

(2018) 08 BOM CK 0102

Bombay High Court

Case No: Writ Petition No. 9072 OF 2018

Kum. Madhavi Shashikant
Umbarje

APPELLANT

Vs

State Of Maharashtra Through
Secretary, Tribal Development
Dept. And Ors

RESPONDENT

Date of Decision: Aug. 13, 2018

Hon'ble Judges: S.C. DHARMADHIKARI, J; BHARATI H. DANGRE, J

Bench: Single Bench

Advocate: R.K. Mendadkar, B.V. Samant

Judgement

Bharati H. Dangre,J

1. The petitioner, who claims to be belonging to Koli Mahadev Tribe, which is recognised as Scheduled Tribe under the Constitution (Scheduled

Tribes) Order, 1950 has approached this Court praying for quashing and setting aside the impugned order dated 24.07.2018 passed by the Scheduled

Tribe Scrutiny Committee, Pune, thereby invalidating the claim of the petitioner as belonging to Koli Mahadev.Â The petitioner has also further sought

direction to the committee to issue certificate of validity in her favour by validating the caste certificate issued to her on 18.08.2016 by the Competent

Authority.

2. The petitioner obtained a certificate of belonging to Koli Mahadev and she was desiring persuading her higher education she sought to rely upon the

said claim of her caste which is recognized Scheduled Tribe and for its verification her caste certificate was made over to the respondent No.2Â-

Committee.Â In order to substantiate her claim she relied on the document of blood relatives from paternal side which are ofÂ preÂconstititonal

period and reflected of the social status of her forefathers of Mahadev Koli, which on enactment of the constitution came to be recognised as

Scheduled Tribe.Â The petitioner also placed reliance on the order passed by this Hon'ble CourtÂ in Writ Petition No.2368 of 1993 in the case of her

real uncle from paternal side from Shri.Sharad Shrikrishna Umbarje.Â This Court by judgment dated 01.03.1996 had disposed of three Writ Petitions

filed by the real uncle of the petitioner and Miss.Kanchan Sidanand Umbarje paternal cousin aunt of the petitioner.Â This Court had given a

declaration that the petitioners before it belonged to Mahadev Koli, Scheduled Tribe and directed the committee to issue necessary certificate in this

regard to the petitioners.Â The said judgments had attained finality.Â The petitioner also placed on record the validity certificate granted in favour of

the said uncle in pursuant to the directions of this Court. Another judgment from this Court delivered in Writ Petition No.6128 of 2010 in case of one

Bhalchandra Sadanand Umbarje the cousin uncle of the petitioner from paternal side is also relied upon by the petitioner where in the committee was

directed to issue certificate of validity by a detailed judgment dated 29.11.2010.Â The said judgment delivered by this Court was challenged before

the Hon'ble Apex Court in Special Leave Petition which came to be dismissed.

3. The claim of the petitioner was referred to the Vigilance Cell for inquiry and the police Inspector of the Vigilance Cell obtained the entries in the

BirthÂDeath registers in relation to the forefathers of the petitioner.Â The petitioner was supplied with the copy of the Vigilance Cell report and filed

a detailed reply on 04.05.2018.Â She was also called for hearing on 25.06.2018 and she attended the proceedings before the committee along with

her grandfather and cousin uncle Mallikarjun.Â During the course of hearing before the committee the grandfather of the petitioner placed on record

two judgments delivered by this Court in Writ Petition No.7846 of 2003 and also judgment in case of Nillappa Mangleshwar Umbarje dated 05.08.2009

in Writ Petition No.6561 of 2008.Â The petitioner has also placed on record the copies of these judgments along with the Writ Petition.Â The

petitioner also placed on record the validity certificate granted in favour of three close blood relatives, viz, Yashwant Chidanand Umbarje, Ravi

Rajkumar Umbarje and Kshitij Yashwant Umbarje issued by the same Scrutiny Committee at Pune.Â The grandfather of the petitioner who attended

the proceedings before the Committee also laid evidence on the ethnological and anthropological traits in order to establish his cultural affinity with

Mahadev Koli, recognised as Scheduled Tribe.Â It is the specific case of the petitioner that the committee failed to take into consideration the

voluminous documentary evidence placed on record as well as the judicial pronouncement rendered in favour of the close blood relatives of the

petitioner and proceeded to reject the claim of the petitioner by impugned order dated 24.07.2018.

The petitioner was aspiring to secure an admission in an Engineering college and in view of the Ordinance issued by the State on 24.06.2018 the

petitioner was considered entitled for a seat reserved for Scheduled Tribe candidate in the respondent No.4 College and she had already commenced

her studies in the said college.Â

4. In support of the petition Shri.Mendadkar would submit that the Committee had the audacity to overturn the four judicial pronouncements rendered

by this Court in case of the blood relatives of the petitioner from the paternal side and according to him the said judicial pronouncements have attained

finality. Shri.Mendadkar therefore vehemently argues that the approach of the committee is of utter defiance towards the authoritative

pronouncements of this Court and he would submit that the Committee has ignored the binding judicial pronouncements and this Court should deal with

the committee with a stern hand so as to prevent any miscarriage of justice.Â The case of the petitioner is that in respect of the validity certificates

granted in favour of the close blood relatives of the petitioners, the committee had alleged tampering in the school and birth record registers and have

alleged that there are entries to the effect of Koli and the petitioner is seeking declaration that she belongs to Mahadev Koli, Scheduled Tribe which in

any case cannot be granted.Â Shri.Mendadkar would therefore pray for declaration that the petitioner belongs to Mahadev Koli.Â In light of the

documents produced on record and also in the backdrop of validity certificates already issued in favour of the close blood relatives of the petitioner.

5. Perusal of the impugned order passed by the Caste Scrutiny Committee would reveal that the committee was conscious of the validity being

conferred on the two uncles of the petitioner and cousin brother Ajinkya Mahindra Umbarje.Â The committee is also made aware of the judgment of

this Court in favour of Shri.Sharad Shrikirishna Umbarje in Writ Petition No.2368 of 1993. The committee also takes note of the judgments of this

Court in Writ Petition No.6182 of 2010 decided on 29.11.2010 on the basis of which Shri.Ajinkya Mahindra Umbarje has been issued certificate of

validity by the committee on 03.05.2011 and declared to be belonging to Koli, Mahadev.

The petitioner has placed on record several documents where the caste of the ancestors of the petitioner came to be recorded as Mahadev Koli.Â

The committee referred the said documents to the Vigilance Cell and it conducted a detailed inquiry and submitted report to the committee on

30.12.2016.Â In paragraph No.4 of the impugned order the committee enlists all the documents reflecting the caste entries of the close relatives of

the petitioner.Â Perusal of the said list would reveal that there are documents in favour of the Grandfather, cousin grandfather of the petitioner which

are of the preÂconstitutional period and the earliest document reflecting the caste Hindu Mahadev Koli is in favour of the grandfather of the petitioner

Sirpoji Revappa Umbarje where the date of birth is recorded as 25.01.1941 and the entry in the school is recorded as 01.04.1947.Â Then are entries

in favour of the cousin grandfather of the petitioner where the caste is recorded as â€œHindu Mahadev Koliâ€€.Â The committee has been able to

procure an extract in favour of one Sayappa Gurusidda Umbarje and claim that he is the cousin grandfather of the petitioner, where the date of birth is

recorded as 02.01.1939 and the entry in school is recorded as 10.12.1947.Â The entries recorded in paragraph No.4 and which are 89 documents, the

extracts have been obtained from the Zilla Parishad Primary Marathi School Aunaj, TalukaÂSouth Solapur, DistrictÂSolapur.Â The committee then

proceeds to refer to entry No.42 which is an entry in favour of cousin cousin Raghunath Dherappa Umbarje where the caste is recorded as Hindu

Mahadev Koli and the committee observes that on personal verification of the said entry, the word "Mahadev Koli" is written in different ink.

Similar observations is made in respect of entry No.44 and 46 and it is alleged by the committee that these are close relatives of the petitioner where

in the caste column the word Mahadev Koli is written in different ink. The committee also relies on the statement of the Head Master

Shri.Chandrakant Raghunath Umbarje and also the erstwhile Head Master Shri.Shivshankar Raghunath Umbarje. On the basis of the said statement

the committee recorded a finding that the Head Master of the school happened to be the close relatives of the petitioners and by surname Umbarje

and it appears that since they have relationship with the petitioner, they have not bothered to trace the original registers from 1919 to 1939 and

according to the committee the said Head Masters did not offer any satisfactory explanation to the committee. In contrast, the Vigilance Cell has

procured entries from the birth/death register which according to the committee are of the close blood relatives of the petitioner where the caste is

clearly recorded as "Koli". On the basis of these entries along with one entry in the Death Register, Shri.Arjuna Gurusidha who is great great

great grandfather of the petitioner the entry is recorded as Koli. The Committee therefore cast doubt on the claim of the petitioner and records a

finding that from 1915 the caste entries have been consistently recorded as "Koli". The committee also proceeds to record a finding that these

entries were obtained by the Vigilance Cell from the Tahsil Office and then it alleged that there has been interpolation in the school records, which is

in total contradiction to the entries obtained by the committee from the Tahsil Office. In light of the said findings been recorded, the committee

proceeds to reject the claim of the petitioner.

6. We have carefully perused the petition along with its annexures and also the impugned order. The petitioner has placed on record the

genealogy. The genealogy reveals that Shri.Arjunappa Gurusidha Umbarje is the original ancestor who had five children namely Ramchandra,

Bhimrao, Revappa, Nilappa and Gurusidhappa. The petitioner is from the branch of Revappa and her father Shashikant is the great grand son of

Revappa.Â The petitioner's father Shashikant is son of Shrikrishna Revappa.Â Sharad is also another son of Shrikrishna and is real uncle of the

petitioner. The said Shri.Shard Shrikrishna Umbarje had approached this Court in the year 1993 by filing Writ Petition No.2368 of 1993 praying for

quashing and setting aside the judgment dated 29.04.1993 passed by the Additional Commissioner Tribal Development, Thane and also the order dated

31.07.1992 passed by the Scrutiny Committee. This Court heard the said Writ Petition along with two other Writ Petitions filed by one Miss.Kanchan

Chidanand Umbarje and Shri.Kashinath Sangappa Umbarje.Â On perusal of the entire record of the three Writ Petition's, this Court noted that the

authorities had rejected the basic document which is common in all the three Writ Petition's namely the school register maintained by the school

Mahanagar Palika Mulanchi Marathi Higher Primary Shala, Solpaur in respect of Basliangappa Ramchandra Umbarje, close relative of the

petitioner.Â As far as the uncle of the petitioner Sharad is concerned, Baslingappa is Sharad's father's paternal uncle.Â The said Baslingappa was

studying in Mahanagar Palika Mulanchi Marathi Higher Primary School, Solapur and in the register at Serial No.917 his caste is mentioned as

Mahadev Koli.Â The Court observed that the Scrutiny Committee has rejected the said document in view of the fact that according to the Head

Master the original entry is recorded as 'Hindu Koli' and the same was subsequently altered/fabricated to Mahadev Koli without any authority, by

somebody.Â The Head Master has stated that there is some sort of manipulation probably to support the claim of the petitioner.Â This Court while

hearing that petition directed the Additional Government Pleader to produce before it the original school register and get clear instructions about any

alterations/corrections made therein in regard to the caste column.Â On such directions being issued the record was produced before the Court and

the Additional Government Pleader pointed out that the relevant entry at Serial No.917 relating to Baslingappa originally was entered only as

â€œHindu Koliâ€ but thereafter concerned Education Inspector passed appropriate order on 06.08.1983 on the application made by the concerned

person to the effect that caste â€œHindu Koliâ€ should be altered as Mahadev Koli and accordingly this order was given effect to by the school

authority on 09.07.1938 and the learned AGP pointed out that the said correction made in the register is therefore genuine.Â The Court therefore

accepted the said position clarified by the AGP and recorded the finding to the following effect:Â

â€œIn view of this categorical statement of the learned Addl. Government Pleader explaining the correct position and in view of the fact that the

document came into existence before the Presidential Order (1950) as indicated above we have no hesitation to hold that the caste of Mr.Baslingappa

Ramchandra Umbarje should be taken as Mahadeo Koli.Â Once we reach this conclusion that the basis document is of the year 1938 and equally

that Mr.Baslingappa Ramchandra Umbarje is closely related to the writ petitioners, it would necessarily follow that the writ petitioners also belong to

Mahadeo Koli, Scheduled Tribes.Â The necessary consequences have to be that we have to set aside the respective orders impugned in these writ

petitioners.â€

With these observations the Writ Petition came to be allowed by this Court and pursuant to it Shri.Sharad Shrikrishna Umbarje was issued a certificate

of validity by the Scrutiny Committee Maharashtra State, Pune on 21.07.2000.Â That is how the real uncle of the petitioner came to be conferred

with the status of Mahadev Koli and continues to remain so for approximately two decades.

7. In case of Bhalchandra Umbarje who approached this Court in Writ Petition No.6182 of 2010, the committee relied upon the report of the Vigilance

Cell in relation to the Nillappa Mangleshwar Umbarje who had also approached this Court, on the basis of said report, the claim of Bhalchandra came

to be rejected. In case of Nillappa who had approached this Court, the Division Bench of this Court by order dated 05.08.2009 had allowed the Writ

Petition and issued validity in favour of Nillappa.Â This Court after noticing the validity certificates issued in relation to the close blood relatives

Nillappa Umbarje, Satish Umbarje, the petitioner Bhalchandra's cousin, the Division Bench relied upon the observation made by the earlier Division

Bench in Writ Petition No.6561 of 2008 to the following effect:Â

â€œ16. Thus caste validity certificates issued in favour of the petitioners close relatives are not irrelevant. They would be irrelevant only if they were

obtained without producing vital evidence or were issued on a wrong premise or mistakes. Such is not the case here. In this case the petitioner's uncle

is declared to be Mahadeo Koli by this Court inter alia taking into consideration the fact that his close relatives were granted caste validity certificates

by the Scrutiny Committee. The petitioner's cousin Satish Umbarje has been issued caste validity certificate on the basis of same vigilance report

which was considered by the Scrutiny Committee in the present case. We are informed that about 26 near relatives of the petitioner have been

granted caste validity certificates by the Scrutiny Committee certifying that they are Mahadeo Kolis. Mr.T.R. Dhondage, Research Officer from

Scrutiny Committee, Pune is present in the court. We asked Mr.Sonawane, learned AGP to find out whether this is true. He confirmed that it is true.

The present case, therefore, stands totally on a different footing from that of Seema Bhadekars case.

17. In the peculiar facts and circumstances of the case, therefore, the petitioner's claim must be upheld. We, therefore, quash and set aside the

impugned judgment and order dated 5/7/08 passed by the Scheduled Tribe Certificate Scrutiny Committee, Pune Region, Pune and direct the said

Scrutiny Committee to validate the caste certificate of the petitioner as belonging to Mahadeo Koli, Scheduled Tribe dated 20/10/05 issued by the Sub

Divisional Officer, Solapur Division, Solapur, at the earliest and at any rate within a period of one month from the date of receipt of this order.â€

The said judgment was carried by the State of Maharashtra to the Apex Court and the Apex Court dismissed the case for non-â€prosecution.â€ Thus,

the orders passed by this Court have reached finality.â€ Thus, once the blood relatives of the petitioners have been granted validity certificates

pursuant to the orders passed by this Court, it is not open for the Respondent No.â€2Committee to express its doubt on the very said documents,

specifically when this Court has accepted the statement of the learned Assistant Government Pleader as to how the entry in respect of Baslingappa

Ramchandra Umbarje came to be changed from Hindu Koli to Mahadev Koli.â€ Once this finding has attained finality, it is not permissible for the

committee to reopen all those entries, when the committee has already abided by the judicial pronouncements and issued validity certificates in favour

of the blood relatives of the petitioner.Â

8. We find that the reliance placed by the learned counsel for the petitioner in case of Apoorva D/o. Vinay Nichale V/s. Divisional Caste Scrutiny

Committee No.1 & OrsÂ to be completely applicable in case of the petitioners.Â The committee has not recorded any finding of any fraud being

committed in the caste entries and when it had cast doubt on the entries where the caste entries were changed to Mahadev Koli, that situation has

been put to rest by the judgment of this Court, thereby accepting that it was on the order passed by the Competent Authority that the entries were

recorded.Â As far as other entries of Koli are concerned, which the committee has referred to and which are traced byÂ the Vigilance Cell, the

committee has not established that the holders of those documents even find place in the genealogical tree which is placed on record by Shashikant

Shrikrishna Revappa Umarje, however, since the real uncle of the petitioner has been granted a validity certificate in pursuant to the directions issued

by this Court and after noting the entry of Hindu Koli recorded in the school register of Baslingappa Ramchandra Umbarje which is from the branch

of Ramchandra Arjunappa Umbarje, we do not find that the committee is justified in not adhering to the mandate issued by this Court in case of

Shri.Sharad Shrikrishna Umbarje and Miss.Kanchan Chidanand Umbarje.Â

The Division Bench of this Court while deciding the three Writ Petition's including one filed by Shri.Sharad Shrikrishna Umbarje uncle of the petitioner

referred to an entry in respect of Baslingappa Ramchandra Umbarje.Â The said Baslingappa is from the branch of Ramchandra and his son of

Ramchandra Arjunappa Umbarje.Â The committee had invalidated the claim of Sharad that is the uncle of the petitioner who is from the branch of

Revappa on the basis of an entry of "Koli" recorded in case of Baslingappa Ramchandra.Â This Court noted that the said entry which was

alleged by the committee to be fabricated was genuine one and granted validity in favour of Sharad.Â Based on Sharad's validity, his brother Satish is

also conferred with validity.Â Along with Sharad, Kum.Kanchan Chidanand was also the petitioner before the Court when on 01.03.1996 the

judgment was delivered in favour of Sharad.Â Â Miss.Kanchan is daughter of Chidanand and is from the branch of Gurusidappa Arjunappa Umbarje

that is the fifth branch. From the same branch Ajinkya son of Mahindra Arjunappa have also been granted validity certificate. The said certificate has been granted to Ajinkya on the basis of the validity been conferred on Bhalchandra Sadanand Umbarje from the same branch of Gurusidhappa. In the same branch Pundalik Gurusidhappa has also been conferred with the status of Mahdev Koli by a judgment of this Court delivered on 08.09.2003.

In light of validity been granted to the blood relatives of the petitioner, we do not intend to deprive the petitioner of the same benefit. The impugned order indicates that the committee intends to proceed against the validity holders in light of the old entry, which has been revealed through its Vigilance Cell. From the impugned order it appears that such show cause notice have already been issued to the validity holders. We do not intend to stall the said process and it is open to the committee to revisit the validity granted by various committee's in favour of the blood relatives of the petitioner, if it is illegally permissible for it to do so. However, in light of the validity existing in favour of the blood relatives of the petitioner we do not intend to deprive the petitioner of the same status, at this stage. The order of the committee therefore cannot be sustained and is liable to be quashed and set aside.

9. As a result of the above discussion, the Writ Petition succeeds.

10. Rule is made absolute in terms of prayer clause (a).

11. Let this Certificate of Validity be issued to the petitioner, certifying him as belonging to 'Koli Mahadeo Scheduled Tribe' on or before 14th August

2018. The order of the Scrutiny Committee dated 24th July 2018 having been set aside and the above direction being issued means that the third and

fourth respondents can proceed to confirm the admission of the petitioner for the Engineering course in the current Academic Session 2018-19.

12. The learned AGP shall communicate this order to the Scrutiny Committee as also the Directorate of Technical Education and the respondent no.3.

13. There will be no order as to costs.