





IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

920 WRIT PETITION NO.8190 OF 2020

CHAITALI PANDIT SHELKE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS .. RESPONDENTS

Mr. P. V. Jadhavar, Advocate for the Petitioner.

Mr. A. B. Chate, AGP for Respondents-State.

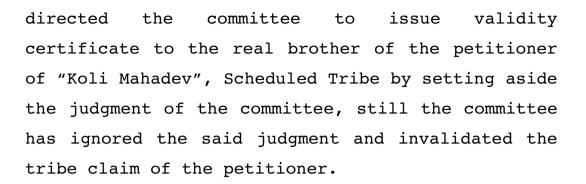
CORAM : S. V. GANGAPURWALA & SHRIKANT D. KULKARNI, JJ.

DATED: 11th DECEMBER, 2020.

PER COURT:-

- 1. The tribe claim of the petitioner as belonging to "Koli Mahadev", Scheduled Tribe is invalidated.
- 2. Mr. Jadhavar, learned counsel for the petitioner submits that the father of the petitioner namely Pandit is issued with the validity certificate of "Koli Mahadev", Scheduled Tribe. The committee had invalidated the tribe claim of real brother of the petitioner namely Prashant Pandit Shelke. The real brother of the petitioner Prashant filed Writ Petition bearing Writ Petition No.10304/2017 before this Court at it's Principal Seat at Bombay. The Division Bench at Principal Seat allowed the writ petition filed by the real brother of the petitioner Prashant and





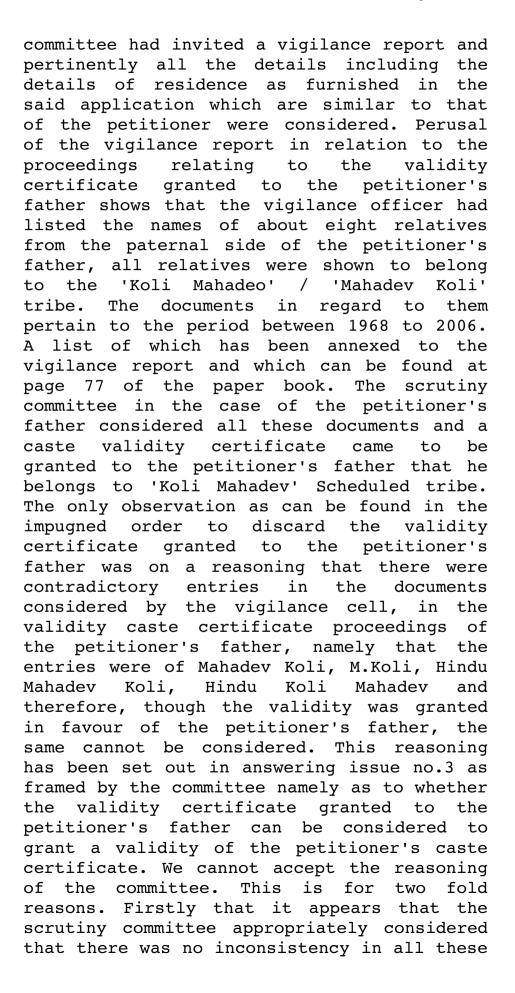
- The learned A.G.P. submits that the father 3. of the petitioner obtained the validity certificate by practicing fraud. The entries of 'Koli Mahadev' in the school record of the cousin grandfather, cousin grandmother of the petitioner are interpolated. Even, there is а change of handwriting while recording tribe as 'Koli Mahadev' in the school record of the petitioner's father. learned A.G.P. further submits that petitioner has failed to prove the affinity test. learned A.G.P. further submits that school record of many of the relatives of the petitioner demonstrates entry of 'Koli' only, the same is S.B.C..
- 4. The learned counsel for the petitioner submits that those persons referred to as relatives in the judgment of the committee are not even distant relatives from the paternal side of the petitioner.
- 5. The learned counsel further submits that all the documents referred by the committee in the instant judgment where a subject matter of



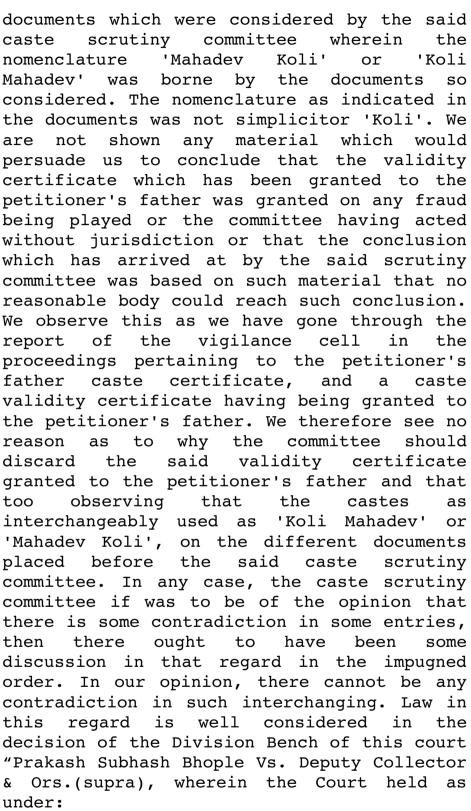
consideration while issuing validity certificate to the petitioner's father and also this Court while allowing the writ petition filed by the real brother of the petitioner.

- 6. We have considered the submissions canvassed by the learned counsel for the respective parties.
- 7. It is a matter of record that, the father the petitioner is issued with the validity certificate of "Koli Mahadev", Scheduled real brother of the petitioner was denied validity certificate by the committee. The real brother of the petitioner filed Writ Petition bearing No.10304/2017 before the Principal Seat at Bombay. The Division Bench at the Principal Seat of this Court at Bombay under judgment and order dated September 25, 2017 allowed the writ petition filed by the real brother of the petitioner bearing Petition No.10304/2017 and directed committee to issue validity certificate to the real brother of the petitioner. The Division Bench of this Court at Principal Seat while allowing the writ petition of the real brother of the petitioner observed thus:
 - 5. It is not in dispute that the petitioner's father Pandit Shamrao Shelke approached the caste scrutiny committee in the year 2007 seeking validity of the caste certificate issued to him belonging to the scheduled tribe 'Koli Mahadev'. It is also not in dispute that the said caste scrutiny

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"6. There is a little doubt that 'Koli Mahadev' are referred as 'Mahadev Koli' and for years together certificates were issued by the competent authorities in favour of persons belonging to the tribal

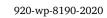
community certifying their tribe as 'Mahadev Koli' and that such certificates have been validated by the Scrutiny Committees without raising the issue.

15. Further, in view of the judgment of the Supreme Court in the matter of State of Maharashtra Vs. Milind and others (Supra), referred above, it will have to be concluded that although the Scrutiny Committee has referred to the discrepancy appeared in recording description of the tribe in the certificates issued the competent authorities, past, thousands of certificates have been issued and the Scrutiny Committee has also validated such certificates referring to the tribe Sr.No.29, in Scheduled Tribes Order, 1950, as 'Mahadev Koli'. judgment of Madhuri reference to the tribe, admittedly, is as 'Mahadev Koli'. It is not a matter of dispute that in past tribe certificates been have issued referring to the tribe as 'Mahadev Koli' and those certificates have been validated by the Scrutiny Committees after observing procedure prescribed in the matter Madhuri Patil well as Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Namadic Tribes, Other Backward Classes and Special Backward Category (Regulation Issuance and Verification of) Caste Certificate Act (23 of 2001). certificates and tribe caste certificates issued in past, after observing due procedure and in case of issuance of validity certificates, after vigilance cell inquiry as well as on



consideration of affinity test, such certificates validitv and certificates shall have to be treated having been validly as issued and shall be treated valid for all practicable purposes."

- 8. Thus, there can be no quarrel on proposition that the place of residence being one of the factors to be considered by the caste scrutiny committee, when there is no other conclusive document to support the caste claim by the claimant. However, in the present case, we do not find that there are any cogent and acceptable reasons to discard the validity certificate which been granted to the father petitioner. It is not the case of the respondent that the validity certificate been granted by the caste scrutiny committee to the petitioner's ignoring the documentary evidence so as to render the decision irrational or for that matter it has been granted by practising fraud.
- 9. In regard to the area restriction, it can be thus concluded that as the affinity test is one of the requirement, then, in the absence of any perversity on the part of the scrutiny committee in granting validity certificate to the petitioner's father, the petitioner, would be correct in contending that to defeat the claim of the petitioner on the ground of area restriction was not an acceptable exercise on the part of the committee.
- 8. For the reasons recorded in the judgment and order dated September 25, 2017 in Writ Petition No.10304/2017 by the Division Bench of this Court at it's Principal Seat at Bombay in the case of real brother of the petitioner Prashant, the present writ petition is allowed.





- 9. The impugned judgment and order is quashed and set aside.
- 10. The committee shall issue validity certificate to the petitioner of "Koli Mahadev", Scheduled Tribe immediately.
- 11. Writ Petition is disposed of. No costs.

(SHRIKANT D. KULKARNI) (S. V. GANGAPURWALA)

JUDGE

JUDGE

Devendra/December-2020