



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4130 OF 2023

Aarti S/o Kishor Bhonde

Vs.

The State of Maharashtra, Through the Secretary, Department of Tribal Development and others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. G.N. Sonawane, Advocate for petitioner
Mr. N.S. Autkar, AGP for Respondent Nos.1 and 2

CORAM: AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

DATED : 29th FEBRUARY, 2024

Heard Mr. Sonawane, learned counsel for the petitioner and Mr. Autkar, learned AGP for the respondents / State. The record of the proceedings before the Caste Scrutiny Committee has been produced by the learned Assistant Government Pleader (AGP) for perusal, which we have accordingly perused with the assistance of the learned counsel for the parties.

2. The petition questions the decision of the Scrutiny Committee dated 24/01/2023, rejecting the claim of the petitioner belonging to the Scheduled Tribe "Koli Mahadev" as per the entry No.29 in the Constitution Scheduled Tribe Order 1950, as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

3. It is the contention of the learned counsel for the petitioner, that the petitioner belongs to "Koli Mahadev Scheduled Tribe as per the entry No. 29 in the aforesaid Presidential Order of the State of Maharashtra, which claim has been rejected by the Scrutiny Committee on the ground that the pre-constitutional document in respect of the ancestors of the petitioner indicates the petitioner belonging to "Koli" and not to "Koli Mahadev", which is recognized as Scheduled Tribe.

4. The learned counsel for the petitioner contends, that all Koli living in Balaghat and Mahadev Hills in the erstwhile Berar Province be considered as belonging to Koli Mahadev Scheduled Tribe. The learned counsel for the petitioner for that purpose relies upon the entry No.25 under Article 366 of the Constitution, which defines "Scheduled Tribes" and so also the report under the title "the tribes and caste of Bombay" by R.E. Enthoven to contend that Koli's are a group which encompasses all those sub-tribes as indicated in the said report (page 180) and therefore, all those persons included in the group would actually be entitled for benefit of reservation, being belonging to the Scheduled Tribes. He also submits, that the word "Koli" is a generic name and therefore, all sub-tribes, which have an association with the word "Koli" would equally be

entitled for benefit of reservation under Entry No.29 for the State of Maharashtra under the Presidential Order, 1950, as it stands amended in 1976. He therefore, submits, that the decision by the Scrutiny Committee denying the claim of the petitioner of belonging to the scheduled tribe “Koli Mahadev” under entry No.29 of the Schedule Part IX for the State of Maharashtra, is incorrect and is required to be set aside.

5. The learned AGP for the respondent / State while opposing the contentions and supporting the decision of the Committee contends, that it is not permissible for the Court to go behind the entry made in the exercise under the power under Article 342 of the Constitution by way of the Presidential Order, as any change therein, can only be made by the Parliament in exercise of powers under Article 342(2) of the Constitution.

6. It is no longer *res integra*, that while granting the validity certificate, the entry in the Presidential Order under Article 342(1) of the constitution has to be read as it is. It is not permissible for the Courts to either enlarge the entry by holding that the entry is generic in nature and therefore, would include all those tribes or parts of such tribes, which are associated or having names

synonymous with the name of the tribe which is in the entry. The Full Bench of this Court in **Maroti Venkati Gaikwad and others Vs. Deputy Director and Member-Secretary in Writ Petition No.12/2022**, while answering the reference made in this regard has categorically held that while construing the entry in the Presidential Order (S.T.) 1950 as it stands amended in 1976, no extrinsic material can be taken into consideration and the entry has to be read as it is.

“15.16 The above judicial pronouncements would therefore unequivocally indicate that the entries in the Scheduled Tribes Order, 1950, are inviolate and have to be read as it is; no enquiry of any nature whatsoever is permissible to find out whether any tribe, sub-tribe or parts thereof have been included in such entries in the Presidential (ST) Order 1950 as non-mention of any tribe, sub-tribe or part/s thereof would necessarily mean their specific exclusion.”

7. It is axiomatic that the Hon'ble President while exercising power under Article 342(1) of the Constitution cannot be held to be oblivious that there are generic names, of tribes and there are sub-tribes in tribes and it is only after considering these, that the Presidential Notification has been issued. It is, therefore, permissible for the Hon'ble President to grant the benefit of reservation under Article 342(1) only to a few out of the generic names considering

the various factors, which may be deemed to be appropriate for consideration. The plea, therefore, that “Koli” is a generic name and all tribes / sub-tribes, which have association and which have names synonymous with the entry in the Presidential Order be considered as one, thereby entitling them also to the benefit of reservation, is one which cannot be accepted.

8. Coming to the merits of the matter, it is necessary to note, that the impugned order dated 24/01/2023, records the oldest entry of 09/12/1941 claimed to be of the great great grandfather of the petitioner, namely Kasiram Kawdaji, as “Koli”. That is the only per-constitutional entry which is available, all the other entries being post constitutional. The Committee further records, that during vigilance another entry has also been found, one in respect of Kasiram Kawdaji himself dated 21/04/1945, which is of “Koli”. This would clearly indicate, that the pre-constitutional entries in respect of the ancestors of the petitioner indicate that the entry is in respect of Koli. Thus on the individual facts of this case also considering the entries in the pre-constitutional documents, the claim of the petitioner has rightly been rejected by the Committee.

9. Though Koli, may be a tribe, however, it is

not a tribe, which has been included in the Presidential Order, 1950, so as to claim grant of benefit of reservation. Though reliance was placed upon the Scheduled Caste and Scheduled Tribes Order (Amendment) Act, 1976 and the 2nd Schedule thereunder and specifically entry 28 in Part IX for the State of Maharashtra to contend, that the tribe “Koli” finds mention in entry 28 and is an independent tribe which has been granted benefit of reservation in view of the comma thereafter, which prima facie appeared to be correct, however, the learned AGP has brought to our notice a corrigendum published in the Gazette of India Extraordinary Part II dated 03/02/1977, which reads as under :

“CORRIGENDUM

In the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (108 of 1976) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 20th September, 1976, -
at page 1392, in Part IX, at serial No. 28, for “Koli, Dhor” read “Koli Dhor”.”

10. It would, therefore, be apparent that the comma after “Koli” and before “Dhor” as occurring in entry No.28 has been deleted and “Koli Dhor” is stated to be the tribe which is entitled to the benefit of reservation.

11. We, therefore, do not see any reason to interfere in the decision of the Caste Scrutiny

Committee, which denies the claim of the petitioner of belonging to Scheduled Tribe “Koli Mahadev”. The petition is dismissed. No costs. The record is returned back to the learned AGP.

(SMT. M.S.JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

MP Deshpande