



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7454 OF 2024

1] Pankaj S/o Bharat Bhimbarwad,
Age – 28 years, Occ – Student,
R/o. Siranjani, Tq. Himayatnagar,
Dist. Nanded.

2] Shubham S/o. Bharat Bhimbarwad,
Age – 24 years, Occ – Student,
R/o. Siranjani, Tq. Himayatnagar,
Dist. Nanded.

.. Petitioners

Versus

1] The State of Maharashtra
Through its Secretary,
Tribal Development Department,
(Social Justice Department),
Mantralaya, Mumbai – 32.

2] The Joint Commissioner,
Scheduled Tribe Certificate Scrutiny
Committee, Kinwat, Division Aurangabad,
Add – beside CIDCO Bus Stand,
CIDCO, Aurangabad

.. Respondents

...
Advocate for petitioners : Mr. M.V. Thorat
Addl. GP for the respondent – State : Mr. A.R. Kale
...

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

**RESERVED ON : 19 AUGUST 2024
PRONOUNCED ON : 27 AUGUST 2024**

ORDER (MANGESH S. PATIL, J.) :

By invoking powers under Article 226 of the Constitution of India, read with sub section (2) of section (7) of the Maharashtra Act No. XXIII of 2001 ('Act'), the petitioners are taking exception to the

judgment and order of respondent no. 2 – Scrutiny Committee constituted under that Act, refusing to validate their ‘Koli Mahadev’ scheduled tribe certificates.

2. The learned advocate for the petitioners would take us through the papers and would submit that the observations and the conclusions of the committee are perverse and arbitrary. Isolated contrary entries have been resorted to as against voluminous favourable record. Even pre-constitutional record of petitioners’ great grandfather Kerba Mahadu of 1347 *Fasli* describing him as ‘Koli Mahadev’ in the *pahani patrak* has been lightly discarded. There was no sufficient and cogent reason for the committee to discard such pre-constitutional record. The original entry is in *Modi* script and has been duly translated by a person who had also filed affidavit. The committee itself did not call for the record and did not verify the original and has clearly relied upon the perception of the vigilance officer. Even if he had some reservations that could not have been the basis for the committee to reach any conclusion. This is abdication of the duty particularly in such serious matters. The committee has not disputed genuineness of the record from the Tehsil office of Mudhol which is now in Nirmal district of Telangana state. The inference of the committee based on the perception of the vigilance officer regarding ‘Koli Mahadev’ entry having been made at a later point of time and is bold

as compared to the other entries, is factually incorrect. Correct appreciation of this pre-constitutional record would outweigh any other subsequent contrary record, even if the committee has referred to couple of such entries of cousin grandfather Maroti Kerba Bhimbarwad and father Bharat Naga Bhimbarwad of the year 1964 and 1972, respectively.

3. Per contra, learned AGP would support the conclusion drawn by the committee. He would submit that it is a matter of appreciation of the evidence. Vigilance enquiry has been conducted which revealed the revenue record of 1347 *Fasli* to have been manipulated. The entry therein appears in bold ink, demonstrating that it was a recent one and inserted at a later point of time and was not made in the ordinary course of the business of that public office. He would, therefore, submit that the observation and the conclusion of the committee refusing to bank upon such dubious entry cannot be questioned.

4. Learned AGP would further submit that the petitioners had failed to discharge the burden cast on them under section 8 of the Act. The petitioners also could not get through the affinity test. Its efficacy has not been discarded at all. In the light of the dubious document relied upon by the petitioners, no exception can be taken with the

committee in even applying the affinity test. He would, therefore, pray to dismiss the petition.

5. We have carefully gone through the papers, including the original papers of the petitioners' proposals with the scrutiny committee.

6. Obviously, this being a tribe claim, pre-constitutional record will have its own importance. Naturally, the petitioners are relying upon *pahani patrak* of 1347-48 *Fasli* which corresponds to the year 1937-38 A.D. There is no dispute about the fact that the original *pahani patrak* from the office of Tehsildar, Mudhol, District – Nirmal of Telangana state, was personally inspected by the vigilance officer by approaching that office. Admittedly, the impugned judgment and order has been passed by the committee solely basing its conclusion on what was reported by the vigilance officer after going through the original revenue record. Independently, the committee had not called upon the original record for its own inspection. Admittedly, a coloured photocopy of the relevant page of the register was collected by the vigilance officer and the committee had an occasion to peruse it.

7. After going through this coloured photocopy of the *pahani patrak* which was maintained in *Modi* script and about translation of which there is no dispute, we have a strong reservation about the

observation of the vigilance officer and even that of respondent no. 2 – scrutiny committee in the order under challenge. We cannot and we do not subscribe to the inference and the observation of the vigilance officer as well as the committee. As against the relevant entry in respect of survey no. 3, the word 'Koli Mahadev' is appearing below the name of the petitioners' great grandfather Kerba wald Mahadu. By no stretch of imagination can it be said that these words 'Koli Mahadev', are in dark ink as compared to the remaining portion of this very entry in respect of survey no. 3 in different columns. The observation and conclusion of the committee in spite of the coloured photocopy being available to it, clearly shows that it has blindly relied upon the observation of the vigilance officer rather than forming its own opinion to verify it in juxtaposition to the photocopy of the original entry. Had it done so, we have no manner of doubt that it would not have subscribed to the observation of the vigilance officer.

8. To repeat, this pre-constitutional record is coming forth from the concerned Tehsil office, genuineness of which comes with a presumption about having been maintained in the ordinary course of the official business. A perfunctory inference by the committee, readily subscribing to the inference drawn by the vigilance officer, is unbecoming of the office which has been conferred with the powers in such serious matters.

9. Be that as it may, we have no manner of doubt in accepting this 1347-48 *Fasli* revenue record wherein the petitioners' great grandfather was described as 'Koli Mahadev'. Naturally this being a pre-constitutional record, would be of greatest relevance as compared to the subsequent couple of entries wherein, as mentioned herein-above, the petitioners' cousin grandfather and father were described as 'Koli Mahadev' in the year 1964 and 1972, respectively.

10. True it is that relevance of affinity test has not been outrightly discarded in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***. However, perusal of paragraph no. 25 of that judgment would clearly demonstrate that it cannot be resorted to, to dislodge the documentary evidence.

11. In the light of above discussion, in our considered view, the impugned judgment and order discarding the pre-constitutional record of 1347-48 *Fasli* is clearly perverse, arbitrary and capricious. Since it is a favourable record which lends support to the petitioners' claim of belonging to 'Koli Mahadev' scheduled tribe, the impugned judgment and order is liable to be set aside.

12. In the result, the writ petition is allowed.

13. The impugned order is quashed and set aside.
14. The respondent - committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Koli Mahadev' scheduled tribe.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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