



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO.7006 OF 2023**

1. Gauri d/o Jitendra More,  
Age 17 years, Occupation Education.
2. Atharva Jitendra More,  
Age 15 years, Occupation Education,

Petitioners are represented through  
Natural guardian i.e. Father  
Jitendra Bansi More (Koli),  
Age 44 years, Occupation Business,  
R/o Kandari Tq. Bhusawal  
Dist. Jalgaon.

**Petitioners**

**VERSUS**

1. Scheduled Tribe Certificate  
Scrutiny Committee, Nandurbar,  
Through its Member Secretary.
2. Scheduled Tribe Certificate  
Scrutiny Committee, Dhule  
Through its Member Secretary.
3. State Common Entrance Test Cell,  
Maharashtra, Mumbai  
8<sup>th</sup> Floor, New Excelsior,  
A. K. Nayak Marg, Fort, Mumbai  
Through its Commissioner  
and Competent Authority.

**Respondents**

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Advocate for Petitioners : Mr. M S. Deshmukh h/f Mr. Vasant S.  
Bholankar and Mr. S. S. Phatale  
AGP for Respondents-State : Mr. A. A. Jagatkar  
.....

**CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**DATE : 06/07/2023.**

**JUDGMENT : ( Per SHAILESH P. BRAHME, J.)**

. Heard learned Advocate for the petitioners and learned AGP for final adjudication at the admission stage.

2. The petitioners are challenging invalidation of their tribe certificate vide Judgment and order dated 29/04/2022, passed by the Scrutiny Committee. They have relied upon pre-independence entries of 1932, 1935. They have also produced the school record, affidavits and written submissions before the Scrutiny Committee. They aspire to prosecute further studies. Hence, an urgency is shown to decide the matter expeditiously.

3. The learned AGP would submit that the pre-independence entries are suspicious and do not conform to the record. The entry in the school record of 1935 is sharply against the claim of the petitioners. He relies upon the vigilance report and the affinity test. The record is also produced for our perusal. It is submitted that the

Scrutiny Committee rightly invalidated the claims.

4. We have considered rival submissions of the parties and gone through the file produced by the Scrutiny Committee and old entries of Giradhar Chindhu More of 1932, Rajdhar Chindhu More of 1932, Babu Girdhar Chindhu of 1935 and Supdu Girdhar Chindhu of 1938. Out of them, entries of the school record of Girdhar and Rajdhar disclose tribe as 'Tokre Koli'. The school entries of Girdhar and Rajdhar are at page No.15 and 16. They bear register number of the pupil and those are of a school at Savda Dist.Jalgaon. It is transpired during perusal of original record that the Headmaster of the Savda School confirmed the said record. Therefore, those entries appear to be reliable and genuine.

5. It is tried to be argued by the learned AGP that there is letter addressed by the Headmaster of Zilla Parishad Primary School at Kandari which creates doubt about the above entries of Girdhar and Rajdhar. This submission cannot be accepted because the communication dated 18/04/2022 is by the Headmaster of altogether different school. Rajdhar and Giradhar were students of school at Savda and old

entries are borne from the record of that school. Those entries have more probative value. The learned Advocate for the petitioners rightly places reliance upon the Judgment of the Supreme Court in the matter of Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, reported in *(2012) 1 Supreme Court Cases 113*.

In paragraph No.22, it is held that :-

"22. It is manifest from the aforeextracted paragraph that 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, 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 document 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.”

6. While accepting the documentary evidence of the old entries, the above principles from Para 22(i) are aptly applicable. Besides that the Scrutiny Committee in the impugned Judgment did not assign any reason for not placing reliance on the entries of 1932. We find that the Scrutiny Committee committed perversity being selective in accepting entries of 1935 and 1938 and not commenting upon entries of 1932.

7. We further accept the submission of the learned Advocate for the petitioners that the material collected for the affinity test cannot be said to be totally inconsistent. The traits and the customs collected by the Vigilance Cell cannot be altogether held against the petitioners’ claim. The remark on page No.38, Serial No.5 of the Vigilance report is also supports the petitioners in view of the principles laid down in paragraph No.22 sub-clause (ii) in the Judgment cited (Supra).

8. For the reasons stated above, we hold that the Scrutiny Committee has committed patent illegality in invalidating the claim

of the petitioners and interference is warranted. We, therefore, pass following order :-

- (1) The writ petition is allowed.
- (2) The Judgment and order dated 29/04/2022 is quashed and set aside.
- (3) The Scrutiny Committee shall issue tribe validity certificates to the petitioners for Scheduled Tribe 'Tokre Koli' within a period of two weeks.
- (4) No order as to costs.

**( SHAILESH P. BRAHME, J. )**

**( MANGESH S. PATIL, J. )**

*bsb/July 23*