



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

WRIT PETITION NO. 10291 OF 2018

1. Ku. Varsha d/o Narendra Nikumbh,
Age : 20 years, Occu. Student, through her father -
Narendra s/o Ramchandra Nikumbh,
Age : 48 years, R/o. Biladi Tasa,
Tq. Shahada, District Nandurbar.
2. Bhushan s/o Narendra Nikumbh,
Age : 19 years, Occu. Student,
through her father -
Narendra s/o Ramchandra Nikumbh,
Age : 48 years, R/o. Biladi Tasa,
Tq. Shahada, District Nandurbar.

...Petitioners

Versus

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate Scrutiny Committee,
Nandurbar Division, Nandurbar,
through its Member Secretary
3. The North Maharashtra University,
Jalgaon, through its Registrar
4. Pujya Sane Guruji Vidya Prasarak Mandal's
D. N. Patel Engineering College,
Shahada, District Nandurbar,
through its Principal

....Respondents

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 Mr. S. R. Barlinge – Advocate for the Petitioners
 Mr. M. M. Nerlikar – Addl. Govt. Pleader for respondent nos. 1 & 2

**CORAM : MANGESH S. PATIL
AND
NEERAJ P. DHOTE, JJ.**

RESERVED ON : 07.12.2023
 PRONOUNCED ON : 19.12.2023

JUDGMENT [Per : Neeraj P. Dhote, J.] :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties at the stage of admission. Perused the papers.

2. The Petitioners, who are the siblings, are challenging the order dated 08.08.2018 passed by the Respondent No.2 – Scrutiny Committee invalidating their claim of belonging to ‘Tokre Koli’ tribe.

3. It is submitted by the learned advocate for the Petitioners that though the material before the Respondent No. 2 – Scrutiny Committee comprised of the validities to the blood relatives of the Petitioners and other documents of the blood relatives supporting the claim, the claim has been invalidated. It is submitted that the reasons given by the Respondent No. 2 – Scrutiny Committee in the impugned order are unsustainable in the eye of law and hence, the petition be allowed.

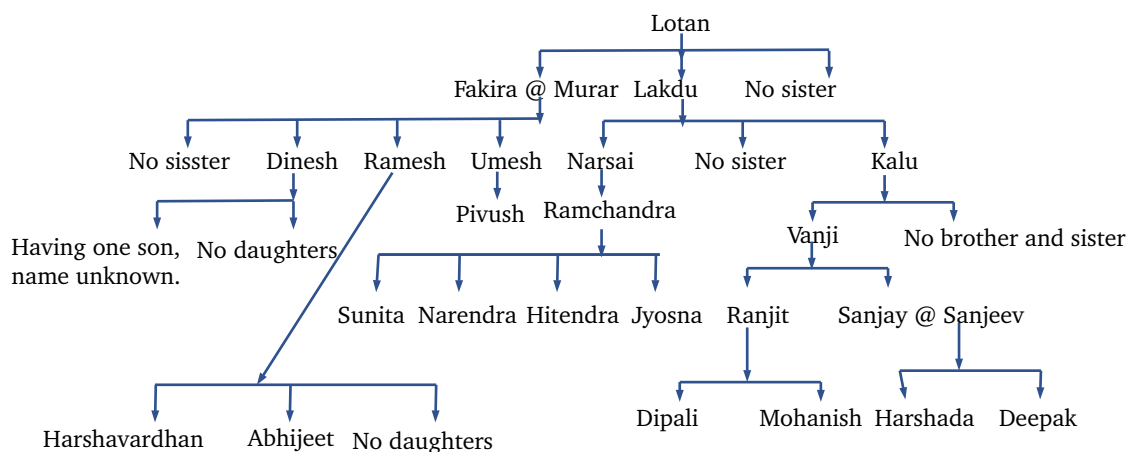
4. It is submitted by the learned AGP that the Respondent No. 2 – Scrutiny Committee has given reasons for invalidating the Petitioners’ claim. He submitted that in all the old documents pertaining to the Petitioner’s blood relatives, caste is mentioned as ‘Koli’ and the Committee has found interpolation in respect of certain

entries. He further submitted that no interference is called for in the impugned order and thus, the petition be dismissed.

5. For deciding the Petitioner's tribe claim, Respondent No. 2 – Scrutiny Committee framed the following points :-

- (i) Whether the Petitioners' claim is established on the basis of the documents?
- (ii) Whether the Petitioners can be given benefit of validity certificates relied upon by the Petitioners?
- (iii) Whether the Petitioners could prove their affinity towards the tribe?
- (iv) What order?

6. Perusal of the record shows that the Petitioners' father Narendra Ramchandra Nikumbh gave the following genealogy :-



7. So far as issue no. 1 framed by the Respondent No.2- Scrutiny Committee is concerned, the impugned order shows that the following documents were collected during the inquiry.

Sr. No.	Name of document	Name of person on document	Blood relation with applicant	Caste entry	Date of admission/entry	Remark
1.	Registration of death (G.N.N.14)	Kalu Lakdu	Cousin great grandfather	Koli	Date of death 26.11.1932	
2.	Extract of school register of birth 1	Vanji Kalu Koli	Cousin grandfather	Koli	10.02.1940	
3.	Entry of Death	Devchand Narsai	Cousin grandfather	Koli	Date of death 29.04.1945	
4.	Date of birth (G.N.N.14)	Rangi Bap Narsai Lakdu	Sister of grandfather	Koli	Date of birth 23.05.1946	
5.	Entry of birth (G.N.N.14)	Libdi Bap Bhana Kalu	Cousin aunt	Koli	Date of birth 01.09.1947	
6.	Extract of school register of birth 1	Ramchandra Narsai Koli	Grandfather	Hindu Koli	09.04.1947	
7.	Extract of school register of birth 1	Ms Rangu Narsai Koli	Sister of grandfather	Hindu Koli	13.	
8.	Entry of birth (G.N.N.14)	Gangu Narsai Lakdu	Sister of grandfather	Hindu Koli	19.02.1949	
9.	Entry of death (G.N.N.14)	Godi Bap Narsai	Sister of grandfather	Koli	Date of death 26.12.1952	
10.	Entry of birth (G.N.N. 14)	Bap Narsai Lakdu	Sister of grandfather	Koli	Date of birth 15.10.1953	
11.	Entry of birth (G.N.N.14)	Vimal Bap Fakira Lotan	Sister of paternal great grandfather	Koli	Date of birth 14.05.1954	
12.	Extract of school register of birth 1	Ms Gangu Narsai Koli	Sister of grandfather	Koli	01.06.1956 1 st Std.	
13.	Entry of birth (G.N.N.14)	Kanta Bap Daulat Fakira Koli	Sister of paternal great grandfather	Hindu	13.08.1959	
14.	Entry of birth (G.N.N.14)	Gunta Bap Naval Fakira Koli	Daughter of paternal great grandfather	Hindu	20.11.1959	
15.	Extract of school register of birth 1	Ms Radha Narsai Koli	Sister of grandfather	Hindu Koli	06.06.1962	
16.	Entry of birth (G.N.N.14)	Pundlik Bap Vana Kalu Koli	Cousin Uncle	Hindu	08.10.1963	
17.	Extract of school register of birth 1	Sarubai Bap Narsai Nikum	Sister of grandfather	Hindu Koli	01.06.1964 1 st Std.	
18.	Entry of birth (G.N.N.14)	Bap Vana Kalu Koli	Cousin uncle of Applicant	Hindu	05.10.1966	
19.	Extract of school register of birth 1	Sarubai Bap Narsai Nikum	Sister of grandfather	Hindu Koli	10.07.1967 3 rd Std.	
20.	Extract of school register of birth 1	Pundlik Vana Koli	Cousin Uncle	Hindu Koli	10.06.1970 1 st Std.	
21.	Extract of school register of birth 1	Hitendra Ramchandra Nikum	Uncle of Applicant	Hindu	02.06.1972	Both the words "Tokre" and "Koli" written in the column of caste have been re-written later in different handwriting and ink.

Sr. No.	Name of document	Name of person on document	Blood relation with applicant	Caste entry	Date of admission/entry	Remark
22.	Extract of school register of birth 1	Ms Sunita Ramchandra Nikum	Cousin Aunt	–	14.06.1973	Correction appears in the column of caste.
23.	Extract of school register of birth 1	Narendra Ramchandra Nikum	Father	Hindu Koli	11.07.1975	The word Tokre Koli appears to have written in 'Hindu Koli' in different handwriting and ink.

8. There is no dispute that the pre-independence documents have higher probative value while considering caste validity claim. There are catena of judgments on this point one of which is **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** reported in **(2011) Mh.L.J.919**. As can be seen from the above chart which is reflected from the impugned order that all the pre-constitutional entries regarding caste of the petitioners parental blood relatives show either 'Koli' or 'Hindu Koli'. Undisputedly, Hindu is not a caste but religion. The Petitioners claim to be belonging to 'Tokre Koli' Scheduled Tribe. None of the entries in the aforementioned documents, much less, prior to the pre-constitutional period is that of 'Tokre Koli'. The Committee has rightly observed that the 'Koli' caste is classified as an Special Backward Class (SBC) Category. The observation recorded by the Respondent No. 2 – Committee that the documents in respect of the blood relatives of the Petitioners of pre-constitutional period show entries contrary to the tribe claim of the Petitioners cannot be faulted with.

9. The Committee observed that there is correction in the caste entry of the Petitioners' real paternal uncle Hitendra Ramchandra Nikumbh of 1972 wherein the caste was mentioned as 'Hindu Koli' and the word 'Tokre' was added in different ink and handwriting and the Committee further observed that the document at Sr. No. 21 in the above chart is fabricated. Perusal of the file of the Respondent No. 2 – Scrutiny Committee shows that the finding is supported by the documentary proof in the nature of coloured copy of the document.

10. The Committee further observed that correction is noticed in the caste entry of the Petitioner's real aunt Ku. Sunita Ramchandra Nikumbh also, which is the document in respect of her school record. The said document is referred at Sr. No. 22 in the above mentioned chart. Perusal of the file of Respondent No. 2 – Scrutiny Committee shows that the said finding is based on the documentary proof in the nature of coloured copy of the document.

11. The Committee further observed that in the school record of the Petitioners' father Narendra Ramchandra Nikumbh, the word 'Tokre' was inserted in different handwriting and ink after the caste 'Hindu Koli' and recorded the finding that the document referred in the chart at Sr. No. 23 was fabricated. Perusal of the file of the Respondent No. 2 – Scrutiny Committee shows that this finding is

based on the documentary proof in the nature of coloured copy of the document.

12. The Committee observed that it is stated in the affidavit of the Petitioners' father dated 28.07.2016 sworn in before the Executive Magistrate, Shahada, that the information provided and the documents enclosed were correct. The Committee observed by referring the documents at Sr. No. 21, 22 and 23 shown in the chart, that a false affidavit was submitted by him.

13. On the basis of the documents available on record, the Committee has come to a conclusion that the Petitioners belong to 'Koli', which is classified as an Special Backward Class and discarded the documents at Sr. No. 21, 22 and 23 being fabricated one. When the pre-constitutional entries do not support the Petitioners claim towards 'Tokre Koli' Scheduled Tribe and the other documents are found to be tampered with, the Committee has rightly answered the issue no. 1 in the negative. Needless to state that the documents which are referred to in the above chart are the one which are collected during the vigilance inquiry as can be seen from para no. 3 of the impugned order. We do not find that the Respondent No. 2 – Scrutiny Committee has committed any error by giving its finding to the issue no. 1, since the findings are based on the material available on record.

14. As to point no. 2 framed by Respondent No. 2 - Scrutiny Committee that the Petitioners have relied upon the tribe validity certificates issued by the Scrutiny Committee, Nashik in favour of Hitendra Nikam and Rupendra Hitendra Nikam, the Committee has recorded that the affidavits of the validity holders were not submitted in the matter. Under Rule 11(2)(a) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, the applicant is required to submit an affidavit along with the application for verification of his Scheduled Tribe Certificate.

15. The copies of the papers made available by the learned AGP from the file of Respondent No. 2 – Scrutiny Committee shows that the papers in the matter No. NDB/SERV/1933/05 are the proceedings in the case of Hitendra Ramchandra Nikumbh. The learned AGP pointed out that Hitendra was granted validity on the basis of the affidavit sworn in by one Devidas Ramchandra Nikumbh. The validity to Hindendra Ramchandra Nikumbh is granted by the Scrutiny Committee at Nashik. The copy of the order does not show any date. Perusal of that order would show that the validity of Hitendra Ramchandra Nikumbh is primarily based on the affidavit of Devidas Ramchandra Nikumbh wherein he (Devidas) has mentioned that he has been granted validity by the Scrutiny Committee, Nashik Division in MISC-Appeal-Caste Certificate No. 6/81 and Hitendra was his cousin. Though in the order it is mentioned that the relationship is verified by the Vigilance Cell, name of Devidas is not in the

genealogy.

16. The order passed in the matter of Hitendra shows that the vigilance inquiry was conducted and the vigilance report was also submitted. The papers in the matter of Hitendra comprised of the copy of the vigilance cell report. It does not show that the documents which are collected by the Vigilance Cell in the present matter, were either collected or made available at that point of time. The order in the matter of Hitendra does not indicate that it was passed on any independent document establishing the claim to be belonging to 'Tokre Koli' Scheduled Tribe. The order further shows that in the School Leaving Certificate of Hitendra's father, Ramchandra Narsai Koli, issued by the concerned school at Nandurbar, caste was mentioned as 'H.I. Koli' and the School Leaving Certificate of the Hitendra's uncle Vanji Kalu Koli, issued by the concerned Headmaster in Shahada Taluka, Nandurbar, caste was mentioned as 'Koli'. It further shows that Hitendra's father had filed an affidavit that due to illiteracy, the caste came to be entered as 'Tokre Koli'.

17. Respondent No. 2 – Scrutiny Committee has further noticed that in three genealogies in the affidavits of the present petitioners, the affidavit of petitioners' father Narendra in the matter of Hitendra and the affidavit of Ramchandra Narsing Nikumbh i.e. grandfather of the petitioner, the name of first person in the family was not identical. These genealogies are reproduced in the impugned

order at internal page no. 12 and 13. It shows that in the petitioners' affidavit, the name of the first person is mentioned as 'Lakdu Lotan Nikum'. In the affidavit of Narendra Ramchandra Nikum, the name of the first person is mentioned as 'Lakdu Daga Nikum' and in the affidavit of Ramchandra Nikum in the matter of Hitendra, it is mentioned as 'Lakdu Kalu Nikum'. On the basis of this material, the Committee has observed that three different names of father of Lakdu had surfaced i.e. Lotan, Daga and Kalu.

18. On the basis of aforementioned material available on the record, the Respondent No. 2 – Committee has observed that the uncle of the Petitioners' i.e. Hitendra Ramchandra Nikum has misled the concerned Scrutiny Committee and got the validity certificate. From the observation made by the Respondent No. 2 – Scrutiny Committee in the impugned order as discussed above, the Committee has discarded the validity of Hitendra Ramchandra Nikum and answered the issue no. 2 in the negative. The Petitioners cannot be given the benefit of the principles laid down by the Hon'ble Supreme Court of India in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra Ors.** reported in **2023 SCC Online SC 326** for the reason that the validity of the Petitioners' uncle Hitendra is primarily based on the affidavit of person who is not related by blood. As can be made out from the order in Hitendra Ramchandra Nikum, it cannot be said to be a reasoned order passed on the basis of proper inquiry and perhaps this is the reason the

Respondent No. 2 – Scrutiny Committee has discarded the same. We do not find that the Respondent No. 2 – Scrutiny Committee has committed any error in answering the issue no. 2 in the negative.

19. So far as issue no. 3 is concerned, the Committee observed that the Petitioners have failed to show affinity towards the tribe. Needless to state that in the case of Maharashtra Adiwas (supra) it is held that, the affinity is not the litmus test to decide a caste claim and is not an essential part in the process of determination of the correctness of the caste or tribe claim in every case. Thus, the said issue melts down.

20. In the facts and circumstances of the matter, the impugned order being well reasoned and based on the documents collected during the vigilance inquiry and submitted by the Petitioners, we do not find that the impugned order requires any interference. Thus, the petition fails and we pass the following order.

ORDER

- [i] Writ Petition is dismissed.
- [ii] Rule is discharged.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE