

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

961 WRIT PETITION NO.2938 OF 2019

NEETA NAGNATH GHISEWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. P.D.Bachate, Advocate for Petitioner.
Mr. P.S.Patil, AGP for Respondents-State.
...

**CORAM : S.V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 10th July, 2019

PER COURT :-

1. The Tribe Claim of the petitioner as "Koli Mahadev" Scheduled Tribe is invalidated. Aggrieved thereby the present petition. Mr. Bachate, the learned counsel submits that the father of the petitioner has been issued with the validity certificate of 'Koli Mahadev' Scheduled Tribe. The real brother of the petitioner namely Tirumal Nagnath is issued with the validity certificate of 'Koli Mahadev' Scheduled Tribe. The real sister of the petitioner namely Neha Nagnath is issued with the validity certificate of 'Koli Mahadev' Scheduled Tribe. The Tribe claim of the petitioner is invalidated only on the ground that in school record of the

petitioner's father, the entry is appearing to be 'Koli' and the same is sought to be erased. The learned counsel submits that at no material point of time the caste was recorded in the register. In none of the student's case, the caste is recorded. The caste column is kept blank. The learned counsel submits that the T.C. issued by the Head Master in the year 1965 to the father of the petitioner records caste as 'Koli Mahadev'. The Vigilance was conducted at the time the father was issued with the validity certificate. The vigilance has examined the original and found the entry of 'Koli Mahadev' on the T.C. of the father of the petitioner to be correct. The learned counsel submits that the school record of the petitioner records entry as 'Koli Mahadev'.

2. The Respondent-Committee had issued validity certificate to father of the petitioner of 'Koli Mahadev' Scheduled Tribe. Subsequently, the Committee has issued an order invalidating the tribe claim of the father of the petitioner. The father of the petitioner filed Writ Petition before this Court bearing Writ Petition No.6932 of 2004. This Court, on 21.09.2006, allowed the Writ Petition filed by the father of the petitioner and directed the Committee to issue validity certificate to the father of the petitioner. The original

complainant had challenged the said judgment before the Apex Court by filing SLP. However, subsequently withdrew the SLP. The learned counsel submits that the reference made to the entry of 'Koli' in the school record of cousin aunt Vijaya Kishanrao is misplaced. Vijaya Kishanrao is also issued with the validity certificate of 'Koli Mahadev' by the same Committee. The learned counsel submits that the validity ought to have been given to the petitioner of 'Koli Mahadev' Scheduled Tribe.

3. Mr. Patil, the learned AGP submits that the brother and sister of the petitioner were issued the validity certificate on the basis of the validity issued in favour of father of the petitioner. In their case, even vigilance was not conducted. The learned AGP submits that in the record there is no order of the Committee issuing validity to the father of the petitioner. The learned AGP submits that in fact the claim of the father of the petitioner is invalidated. While the matter was taken up before this Court by the father of the petitioner by filing Writ Petition No.6932 of 2004, this Court did not examine the matter on merits. However, on the ground that earlier validity was issued to the father of the petitioner, directed Committee to issue validity to the petitioner. This is

the first case in the family of the petitioner that is examined on merits and the interpolation has been found in the school record of the father of the petitioner. As far as the entry of the tribe in the record of petitioner and his brother and sister are concerned they are of recent origin, the learned AGP submits that even the school record of the cousin grand father of the petitioner Kishan records caste as 'Koli'. The said fact was suppressed while obtaining validity by the father, the brother and the sister of the petitioner. One cousin of the petitioner namely Santosh, his claim is also invalidated by the Committee in the year 2006. However, the said fact was also not brought to the notice of the Committee and the same was suppressed. The learned AGP submits that the petitioner also could not prove the affinity test. All these factors are considered by the Committee and thereby arrived at a conscious conclusion invalidating the tribe claim.

4. This Court in Writ Petition No.6932 of 2004 under order dated 21.09.2006 directed the Committee to issue validity certificate to the father of the petitioner. The said order has become final. The Committee has not taken any steps as against the said judgment.

5. On the basis of the validity certificate issued to the father of the petitioner, the real brother and sister of the petitioner have been issued with the validity certificate. Even Vijaya, the cousin aunt of the petitioner whose school record records caste as 'Koli' has also been issued with the validity certificate of 'Koli Mahadev' Scheduled Tribe.

6. As far as the entry at Serial Nos.1, 2, 3, 7 in the school record of the father of the petitioner is concerned, the record is placed before the Court wherein in the caste column some erasion appears. However, if that record is perused with regard to the other students, the entry of the caste is blank.

7. The vigilance was conducted even while considering the case of the father of the petitioner. The vigilance has found that the T.C. issued by the Head Master in the year 1965, records caste as 'Koli Mahadev'.

8. Considering that, this Court had directed the Committee to issue validity certificate to the father of the petitioner and the said order has become final, so also on the basis of the said judgment subsequently the Committee has issued validity certificate to the real brother and sister of the petitioner, we do not see any reason to take a different view

in the matter. More particularly, when the vigilance has found that in the original record of the T.C. being issued, the caste is recorded as 'Koli Mahadev' in respect of the father of the petitioner.

9. It is also held that the affinity test is not the litmus test. Reference can be had to the judgment of the Apex Court in case of **Anand Vs. Committee for Scrutiny & Verification of Tribe Claims reported in (2012) 1 SCC 113.**

10. In light of the above, the impugned judgment and order is set aside. The Committee shall issue validity certificate to the petitioner of 'Koli Mahadev' Scheduled Tribe immediately.

11. Writ Petition is disposed of. No costs.

(MANGESH S. PATIL, J.)

(S.V. GANGAPURWALA, J.)

...

vmk/-