



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.4350 OF 2024

1. Shubham s/o Kishor Suryawanshi,  
2. Aniket s/o Gajanan Suryawanshi ... PETITIONERS

**VERSUS**

1. The State of Maharashtra  
Department of Tribal Development  
Mantralaya, Mumbai – 32  
through its Secretary  
2. The Scheduled Tribe Certificate Scrutiny  
Committee, Kinwat  
(Headquarter – Chh. Sambhajinagar)  
Tq. & Dist. Chh. Sambhajinagar  
through its Member Secretary ... RESPONDENTS

Advocate for petitioner : Mr. S.C. Yeramwar  
A.G.P for respondent/State : Mr. N.D. Batule

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

**Reserved on : 05.08.2024  
Pronounced on : 14.08.2024**

**ORDER (MANGESH S. PATIL, J.) :**

We have heard both the sides finally with the consent.

2. Rule. Rule is made returnable forthwith.  
3. By way of this writ petition under Article 226 of the  
Constitution of India read with Section 7(2) of the Maharashtra Act  
No.XXIII of 2001, the petitioners are challenging the common judgment  
and order of the respondent No.2 which is a Scheduled Tribe Certificate  
Scrutiny Committee, Kinwat (hereinafter the Scrutiny Committee),  
constituted under that Act refusing to validate their 'Koli Mahadev'

scheduled tribe certificates and directing confiscation and cancellation.

4. Learned advocate for the petitioners would submit that the petitioners are cousins *inter se*. Vigilance inquiry was conducted. Several documents were collected, wherein, the petitioners and their family members were described in the school record and birth record as 'Koli Mahadev' or 'Mahadev Koli'. The oldest document was of the year 1979. Genuineness of this record was not doubted and therefore committee could have accepted it. He would submit that the stand of the Committee refusing to consider this favourable record merely on the ground that it is of recent origin and expecting a pre-constitutional record is perverse and arbitrary. Legally there could not have been any insistence for production of pre-constitutional record. The tribal communities cannot be expected to have undertaken any education during pre-constitutional period. If they have migrated and are able to take education obviously, they cannot be said to be non-tribals merely for failure to produce the old record. This is against the action of removal of area restriction by Amendment Act of 1976 and applying it circuitously. He would also refer to the decision of the division benches in the matter of **Vajjnath s/o Janardhan Zunjkar Vs. Scrutiny Committee for Verification of Tribe Claims, Aurangabad and Anr.; 2006(3) Mh.L.J. 536** and **Yogesh s/o Madhavrao Kakulte Vs. State of Maharashtra and Anr.; 2006(3) Mh.L.J. 691**.

5. Learned advocate Mr. Yeramwar would further submit that there is not a single contrary entry and the Committee ought to have

accepted the claims as was done in the matter of **Vishal s/o Bhagwanrao Chandel Vs. The State of Maharashtra and Ors.; Writ Petition No.10389/2016** (Aurangabad Bench) dated 17.01.2017.

6. Mr. Yerumwar would further submit that contrary to the law laid down in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**, the Committee has illegally resorted to affinity test. He would submit that the Committee in the impugned order has tried to discard the response given during the vigilance inquiry that some of the families of 'Koli Mahadev' from their village Vasarni Tq. and Dist. Nanded have surnames like Mokle, More, Bhange, Mamde and Patait. The petitioners have filed affidavit in this petition expressly giving the details and a list of the residents from his village who have been issued with certificates of validity of Koli Mahadev scheduled tribe having surnames More, Patait, Mamde, Bhange, Mokle. He would, therefore, submit that the impugned order refusing to consider the favourable record for no valid reason is illegal, and be reversed.

7. Learned AGP Mr. Patil would submit that though pre-constitutional record cannot be insisted for, the post constitutional favourable record will have inherent limitations. There is every possibility of such subsequent favourable record having been prepared with an ulterior motive to derive benefit of reservation and no fault can be found with the Committee on being guard and expecting the petitioners to lead

corroborative evidence.

8. Mr. Patil would submit that it is in this context even **Maharashtra Adiwasi Thakur Jamat** (supra) does not clearly discard application of affinity test. It merely cautions that it is not a litmus test and even expects it to be applied in the absence of documentary evidence or when the Committee is not ready to believe the documents produce in support of the caste or tribe claim.

9 Mr. Patil would further submit that in response to the affidavit filed by the petitioners, though it could be noticed that some villagers from the petitioners' village Vasarni have been issued with certificates of validity, on scrutiny, it was found that they were not related to the petitioners and even found that they had obtained certificates of validity by practising fraud and the show cause notices have been issued to them for recalling the validities. He would, therefore, submit that the reply given during the vigilance inquiry by the petitioners, referring to the validities possessed by individuals from the village having these surnames is inconsistent with the claim of 'Koli Mahadev'. He would, therefore, pray to reject the petition.

10. We have carefully considered the rival submissions and perused the papers. Obviously, there cannot be any insistence for proving a fact that it should be proved by a particular mode only, more so when a fact is to be proved, like in the matters of caste claims, on the basis of preponderance of probabilities. The very purpose and avowed

constitutional object of bringing the tribals to the main stream by providing reservation is demonstrative of the fact that these tribals had no opportunity to undertake education. Expecting such scheduled caste and scheduled tribes to produce school record or even birth record of the pre-constitutional period is a dangerous approach and is grossly illegal. The first generation tribal who has access to education only after the independence, cannot be denied the benefits of reservation merely because their ancestors had no access to education. We, therefore, strongly deprecate the conduct of the Committee in insisting for a pre-constitutional record for corroborating a tribe claim. Even same was the case in the matter of **Vajnath s/o Janardhan Zunjkar** and **Yogesh s/o Madhavrao Kakulte** (supra).

11. However, incidentally, this is where the affinity test would come into play. Though it is trite that it is not a litmus test, its efficacy has not been out rightly discarded. It will have its own place as has been indicated in **Maharashtra Adiwasi Thakur Jamat** (supra). Paragraph No.25 of the judgment reads as under:

**“AFFINITY TEST**

*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 & Anr. Vs. ADD1. Commr., Tribal Development, Thane & ORS.; 1997 (5) SCC 437 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.”*

From these observations it is evident that in an appropriate case even affinity test will have to be resorted to.

12. If the entire favourable record produced by the petitioners is of recent period, from the year 1979 onwards, obviously, it will have inherent limitation in substantiating a caste or tribe claim, inasmuch as there is every possibility of such entries having been made objectively to derive the benefit. Therefore, although merely because this is a post independent record it cannot be out-rightly rejected, application of affinity test would become imperative. We, therefore, are of a firm view that no fault can be found with respondent No.2 - Scrutiny Committee in applying the affinity test.

13. Though by virtue of Amendment Act, 1976 and in the light of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359**, the area restriction having been removed, no inference can be deduced by referring to and deciding the claims on the touch stone of the actual place of residence of a claimant and the original place of the tribe or the caste cannot be resorted to, similar is not the case in respect of the affinity test in light of the observations in **Maharashtra Adiwasi Thakur Jamat** (supra).

14. As per the vigilance inquiry report and particularly the endorsement of the research officer in the context of responses given by the petitioners to various traits and characteristics peculiar to 'Koli Mahadev' scheduled tribe, the petitioners could not succeed.

15. Even in their reply to the Vigilance Cell Report they have not taken any exception to such observation and conclusion of the research officer much less, on any specific point with reference to a particular trait or characteristics. No fault, therefore, can be found even in the conclusion of the scrutiny committee in the impugned order in observing that the petitioners' family does not follow and fit in the specific traits and characteristics of 'Koli Mahadev' scheduled tribe.

16. Consequently, as laid down in the matter of **Maharashtra Adiwasi Thakur Jamat** (supra) when the favourable record produced by the petitioners, was not being accepted by the Committee readily for the acceptable reason that this record was of recent origin and had applied

the affinity test to ascertain whether the petitioners are able to withstand and demonstrate the specific anthropological and ethnological traits which are peculiar to 'Koli Mahadev' scheduled tribe, the decision of the Committee in refusing to validate their 'Koli Mahadev' certificates cannot be said to be perverse or arbitrary.

17. It is important to note that even in the matter of **Vajjnath s/o Janardhan Zunjkar** and **Yogesh s/o Madhavrao Kakulte** (supra), while holding that the caste or tribe claims cannot be discarded on the ground of inability of the claimants to produce pre-constitutional record, in both these matters, the claimants therein on application of affinity test were found to be belonging to 'Koli Mahadev' scheduled tribe. For the sake of convenience, we reproduce relevant paragraphs from both these judgments:

Paragraph No.12 of **Vajjnath s/o Janardhan Zunjkar** (supra)

reads as under :

*"12. Observations of the Committee in Para No. 7 of the impugned order are that, "on going through the statements recorded by the Vigilance Officer, the Committee observed that the applicant does not have even the basic knowledge of traits, characteristics and customs, culture etc. of "Koli Mahadeo" Scheduled Tribe community. It can thus be seen that approach to the affinity test is perfunctory. In this view of the matter original record was called. We have scrutinised the answers given by the petitioner in the questionnaire. The petitioner has correctly answered most of the questions in respect of peculiar traits and characteristics of his tribe. According to the learned counsel for respondent No. 1 the petitioner could not correctly answer some of the questions including questions relating to the place of residence of the members of the tribe. Therefore, no exception can be taken to the observations of*



*the Committee that he does not have knowledge about the traits and characteristics of the Tribe. From the questionnaire, it can be seen that the petitioner has knowledge about the petitioner's traits characteristics and customs. Thus, the contention of learned counsel for respondent No.1 cannot be sustained.”*

Paragraph No.11 **Yogesh s/o Madhavrao Kakulte** (supra)

reads as under :

*“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.”*

18. A bare look at these observations would substantiate our conclusions regarding efficacy of the affinity test. True it is, in the matter of **Vishal s/o Bhagwanrao Chandel Vs. The State of Maharashtra and Ors.; (W.P. No.10389/2016)** dated 17.01.2017 the petitioner was held to be entitled to a certificate of validity in the absence of even a single contrary evidence and in the absence of any allegations regarding manipulation in the favourable record. However, conspicuously, contrary to what has been laid down in the matter of **Maharashtra Adiwasi Thakur**

**Jamat** (supra) the affinity test was not even considered or applied. Therefore, the petitioners cannot be extended the benefit of the decision in the matter of **Vishal Bhagwanrao Chandel**.

19. True it is that the petitioners precisely seek to question the observation of the Committee with reference to the individuals from the same village possessing certificates of validity of 'Koli Mahadev' by producing the details, by way of affidavit and even the fact has been expressly admitted in the affidavit-in-reply filed on behalf of the respondents. Therefore, irrespective of the stand of the respondent – Committee now as mentioned in the affidavit-in-reply of its intention to revisit these validities by undertaking fresh inquiries, this would only demonstrate that the Committee in the impugned judgment and order has erred in emphasizing on the reply given by the petitioners in the vigilance inquiry. However, such isolated circumstance would not be sufficient to discard the conclusion of the research officer accepted by the committee on the other aspects of the affinity test, on several other parameters like dialect, Gods, festivals, form of marriage, occupation and last rites etc. which replies were found to be incompatible with the petitioners' claim.

20. In the result, the observations and conclusion of the committee in refusing to validate petitioners 'Koli Mahadev' scheduled tribe certificates cannot be said to be perverse, arbitrary and capricious. The conclusions are based on plausible appreciation of all the attending

circumstances and evidence. There is no merit in the petition.

21. The writ petition is dismissed. Rule is discharged.

[ SHAILESH P. BRAHME ]  
JUDGE

[ MANGESH S. PATIL ]  
JUDGE

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