IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7545 OF 2024

Ashwini Prakash Devre,
Age : 20 years, Occu. Student,
R/o. Barhali, Tq. Mukhed,
Dist. Nanded .. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
Tribal Department,
Mantralaya, Mumbai – 32.

2] The Scheduled Tribe Certificate Scrutiny
Committee, Kinwat, Head Quarter,
Ch. Sambhajinagar,
Tq. & Dist. Sambhajinagar,
Through its Deputy Director (R) .. Respondents

...
Advocate for petitioner : Mr. P.V. Jadhavar
AGP for the respondent – State : Mr. S.P. Joshi
...

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

DATE : 05 AUGUST 2024

JUDGMENT (MANGESH S. PATIL, J.) :

Rule. Rule is made returnable forthwith. Learned AGP waives service.

2. By resorting to Article 226 of the Constitution of India read with section 7(2) of the Maharashtra Act No. XXIII of 2001 ('**Act'**) and the rules framed thereunder, the petitioner is challenging the judgment and order of respondent no. 2, which is a committee constituted under

that Act for validation of the scheduled tribe certificates, refusing to validate her ‘Koli Mahadev’ scheduled tribe certificate and directing its confiscation and cancellation.

3. The learned advocate for the petitioner would vehemently submit that in spite of conducting vigilance enquiry, no contrary record could be traced and none has been referred to in the entire impugned order. The record collected during vigilance enquiry, is only favourable record wherein petitioner’s blood relatives have been described as ‘Mahadev Koli’ or ‘Koli Mahadev’. The conduct of the committee in discarding this record only because it is of recent period and there is no evidence of pre-constitutional period, is perverse and arbitrary. He would submit that there could not have been insistence for producing pre-constitutional record. The issue has been consistently addressed by this Court wherein it has been held that there should not be insistence to produce old record. He would cite decisions in the matters of ***Vaijnath S/o Janardhan Zunjkar Vs. Scrutiny Committee for Verification of Tribe Claims, Aurangabad and another; 2006(3) Mh.L.J. 536*** and ***Yogesh S/o Madhavrao Kakulte Vs. State of Maharashtra and another; 2006(3) Mh.L.J. 691***.

4. Learned advocate would further submit that the committee has also illegally applied the area restriction and the affinity test. The petitioner being the first person in the entire family seeking validation of

tribe certificate, the record available before the committee was sufficient to substantiate her claim and the impugned order being perverse, arbitrary and capricious, be quashed and set aside.

5. The learned AGP would support the order under challenge. He would submit that the committee has merely observed that the favourable record produced by the petitioner is of recent period between 1983 and 2020. The committee has merely observed that such favourable record of recent period was not sufficient to substantiate the tribe claim. The committee has also, therefore, rightly resorted to the principle of area restriction and has even applied the affinity test. She failed in both. By virtue of section 8 of the Act, the burden is on a claimant to lead cogent evidence to substantiate the claim. The observations and conclusions of the committee are plausible and reasonable. In the absence of any convincing evidence, the only option with the committee was to refuse to validate petitioner's tribe certificate.

6. We have considered the rival submissions and perused the papers.

7. At the outset, it is necessary to record that though by virtue of section 8 of the Act, the burden is on the claimant to lead cogent and convincing evidence to substantiate the tribe claim, there cannot be insistence as to the nature of evidence that is required to discharge

such burden. Since it is a matter of proof of a fact, any evidence permissible under the Indian Evidence Act, would be admissible. This Court has been consistently observing that there could not be any insistence by the committee/s for producing pre-constitutional record for substantiating the caste or tribe claim/s. Consequently, the stand of the committee in the impugned order observing that the petitioner having failed to lead evidence of the period prior to 1950, would not be legally sustainable.

8. However, when, admittedly, the petitioner has tendered the favourable record of recent origin, i.e. between 1983 and 2020, in our considered view, no fault can be found with the committee in not extending the weight to such record which would have inherent limitations inasmuch as there would be every room to believe that all these entries must have been taken with an obvious intention to derive the benefit of reservation policy pronounced way back in the year 1950.

9. Precisely for this reason, though in the normal course, affinity test is not to be resorted to, not being a litmus test, as laid down in the matter of ***Anand V. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113,*** but it has its own significance in an appropriate case, as observed in paragraph no. 25 of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State***

of Maharashtra and others; 2023 SCC Online SC 326, which reads as under:

> ***"25.*** *Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of Kumari Madhuri Patil (1994) 6 SCC 241, it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant."*

In view of such observations, with the vulnerability of the record being relied upon by the petitioner of recent origin, no fault can be found in the committee undertaking and applying the affinity test. One need not burden this judgment any more once we have reproduced the observations of the Supreme Court.

10. As can be seen from the vigilance enquiry report, the petitioner had failed to reply to several questions formulated for testing

her knowledge about the traits and characteristics of Koli Mahadev scheduled tribe, some of which have been referred to in the impugned judgment and order. Neither in the reply filed by the petitioner to the vigilance cell report (**Exhibit - D**) nor in the petition memo, substantial challenge has been put up to either the vigilance report to the extent of affinity test or the observations of the committee regarding issue no. 2 pertaining to the affinity. In view of such state of affairs, when the documentary evidence before the committee was of recent origin having inherent limitations to substantiate the tribe claim, no fault can be found with the committee in applying the affinity test and, based on the vigilance report, in arriving at a conclusion about the petitioner having failed in it.

11. In these peculiar circumstances, even if the committee has erred in making an observation that the petitioner had failed to produce pre-constitutional record, and in insisting therefor, the observations and the conclusion of the committee in refusing to persuade itself on the basis of the recent record and examining the petitioner's claim on the touchstone of the affinity test and discarding it by observing that she failed in it, is clearly a plausible view and by no stretch of imagination can be said to be perverse, arbitrary or capricious.

12. Incidentally, in both the matters *viz*. ***Vaijnath Zunjkar*** and **Yogesh *Kakulte*** (supra), division bench of this Court had similarly

observed that the committee could not have insisted for pre-constitutional record and set aside its orders refusing to validate the tribe claims, however, precisely noting that in both those matters, the claimants had been successful in the affinity test.

13. Paragraph no. 13 from ***Vaijnath Zunjkar*** and paragraph no. 11 from ***Yogesh Kakulte*** (supra) need to be looked into, which read as under:

> ***Vaijnath Zunjkar***
>
> *"**13.** In the present case, the Committee has not considered probative value of the documents produced by the petitioner merely on the ground that they belong to Post-Presidential Notification era. The report of home enquiry is also not properly appreciated by the Committee. Considering the fact that right from the Primary stage till the graduation the petitioner is shown to belong to Mahadeo Koli Tribe and the fact that the petitioner has given correct information in respect of some of the important traits and characteristics, we cannot sustain invalidation of the tribe claim of the petitioner by the Committee, particularly when no contra material is brought on record during the home enquiry conducted by the Vigilance Cell. In these circumstances, interference with finding of the Committee is justified. In this behalf reference can be made to the ruling of the Supreme Court reported in 1996(2) Mh.L.J. (SC) 402 = (1996) 3 SCC 685 in the matter of Gayatrilaxmi Baburao Nagpure v. State of Maharashtra and Ors. While dealing with similar circumstances, after referring to the principles laid down in Ku. Madhuri Patil v. Additional Commissioner and Ors., AIR 1995 SC 94. Their Lordships have observed in para No. 17 of the report that,*
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> > *17. Applying the above test to the facts of the present case, we are satisfied that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document "Sl. No. 9" which led the Committee to ultimately record a finding against the appellant. By a wrongful denial of the Caste certificate, the genuine candidate, he/she will be deprived of the privileges conferred upon him/her by the constitution. Therefore, greater care must be taken*

before granting or rejecting any claim for caste certificate."

.....

Yogesh Kakulte

*"**11.** In the present case also, it can be seen that the petitioner has produced documents substantiating his caste claim. Though the documents are of the recent origin, the petitioner has proved his affinity and ethnic linkage with Mahadeo Koli, Tribe, by correctly giving information regarding peculiar traits, characteristics, customs, usages etc. of his tribe. Therefore, in the peculiar circumstances of this case where all the near blood relatives of the petitioner are illiterate, the Committee ought to have given due weightage to the documents produced by him and after considering the probative value of the documents produced and the fact that petitioner has established his affinity to and ethnic linkage with 'Mahadeo Koli" Scheduled Tribe, the Committee ought to have validated the tribe claim of the petitioner. Since the Committee has utterly failed to give due weightage to the material on record, decision of the Committee cannot be upheld."*

14. In view of above, we are unable to accept the submissions on behalf of the petitioners putting up challenge to the impugned judgment and order of the scrutiny committee.

15. The petition is devoid of merit and is liable to be dismissed.

16. The petition is dismissed.

17. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/