

KUMARI APARNA SHRIKANT BHAYE

v.

STATE OF MAHARASHTRA AND ORS.

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AUGUST 24, 1990

[M.H. KANIA AND K.J. REDDY, JJ.]

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Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976—Para 9, Entry 29—Son Kolis—Whether a section of the Scheduled Tribe of Mahadeo Koli.

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The petitioner sought admission to a medical college in the State of Maharashtra on the footing that she belonged to the Scheduled Tribe of Mahadeo Koli and submitted several caste certificates, including her father's Secondary School Leaving Certificate. The Scrutiny Committee, the expert body for determining such claims, rejected her claim on the basis of entries made in 1945 in the register of the Municipal Primary School, where her father had his primary education, which showed that the caste of the petitioner's father was recorded as 'Son Koli'. This decision was upheld by the Additional Commissioner for Tribal Development. The High Court summarily dismissed the petitioner's writ petition.

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In the Special Leave Petition before this Court, on behalf of the petitioner it was contended that the High Court was in error in rejecting the Writ Petition summarily and that the Scrutiny Committee had proceeded on an entirely erroneous basis as the real basis of the petitioner's claim was that Son Kolis were a section of the Schedule Tribe of Mahadeo Koli.

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Dismissing the Special Leave Petition, this Court,

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HELD: Entry 29 of the list of Scheduled Tribes in the State of Maharashtra, appearing in Para 9 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 shows that 'Koli Mahadeo' is a Scheduled Tribe recognised in Maharashtra. In the list of Backward Classes issued by the State, Kolis are recognised as belonging to "other backward classes". Son Kolis are shown as belonging to other backward classes in the list of other backward classes. These documents nowhere support the claim that Son Kolis are a section of Scheduled Tribe of Mahadeo Koli. Though Kolis are described as a tribe in the publication entitled "Transactions of the Bombay Geog-

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A **raphical Society from 1836 to 1838", a perusal of the relevant observations shows that no distinction has been drawn in the said publication between castes and tribes. [2D-F]**

B **Admittedly, Mahadeo Koli is a Scheduled Tribe whereas Son Koli is a caste. The Scrutiny Committee cannot be faulted for placing great reliance on the entries in the register of the primary school where the petitioner's father took his primary education, as at the time when these entries were made there was no reason why he should have made a wrong statement about the caste or tribe to which he belonged. These entries were made in 1945, when there was no special advantage which the Scheduled Tribe of Mahadeo Koli enjoyed over the members of the caste of Son Koli. The certificates relied upon by the petitioner have been rejected by the Scrutiny Committee primarily because these certificates were inconsistent with the entries in the said register of the Primary School relating to the petitioner's father to which the Committee attached great probative value, as it was of the view that they were made at a time when no question of making any manipulation arose.**

C **D The reasons given by the Scrutiny Committee for the rejection cannot be said to be irrelevant or perverse. There is no complaint that the rules of fair play have not been observed by the Scrutiny Committee. [4A-E]**

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 11493 of 1989

E **From the Judgment and Order dated 7.9.1989 of the Bombay High Court in W.P. No. 3762 of 1989.**

Mr. Indira Jaisingh, Tripurari Ray and M.N. Shroff for the Petitioner.

F **V.N. Ganpule and A.S. Bhasme for the Respondents.**

The Judgment of the Court was delivered by

G **KANIA, J. This Special Leave is directed against the judgment of a Division Bench of the Bombay High Court dismissing summarily Writ Petition No. 3762 of 1989 filed by the petitioner.**

H **The petitioner passed the Higher Secondary Certificate (hereinafter referred to as "the H.S.C.") examination held in March 1989, and sought admission to a medical college in Bombay conducted by the Government or one of the Municipal Medical Colleges in the city of**

Bombay on the footing that she belonged to the Scheduled Tribe of Mahadeo Koli. In support of her claim she tendered certain caste certificates. Her application was referred, in accordance with the relevant rules to the Scrutiny Committee, which is an expert body for determination of caste claims, for verifying her claim to belong to the aforesaid Scheduled Tribe. In support of her claim, the petitioner submitted several caste certificates obtained by her. At the hearing before the Scrutiny Committee the petitioner also furnished the Secondary School Leaving Certificate of her father. Her father was requested to furnish his Primary School Leaving Certificate or birth certificate in order to ascertain the correct caste of the petitioner but he failed to produce the same. The Committee, therefore, conducted the necessary inquiries at the Municipal Primary School, Worli, Koliwada, Bombay where the petitioner's father had taken his primary education. That school by its letter dated April 29, 1989, disclosed entries made in register of the said school showing *inter alia*, that the caste of the petitioner's father was recorded as "Son Koli". These entries were made in 1945 when there was no special advantage which the Scheduled Tribe of Mahadeo Koli enjoyed over the members of the caste of Son Koli. It was pointed out by the Committee that these entries are entitled to a very great probative value as they have been made at a time when no question of making any manipulation arose. The certificates relied upon by the petitioner have been rejected by the Scrutiny Committee primarily because these certificates were inconsistent with the entries in the said Register of the Primary School relating to the petitioner's father to which the Committee attached great probative value. The reasons given by the Scrutiny Committee for the rejection cannot be said to be irrelevant or perverse. There is no complaint that the rules of fairplay have not been observed by the scrutiny Committee. It rejected the claim of the petitioner that she belonged to the Scheduled Tribe of Mahadeo Koli. This decision was upheld by the Additional Commissioner for Tribal Development, State of Maharashtra in an appeal preferred by the petitioner. Against the decision the petitioner filed a writ petition in the Bombay High Court challenging the aforesaid decision and that writ petition was summarily dismissed by a Division Bench of that High Court.

We have heard learned counsel for the petitioner who has strongly urged that the High Court was in error in rejecting the writ petition summarily as it is done. We find, however, that it has not been shown how the decision of the Scrutiny Committee or the Appellate decision of the Commissioner for Tribal Welfare discloses any error calling for any interference in a writ petition. The entire controversy

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- A has to be appreciated in the light of the admitted fact that Mahadeo Koli is a Scheduled Tribe whereas Son Koli is a caste. We cannot find fault with the Scrutiny Committee for placing great reliance on the entries in the register of the primary school where the petitioner's father took his primary education, as at the time when these entries were made there was no reason why he should have made a wrong statement about the caste or tribe to which he belonged.

It was sought to be contended by learned counsel for the petitioner that Scrutiny Committee has proceeded on an entirely erroneous basis as the real claim of the petitioner is that Son Kolis are a section of the Scheduled Tribe of Mahadeo Koli. We find, however,

- C that this contention has nowhere been raised before the Scrutiny Committee or before the Commissioner of Tribal Welfare although it does appear to have been raised in the writ petition. It was not open to the petitioner to raise this contention for the first time in the writ petition. Learned counsel drew our attention to the list of the Scheduled Tribes in the State of Maharashtra appearing in Para 9 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. Entry 29 shows that "Koli Mahadeo" is a Scheduled Tribe recognised in Maharashtra. In the list of Backward Classes issued by the State of Maharashtra we find that Kolis are recognised as belonging to "other backward classes". Son Kolis are shown as belonging to other backward classes in the list of other backward classes issued by the State of Maharashtra. These documents, however, nowhere support the claim that Son Kolis are a section of Scheduled Tribe of Mahadeo Koli.
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Learned counsel for the petitioner drew our attention to a publication entitled "Transactions of the Bombay Geographical Society from 1836 to 1838" which has been printed in 1844. In this publication, Kolis are described as a tribe but a perusal of the relevant observations show that no distinction has been drawn in this publication between castes and tribes, and hence, the statements made in the said publication do not lend any support to the claim of the petitioner.

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- G In the result, there is no merit in the special leave petition and it is dismissed. No orders as to costs.

N.P.V.

Petition dismissed.