

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

WRIT PETITION NO. 1411 OF 2013

Shri Rajendra S/o Ganpat Kabade,
Age : 47 Years, Occu. : Service,
R/o Rokade Hanuman Road,
Udgir, Tq. Udgir,
District Latur.

.. Petitioner

Versus

1. The State of Maharashtra
(Copy to be served on the Govt.
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad).
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad,
Through its Deputy Director (R)
& Member Secretary.
3. The Collector,
Latur.
4. The Tahsildar & Executive
Magistrate, Udgir,
Tq. Udgir, Dist. Latur.
5. Bharat Liberal Education Society,
(Through its President Shri
Madhavrao Patil Kaulkhedkar,
Age : 75 Years, Occu. : Legal Profession,
R/o Nai Abadi, Udgir, Tq. Udgir,
District Latur.
6. The Head Master,
Sangram Smarak Vidyalaya, Udgir,
District Latur.

7. Baburao S/o Ambaji Telang,
Age : 65 Years, Occu. :
R/o Sant Kabir Road, opposite
Railway Station, Udgir,
Tq. Udgir. Dist. Latur. .. Respondents

Shri S. B. Talekar, Advocate for the Petitioner.
Shri A. S. Shinde, A.G.P. for Respondent Nos. 1, 3 and 4.
Shri Ashok B. Tele, Advocate for the Respondent No. 2.
Shri M. B. Kolpe, Advocate for the Respondent No. 7.
The Respondent Nos. 5 and 6 are deleted.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE ON WHICH RESERVED FOR ORDERS : 09.09.2014

DATE ON WHICH ORDER PRONOUNCED : 26.09.2014

JDUGMENT (Per S. V. Gangapurwala, J.) :-

. The learned counsel for the petitioner seeks leave to delete respondent Nos. 5 and 6. Leave to delete respondent Nos. 5 and 6 granted at the risk of the petitioner.

2. Rule. Rule returnable forthwith. With the consent of parties taken up for final hearing.

3. This Court on 26.02.2013 had adjourned the matter at the request of counsel for the respondent No. 7 so as to enable him to file affidavit in reply. The affidavit in reply is filed by the respondent No. 7 in April 2013. Thereafter, the matter has been adjourned at the request of the respondents, initially on

07.07.2014 for five weeks and thereafter on 11th August, 2014 for four weeks. The matter is heard on 09th September, 2014.

4. Mr. Talekar, the learned counsel for the petitioner states that, the respondent No. 2/Committee failed to consider the oldest document of the year 1951 that is Citizens Nationality Register, wherein the tribe of the petitioner's grandfather, grandmother, father and uncle is recorded as "Mahadeo Koli" (Scheduled Tribe). The learned counsel further submits that, the respondent No. 2/Committee ignored the entry in the column of caste of the petitioner in the school record and has unnecessarily placed reliance on the entries in the school record of the cousin brothers, cousin sisters and aunts. The learned counsel submits that, in the year 1976 for the first time Koli Mahadeo Caste was recognized as backward class falling in the category of Scheduled Tribe category so far as Marathwada region is concerned and, therefore, as per the rules governing the entries in the school register as prevailing on the date on which the petitioner as well as family members were admitted in the school, it was not necessary to mention them as belonging to Mahadeo Koli schedule tribe. The learned counsel submits that, in order to rebut the letter dated 30.03.2012 issued by the Tahsildar, Udgir about entry of caste certificate was not seen in the karyavivaran register. The petitioner filed an application requesting to call the Tahsildar, Udgir to rebut the submissions, however, the said application is rejected without assigning any reason. The learned counsel further submits that, earlier the tribe claim of

the petitioner's real brother and real sister is validated by the respondent No. 2/Committee after the vigilance enquiry. The same could not have been ignored. The learned counsel submits that, the petitioner is not attributed with any role so far as recording the word Mahadeo in different ink. The learned counsel relies on the judgment of the Apex Court in a case of **Sayanna Vs. State of Maharashtra and others** reported in (2009) 10 SCC 268 to submit that, only for addition of some word subsequently would not lead to irresistible conclusion that the said word was added by the appellant or at his behest. The Vigilance Officer has failed to record the statements of parents and other nearest blood relatives, nor is justified to negate the case of the petitioner without conducting home enquiry. According to the learned counsel, when the real brother's, real sister's tribe claim as Koli Mahadeo has been validated after due vigilance, there is no reason to apply different yardstick to the petitioner. There is no contra evidence.

5. The learned counsel for respondents support the judgment passed by the Committee and submits that, the Committee has considered all the pros and cons and thereby has arrived at correct conclusion. Only because the tribe claim of the petitioner's real brother and real sister are validated, the same would not be sufficient for issuing validity certificate to the petitioner. Each case would be required to be considered on its own merits and as per the evidence brought on record. The petitioner has to stand on his own legs. The learned counsel

relies on the judgment of the Apex court in a case of **Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others** reported in (1994) 6 SCC 241. The petitioner has failed in the affinity test, and the same is rightly considered. The learned counsel rely on the judgment of the Full Bench of this court in a case of **Shilpa Vishnu Thakur Vs. State of Maharashtra and others** reported in 2009(3) Mh. L.J. 995. The learned counsel submits that, in the school record of father of the petitioner caste is recorded as Hindu Koli. So also in the case of cousin cousin brother of the petitioner, the caste is recorded as Hindu Koli. This is the contra evidence on record. No illegality has been committed by the Committee.

6. We have considered the arguments canvassed by the learned counsel for respective parties and have gone through the various caste certificates and the validity certificates issued.

7. As far as the school record of the petitioner with Vidyavardhani Primary School Udgir is concerned, the caste is recorded as Mahadeo Koli. The admission in the said school is taken on 17.06.1972. In the petitioner's school record with Vidyavardhani High School, wherein admission is taken subsequently, the caste is recorded as Hindu Mahadeo Koli. The caste recorded in the college of the petitioner, wherein admission is taken in the year 1984, the caste is recorded as Mahadeo Koli. The Committee has observed that, in respect of the school record

of Vidyavardhani Primary School word Mahadeo is written in different ink. However, it has not been opined by the Vigilance Officer, nor by the Committee that, the same is done by the petitioner. The record is with the school. As held by the Apex Court in a case of **Sayanna Vs. State of Maharashtra and others** referred supra, that if a word is subsequently added would not lead to irresistible conclusion that said word is added by the petitioner or at his behest. The Scrutiny Committee has never attempted to get an expert's opinion.

8. The rest of the school record of the petitioner depict the caste as Mahadeo Koli.

9. The caste of the real brother of the petitioner namely Subhash Ganpat Kabade was subject matter of scrutiny before this court in Writ Petition No. 438 of 1985. This court vide judgment dated 19/20.06.1986 after discussing various evidence produced by the parties therein observed as under, "there cannot be any semblance of doubt that, the petitioner belongs to the Scheduled tribe of Mahadeo Koli" and thereafter the validity certificate is issued in favour of said Subhash Kabade as belonging to Koli Mahadeo (Scheduled Tribe). The observations by this Court in the case of real brother can very well be considered. The school leaving certificates of the petitioner's brother, sister were also considered, including that of the present petitioner.

10. The validity has also been issued in favour of another real

brother of the petitioner namely Shivaji Ganpat Kabade in 1991. Thereafter, the Committee has also issued validity certificate in favour of the real sister of the petitioner namely Anita Ganpat Kabade on 07.10.2010. The same is issued after considering report of the vigilance. Only, because in respect of some of the cousin cousin brother of the petitioner in the school record there is entry of Hindu Koli that would not be sufficient to negative the case of the petitioner. Affinity test is only corroborative piece of evidence and cannot be a sole ground to reject the claim of the petitioner. In view of the documentary evidence of petitioner himself so also the validity certificates issued by the Committee after following proper procedure to real brothers and one real sister, that of Mahadeo Koli (Scheduled Tribe) and further further observations of this Court in earlier writ petition, there cannot be any manner of doubt that the petitioner also belongs to the same caste that is Koli Mahadeo (Scheduled Tribe).

11. Considering the aforesaid aspects of the matter, the impugned judgment passed by the respondent No. 2/Scrutiny Committee is quashed and set aside. The respondent No. 2/Committee is directed to issue validity certificate in favour of the petitioner as belonging to "Koli Mahadeo" (Scheduled Tribe). Rule is accordingly made absolute in above terms. No costs.

Sd/-

[A. M. BADAR, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 14