

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 621 OF 2012

RAOSAHEB DHANPAL KOLI

APPELLANT

VERSUS

GENERAL MANAGER, CANARA BANK & ANR.

RESPONDENTS

O R D E R

Heard Mr. Rahul Joshi, the learned counsel appearing for the appellant. Also heard Ms. Hetu Arora Sethi, the learned counsel appearing for respondent No.1-Canara Bank. Mr. Shrirang Varma, the learned counsel appears for respondent No.2- the Scheduled Tribes Certificate Scrutiny Committee, Pune (for short, the "Scrutiny Committee").

2. The challenge in this appeal is to the judgment and final order dated 22.01.2010 of the High Court of Judicature at Bombay in Writ Petition No. 446 of 2009 whereby the writ petition filed by the appellant was dismissed upholding the view taken by the Scrutiny Committee in rejecting the caste claim of the appellant as belonging to "*Mahadeo Koli*", which is recognised as a Scheduled Tribe category.

3. The appellant was appointed as a Clerk on 11.07.1991 in the Canara Bank in the post reserved for Scheduled Tribe category. To secure the appointment, the appellant presented a certificate which showed that he belongs to "*Mahadeo Koli*", a recognised Scheduled

Tribe category. Several years after the said appointment, when promotion was due to the appellant, the Bank initiated a process in the year 2005 to verify the status of the appellant as to whether he actually belongs to the Scheduled Tribe category and eventually the issue was referred to the Scrutiny Committee.

4. Before the Committee, the appellant, in order to support his Scheduled Tribe category claim, relied on the following documents:

"I. Original and attested copy of the caste certificate in respect of Ravsaheb Dhanpal Koli (applicant) issued by the Executive Magistrate Hatkanangale, on 24/01/1985 wherein his caste is shown as Koli Mahadev, Scheduled Tribe.

II. Unattested copy of duplicate primary school leaving certificate in respect of the applicant wherein caste is shown as Hindu Koli and date of admission is 28/06/1973.

III. Unattested copy of high school leaving certificate in respect of the applicant wherein caste is shown as Koli Mahadev and date of admission is 25/06/1984.

IV. Unattested copy of primary school leaving certificate in respect of Maruti Shankar Koli (applicant's uncle) wherein caste is shown as Hindu Koli and date of admission is 05/06/1950.

V. Unattested copy of birth abstract in respect of Maruti Shankar Dhula Koli (applicant's uncle) wherein caste is shown as Koli and date of birth is 01/02/42.

VI. Unattested copy of birth abstract in respect of Malu Shankar Dhule Koli (applicant's father) wherein caste is shown as Koli and date of birth is 03/03/38.

VII. Unattested copy of dakhala issued by Sarpanch, Grampanchayat Rukadi in respect of the applicant wherein caste is shown as Hindu Koli (mahadev).

VIII. Unattested school record in respect of Babaso Dhanpal Koli (applicant's brother) wherein caste is shown as Mahadev Koli and date of issuance is 20/06/1998."

5. As per the provisions of sub-rule (2) of Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short, the "Rules"), the Vigilance Cell was entrusted to conduct enquiry in the appellant's home, school etc. and an enquiry report was furnished to the Committee on 25.06.2007. In course of the enquiry, the statement of the appellant was recorded and the Enquiry Officer obtained the school records pertaining to the appellant himself as also his Uncle which indicated that they belong to the "*Hindu Koli*" category, which coincidentally is recognised only in the Other Backward Classes category. It was further observed by the Research Officer attached to the Vigilance Cell that the traits, characteristics, customs and traditions as stated by the appellant in course of the home enquiry, are not matching with the traits, customs, etc. of "*Mahadeo Koli*", a recognised Scheduled Tribe category. The copy of the enquiry report was furnished to the appellant for his response and the appellant on 19.09.2007 mainly stated that caste people are residing in various parts of our country. The dialect, the traits, customs and traditions of the same community in various parts of the country is different. The appellant pertinently was also afforded personal hearing by the Scrutiny Committee.

6. The Scrutiny Committee took note of the documents relied upon

by the appellant and also adverted to the judgment in *Kumari Madhuri Patil & Anr. v. Addl. Commissioner, Tribal Development & Ors.*, (1994) 6 SCC 241 and after considering the materials on record concluded that the appellant does not belong to "*Mahadeo Koli*" and invalidated his claim as belonging to the Scheduled Tribe category. In consequence, in accordance with Section 7(1) 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 (for short, the "2000 Act"), the caste certificate issued to the appellant was cancelled and was confiscated.

7. Aggrieved by the adverse conclusion reached by the Scrutiny Committee, the appellant moved the High Court and in the impugned judgment dated 22.01.2010, the learned Division Bench of the High Court noted that one of the pertinent documents relied upon by the Scrutiny Committee for invalidating the caste claim of the appellant pertains to his Uncle, Maruti Shankar and in the year 1950, the caste of the Uncle is noted as "*Hindu Koli*" and not "*Mahadeo Koli*". This being one of the oldest documents available on record, the Court opined that the same would have greater probative value as compared to all other documents relied upon by the appellant and accordingly it was concluded that the finding given by the Scrutiny Committee that the appellant does not belong to the Scheduled Tribe category, not being a "*Mahadeo Koli*", was found to be just and proper and on that basis, the writ petition

challenging the Scrutiny Committee's decision, came to be dismissed.

8. This Court in *Kumari Madhuri Patil* (supra) had the occasion to examine the case of a person claiming to be a "Mahadeo Koli". It noted that the tribe "Koli Mahadev", which is a Scheduled Tribe declared in the Presidential Notification- The Constitution (Scheduled Tribes) Order, 1950, is a tribe and is not a sub-caste. It is a hill tribe, may be like 'Koya' in Andhra Pradesh. The "kolis", a backward class, have different sub-castes, are fishermen by caste and profession and reside mostly in Maharashtra's coastal area. The "Mahadeo Kolis" however reside in hill regions and agriculture, agricultural labour and gathering of minor forest produce and sale thereof is their avocation. Therefore, the cancellation of the social certificate issued by the Executive Magistrates by the Scrutiny Committee was found to be legal. It was also observed in the same judgment that "Kolis" have been declared to be OBC in the State of Maharashtra. Moreover, even prior to independence, the Maharashtra Government declared "Mahadeo Koli" to be criminal tribe as early as 29-5-1933 in Serial No. 15 in List II thereof. In the 1942, Resolution in Serial No. 15 in Schedule B of the Bombay resolution, "Mahadeo Koli" tribe was notified as a Scheduled Tribe. Later in the Presidential Notification- The Constitution (Scheduled Tribes) Order, 1950, "Koli Mahadev" was inserted at Serial No.13. Thereafter, a slight modification was made in that behalf by the Presidential Notification dated 29-10-1956. In the 1976 Amendment Act, there is no substantial change

except removing the area restriction. Thus "*Mahadeo Koli*", a Scheduled Tribe continued to be a Scheduled Tribe even after independence. The Presidential Notification, 1950 also does recognise by public notification of their status as Scheduled Tribes. The assumption of the Division Bench of the Bombay High Court in *Subhash Ganpatrao Kabade vs. State of Maharashtra* case [WP No. 438 of 1985], that "*Mahadeo Koli*" was recognised for the first time in 1976 under Amendment Act, 1976, as Scheduled Tribe was found to be an erroneous assumption in *Kumari Madhuri Patil (supra)*. It was further observed that Presidential declaration, subject to amendment by Parliament being conclusive, no addition to it or declaration of castes/tribes or sub-castes/parts of or groups of tribes or tribal communities, is permissible.

9. In the later judgment in *Anand v. Committee For Scrutiny and Verification of Tribe Claims & Ors.*, (2012) 1 SCC 113, the Court opined that the genuineness of a caste claim has to be considered on a thorough examination of the documents relied upon by the claimant and can be corroborated by the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. The following broad parameters were set out by the Court in verifying the caste claim of a person:

"22(i) While dealing with 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 of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does

not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

10. It was further opined that the burden of proving the caste claim is upon the concerned applicant and he has to produce all requisite documents in support of his claim. The role of the Scrutiny Committee was described as the authority to verify the claim on the basis of the documents relied upon but the Committee is disentitled to gather evidence on its own to prove or disprove any caste claim.

11. In a case where the caste certificate is cancelled, the consequences of such cancellation is provided in *Chairman and Managing Director, Food Corporation of India & Ors. v. Jagdish Balaram Bahira & Ors.*, (2017) 8 SCC 670, where the Court said that the first consequence is the withdrawal of benefits secured on the basis of a claim to belong to a designated tribe, group or class which is held to be invalid and this is a civil consequence which will deprive the concerned applicant of the benefits of a caste certificate which has been cancelled by the Scrutiny Committee. Moreover, Criminal action may also accrue as a consequence to the cancellation of a certificate by the Scrutiny Committee. In the very same judgment in paragraph 48, the Division Bench made the following relevant observation:

"48. ...Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong. The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a

scarce public resource is obtained. The same principle would apply where a candidate secures admission to an educational institution on the basis of a false claim to belong to a reserved category. A candidate who does so causes detriment to a genuine candidate who actually belongs to the reserved category who is deprived of the seat. For that matter, a detriment is caused to the entire class of persons for whom reservations are intended, the members of which are excluded as a result of an admission granted to an imposter who does not belong to the class. The withdrawal of benefits, either in terms of the revocation of employment or the termination of an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained..."

12. In a recent judgment of this Court in *Mah. Adiwasi Thakur Jamat Swarakshan Samiti v. The State of Maharashtra & Ors.* rendered on 24.03.2023 in Civil Appeal No. 2502 of 2022, a three-Judges Bench of this Court opined that the affinity test cannot be conclusive in the matter of determination of the caste status of a person. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other materials on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim.

13. Proceeding on the above declaration of law in *Kumari Madhuri Patil* (supra), *Anand* (supra), *Chairman and Managing Director, Food Corporation of India* (supra) and *Mah. Adiwasi Thakur Jamat Swarakshan Samiti* (supra), even if the affinity test is not essential, there can be no difficulty in accepting that older documents will have higher probative value in the matter of

determination of the caste status of a person. In the instant case, the Scrutiny Committee in determining that the appellant does not belong to the "Mahadeo Koli" category took note of the earliest document pertaining to the appellant's Uncle and Father's birth certificate, not showing as "Mahadeo Koli" but "Koli" and, therefore, the basis for the conclusion drawn against the appellant by the Scrutiny Committee, cannot be faulted.

14. Having considered the fact that the appellant has failed to discharge the burden of proving his caste status before the Scrutiny Committee and the foundation on which the conclusion is reached by the Scrutiny Committee against the appellant, we are of the considered opinion that the High Court rightly rejected the appellant's challenge to the determination made by the Scrutiny Committee against him. In consequence, the appeal is found devoid of merit and the same is dismissed.

15. Pending application(s), if any, shall stand closed.

.....J.
(HRISHIKESH ROY)

.....J.
(MANOJ MISRA)

NEW DELHI;
APRIL 20, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 621/2012

RAOSAHEB DHANPAL KOLI

APPELLANT

VERSUS

GENERAL MANAGER, CANARA BANK & ANR.

RESPONDENTS

([REMAIN IN LIST])

Date : 20-04-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE MANOJ MISRAFor Appellant(s) Mr. Rahul Joshi, AOR
Mr. Abdulrahiman Tamboli, Adv.For Respondent(s) Ms. Hetu Arora Sethi, AOR
Mr. Abhimanyu Verma, Adv.
Mr. Aniradh Bhat, Adv.Mr. Shrirang B. Varma, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Ms. Palak Arora, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
COURT MASTER (SH)(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed order is placed on the file)