



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.601 OF 2023

Harshal Lilachand Nikumbh

... PETITIONER

VERSUS

1. The State of Maharashtra,
through it's Secretary
Tribal Development,
Mantralaya, Mumbai – 32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
through its Deputy Director (R)

... RESPONDENTS

...
Advocate for petitioner : Mr. Jadhavar Pratap V.
AGP for respondents/State : Mrs. P.J. Bharad
...

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

DATE : 05.09.2024

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner who claims to be belonging to 'Tokre Koli' scheduled tribe is challenging the judgment and order of the respondent Scrutiny Committee dated 19.04.2022 refusing to validate his tribe certificate in a proceeding under Section 7 of the Maharashtra Act XXIII of 2001.

3. Learned advocate for the petitioner submits that there are four record of birth and death register of petitioner's ancestors of the period between 1917 and 1932 wherein, they were described as 'Koli Dhor' and 'Tokre Koli'.

4. He would submit that though 'Koli Dhor' and 'Tokre Koli' look different they are part of the same entry at Serial No.28 of the precedential order. In the matter of **Nilesh Gulab Sonawane and another Vs. The State of Maharashtra and others**; Writ Petition No.9654/2019 decided on 18.10.2023 and **Samriddhi Yogesh Savale Vs. The State of Maharashtra and Ors**; Writ Petition No.1209/2022 decided on 20.07.2024 this Court has held that Since 'Koli Dhor' and 'Tokre Koli' are the entries at same serial No.28. These are not incompatible and cannot be treated as inconsistent entries. He would therefore submit that the first two entries of 1917 and 1926 of 'Koli Dhor' could not have been treated as contrary entries to the petitioner's claim of 'Tokre Koli'. He would further submit that the observation of the Committee to discard favourable Tokre Koli recorded of 1925 and 1932 on the ground that there is difference of ink and the entries seem to be manipulated is factually incorrect. The two records of 1948 and 1942 describing petitioner's cousin grandfathers as 'Koli' would have lesser probative value and still relying upon those two subsequent contrary entries the Committee has illegally refused to validate petitioner's certificate.

5. The learned AGP would support the impugned order. He

would submit that petitioner claims to be ‘Tokre Koli’ and the entries of the ancestors of ‘Koli Dhor’ are contrary entries. Those being the oldest one, no fault can be found with the impugned judgment and order. He would also submit that there is apparent manipulation in the record of 1925 and 1932.

6. We have considered the rival submissions and perused the papers. The first six entries reproduced by the Committee are as under :

Sr. No.	Name of Document	Name of person on the document	Blood relation with the applicant	Caste recorded	Date of Admission/birth/death date
1	Birth record	Kali Father Dodha Dhanji	Grandmother	Koli Dhor	Birth date 08.08.1917
2	Death record	Kali Father Dodha Dhanji	Grandmother	Koli Dhor	12.11.1926
3	Birth record	Bhagwan Dodha Dhanji	Cousin Grandfather	Tokre Koli	Birth date 20.12.1925
4	Death record	Raghunath Dodha Dhanaji	Grandfather	Tokre Koli	Death date 29.08.1932
5	School Record	Lotan Sadhu Nikumbh	Cousin Grandfather	Koli	26.07.1940
6	School Record	Bhagwan Dodha Nikumbh	Cousin Grandfather	Koli	01.07.1942

7. So far as the dispute as to whether ‘Koli Dhor’ and ‘Tokre Koli’ are incompatible entries, the issue is no more *res integra* in the light of decisions of this Court in the matter of **Nilesh Gulab Sonawane** and **Samridhi Yogesh Savale** (supra).

8. We reproduce following observations from **Nilesh Gulab Sonawane** (supra):

“14. The learned Counsel for the petitioners has invited our attention to entry no.28 of the Constitution (Scheduled Tribe) Order, 1950. Tokre Koli and Koli Dhor are included in the entry. There is combined record showing the caste of the relatives of the petitioners as Tokre Koli and Koli Dhor. Those were recorded during the period of pre-independence. It cannot be inferred that there was any oblique motive to record the caste. The reference of Koli Dhor or Tokre Koli cannot be treated to be contrary entry. Both are scheduled tribes. The difference in nomenclature may not change social status as both the caste are included in one entry. The finding of the Scrutiny Committee is not sustainable.”

In the light of the view expressed by us, the observation of the Committee to treat 'Koli Dhor' entries as contrary to the entries of 'Tokre Koli' is not sustainable.

9. Once having reached such a conclusion, since admittedly, there are four entries of 1917, 1926, 1925 and 1932 which apparently substantiate petitioner's claim, following **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.; (2012) 1 SCC 113** those would have greater probative value and would outweigh the subsequent 'Koli' entries of 1940 and 1942.

10. As regards the alleged manipulation in the record at serial Nos.3 and 4, of 1925 and 1932, the coloured photocopies of the relevant extract available in the original file of the Committee has been tendered across the bar for our scrutiny. We have no manner of doubt, after going through it, that the observations in the vigilance report and substantiated by the Committee in the impugned order are clearly perverse and arbitrary. We do not notice any manipulation in either of the entries. The observation that there is difference in handwriting and ink, even if it is accepted, cannot substantiate the inference of manipulation. It is a birth and death record maintained in form-14 by the village officer. Obviously, there could be a difference in ink and handwriting depending upon the person who enters it. The fact that all the columns in respect of each of these entries are in the same handwriting and same ink. The entries appear sequentially in that register, maintaining equal distance

between the earlier and latter entries. This would leave us with no manner of doubt that those were recorded in the ordinary course of official business of the public officer maintaining this record. It is not that some doubt has been entertained by the committee regarding the entire register of which this is an extract. Consequently, we clearly disagree and overrule the observations of the Committee that these entries of 1925 and 1932 are manipulated one.

11. Resultantly, when there is a favourable record in the form of earliest four entries, the latter two entries which are contrary, of the year 1940 and 1942 cannot outweigh the former. Once having reached such a conclusion, the impugned judgment and order does not stand scrutiny of law and is liable to be quashed and set aside.

12. The writ petition is allowed. The impugned order dated 19.04.2022 passed by the respondent No.2 – Scrutiny Committee is quashed and set aside.

13. The Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as belonging to ‘Tokre Koli’ scheduled tribe in the prescribed format without adding anything.

14. Rule is made absolute in above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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