

(2024) 01 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No.14096 Of 2021

Samira Pravin Savale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 23-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 01 BOM CK 0095

Hon'ble Judges : Vibha Kankanwadi, J;S. G. Chapalgaonkar, J

Bench : Division Bench

Advocate : P. V. Jadhavar, N. S. Tekale, S. G. Karlekar

Final Decision : Allowed/Disposed Of

Judgement

S. G. Chapalgaonkar, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India, thereby impugning the order dated 24.11.2021 passed by respondent no.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar, thereby invalidating the caste claim of the petitioner as belonging to 'Koli Mahadev', Scheduled Tribe.

3. Mr. Pratap Jadhavar, learned Advocate appearing for the petitioner would submit that the petitioner is a student and pursuing her education. The Competent Authority issued caste certificate dated 17.02.2018 in his favour certifying that she belongs to 'Koli Mahadev', Scheduled Tribe. The certificate was forwarded to the Committee for verification alongwith various documents including school record, service book record and affidavit containing genealogy. The vigilance inquiry was ordered by the Committee. On receipt of the report, show cause notice was issued, which has been duly replied by petitioner explaining the adverse remarks. Mr. Jadhavar would submit that the petitioner has submitted pre-Constitutional documents in the form of school admission

entry of second cousin i.e. Sahadu Khandu Savale dated 01.06.1941, Mirabai Govinda Savale i.e. cousin grandmother dated 01.06.1949, Rohidas Kautik Savale i.e. grandfather dated 01.06.1951 and so on. However, Committee relying upon some contra entries pertaining to the distinct blood relatives, discarded the caste claim of the petitioner, which is contrary to the settled legal position.

4. The learned AGP supports order and points out that the vigilance report depicts the entries from 1915 onward depicting caste of petitioner's blood relatives as 'Koli', 'Mahadev Koli', 'Suryawanshi Koli' 'Hindu Suryawanshi Koli', 'Hindu Mahadev Koli', 'Hindu Tokre Koli', which is contrary to the claim of the petitioner for 'Koli Mahadev', Schedule Tribe. The Committee has taken possible view after considering the documents on record. He would further submit that the petitioner failed to establish the traits analogous to tribes peculiar Anthropological and ethnological traits, deity, customs etc. He would, therefore, submit that there is no merit in the petition.

5. We have considered the submissions advanced on behalf of the respective parties, so also perused the annexures to this petition. The original file received from the Committee is also made available for our consideration. The petitioner in support of her caste claim for 'Koli Mahadev', Scheduled Tribe placed reliance on following documents:-

6. The Committee relied upon the contra entries in respect of cousin great great grandfather and cousin grandfather, which are from 1915 to 1941, wherein caste is referred as 'Koli'. Apparently, the reliance of the petitioner is on pre-Constitutional documents, so also period of vicinity of Presidential order. The petitioner is relying upon two documents of the year 1951 depicting the entry of caste as 'Mahadev Koli', Scheduled Tribe in the school record of the blood relatives i.e. second cousin, cousin paternal aunt, grandfather and cousin grandfather. Pertinently, the aforesaid record is impeccable in character. The vigilance report nowhere doubts the genuineness of the said documents being fraudulent or obtained by misrepresentation or observing any overwriting or manipulation. So far as the contra entries noted by the Committee are concerned, those are during pre-Constitutional period, when no benefit was available based on the caste to the particular community. The entries depict 'Koli' as caste without further abbreviations. This Court in case of Mayuri Sudhakar Sawsakad and another Vs. State of Maharashtra & others 2019 (6) Mh.L.J. 766. observed in paragraph no.19 as under:-

"19. In our view, the concept of recognized Scheduled Tribe for the purposes of giving benefits and concessions was not prevailing prior to 1950 and, therefore, only caste or community to which a person belonged was stated in the birth, school and revenue records maintained. The documents are issued in the printed format, which contains a column under the heading 'Caste' and there is no column of tribe. Irrespective of the fact that it is a tribe, the name of tribe is shown in column of caste. While entering the name, the distinction between caste and tribe is ignored."

7. It would be, therefore, appropriate to give weightage to the pre-Constitutional document, which specifies caste and tribe both in the document. In the present case, the school record of Sahadu Khandu Savale (1941), Mirabai Govinda Savale (1949) specify caste to be 'Mahadev Koli'. Further in the year 1951 the school admission extracts of the petitioner's grandfather Rohidas Kautik Savale and cousin grandfather Lotan Namdev Savale show caste entries as 'Mahadev Koli'. In light of this pre-Constitutional record of blood relations, we have no hesitation to hold that the documents produced by the petitioner would fetch greater probative value, whereas the other entries relied upon by the Committee, although pre-Constitutional referring caste as 'Koli' would not read as contra entries to dislodge the caste claim of the petitioner for 'Koli Mahadev' Scheduled Tribe. So far as the affinity test is concerned, it is now well settled that it would be the corroborative evidence to the documentary evidence and should not be sole criteria to reject the caste claim. Further in view of the industrialization and overall development bringing various means of transportation and homogenization classes of the society, affinity test cannot be considered as litmus test in view of the acceptance of new traits by the tribe. Therefore, failure to corroborate with the peculiar anthropological or ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. can be ignored in facts of the case. Some variation in this regard may not be read adverse to the caste claim. It is true that in absence of documentary evidence, the affinity test assumes great significance and due importance needs to be given in appropriate cases. However, when the claim is based on documents, the preference needs to be given to the documentary evidence, particularly documents pertaining to pre-Constitutional era.

8. In view of the aforesaid observations, we have no hesitation to hold that the Committee has adopted hyper technical approach and erroneously dislodged the caste claim of the petitioner.

9. Hence, we proceed to pass following order:-

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 24.11.2021 passed by respondent no.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar is hereby quashed and set aside.
- c. The respondent no.2-Committee shall immediately issue certificate of caste validity in favour of the petitioner for 'Koli Mahadev', Scheduled Tribe.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.