

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11298 OF 2023

Prakita Kishor Suryawanshi

.. Petitioner

Versus

1] The State of Maharashtra,
Through Secretary of
Tribal Development Department
Mantralaya, Mumbai-32.

2] Joint Commissioner,
Scheduled Tribe Certificate Scrutiny
Committee, Dhule
Office Address Sindhu Manik, Survey No. 53,
Near Eakvir Devi High School,
Sharada Nagar, Devpur, Dhule – 424 005

.. Respondents

...
Advocate for petitioner : Mr. Mohanish V. Thorat
AGP for the respondent – State : Mr. A.A. Jagatkar
...

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

DATE : 13 SEPTEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

The petitioner who claims to be belonging to Tokre Koli scheduled tribe is challenging the order of the scrutiny committee passed in a proceeding under section 7 of the Maharashtra Act No. XXIII of 2001 thereby confiscating and cancelling her tribe certificate.

2. In view of the urgency inasmuch as the petitioner having appeared at NEET-UG-2023, is desirous of securing her admission in the current admission process, the matter has been heard finally at the stage of admission.

3. The learned advocate for the petitioner would take us through the record and would submit that the petitioner is the first family member seeking validation. Though the school record of her great great grandfather - Chiman Desai Koli of the year 1909 which was in Modi script was available with its authentic translation, the committee has discarded it illegally and by relying upon some contrary entries of the later time. There were no cogent reasons for the committee to discard the school record of 1909. The inference drawn is based on conjectures and surmises. The oldest entry would have a greater probative value. Ignoring this principle, the committee has proceeded to discard the claim. The order is perverse and arbitrary.

4. Learned advocate would further submit that even contrary to the settled principles, the committee has applied the affinity test which it could not have.

5. The learned AGP would strongly oppose the petition. He would submit that the committee has cogent and convincing reasons as to why it was not relying upon the school record of the year 1909 in respect of Chiman Desai Koli. If his date of birth was as mentioned therein of 1894, it is unbelievable that he could have been admitted to the school at the age of 15 years in first standard. Even during the vigilance enquiry, the entries in Modi script were examined. Entries in the school record were found to have been made with ink pen which was not invented in the early part of the twentieth century. The

inference drawn by the committee is based on objective scrutiny of the record. There were consistent contrary entries in the school record of the petitioner's blood relations right from the year 1923 to 1959 wherein they were shown to be Koli, Hindu (Ku. Ko), Hindu Koli, Hindu Suryawanshi Koli. He submits that Koli or Suryawanshi Koli fall in Other Backward Class whereas Tokre Koli is a tribe. The inference drawn by the committee could not be interfered with.

6. We have carefully considered the rival submissions and perused the papers.

7. The committee has resorted to following contrary entries to discard the claim.

Sr. No.	Name of Document	Name of person on the document	Relation with the applicant	Caste registered	Admission / Registration date
1	Village Specimen 14	Rajaram Chiman Va Desai	Great grandfather	Koli	12.07.1923
2	Educational evidence	Rajaram Chiman Koli	Great grandfather	Hindu (Ku.Ko.)	25.08.1931
3	Educational evidence	Rajaram Chiman Koli	Great grandfather	Hindu Koli	08.01.1936
4	Educational evidence	Digambar Chiman Koli	Cousin great grandfather	Hindu Koli	05.12.1936
5	Educational evidence	Bajirao Chiman Koli	Cousin Grandfather	Hindu Koli	01.06.1948
6	Educational evidence	Tryambak Rajaram Suryawanshi	Grandfather	Hindu Suryawanshi Koli	02.06.1959
7	Educational evidence	Kishor Tryambak Suryawanshi	Father	Hindu Suryawanshi Koli (OBC)	27.07.1989
8	Educational evidence	Prakita Kishor Suryawanshi	Applicant	Hindu Tokre Koli	15.06.2011

8. Obviously, Koli or Suryawanshi Koli fall in the Other Backward Class whereas Tokre Koli is a scheduled tribe. However, though these are apparently contrary entries, admittedly the petitioner has been heavily relying upon the school record of petitioner's great great grandfather - Chiman Desai Koli. Since this is the oldest record older than the afore-mentioned contrary record, the former would have a greater probative value.

9. Pertinently, the original school record is in Modi script. Though the committee has entertained some doubt about this entry, it has not made any emphatic observation that the entire register itself is bogus and is not coming from the proper custody. Consequently, everything boils down to what actually is the entry and is it really an entry recorded in due course as contemplated under section 35 of the Evidence Act or has been inserted at a later point of time.

10. As far as the genuineness of the record is concerned, there cannot be any dispute that the original school record was coming from the proper custody as has been mentioned even in the vigilance report. The stand of the vigilance officer who has resorted to some independent scrutiny on his own in respect of the true translation of that entry, has proceeded to doubt the translation which has been done by independent translator who is a curator of the renowned institution. Interestingly, the vigilance officer has laboured to differentiate in the

letter from the Modi script as if he was conversant with that script and has drawn an inference about the correctness of the translation. Surprisingly, even the committee has indulged in and has drawn an inference based on the inference drawn by the vigilance officer without indicating that the members of the committee were conversant with the script. If that was so, when there is a clear translation of that entry from the school record coming from the proper custody revealing it to be entry of Tokre Koli, the observation and the conclusion of the committee to discard it even by going into the correctness of the translation is clearly arbitrary exercise of the powers.

11. The committee has again entertained a doubt about this school record on the ground that it was unlikely that petitioner's great great grandfather - Chiman could have been admitted to first standard at the age of 15 years. We have a serious doubt about the correctness of such an inference since it is a matter of first decade of the 20th century, when the register is coming from the proper custody and apparently entry in respect of the petitioner's great great grandfather does not seem to be inserted or manipulated at some later point of time. No such inference could have been drawn based on the fact that though he was admitted to the school having birth date of 1894 in the year 1909.

12. Following the principle laid down in the matter of **Anand Dhananjay Nalawade Vs. State of Maharashtra; 2014 (4) Mh.L.J. 77**, the school record of petitioner's great great grandfather - Chiman of 1909 describing him to be belonging to Tokre Koli scheduled tribe will have the greatest probative value as compared to the subsequent entries supra. The reasons assigned by the committee for discarding this oldest school record are not tenable. The impugned order is therefore perverse and arbitrary and is liable to be quashed and set aside.

13 In the result, the following order :-

(i) The writ petition is allowed. The impugned order dated 08.09.2023 is quashed and set aside.

(ii) The Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as belonging to "Tokre Koli" scheduled tribe.

(iii) The learned AGP in presence of the law officer of the Scrutiny Committee shall immediately inform the decision to the Committee so that the petitioner can secure her admission.

[SHAILESH P. BRAHME]
JUDGE

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[MANGESH S. PATIL]
JUDGE