

(2024) 11 BOM CK 0016

**Bombay High Court (Aurangabad Bench)**

**Case No:** Writ Petition No. 11376 Of 2022

Laxman Subhash Koli

APPELLANT

Vs

State Of Maharashtra Through Its  
Secretary And Others

RESPONDENT

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**Date of Decision:** Nov. 27, 2024

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227, 341, 342, 343
- Maharashtra Scheduled Castes, Scheduled Tribes, De Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 - Section 4, 8

**Hon'ble Judges:** Mangesh S. Patil, J; Prafulla S. Khubalkar, J

**Bench:** Division Bench

**Advocate:** Sushant C. Yeramwar, S.S. Joshi

**Final Decision:** Allowed

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### Judgement

Mangesh S. Patil, J

1. By way of this petition under Article 226 of the Constitution of India, read with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (the Maharashtra Act XXIII of 2001), the petitioner is taking exception to the judgment and order of the caste scrutiny committee (hereinafter 'the committee'), whereby it has refused to validate his 'Tokre Koli' scheduled tribe certificate issued under Section 4 of the Act of 2001 and directing its confiscation and cancellation.

2. The learned advocate Mr. Yeramwar for the petitioner would submit that the impugned judgment is perverse and arbitrary. Pre-constitutional entries of the petitioner's ancestors from the paternal side right from the year 1919 have been discarded treating those to be contrary to the claim of 'Tokre Koli' being 'Koli Dhor' entries. In the matter of Samriddhi Yogesh Savale Vs. The State of Maharashtra and others in Writ Petition No. 1209/2022 decided on 20.07.2024, this Court has already demonstrated by sound reasons as to how both these scheduled tribes 'Tokre Koli and 'Koli Dhor' form part of the same entry at serial no. 28. No doubt has been expressed about the genuineness of the pre-constitutional record, wherein the petitioner's ancestors were described as 'Koli Dhor' or 'Dhor Koli'.

3. Mr. Yeramwar would also refer to the Government resolution dated 24.04.1985, wherein both these tribes find place at the same serial no. 28. It is issued by Tribal Development Department. He would refer to the orders issued by the erstwhile Government of Bombay and the extracts from tribes (Tribes and Castes of Bombay, Volume II, written by R.E. Enthoven). He would also refer to "an Index to the Castes and Tribes of the Bombay Presidency (Provisional)". He also referred to a broacher published in a workshop held by the Tribal Development Department of the State of Maharashtra at Tribal Research and Training Institute, Pune, on 24.06.2009, at Nashik, wherein it was categorically observed that 'Tokre Koli' was commonly known as 'Dhor Koli' earlier due to similar occupations of both the tribes. He also referred to the extracts of "People of India-Maharashtra, Volume XXX, Part II, published by Anthropological Survey of India", wherein it is categorically observed that 'Dhor Kolis' are also referred as 'Tokre Kolis'. Again, he referred to the report of the Advisory Committee on the revision of the lists of the scheduled castes and scheduled tribes published by the Department of Social Security, Government of India, wherein list of all the tribes throughout India has been given. So far as to the State of Maharashtra, it enlists 'Dhor Koli' and 'Tokre Koli' at the same serial no. 13. He would also refer to a publication "Maharashtra : Land and its People" expressly having description of 'Dhor Koli' by making observation that it was known by various names as 'Koli Dhor' and 'Tokre Koli'. He would submit that even in Gazetteer of the Bombay Presidency Volumn XIII, wherein Government Orders of 1882 in respect of Thana mentions that 'Dhor Koli' is generally known as 'Tokre Koli'.

4. Mr. Yeramwar, would, therefore, submit that such enormous record would be evidence to demonstrate that anthropologically 'Tokre Koli' tribe was earlier also commonly known as 'Dhor Koli' and finding the pre-constitutional record of the petitioner's ancestors as 'Dhor Koli' or 'Koli Dhor' could not have been legally treated by the committee as contrary to the petitioner's 'Tokre Koli' claim.

5. Mr. Yeramwar, would, therefore, submit that once having seen such evidence, existence of pre-constitutional record, petitioner's ancestors describing them as 'Koli

Dhor' coupled with a specific record right from the year 1952 of petitioner's grandfather, wherein in the school record he was described as 'Hindu Tokre Koli', 'Hindu' being not a caste but a religion, was sufficient to substantiate petitioner's claim. But, the committee has fallen in error in appreciation of the aforementioned facts and circumstances and the observations be discarded, being perverse and arbitrary.

6. Mr. Yeramwar would submit that division benches of this Court have consistently taken a similar view and have consciously refused to regard 'Dhor Koli' or 'Koli Dhor' entries as contrary to the claim of 'Tokre Koli'. He would refer to the decisions in the matter of Nilesh Gulab Sonawane and another Vs. The State of Maharashtra and others ( in Writ Petition Non. 9654/2019) (Aurangabad Bench), dated 18.10.2023, which was followed by another division bench in Shanabhau s/o Rambhau Sonawane Vs. The State of Maharashtra and others (in Writ Petition No. 1890/2009) (Aurangabad bench) decided on 07.02.2024, and Samriddhi Yogesh Savale Vs. The State of Maharashtra and others (in Writ Petition No. 1209/2022) (Aurangabad bench) decided on 20.07.2024.

7. He would further submit that the committee without indicating anything to the petitioner has made certain observations in respect of some decision of the High Court in an unrelated matter, which sustained up to the Supreme Court, without there being any similarity in the facts and circumstances. He would submit that even the committee has illegally applied affinity test, contrary to the principles laid down by the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326, when it has discarded a favourable record, may be of post-independence period, simply by referring to some alleged manipulation, only in respect of two school entries of petitioner's cousin grandfather and father of the year 1958 and 1967 respectively. He would, therefore, submit that the impugned judgment being perverse and arbitrary be quashed, set aside and reversed.

8. The learned A.G.P., Ms. Joshi, would at the outset discard the submission of Mr. Yeramwar seeking to draw parallel between the anthropological characteristics and traits of 'Koli Dhor' and 'Tokre Koli' being same or similar. She would submit that no such extraneous evidence as has been cited by Mr. Yeramwar can be legally resorted to, to understand this. Rather, such a course cannot be resorted to in light of the observations of the Supreme Court in the matter of State of Maharashtra Vs. Milind and others; (2001) 1 Supreme Court Cases 4, which has been consistently followed thereafter by a division bench of this Court in the matter of Mana Adim Jamat Mandal Vs. State of Maharashtra and others, 2004(2) Bom.C.R. 295, which has been upheld by the Supreme Court in the matter of State of Maharashtra and others Vs. Mana Adim Jamat Mandal; (2006) 4 Supreme Court Cases 98. She would submit that this Court in exercise of the powers under Article 226 of the Constitution of India cannot indulge into any enquiry on the lines submitted by Mr. Yeramwar, merely because both the

tribes, 'Koli Dhor' and 'Tokre Koli' appear at the same serial number of the notification issued, namely the Constitution (Scheduled Tribes) Order, 1950, in exercise of the powers conferred by Clause 1 of Article 342 of the Constitution. She would particularly refer to para 36 from Milind and para No. 30 from Mana Adim Jamat Mandal (supra).

9. Ms. Joshi, would submit that the decisions in the matter of Milind and Mana Adim Jamat Mandal (supra) were not cited before the division benches, which decided the matters of Nilesh Gulab Sonawane and Shanabhau s/o Rambhau Sonawane Samridhi Yogesh Savale (supra).

10. Ms. Joshi, would further submit that no fault can be found with the committee in discarding 'Koli Dhor' or 'Dhor Koli' entries of pre-constitutional period as contrary to the petitioner's claim of 'Tokre Koli'. The observations of the committee are based on correct and plausible appreciation of evidence before it and this Court cannot sit in appeal and substitute its views. She prayed to dismiss the petition.

11. We have considered the rival submissions and perused the original record. It is necessary to note that except couple of school entries, regarding which committee has sought to discard them on the ground that those were manipulated, it has not entertained any doubt about genuineness of the rest of the record, which, based on the vigilance report and the evidence furnished by the petitioner, has been collated by the committee in the impugned judgment as under:

<b>Sr. No.</b>	<b>Name of the Document</b>	<b>Name of the person on the document</b>	<b>Relationship with the applicant</b>	<b>Caste entry</b>	<b>Admission/Registration date</b>	<b>Remark</b>
1)	Birth registration evidence	Daga s/o Shamji Gokul Gajmal	Great grandfather	Koli Dhor	08.11.1919	
2)	Birth registration evidence	s/o Daga Shamji	Grandfather	Koli Dhor	04.01.1943	

3)	Birth registration evidence	Rukhma s/o Daga Shamji Pundlik	Grandmother	Koli Dhor	09.11.1944
4)	Birth registration evidence	s/o Daga Shamji Gajmal	Cousin grandfather	Koli Dhor	14.04.1948
5)	School evidence	Daga Koli	Grandfather	Hindu Tokre Koli	09.01.1952
6)	School evidence	Pundlik Daga Koli	Cousin grandfather	Hindu To Koli	06.06.1958
7)	Death registration evidence	Father Daga Shamji Koli	Great grandfather	To. Ko.	05.07.1960

In the column of caste and sub-caste letter 'To' **¼Vks½** appears in a different ink

						In the column of caste and sub-caste letter 'To' <b>¼Vks½</b> appears in a different ink
8)	School evidence	Subhash Gajmal Koli	Father	Hindu To. Koli	23.06.1967	
9)	School evidence	Laxman Subhash Koli	Applicant	Hindu Tokre Koli	02.07.1993	
10)	School evidence	Sandip Subhash Koli	Brother	Hindu Tokre Koli	01.06.1995	

As can be noticed, all the pre-constitutional record from the birth and death registers of petitioner's great grandfather, grandfather, grandmother and cousin grandfather were 'Koli Dhor'. In the post-constitutional period the record of his grandfather of 1952, death record of great grandfather of 1960, and the school record of the petitioner himself and his brother was 'Hindu Tokre Koli' of the year 1993 and 1995, respectively. It is, therefore, abundantly clear that the petitioner's claim is not without there being any evidence, albeit it is trite as laid down in the matter of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors; (2012) 1 SCC 113, a pre-constitutional record would carry a greater probative value as compared to the post-constitutional record for the obvious reasons that there could be a possibility of the entries having been made consciously after the notifications were issued under Article 343 of the Constitution of India, for deriving the benefit of reservation.

12. However, it has to be borne in mind that the caste claims under the Maharashtra Act XXIII of 2001 are to be proved on the principle of preponderance of probability and no strict proof is required, though the burden lies on the claimants under Section 8 to substantiate their claims based on evidence which is legally acceptable.

13. Bearing in mind this trite principle and assuming for the sake of arguments for the time being that 'Koli Dhor' entries of the pre-constitutional period would be contrary to the petitioner's claim of being 'Tokre Koli', to which we are advertent to latter, admittedly, the father's school record of 1952, described him as 'Hindu Tokre Koli' and the death record of great grandfather of 1960, described him as 'To. Ko.', obviously as an abbreviation of 'Tokre Koli', substantiate the petitioner's claim. Even though two intermittent entries in the school record of 1958 and 1967 have been discarded by the committee by making a subjective assessment of the record on the ground that letter 'Vks', in the form of abbreviation of 'Tokre' appeared in different ink, since it is a matter of preponderance of probabilities, the alleged manipulation in the school record after 1952 would not dislodge the school record of 1952 of petitioner's grandfather, wherein he was described as 'Hindu Tokre Koli'. 'Hindu' not being a tribe or caste, but a religion, appearance of word 'Hindu' prefixing 'Tokre Koli', in our considered view, was also sufficient for the committee and substantiated the petitioner's claim on probability. No reasons have been assigned by the committee to discard this 1952 favourable record of petitioner's grandfather except on the ground that there was contrary record of 'Koli Dhor' of the pre-constitutional period.

14. Precisely for this reason, in a slightly different context, by referring to Milind (supra), following observations were made in the matter of Samriddhi Yogesh Savale (supra), by a division bench of this Court, to which one of us (Mangesh S. Patil, J.) was a party :

"17. One need not delve deep to observe that every entry in the constitutional order / schedule has its own sanctity and has to be understood and applied strictly as laid down in Milind Sharad Katware and others Vs. State of Maharashtra and others; 1987 Mh.L.J. 572. Admittedly, the tribe 'Koli' which was initially included in other backward class, subsequently, was included in special backward class. As against this, 'Tokre Koli' or 'Dhor Koli' are included in entry at serial no. 28 of scheduled tribes. Obviously, therefore, Koli entries would be inconsistent with the claim of 'Dhor Koli' or 'Tokre Koli'.

18. As can be seen, the school record or birth record of 1913, 1922, 1928 and 1935 describe the petitioner's forefathers as 'Koli'. However, school record and birth record of 1906, 1923, 1925, two entries of Bhila Ragho and Guman Budha of the year 1930, 1932, 1937, 1942, 2 entries of Mohan Ragho and Motiram Bhila of 1948, describe petitioner's forefathers as 'Dhor Koli' or 'Tokre Koli' or 'Koli Dhor' or 'Hindu To. Koli'. Though the committee had plausible reasons to discard some of this record on the ground of the entries being suspicious and looked manipulated, or else the original record of the school was not tallying with the loose pages containing some of these entries, even if the committee is justified in discarding these dubious entries, it is abundantly clear that these pre-constitutional entries which have been doubted by the committee and even by the vigilance cell, petitioner's forefathers were interchangeably

described as 'Koli', 'Dhor Koli' 'Tokre Koli' or 'Koli Dhor'. It is thus quite clear that the entries were made ex facie interchangeably, without intending to describe these individuals bearing in mind the future consequences. In other words, the persons who must have furnished the information while making these entries in the school record or in the birth and death register in Form no. 14 must have loosely described the caste as per their own understanding. At times, the entries were made as 'Koli' which could have been used colloquially as a generic name. If such is the state of affairs, the forefathers of the petitioner though at times were described as Koli, but were also number of times described as 'Dhor Koli' or 'Tokre Koli' or 'Koli Dhor', one needs to appreciate these entries pragmatically.

19. It is just possible that the person providing the information may describe the caste as 'Koli' even without what he meant was to describe that it with an adjective, 'Dhor' or 'Tokre'. While recording the entries 'Dhor Koli' or 'Tokre Koli' or 'Koli Dhor' he or they would do it consciously emphasizing the adjective having a different connotation. Therefore, though per se, the entry 'Koli' is inconsistent with the claim of being 'Tokre Koli' or 'Dhor Koli', when there are plentiful entries of 'Dhor Koli' or 'Tokre Koli' of the pre-constitutional period, in our considered view, the principle of preponderance of probabilities would apply and would substantiate the petitioner's claim. It is not merely a question of mathematical calculation as to how many are the favourable entries as against the contrary entries of 'Koli'. It would be a matter of appreciation of the circumstances while making those entries, that too in pre-constitutional era. Obviously, when many of the pre-constitutional entries are of first quarter of the 20th century when the rate of literacy must have been drastically low, even if there are few contrary entries of 'Koli', in our considered view, not much weight can be attached to it when simultaneously there are plentiful favourable entries as well, of the same period.

20. True it is that there seems to be some attempt at manipulation for the obvious purpose. However, we have expressly ignored such entries which are dubious in nature as described by the committee. We have considered only those entries regarding which the committee has not entertained any doubt about their genuineness. Still, we have found that there are number of favourable entries describing the forefathers as 'Dhor Koli' or 'Koli Dhor'."

21. True it is that there is no clear entry of 'Tokre Koli' which is the claim of the petitioner of the pre-constitutional period and the word 'To' seems to have been added at a later point of time. However, we have already considered the aspect as to whether claim of 'Tokre Koli' and that of 'Dhore Koli' or 'Koli Dhor' could be treated as inconsistent, in the matter of Nilesch Sonawane (supra). We pointed out that entry no. 28 of schedule of Tribe Order, 1950 mentioned four tribes - 'Koli Dhor', 'Tokre Koli', 'Kolcha' and 'Kolgha'. If the legislature in its wisdom has put 'Koli Dhor' and 'Tokre Koli' in the same entry, the claim of 'Tokre Koli' cannot be treated as inconsistent with that of



'Koli Dhor'.

22. There is one more aspect which needs to be emphasized in this context. A person would not derive any additional advantage or benefit by being described as 'Tokre Koli' instead of 'Koli Dhor' or vice versa. This would be another reason not to treat such claims to be inconsistent. Therefore, when, as is mentioned herein-above, there is acceptable documentary evidence of pre-constitutional period wherein the petitioner's forefathers were described as 'Dhor Koli' or 'Koli Dhor', the committee could not have refused to extend its benefits to her when she has been claiming to be a 'Tokre Koli'.

15. These reasons with the observations, particularly in paragraph nos. 19 to 22, in our considered view, are sufficient even for the matter in hand to substantiate the petitioner's claim.

16. With respect, the observations of the Supreme Court in the matter of Milind and Mana Adim Jamat Mandal (supra) will have to be followed. However, it is not a fact, as has been submitted by the learned A.G.P., Ms. Joshi that the decision in the matter of Samriddhi Yogesh Savale (supra) was decided without any reference to Milind (supra), when paragraph no. 17 of that judgment demonstrates that it was cited before the division bench and was specifically referred to.

17. With utmost respect, the observations (supra) in the matter of Samriddhi Yogesh Savale would clearly demonstrate that the documentary evidence was analyzed and inter alia it was observed that a person would not derive any additional advantage or benefit by being described as 'Tokre Koli' instead of 'Koli Dhor' or vice versa, obviously, as both these tribes find place at the same serial No. 28 of the Schedule of the Constitutional notification, 1950. Since it is a matter of appreciation of evidence, the observations in the matter of Samriddhi Yogesh Savale (supra), as we have reiterated herein above, is a matter of proof on the principle of preponderance of probability and it is in that context it was observed by the division bench in Samriddhi Yogesh Savale (supra), which course we seek to follow, when there are favourable entries may be of 1952, onwards wherein the petitioner's grandfather and father were described as 'Tokre Koli' in the school record. It is not a matter that there is absolutely no evidence to substantiate petitioner's claim. To repeat, even though the petitioner's forefathers were described in the birth record, right from 1919, during the pre-constitutional era as 'Dhor Koli', the petitioner's family was not to derive any additional advantage by seeking to change the description in the post-constitutional period as 'Tokre Koli' when the notification issued under Articles 341 and 342, enlisted both these tribes at the same serial number 28. In these peculiar circumstances, as was done in the matter of Samriddhi Yogesh Savale (supra), according to us rightly so, the observation and conclusion of the committee in treating 'Dhor Koli' entries of the pre-constitutional period as contrary to the petitioner's claim of 'Tokre Koli' would not be a correct

appreciation of the facts and circumstances. A man would indulge in such manipulation if he would want to derive some advantage, which otherwise would not have been available to him. Even if the petitioner's ancestors were subsequently described in the post-constitutional period as 'Tokre Koli', they could have been alleged to have done so consciously had it been a fact that only 'Tokre Koli' was notified as a scheduled tribe and not 'Koli Dhor'. If they were to derive the benefit of constitutional notification enlisting the tribes, they would have happily continued to describe them as 'Koli Dhor' for deriving the benefit of reservation. It is in such peculiar state of affairs that according to us, the decisions of the Supreme Court in the matter of Milind and Mana Adim Jamat Mandal (supra) would not be applicable to the fact situation of the matter.

18. In the matter of Milind (supra), the principle laid down is to the effect that in light of the Articles 341 and 342 of the Constitution, a scheduled tribes order can be amended only by the Parliament and the High Court in exercise of a limited jurisdiction under Article 227 of the Constitution, cannot deal with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order. The claimant therein, who was the respondent before the Supreme Court was claiming to be belonging to 'Halba/Halbi', which is the scheduled tribe under entry 19 of the Presidential Order relating to the State of Maharashtra, when he was proved to be belonging to 'Koshti'. The High Court in that matter had allowed the writ petition and quashed and set aside the order of the committee, and had held that it was permissible to enquire whether any sub-division of a tribe was a part of the tribe mentioned in the Presidential Order holding that 'Halba-Koshti' is a sub-division of main tribe 'Halba/Halbi' at entry 19 in the schedule tribe order applicable to Maharashtra. It is such exercise undertaken by the High Court was held by the Supreme Court to be impermissible. Indeed, the conclusion is binding as a ratio. However, with respect, in the matter in hand the facts are peculiar. The petitioner is not belonging to any different caste or even tribe, but the record demonstrates that his forefathers in the pre-constitutional period were described as 'Dhor Koli' whereas in the post-constitutional record they were described as 'Tokre Koli', both of which entries find place at the same serial number 28 of the Constitutional Order, which was not the case before the Supreme Court even in the matter of Mana Adim Jamat Mandal (supra).

19. We, therefore, find no force in the submission of the learned A.G.P. Ms. Joshi to the effect that firstly the decision in Samriddhi Yogesh Savale (supra) was in ignorance of the principle laid down in Milind (supra), when it was specifically referred to in paragraph no. 17 of the judgment of the division bench, and secondly, on the ground that the decisions in Milind and Mana Adim Jamat Mandal (supra), are applicable to the matter in hand is not sustainable for the peculiar facts and circumstances obtaining herein as compared to the ones which were before the Supreme Court.

20. Resultantly, the pre-constitutional record of petitioner's forefather, wherein they were described as 'Koli Dhor' could not have been treated as contrary to the petitioner's claim of 'Tokre Koli' and the observations of the committee to that effect are not legally sustainable, being perverse and arbitrary.

21. In light of above, the petition deserves to be allowed as prayed for.

22. The Writ Petition is allowed.

23. The impugned order is quashed and set aside.

24. The respondent-committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Tokre Koli' scheduled tribe in the prescribed format.