



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9246 OF 2021

Hrishikesh Santosh Kamble

...Petitioner

vs.

The State of Maharashtra
and Ors.

...Respondents

Mr. R. K. Mendadkar - Advocate for the Petitioners

Mr. S. L. Babar- AGP Advocate for the Respondent-State

**CORAM : S.V. GANGAPURWALA AND
 S. M. MODAK, JJ.**

DATE : 01st JULY, 2022

ORAL JUDGMENT :-

1. Rule. Rule made forthwith with consent of both the parties.
2. The caste claim of the Petitioner as belonging to the Koli Mahadev, Scheduled tribe is invalidated.
3. Learned counsel for the Petitioner submits that even the documents of the years 1950, 1938 in the record of the grandfather and great grandfather of the Petitioner records caste as 'Mahadev Koli'.
4. Learned counsel submits that Vigilance Cell has not found any interpolation in the old record. Learned counsel submits that pre-constitutional documents have more probative value.
5. Learned counsel further submits that the affinity test is not a

litmus test. Reliance is placed on the judgment of the Apex Court in case of *Anand V/s Committee for Scrutiny and Verification of Tribe Claims and Ors.* reported in 2012 (1) SCC 113.

6. Learned AGP submits that that the school record of the father of the Petitioner is interpolated. In the caste column, the caste Hindu Koli is stroked and Mahadev Koli has been inserted. So far as the birth record of the great grandfather of the Petitioner is of the year 1929, the same does not find place and the caste is written in different ink and handwriting. The day mentioned is 18/02/1929 and there is no page number on it. Looking at birth record of the year 1934 of Dattu Babaji, it appears that Mahadev Koli caste is written in different handwriting and different ink. The Petitioner has also failed in Affirmity test.

7. We have considered the submissions. The Petitioner has relied upon the following documents which has been considered by the Vigilance cell also:-

१. शाळेचे नाव : जिल्हा परिषद प्राथमिक शाळा, देगाव, ता. पंढरपुर, जि. सोलापूर

अ. क्र.	रजि. क्र./बुक नं.	विद्यार्थ्याचे नाव	जात व पोटजात	जन्म दिनांक, शाळेत --- दाखल दिनांक	मुख्याध्यापकांचा अभिप्राय	अजदाराशा नातेसंबंध
१.	१४६/२	रामलिंग इंद्रजित कांबळे	हिंदू-महादेव कोळी	जन्म तारीख ०१/०६/१९५० दाखल तारीख ५/०६/१९५६	खाडाखोड नाही	आजोबा
२.	३३६/४	संतोष रामलिंग	हिंदू कोळी	जन्म तारीख	कॉलम नं ४	वडील

		कांबळे	महादेव कोळी	०१/०६/१९७५ दाखल तारीख ०५/०६/१९८१	मध्ये हिंदू कोळी खाडून महादेव कोळी लिहीलेले आहे.	
३.	६९/५	---रामलिंग कांबळे	महादेव कोळी	जन्म तारीख --/--/---- दाखल तारीख ६/६/८३	जन्म तारीख दिसून येत नाही.	चुलते
४	४२०/४	दत्तात्रय रामलिंग कांबळे	हिंदू महादेव कोळी	जन्म तारीख ०१/०६/१९७७ दाखल तारीख ६/६/८३	खाडाखोड नाही	चुलते
५	२३८/२	कु. विमल इंद्रजित कांबळे	हिंदू- महादेव कोळी	जन्म तारीख ०१/०६/५३ दाखल तारीख --/७/५९	दाखल दिनांक दिसून येत नाही	आजोबांची सख्खी बहीण
६	७७/१	बाबाजी मार्टंड कांबळे	महादेव कोळी	जन्म तारीख ६/९/---- दाखल तारीख ८/ ७/१४	जन्म तारखेचे वर्ष स्पष्ट दिसून येत नाही	खापर पणजोबा

२. शाळेचे नाव : जिल्हा परिषद प्राथमिक शाळा, तुंगत, ता. पंढरपुर, जि. सोलापूर

अ. क्र.	बुक नं./ रजि क्र.	विद्यार्थ्याचे नाव	जात व पोटजात	जन्म दिनांक, शाळेत --- दाखल दिनांक	मुख्याध्यापकां चा अभिप्राय	अजदाराशा नातेसंबंध
१.	१६९	इंद्रजित बाबाजी कांबळे	हिंदू-महादेव कोळी	जन्म तारीख ४/१/३० दाखल तारीख १४/१/३८	नमुना नं १ चा उतारा	पणजोबा
२.	१७०	पारुबाई बाप बाबाजी कोळी	हिंदू-महादेव कोळी	जन्म तारीख १४/१०/३२ दाखल तारीख १६/१/३८	नमुना नं १ चा उतारा	पणजोबांची सख्खी बहीण

8. Except the document of the year 1981 of the father, the vigilance

has found the other entries in the caste column of the Petitioner's grandfather and great grandfather to be as 'Mahadev Koli' and no interpolation has been found in the said documents.

9. The documents of the grandfather and great grandfather of the Petitioner recording caste as 'Mahadev Koli' are pre-constitutional documents having more probative value.

10. Affirmity test is not a litmus test as observed by Apex court in case of *Anand* (supra), in view of consistent old record recording caste as 'Mahadev Koli' in the school record and birth record of the Petitioner's grandfather and great grandfather, we are inclined to consider the case of the Petitioner.

11. In light of the above, the impugned judgment is quashed and set aside. The Committee shall issue validity certificate to the Petitioner of Koli Mahadev, Scheduled tribe preferably within three weeks.

12. Rule accordingly made absolute. Writ petition is disposed of. No costs.

[S. M. MODAK, J.]

[S.V. GANGAPURWALA, J.]