

(2023) 12 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No.13653 Of 2023

Vishal

APPELLANT

Vs

Schedule Tribe Certificate Scrutiny Committee And Others

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Evidence Act, 1872 — Section 35

Citation : (2023) 12 BOM CK 0035

Hon'ble Judges : Ravindra V. Ghuge, J;Y.G. Khobragade, J

Bench : Division Bench

Advocate : Mahesh P. Deshmukh, P.K. Lakhotiya, Y.B. Bolkar

Final Decision : Dismissed

Judgement

Y.G. Khobragade, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By the present petition under Article 226 of the Constitution of India, the Petitioner has prayed for quashing and setting aside of the Judgment/Order dated 4th October, 2023 passed by Respondent No. 1 i.e. Caste Scrutiny Committee thereby invalidating the caste claim of the petitioner being "Tokre Koli" Scheduled Tribe and issuance of directions against Respondent No. 1 to declare his caste being "Tokre Koli" Scheduled Tribe and to issue Caste validity certificate in his favour.

3. Brief facts are that the Petitioner belongS to "Tokre Koli" Scheduled Tribe. On 15.09.2022, the Sub-Divisional Officer, Faizapur, Dist. Jalgaon issued a "Tokre Koli" Scheduled Tribe, Caste Certificate. In the year 2019, the Superintendent of Police, Jalgaon conducted recruitment process for the post of Constable. In pursuance of said advertisement, he submitted his candidature. After completion of selection process, he was appointed as Police Constable (Group-2) vide

appointment order dated 24.02.2022 against the reserved Scheduled Tribe category and he is still working on the said post. On 16. 09.2022, his Employer i.e. Respondent no. 2 forwarded proposal of his caste claim for scrutiny to Respondent No.1. He produced all documentary evidence in support of his caste claim. Respondent No.1 had called Vigilance Report, which has was submitted on 08.12.2022. The vigilance cell report was duly communicated to the Petitioner with show cause notice dated 12.12.2022 with directions to remain present before the Scrutiny Committee on 29.12.2022 along with explanation, but due to some technical problem, hearing was adjourned till 05.01.2023, on 05.01.2023 time was sought to file reply. On 19.01.2023, a detailed reply to the Vigilance Cell report was filed, but hearing was postponed on various dates due to technical reasons. On 10.08.2023, he along with his counsel appeared before the Respondent No.1 and had sought time to file reply on documents given to him during the course of hearing and matter was postponed on 28.08.2023, but again hearing was adjourned to 31.08.2023). Lastly, on 13.09.2023, his counsel sought adjournment, but it was rejected and matter was closed for orders. On 04.10.2023, the Respondent No.1 - Scrutiny Committee passed the impugned order thereby invalidating his Scheduled Tribe caste claim on the ground that the Petitioner failed to produce corroborative documents to prove affinity test and no validity certificate of his blood relatives were produced to support to his caste claim.

4. Mr. Mahesh S. Deshmukh, the learned advocate appearing for the Petitioner vehemently canvassed that the Petitioner submitted various pre-independence era documents of his blood relatives viz., birth registration certificates in respect of Narmada Ganu Sapkale, the real sister of his grand-father, who was born on 16.02.1936, birth certificate of Shri Raghunath Sapkale, the cousin grand-father who was born on 01.02.1938, birth certificate of Shri Dashrath Ganu Sapkale, real grand-father who was born on 03.03.1950, birth certificate of Shri Ramkrushna Vithu, the cousin grand-father who was born on 06.06.1932, birth certificate of Shri Supudu Totaram Sapkale, the cousin grand-father who was born on 01.06.1946, birth certificate of his father Shri Popat Dashrath Sapkale, who was born on 01.06.1977 and extract of School Register entry dated 03.06.2000, however, Respondent No.1 failed to consider the said documentary evidence as well as the reply to the Vigilance Cell report and invalidated the caste claim of the Petitioner, which is illegal, bad in law and hence, prayed for quashing and setting aside the impugned order.

5. The learned advocate for the Petitioner further canvassed that, on 10. 08.2023, the Petitioner with his advocate duly appeared before Respondent No.1 and had sought time to file reply on the documents provided to the Petitioner during the course of hearing. The matter was postponed to 28. 08.2023 and thereafter to 31.08.2023 and lastly on 13.09.2023, the Petitioner sought time. But the said request was rejected and the matter was abruptly closed for orders. Therefore, Respondent No.1 failed to give a reasonable opportunity of hearing to the Petitioner and passed the impugned order. Hence, it is violation of the

principles of natural justice. Therefore, prayed for quashing and set aside the impugned order.

6. Per contra, Mr. P. K. Lakhotiya, the learned Assistant Government Pleader appearing for the Respondent Nos.1 & 2 submits that the Vigilance Cell Officer has intensely scrutinized the birth records produced by the Petitioner and collected relevant documents to verify the genuineness and authenticity of the documents relied upon by the Petitioner. There are contra entries in the old documentary record in respect of caste of the Petitioner. So also, the affinity test does not prove caste claim of the Petitioner. Hence, prayed for dismissal of the petition.

7. Adv. Y.B. Bolkar, the learned counsel appearing for Respondent No.3, orally submitted that in selection process of Police Constable, the Petitioner and Respondent No.3 were selected under Scheduled Tribe category. The name of the Petitioner was enlisted at Sr. No. 1 and Respondent No.3 was kept at sr. no.1 on the waiting list. However, after the selection process, in order to ascertain whether the Petitioner belongs to Scheduled Tribe or not, Respondent no. 3 solicited Caste Certificate of the Petitioner which was issued under outward No.MAG/ WS/ ST/ 1693/2010 dated 23.05.2010 from the office of Divisional Officer, Jalgaon, but the said Caste certificate was fabricated and found to be bogus which has been submitted for scrutiny before Respondent No.1. Therefore, vide order dated 01.08.2022, Respondent No.1 confiscated the said Certificate on the ground of a spelling mistake in the Caste Certificate "Tokare Koli" instead of "Tokre Koli" and the Petitioner was directed to obtain a fresh Caste Certificate. However, the Petitioner obtained another Caste Certificate from the Office of Sub-Divisional, Faijapur, through online process on 14.09.2022, which was submitted for the scrutiny. Thereafter, Respondent No.3 obtained information under the Right to Information Act on 09.11.2022, the information solicited by the Petitioner from the Office of Sub-Divisional Officer with respect to the date and outward number of the Petitioner's Caste Certificate, but it was not found in the office record at entry no. 1693 for the year 2010 and it does not contain said serial number. Therefore, the Petitioner committed forgery and secured a Government Job on the basis of a forged Caste Certificate. Therefore, he prayed for dismissal of the petition.

8. Having regard to the rival submissions canvassed on behalf of both the sides, we have gone through the record. It is not in dispute that vide the appointment order dated 24.02.2022 issued by the Superintendent of Police, the Petitioner was appointed as a Police Constable (Group-2) against the reserved category "Scheduled Tribe". Therefore, his Caste claim was referred for scrutiny to the Respondent No.1. On 16.09.2022, the appointing authority of the Petitioner referred the caste claim of the Petitioner for scrutiny. In order to prove his caste as "Tokare Koli Schedule Tribe", the Petitioner produced certain documents of his blood relatives viz., birth registration certificates in respect of (1) Narmada Ganu Sapkale, the real sister of his grand-father who was born on 16.02.1936. (2) The

birth certificate of Shri Raghunath Sapkale, his cousin grand-father, who was born on 01.02.1938. (3) The birth certificate of Shri Dashrath Ganu Sapkale, his real grand-father who was born on 03.03.1950. (4) The birth certificate of Shri Ramkrushna Vithu, his cousin grand-father, who was born on 06.06.1932. (5) The birth certificate of Shri Supudu Totaram Sapkale, his cousin grand-father, who was born on 01.06.1946. (6) The birth certificate of the Petitioner's father Shri Popat Dashrath Sapkale, who born on 01.06.1977 and the extract of the School Register entry dated 03.06.2000.

9. During the course of the Vigilance cell inquiry, the Investigating Agency collected extract of School Registers pertaining to (1) Narmada Ganu Sapkale, (2) Shri Raghunath Sapkale, (3) Shri Dashrath Ganu Sapkale (4) The birth certificate of Shri Ramkrushna Vithu, (5) Shri Supadu Totaram Sapkale, (6) Shri Popat Dashrath Sapkale, the Petitioner's father and (7) Vishal Popat Sapkale, the Petitioner himself. The Vigilance Cell Report clearly reveals that, Narmada Ganu Sapkale is the real sister of Petitioner's grand-father who was born on 16.02.1936. However, in reply to the Vigilance Cell Report at Exh.D, the Petitioner denied his blood relation with Narmada Ganu Sapkale and her name has not been disclosed in the genealogy. The Vigilance Cell report reflects that Narmada Ganu Sapkale is the real sister of Dashrath Ganu Sapkale, the real sister of the grandfather of the Petitioner. The Petitioner failed to bring sufficient material on record to disprove the relationship between Narmada Ganu Sapkale and his real grand-father Shri Dashrath Ganu Sapkale.

10. It is needless to state that the Vigilance Cell collected School Register and Birth entry extracts of the Petitioner's forefathers. The entries in birth extract of forefathers of the Petitioner is mentioned as "Hindu Koli", "Hindu Suryavanshi Koli", "Hindu other backward" and "Hindu Koli Special Other Backward". The Vigilance Cell submitted the report, which does not prove that the Petitioner belongs to "Tokare Koli Scheduled Tribe". The Petitioner was served with the show cause notice dated 12.12.2022 along with the copy of Vigilance Cell Report calling upon him to submit his explanation. Accordingly, the Petitioner submitted his explanation on 24.11.2022, but the Petitioner has not countered the report of the Vigilance Cell and no documentary evidence was brought on record to prove that he belongs to Tokare Koli, Scheduled Tribe. It is well settled that, an affinity test is not a litmus test, and certainly, the documentary evidence would prevail over the so- called affinity test as laid down in case of Saurabh Ashok Nikam V/s. State of Maharashtra & Anr. in Writ Petition No. 241 of 2022, decided on 06.01.2022.

11. The Petitioner has mainly relied on the following birth entries record as under:-

Sr. No

Description of Document

Name of Person on the Document

Blood Relation with the Applicant

Entry of Caste

Date of Entry

1

School Record

Ramkrushna Vithu Koli

Cousin grand- father

Hindu Koli

06.06.1932

2

School Record

Narmada D/o Ganu Sapkale

Sister of

Grandfather

Hindu Suryavanshi Koli

17.06.1942

3

School Record

Raghunath Vithal Sapkale

Cousin Grandfather

Hindu Koli

19.07.1944

4

School Record

Dashrath Ganu Sapkale

Grandfather

Hindu Koli

03.03.1950

5

School Record

Supudu Totaram Sapkale

Cousin Grandfather

Hindu Suryavanshi Koli

01.06.1955

6

School Record

Popat Dashrath Sapkale

Father

Hindu OBC

13.06.1977

7

School Record

Vishal Poat Sapkale

Applicant (Petitioner)

Hindu Koli Spl.

Backward

03.06.2000

12. It is an admitted fact that, the petitioner has not produced even a single caste validity certificate of his blood relatives. Though, the Petitioner submitted that he belongs to Tokare Koli recognized as Scheduled Tribe, however, the Petitioner has not given any satisfactory reasons, as to how, "Hindu Koli", "Hindu Suryavanshi Koli", "Hindu other backward Caste" were recorded in birth entries of his forefather. Therefore, Respondent No.1 opined that the Petitioner did not belong to Tokare Koli, Scheduled Tribe.

13. In the case of Anand V/s. Committee for Scrutiny and Verification of Tribe Claims and Ors.; (2012) 1 SCC 113, the Hon'ble Apex Court has observed in para No. 22 as under:

"22. It is manifest from the afore extracted paragraph that the genuineness of a Caste claim has to be considered not only on a through 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, we feel that 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 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”.

14. After having gone through the records, we find that the School Admission Register, the birth entries were mainly relied upon by the Petitioner. The record reveals that many entries in the birth register made in the names of the blood relatives of the Petitioner as “Hindu Koli”, “Hindu Suryavanshi Koli”, “Hindu other backward Caste”. The details have been dealt with by the Vigilance report.

15. In the case of State of Maharashtra V/s. Milind and others; 2001 (1) SCC 4, the Hon’ble Apex Court has held as:

“1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution) Scheduled Tribes) Order, 1950.

2. The Scheduled “Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specially mentioned in it.”

16. It is submitted that, the entries from the birth and death register would prevail over the School register entries. In the case of CIDCO V/s. Vasudha Mandevlekar; (2009) 7 SCC 283, the Hon’ble Apex Court held in paragraph no. 18 that, the death and birth register maintained by the Statutory Authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the School Register, particularly in the absence of any proof that the same was recorded at the instance of the guardian of the Respondent.

17. The caste of the Petitioner’s cousin grand-fathers namely Ramkrushna Vithu Koli, Raghunath Vithal Sapkale and Petitioner’s real grandfather Shri Dashrath Ganu Sapkale, as per the birth register is shown as “Hindu Koli”. The Caste of cousin sister of Petitioner’s grandfather is recorded as “Hindu Suryavanshi Koli”. These entries are pre-independence. The caste of the Petitioner’s father is recorded as “Hindu Other Backward Class”, however, for first time the caste of the Petitioner is shown as “Hindu Koli, Special Backward”.

18. A detailed discussion of facts and law lead us to arrive at the conclusion that the birth entries would prevail over the entries in the school registers. The Petitioner failed to prove his Caste as Tokare Koli, Scheduled Tribe as recorded in his caste certificate issued by the Sub-Divisional Officer, Faijapur, Dist. Jalgaon. Nonetheless, the caste certificate which was issued in favour of the Petitioner bearing outward No. MAG/ WS/ ST/ 1693/2010 dated 23. 05.2010 by the Divisional Officer, Jalgaon was found to be fabricated and bogus by Respondent No.1. Therefore, vide order dated 01.08.2022, Respondent No.1 confiscated the said fabricated and bogus certificate and the Petitioner was directed to obtain a fresh caste certificate. However, the Petitioner obtained another caste certificate from the Office of Sub-Divisional, Faijapur, through the online process on 14.09.2022, which resulted in it's invalidation. The Petitioner failed to produce any substantial documents to prove his caste claim "Tokre Koli Scheduled Tribe". The findings recorded by the Scrutiny Committee are well founded on documentary evidence. Thus, it is not permissible for this Court to interfere with such findings of facts in our Writ jurisdiction. No interference is thus warranted.

19. In view of the above discussion, the present petition is hereby dismissed. Accordingly, Rule is discharged. No orders as to costs.

20. After the judgment was pronounced, the learned Advocate for the Petitioner sought continuation of the interim order.

21. The learned Advocate for the added Respondent No.3 and the learned AGP submit that ad-interim protection was granted on 01.11.2023 upto 28. 11.2023. Moreover, the Petitioner has been appointed on 24.02.2022 as a constable and he is on probation.

22. In view of the above and considering the conclusions drawn by us with regard to the conduct of the Petitioner, the request for continuation of the interim order is refused.