

(2024) 07 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 1209 Of 2022 And Civil Application No. 6755 Of 2024

Samriddhi Yogesh Savale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-07-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Land Revenue Code, 1966 — Section 36, 36A

Citation : (2024) 07 BOM CK 0040

Hon'ble Judges : Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Mohanish V. Thorat, Sarang P. Joshi, Shaikh Wasif, M.D. Narwadkar

Final Decision : Allowed

Judgement

Mangesh S. Patil, J

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

2. In this petition under Article 226 of the Constitution of India, read with section 7(2) of the Maharashtra Act No. XXIII of 2001 (hereinafter 'the Act'), the petitioner is taking an exception to the judgment and order passed by respondent no. 2 – scheduled tribe certificate scrutiny committee (hereinafter 'the committee'), whereby it has refused to validate her 'Tokre Koli' scheduled tribe certificate and directed it to be confiscated and cancelled, in a proceeding under that Act.

3. Learned advocate for the petitioner submitted that there are pre-constitutional school record and birth and death record maintained in the ordinary course, describing the petitioner's forefathers as 'Dhor Koli' or 'Tokre Koli'. He would submit that though 'Dhor Koli' and 'Tokre Koli' sound different, they are covered by the same entry at serial no.28 of the Presidential Order. He would submit that even in the government resolution dated 24-04-1985 while laying down

guidelines, Tribal Welfare Department of the state had expressly observed that 'Dhor Koli' was at the lowest rung and the persons belonging to it were treated as untouchables and expressly declaring this category of community being known as 'Dhor Koli', 'Tokre Koli', 'Kolcha' and 'Kolgha'. Consequently, all these entries find place at serial number 28. He would submit that appreciating such state-of-affairs, even this Court in the matter of Nilesh Gulab Sonawane and another Vs. State of Maharashtra and others (writ petition no. 9654 of 2019 decided on 18-10-2023) has expressly concluded that the entries as 'Koli Dhor' or 'Tokre Koli' could not be read as contrary or inconsistent entries.

4. Learned advocate would further submit that there is pre-constitutional school record and birth and death record consistently describing the petitioner's forefathers as 'Koli Dhor' or 'Dhor Koli' or 'Tokre Koli'. Though there were few other entries of some relatives referred to by the committee which are also pre-constitutional, describing some of the ancestors as 'Koli', those are very few and could not outweigh the favourable record which was in abundance. He would submit that when there are several pre-constitutional entries, the decision ought to have been based only by analyzing and appreciating such pre-constitutional record which would have a greater probative value but the committee has chosen to rely upon only contrary record of the post-constitutional period. Petitioner's forefathers cannot be attributed with having any oblique intention while mentioning their caste even before the constitutional order providing reservation has seen the light of the day.

5. Learned advocate for the petitioner would submit that even the committee has referred to the oldest record of the year 1906 when petitioner's great grandfather was admitted to a school and has refused to recognize this because the committee has treated that entry as 'Dhor Koli' as being inconsistent with the claim of 'Tokre Koli'. He would submit that even the committee has refused to rely upon this on the opinion of the headmaster, as the school register extract did not tally with any of the school register / record. However, the committee has conveniently overlooked even the older record of great great grandfather Ragho Ratan in the birth and death record maintained in Form no. 14 by the village panchayat regarding his birth date as 11-10-1905 describing him as 'Koli Dhor'. When the petitioner had expressly referred to this old record in her reply to the vigilance report, it was imperative for the committee to have gone through such old village panchayat record of the earliest point of time but it has refused to do so.

6. Learned advocate would also submit that even the committee has not considered another pre-constitutional record of 1923 wherein petitioner's grandfather Bhila Ragho Savle was described as 'Tokre Koli' in the school record and the headmaster had expressly certified that it was tallying with the school register and there was no over-writing. He would, therefore, submit that the committee has not appreciated the evidence in the proper perspective and has reached a perverse and arbitrary conclusion.

7. Learned advocate would then submit that even the revenue record possessed by the petitioner's family describing it to be regulated by the provisions of section 36 and 36-A of the Maharashtra Land Revenue Code, 1966 which could have occurred only because the petitioner's ancestors were granted these lands as a watan, has been overlooked by the committee without any sound reason. He, therefore, prayed to allow the writ petition.

8. Learned AGP would support the impugned judgment and order. He would submit that though the petitioner has been relying upon pre-constitutional record as mentioned by the committee, apart from the fact that some of those were 'Koli' or 'Hindu Koli', which is a special backward class and inconsistent with the claim of 'Tokre Koli', the committee found several interpolations and even the headmaster had opined that the extracts of the school register produced / relied by the petitioner was not tallying with any school record.

9. He would further submit that the entries in the schedule have to be read as it is and claim of the petitioner of 'Tokre Koli', is inconsistent with the pre-constitutional record of 'Koli Dhor' or 'Dhor Koli'. Even the post-independence record of the petitioner's blood relatives is inconsistent and describe them as 'Koli' or 'Hindu Koli'. By virtue of section 8 of the Act, the burden to prove tribe claim rests on the claimants. She had failed to substantiate the claim. The committee had assigned sound reasons and taken a plausible view in rejecting the claim.

10. We have considered the rival submissions and perused the papers.

11. At the outset, it would be appropriate to appreciate the reasoning assigned by the committee by reproducing the chart in respect of the record of the petitioner's ancestors. Though it is in one table, in our considered view, it would be appropriate that depending upon the reasoning assigned by the committee, it can be segregated in two parts; first chart describing the petitioner's relatives as 'Koli' or 'Hindu Koli' and second describing them as 'Koli Dhor' or 'Dhor Koli' or 'Hindu Tokre Koli'. It is apparent that the committee has discarded some of this record on the ground that those are 'Koli' or 'Hindu Koli' and are inconsistent with the petitioner's claim of 'Tokre Koli'. It has also mentioned that some of such entries have been interpolated by inserting letter 'टो'. The tables as mentioned above, are as under :

Sr.

No.

Name of Document

Name of person on the document

Blood relation with the applicant

Caste recorded

Date of Admission / Registration

1

Village Form No. 14

Rama Kumbala Koli

Cousin Great Great Grandfather

Koli

04.01.1913

2

Village Form No. 14

-- Ragho Ratan

Great Great Grandfather

Koli

July / 1922

3

Village Form No. 14

Chindhi Ragho Ratan

Great Grandmother

Koli

08.09.1928

4

Village Form No. 14

Mohan Ragho Ratan

Cousin Great Grandfather

Koli

April / 1935

5

School Record

Ku. Salunka Guman Savle

Cousin Grandmother

Hindu Koli

21.06.1955

6

School Record

Arastol Hilal Savle

Cousin Grandmother

Hindu Koli

26.06.1962

7

School Record

Bharat Hilal Savle

Cousin Grandfather

Hindu Koli

01.06.1964

8

School Record

Hira Bhila Savle

Grandmother

Hindu Koli

02.06.1964

9

School Record

Bablibai Guman Savle

Cousin Grandmother

Hindu Koli

03.06.1965

10

School Record

Meerabai Father Mohan Savle

Cousin Grandmother

Hindu Koli

17.06.1965

11

School Record

Sarubai Bhila Savle

Grandmother

Hindu Koli

06.06.1966

12

School Record

Pundlik Hilal Savle

Cousin Grandfather

Hindu Koli

29.06.1966

13

School Record

Keval Bhila Savle

Cousin Grandfather

Hindu Koli

22.06.1974

Sr.

No.

Name of Document

Name of person on the document

Blood relation with the applicant

Caste recorded

Date of Admission / Registration

1

School Record

Ragho Ratan

Great Great Grandfather

Dhor Koli

10.06.1906

2

School Record

Bhila Ragho Koli

Great Grandfather

Tokre Koli

01.05.1923

3

Village Form No. 14

Ragho Ratan

Great Great Grandfather

Koli Dhor

10.12.1925

4

Village Form No. 14

Bhila Ragho Ratan Savle

Great Grandfather

Koli Dhor

10.01.1930

5

Village Form No. 14

Guman Budha Rama Savle

Cousin Great Grandfather

Koli Dhor

10.04.1930

6

Village Form No. 14

Ratan Kubla Savle (Kuber)

Great Great Great Grandfather

Koli Dhor

07.01.1932

7

Village Form No. 14

Tapi Budha Rama

Great Grandmother

Dhor Koli

December / 1937

8

Village Form No. 14

Ragho Ratan

Great Great Grandfather

Koli Dhor

07.01.1942

9

School Record

Mohan Ragho Koli

Cousin Great Grandfather

Hindu To.

Koli

03.08.1948

10

Village Form No. 14

Motiram Bhila Ragho

Grandfather

Koli Dhor

08.04.1948

11

School Record

Ku. Salunka Guman Savle

Cousin Grandmother

Hindu To.

Koli

20.06.1955

12

School Record

Manjula Guman Savle

Cousin Grandmother

Hindu To.

Koli

01.06.1961

13

School Record

Pandit Hilal Savle

Cousin Grandfather

Hindu Koli Tokre

07.06.1963

14

School Record

Nanabhau Guman Savle

Cousin Grandfather

Hindu To.

Koli

01.06.1966

15

School Record

Ranjatabai Motiram Savle

Paternal Aunt

Hindu Tokre Koli

25.06.1976

16

School Record

Manisha Motiram Savle

Paternal Aunt

Hindu Tokre Koli

03.10.1979

17

School Record

Yogesh Motiram Savle

Father

Hindu Tokre Koli

14.06.1984

18

Colour photocopy of Service book

Chhotulal alias Nanabhau Guman Savle

Cousin Grandfather

Hindu To.

Koli

19.06.1991

19

School Record

Samriddhi Yogesh Savle

Applicant

Hindu Tokre Koli (S.T.)

11.04.2009

The committee has not expressly indicated as to which of these entries are manipulated or interpolated. The observation of the committee is omnibus. It was not proper for the committee to analyze the evidence in such serious matters, without being careful about expressly dealing with each record which it believed to be interpolated or fabricated.

12. It, therefore, becomes imperative for us to understand the observations of

the committee in the context of the vigilance cell report. The vigilance cell report gives following description in a chart :

Sr.

No.

Name

Blood relation with candidate

Available Evidence

Caste recorded in

evidence

Year of evidence

Remark

1

2

3

4

5

6

7

I.

Rama Kubla Koli

Great Great Grandfather

Death record of village Form No. 14

Koli

Date of Death 04.01.1913

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II.

----- Ragho Ratan

Cousin Grandfather

Birth record of village Form No. 14

Koli

Date of Birth

July / 1922

III.

Chindhii Ragho Ratan

Sister of Cousin Grandfather

Birth record of village Form No. 14

Koli

Date of Birth 08.09.1928

IV.

Mohon Radhe Ratan

Cousin Grandfather

Death record of village Form No. 14

Koli

Date of Death April / 1935

V.

Ragho Ratan

Cousin Great Grandfather

Admission Extract of General Register of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Dhor Koli

Birth 10.06.1906

The entry is in a loose page and the page could tally with any of the school registers. The handwriting on this page containing this entry is in a different ink and handwriting as compared to the rest of the entries in the school register.

VI.

Bhila Ragho Koli

Cousin Grandfather

Admission Extract of General Register of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Tokre Koli

Birth 01.05.1923

The entry is in a loose page and the page could tally with any of the school registers. The handwriting on this page containing this entry is in a different ink and handwriting as compared to the rest of the entries in the school register.

VII.

Mohan Ragho Koli

Cousin Grandfather

Admission Extract of General Register no. 63, book no.

2 of Z.P.

Primary School Shelti, Tq. Shahada, Dist.

Nandurbar

Hindu To.

Koli

03.08.1948

2nd standard

Letter 'टो' in a different ink and handwriting has been inserted in the entry "Hindu Tokre Koli".

VIII.

Ku. Salunka Guman Savle

Paternal Aunt

Admission Extract of General Register no. 244, book no. 2 of Z.P. Primary School Shelti, Tq. Shahada, Dist.

Nandurbar

Hindu Koli

21.06.1955

1st Standard

IX.

Ku. Salunka Guman Savle

Paternal Aunt

Admission Extract of General Register no. 78, book no.

3 of Z.P.

Primary School Shelti, Tq. Shahada, Dist.

Nandurbar

Hindu To.

Koli

20.06.1955

1st Standard

X.

Arastol Hilal Savle

Cousin Paternal Aunt

Admission Extract of General Register no. 371, book

no. 3(1) of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Hindu Koli

26.06.1962

1st Standard

XI.

Pandit Hilal Savle

Cousin Uncle

Admission Extract of General Register no. 398, book

no. 3(1) of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Hindu Koli Tokre

07.06.1963

1st Standard

Word 'Tokre' has been inserted in different handwriting after the words 'Hindu Koli'.

XII.

Keval Bila Savle

Cousin Paternal Aunt

Admission Extract of General Register no. 417, book
no. 3(1) of

Z.P. Primary School

Hindu Koli

School leaving date 22.06.1974

XIII.

Hira Bhila Savle

Cousin Paternal Aunt

Admission Extract of General Register no. 488, book
no. 3(1) of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Hindu Koli

02.06.1964

1st Standard

XIV.

Bablibai Guman Savle

Paternal Aunt

Admission Extract of General Register no. 491, book
no. 3(1) of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Hindu Koli

03.06.1965

1st Standard

Separate paper has been pasted in the column of caste in the school register and on that paper, caste 'Hindu Koli' appears.

XV.

Meerabai Father Mohan Savle

Cousin Paternal Aunt

Admission Extract of General Register no. 500, book
no. 3(1) of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Hindu Koli

17.06.1965

1st Standard

XVI.

Sarubai Bhila Savle

Cousin Paternal Aunt

Admission Extract of General Register no. 535, book
no. 3(1) of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Hindu Koli

06.06.1966

1st Standard

XVII.

Pundlik Hilal Savle

Cousin Uncle

Admission Extract of General Register no. 550, book
no. 3(1) of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Hindu Koli

29.06.1966

1st Standard

XVIII.

Manjula Guman Savle

Paternal Aunt

Admission Extract of General register book no. 3(1) of Z.P.

Primary

Hindu To.

Koli

Birth 01.06.1961

Letter 'ਦੇ' has been inserted subsequently, in a different handwriting.

XIX.

Bharat Hilal Savle

Cousin Uncle

Admission Extract of General Register no. 736 of Z.P.

Primary School Shelti, Tq. Shahada, Dist.

Nandurbar

Hindu Koli

Birth 01.06.1964

XX.

Nanabhau Guman Savle

Father

Admission Extract of General Register of

Z.P. Primary School Shelti, Tq. Shahada, Dist. Nandurbar

Hindu To.

Koli

Birth 01.06.1966

Letter 'ਦੇ' has been inserted subsequently, in a different handwriting.

XXI.

Chhotulal alias Nanabhu Guman Savle

Father

Colour photocopy of service book

Hindu To.

Koli

Date of start of service 19.06.1991

Letter 'टो' has been inserted subsequently, in a different handwriting.

This is a vigilance report conducted at the time of claim of one of the petitioner's blood relatives by name Kunal Chhotulal Savale which has been referred to.

13. It is necessary to note that the proceeding before the committee constituted under the Act is in the nature of a quasi judicial enquiry. The facts can be proved on the basis of preponderance of probabilities and strict proof is not to be insisted for.

14. Neither the committee nor the vigilance officer has raised any doubt about the record reproduced herein-above is of the petitioner's ancestors from the paternal side. As has been laid down in the matter of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113, the pre-constitutional record would carry greater probative value as compared to the record of the latter period. This is obviously because the policy of reservation in the light of Articles 341 and 342 of the Constitution of India under which the schedules have been prepared listing various scheduled castes and scheduled tribes, no one could be attributed with any ulterior intention of deriving the reservation benefit, prior to the advent of such policy.

15. Therefore, in our considered view, when the pre-constitutional record of the petitioner's forefathers could be traced or was produced, reference by the committee to the record of post independence period and its approach in referring to and analyzing it, either in support of or against the petitioner's claim should take a back seat. Obviously, such post independence record either favourable to the petitioner or against her would not outweigh the pre-constitutional record which was available to the committee. We, therefore, proceed to examine the inference drawn by the committee on the basis of the pre-constitutional record only.

16. As can be seen from the afore-mentioned charts, the first 4 entries in the first chart, first 10 entries in the second chart and the first 7 entries in the third chart need to be objectively scrutinized. As we have mentioned herein-above, the impugned judgment does not specifically comment on veracity or otherwise of each of these pre-constitutional entries and we had to understand its inference based on the vigilance report.

17. One need not delve deep to observe that every entry in the constitutional order / schedule has its own sanctity and has to be understood and applied strictly as laid down in *Milind Sharad Katware and others Vs. State of Maharashtra and others*; 1987 Mh.L.J. 572. Admittedly, the tribe 'Koli' which was initially included in other backward class, subsequently, was included in special backward class. As against this, 'Tokre Koli' or 'Dhor Koli' are included in entry at serial no. 28 of scheduled tribes. Obviously, therefore, Koli entries would be inconsistent with the claim of 'Dhor Koli' or 'Tokre Koli'.

18. As can be seen, the school record or birth record of 1913, 1922, 1928 and 1935 describe the petitioner's forefathers as 'Koli'. However, school record and birth record of 1906, 1923, 1925, two entries of Bhila Ragho and Guman Budha of the year 1930, 1932, 1937, 1942, 2 entries of Mohan Ragho and Motiram Bhila of 1948, describe petitioner's forefathers as 'Dhor Koli' or 'Tokre Koli' or 'Koli Dhor' or 'Hindu To. Koli'. Though the committee had plausible reasons to discard some of this record on the ground of the entries being suspicious and looked manipulated, or else the original record of the school was not tallying with the loose pages containing some of these entries, even if the committee is justified in discarding these dubious entries, it is abundantly clear that these pre-constitutional entries which have been doubted by the committee and even by the vigilance cell, petitioner's forefathers were interchangeably described as 'Koli', 'Dhor Koli' 'Tokre Koli' or 'Koli Dhor'. It is thus quite clear that the entries were made *ex facie* interchangeably, without intending to describe these individuals bearing in mind the future consequences. In other words, the persons who must have furnished the information while making these entries in the school record or in the birth and death register in Form no. 14 must have loosely described the caste as per their own understanding. At times, the entries were made as 'Koli' which could have been used colloquially as a generic name. If such is the state of affairs, the forefathers of the petitioner though at times were described as Koli, but were also number of times described as 'Dhor Koli' or 'Tokre Koli' or 'Koli Dhor', one needs to appreciate these entries pragmatically.

19. It is just possible that the person providing the information may describe the caste as 'Koli' even without what he meant was to describe that it with an adjective, 'Dhor' or 'Tokre'. While recording the entries 'Dhor Koli' or 'Tokre Koli' or 'Koli Dhor' he or they would do it consciously emphasizing the adjective having a different connotation. Therefore, though *per se*, the entry 'Koli' is inconsistent with the claim of being 'Tokre Koli' or 'Dhor Koli', when there are plentiful entries of 'Dhor Koli' or 'Tokre Koli' of the pre-constitutional period, in our considered view, the principle of preponderance of probabilities would apply and would substantiate the petitioner's claim. It is not merely a question of mathematical calculation as to how many are the favourable entries as against the contrary entries of 'Koli'. It would be a matter of appreciation of the circumstances while making those entries, that too in pre-constitutional era. Obviously, when many of the pre-constitutional entries are of first quarter of the 20th century when the rate of literacy must have been drastically low, even if

there are few contrary entries of 'Koli', in our considered view, not much weight can be attached to it when simultaneously there are plentiful favourable entries as well, of the same period.

20. True it is that there seems to be some attempt at manipulation for the obvious purpose. However, we have expressly ignored such entries which are dubious in nature as described by the committee. We have considered only those entries regarding which the committee has not entertained any doubt about their genuineness. Still, we have found that there are number of favourable entries describing the forefathers as 'Dhor Koli' or 'Koli Dhor'.

21. True it is that there is no clear entry of 'Tokre Koli' which is the claim of the petitioner of the pre-constitutional period and the word 'To' seems to have been added at a later point of time. However, we have already considered the aspect as to whether claim of 'Tokre Koli' and that of 'Dhore Koli' or 'Koli Dhor' could be treated as inconsistent, in the matter of Nilesh Sonawane (supra). We pointed out that entry no. 28 of schedule of Tribe Order, 1950 mentioned four tribes - 'Koli Dhor', Tokre Koli, 'Kolcha' and 'Kolgha'. If the legislature in its wisdom has put 'Koli Dhor' and 'Tokre Koli' in the same entry, the claim of 'Tokre Koli' cannot be treated as inconsistent with that of 'Koli Dhor'.

22. There is one more aspect which needs to be emphasized in this context. A person would not derive any additional advantage or benefit by being described as 'Tokre Koli' instead of 'Koli Dhor' or vice versa. This would be another reason not to treat such claims to be inconsistent. Therefore, when, as is mentioned herein-above, there is acceptable documentary evidence of pre-constitutional period wherein the petitioner's forefathers were described as 'Dhor Koli' or 'Koli Dhor', the committee could not have refused to extend its benefits to her when she has been claiming to be a 'Tokre Koli'.

23. In the light of the fact that there is substantial documentary evidence, even the committee could not have applied the affinity test, the scope of which is limited, as is described in Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others (supra) and Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326.

24. It is necessary to note that the petitioner has filed civil application no. 6755 of 2024 and has produced coloured photocopies of the birth and death register of village Shelti of 1905 as well as coloured photocopy of the general register of Zilla Parishad Primary School, Shelti, Taluka - Shahada. It is mentioned in this application that this record was available to the petitioner when the enquiry was going on before the committee but the committee merely retained it without raising any objection.

25. Learned advocate for the petitioner would submit that even no comment has been made on it. Instead of going into the allegations about the committee having not entertained and scrutinized such record, since it is now made

available to us, and expressly reads an entry in the name of Ragho Ratan Kubala of 11-10-1905 describing him to be 'Koli Dhor', ex facie, this entry in the birth register does not seem to be inserted rather it appears sequentially at serial no. 24 and would substantiate the petitioner's claim.

26. In the result, the impugned order is not sustainable in law and is liable to be reversed.

27. The writ petition is allowed.

28. Impugned order is quashed and set aside.

29. The respondent - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Tokre Koli' scheduled tribe in the prescribed format.

30. Pending civil application is allowed and disposed of.