity with the principles of natural justice. In support reliance has been based on the judgment of this High

Court passed in W.P. No. 3372/1997 wherein it was observed:-

"In our view, the Committee consisting of three members should have heard the petitioner and thereafter should have proceeded to pass an order. In the case of Dr. C. Velayudhan Vs. State of Kerala and Others, , it has been observed thus:

"We are of the view that the Committee should have been consisting of three members as directed by the Supreme Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, (cited Supra). Any decision which is made by the Committee, consisting of lessor number of members cannot be treated as valid in the eye of law.....

(ii) The second ground of challenge is that the respondent No. 2 Committee while invalidating the Tribe Claim of the Petitioner has totally ignored following crucial facts namely:

(a) That the learned Additional Commissioner by his order dated 28.6.1994 has held the petitioner as belonging to Mahadev Koli, S.T. and had directed the Executive Magistrate to issue certificate to the petitioner as belonging to the Mahadev Koli, S.T.

(b) That by judgment and order dated 24.3.1994 this Court in W.P. No. 1424/1994 in the case of Yamini Pandurang Bastav (the petitioner's first cousin sister declared her as belonging to Mahadev Koli S.T.

7. The second point raises the question of reconciliation of inconsistent orders passed by this Court in W.P. No. 1424 of 1994 in the case of Miss. Yamini Pandurang Bastav the cousin sister of the Petitioner, declaring her as belonging to the Mahadev Koli S.T. and the impugned order passed by the Scrutiny Committee rejecting the claim of the petitioner as belonging to Mahadev Koli despite the fact that the petitioner and Yamini Pandurang Bastav are first cousins since the father of petitioner and the father of the Yamini Pandurang Bastav are blood brothers.

8. The Scrutiny Committee has discarded the documents Nos. 1 to 4 and 13 solely on the ground that the petitioner's father's caste is shown as "Koli" and not "Mahadev Koli" in the birth extracts of the petitioner's father and also as "Suryavanshi" in his school record. These documents pertaining to the petitioner's father and his uncle which are at serial Nos. 5 and 9 are extracts of the birth register obtained in 19933. The Scrutiny Committee has rejected the documents at serial Nos. 1, 2, 4 and 13 namely School records of the candidate and his cousin sister showing their caste as "Mahadev Koli", ST solely on the basis of the birth extracts and school leaving certificates Exhibits 5 and 9, wherein the petitioner father's caste and uncle's caste is shown as "Koli" and not Mahadev Koli. It appears to us that the approach of the Scrutiny Committee is highly erroneous. The Scrutiny Committee's has failed to appreciate that merely because the caste was generally described as Koli that by itself does not exclude the possibility of the caste of the petitioner's father and uncle being

"Mahadev Koli". The general description of the genus, caste does not exclude any particular, specie such as "Mahadev Koli on the contrary it is an inclusive description. There is nothing on record to exclude the petitioner's father and uncle belonging to the caste "Mahadev Koli. On the other hand the petitioner has produced sufficient documentary evidence in support of his caste claim in the form of document Nos. 1 to 4 and 13 which show the petitioners and petitioner's cousin sister's caste as "Mahadev Koli. This Court has in a similar matters taken the view that the candidate cannot be denied of the caste certificate of "Mahadev Koli" merely on the ground that originally the caste has been mentioned as "Koli".

9. As already pointed out the Scrutiny Committee has recorded the finding that the petitioner's cousin sister Yamini Pandurang Bastav belongs to the "Mahadev" Koli on the basis of the order of this Court dated 3.11.1993 in W.P. No. 3017 of 1993 being document No. 15 produced before the scrutiny Committee.

10. In view of the above, the impugned order dated 16.7.1996 is quashed and set aside. The matter connecting the petitioner's caste claim bearing No. TCSC/EDN/BOM/128/YNB is restored to the file of Committee for Scrutiny and Tribe Claims Pune. The committee is directed to reconsider the petitioner's caste claim in the light of the documents produced especially in view of the order dated 24.3.1991 by this Court in W.P. No. 1424 of 1994 declaring the petitioner's cousin sister Yamini Pandurang Bastav as belonging to the "Mahadev Koli" S.T. After hearing the petitioner the Committee is directed to pass a speaking order. The petitioner is directed to appear before the concerned Committee on 30.4.2003 and the Committee is expected to pass fresh orders within six months from the date of appearance of petitioner.

11. All the contentions of the petitioner are kept open to be agitated before the concerned Caste Scrutiny Committee.

No Costs.