



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12482 OF 2022

Kum. Mitali Satish Umbarje
Aged 18 years, Occ. Student,
Residing at 20, Ashok Nagar,
Ner Jai Jui Bungalow, Vijayapura Rd
Solapur, Dist Solapur- 41300

... Petitioner

V/S.

State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai 400032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Pune
Division, Pune through its
Member Secretary, having its
Office at Kapil Towers, C Wing,
Near RTO Office, Pune 411001
Mumbai 400001

... Respondents

CORAM : S. V. Gangapurwala &
R. N. Laddha, J.J.

DATED : 19th October 2022

JUDGMENT (Per R. N. Laddha, J.) :

Heard the learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned counsel for the parties.

3. This petition is directed against the decision and order dated 3rd October 2022 passed by the Respondent No.2- Scrutiny Committee invalidating the Petitioner's tribe certificate belonging to Koli Mahadev – Scheduled Tribe. Further, she sought directions to the scrutiny committee to issue a certificate of validity in her favour. Being a student, the petitioner was required to submit tribe validity certificate for prosecuting higher studies. Before the Respondent Committee the petitioner produced a number of documents that consisted of pre-constitutional period documents, the certificates of validity issued to her blood relatives and copies of several orders passed in various writ petitions whereby the concerned scrutiny committee was directed to give validity certificates to her blood relatives from paternal side.

4. The Respondent Committee forwarded the documents to the Vigilance Cell for verification. The Vigilance Cell conducted the

investigation and submitted its report. A copy of the report of the Vigilance Cell was given to the Petitioner. An opportunity of hearing was also granted. The Respondent Committee having assessed the documents, by an order dated 3rd October 2022 , rejected the claim of the Petitioner's tribe claim.

5. Mr. R.K. Mendadkar, learned Counsel appearing on behalf of the Petitioner submits that several documents were relied upon and though all of them are genuine, the Affinity Test has been resorted to. It is submitted that the Respondent Committee ought to have considered the documentary evidence and should have placed greater reliance on pre-independence documents. He submits that Affinity Test is not the litmus test for establishing the link of the Petitioner with a Scheduled Tribe. In support of his broad proposition, reliance was placed on the decision of the Hon'ble High Court in the case of Anand v/s. Committee for Scrutiny and Verification of Tribe Claims and ors.¹.

6. According to the learned Counsel it is mandatory to issue caste validity certificate to the claimant if the validity is already issued to his blood relatives. To lend support to this submission reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Apoorva, daughter of Vinay Nichale v/s. Divisional

1 AIR 2012 SC 314

Caste Certificate Scrutiny Committee & ors.². It has been submitted that the tribe validity certificate produced on records of blood relatives have been overlooked. Further it has been submitted that the Respondent Committee should have considered the documentary evidence and placed greater reliance on pre-independence documents. The learned Counsel relied on (i) *Pundalik Gursiddhappa Umbarje*³ in WP No.7846/2003, (ii) *Naina Girish Umbarje and Harish Girish Umbarje*⁴ (iii) *Kanchan Chidanand Umbarje*⁵, (iv) *Sharad Shrikrishna Umbarje vs. Secretary, Tribal Development Department*⁶; (v) *Kashinath Sangappa Umbarje*⁷, (vi) *Mahesh Bhimashankar Umbarje*⁸, (vii) *Arya Vaibhav Umbarje vs. State of Maharashtra*⁹, (viii) *Nilappa Mangeshwar Umbarje vs. State of Maharashtra*¹⁰, (ix) *Bhalchandra Umbarje vs. State of Maharashtra*¹¹ and (x) *Kum. Madhavi Shashikant Umbarje vs. State of Maharashtra*¹²; (xi) *Abhishek Mahindra Umbarje vs. State of Maharashtra*¹³, in support of his contentions. He submits that all the Petitioners in the petitions mentioned above are blood relatives of the present Petitioner, and,

2 2010 (6) Mh.L.J. 401

3 WP No.7846 of 2003 order dt. 8.12.2003

4 Order dt.5.9.2001 by Hon'ble Vth Joint Civil Judge, Sr. Division, Solapur.

5 WP N o.448/1993 order dt. 1.3.1996

6 WP No. 2368/1993 order dt. 1.3.1996

7 WP No.2368/1993 order dt.1.3.1996

8 WP No.2388/1994 order dt.29.7.1994

9 WP No.3735/2022 order dt. 31.3.2022

10 WP No.6561/2008 order dt. 5-08-2009

11 WP No.6182/2010 order dt. 29.10.2010

12 WP N o.9072/2018 order dt.13.10.2018

13 2022 SCC Online Bombay 2858

under Court orders, they have been issued tribe validity certificates.

7. Mr. A.P.Vanarase, the learned Additional Government Pleader, contested the contentions of the learned Counsel for the Petitioner. He submits that the Vigilance report giving all the details regarding social, cultural and anthropological traits and characteristics and traditions, have been considered properly by the Respondent Committee. According to the learned AGP, the Petitioner could not establish any Affinity and ethnic linkage towards Koli Mahadev, Scheduled Tribe. Further, he submits that during the investigation, contra entries are found. According to the learned AGP impugned order passed by the Respondent Committee is reasoned one and findings are based upon evidence produced before the Committee.

8. We have considered the contentions canvassed by the learned Counsel for the parties and perused the record.

9. Petitioner, as indicated above claims to belong to Mahadev Kolip-Scheduled Tribe. The material on record indicates that the Petitioner had submitted several documents in support of her tribe claim before the Respondent Committee indicating the tribe and social status of her blood relatives to be that of Mahadev-Koli –

Scheduled Tribe. Apart from her own documents, the Petitioner had produced pre-constitutional period documents, certificates of validity issued to her blood relatives and copies of the several orders passed in various writ petitions in favour of her blood relatives whereby concerned Scrutiny Committees were directed to issue validity certificates.

10. In *Anand Katole v/s. Committee for Scrutiny and Verification of Tribe Claims & ors.* it was enunciated that while dealing with the documentary evidence greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status as a caste, as compared to post-independence documents.

11. In the present case, however, it does appear that the Respondent Committee has not appreciated the documents of pre-constitutional era in their proper perspective.

12. In *Apoorva v/s. Divisional Caste Certificate Scrutiny Committee No.1*¹⁴, the Division Bench of this Court has held that if the Committee has validated the tribe claim of the candidate as belonging to the scheduled tribe, then the other close blood relatives cannot be denied the validation of tribe certificates unless,

¹⁴ 2010 (6) Mh.L.J. 401

of course, case of fraud, misrepresentation or suppression of facts is made out.

13. In this context, though the legal position is well neigh settled and does not need the support of precedent, yet to retain emphasis, a profitable reference can be made to the Judgment of the Division Bench of this Court in the case of ***Mayuri d/o. Jagannatha Pandhare Vs. The State of Maharashtra and Ors., W.P. No. 8088 of 2020, dated 18 December 2020***, wherein after taking survey of the previous pronouncement in the case of **Apoorva** (supra) on which reliance was placed by the learned counsel for the petitioners, reiterated the legal position in the following words :

“19) On perusing the original file of Angad Laxman Pandhare, it is evident that his tribe claim has been turned down by the Committee vide order dated 29.12.1995 and same has been reached finality. Thus, it is clear that there are 9 valid tribe validity certificates in the family of Petitioner referred above including his father. The Division Bench of this Court in the case of **Apoorva d/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others, reported in 2010 (6) Mh.L.J. 401** observed that where a Committee has given a finding about the validity of the caste of a candidate, another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the Committee dealing with the subsequent caste claim to reject it.

There is, however, no doubt that if a Committee is of the view that the earlier certificate is obtained by fraud, it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order”.

14. It is a matter of record that as many as 17 blood relatives of the Petitioner have been issued with the validity certificate of the Mahadev Koli - Scheduled Tribe under the orders of the Court. These certificates of validity constitute conclusive evidence of their social standing. The claim for a paternal relationship is an imperative consideration. The tribe of the Petitioner cannot be different from the tribe of her blood relatives. Moreover, the Affinity Test is not the litmus test for establishing the links of the Petitioner with a Scheduled Tribe as enunciated by the Hon'ble Supreme Court in the case of *Anand Katole (supra)*.

15. In view of the matter, we find it difficult to approve the impugned order of the Respondent Committee. Having found that each of the findings and conclusions is unsustainable in law, perverse and vitiated by complete disregard for the judicial pronouncement, we have no hesitation in allowing this writ petition. The Writ Petition succeeds.

16. Therefore, based on those described above, we hereby set aside the impugned order and direct that the Respondent Committee to issue a validity certificate in the name of the Petitioner of the Mahadev Koli - Schedule Tribe immediately.

17. Rule is accordingly made absolute in the above terms. There shall be no order as to costs.

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)

L.S.Panjwani, P.S.