

(1984) 01 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 1480 of 1983

Abhay Shrawanji Parate

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 27-01-1984

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (1984) MhLj 289

Hon'ble Judges : V. Mohta, J;H.W. Dhabe, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; B.P. Jaiswal, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Mohta, J.—The petitioner Abhay Shrawanji Parate, resident of Umrer in district Nagpur was given a caste certificate dated 22nd June 1982 by the Executive Magistrate, Umrer, certifying that he belongs to a Scheduled Tribe "Halba" as mentioned in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The present petition is directed against the orders of the Director of the Social Welfare and Divisional Commissioner invalidating the said certificate.

2. Undisputed position is that the birth certificate of the petitioner dated 2nd June 1964, his Primary School Leaving Certificate, the Secondary School Leaving Certificate and the 12th standard Junior College Leaving Certificate of the year 1982 describe him as Halba. On the basis of the caste certificate issued by the Executive Magistrate, the petitioner was provisionally admitted in the Government Medical College, Nagpur, in the First year M.B.B.S. course. As per the practice, the matter was referred to the Director of Social Welfare Department, Pune (respondent No. 3) for verification of his caste. After making some enquiry, respondent No. 3 came to the conclusion that the petitioner was not Halba and invalidated the certificate. Being aggrieved by the said decision, an appeal was preferred under Rule 3(10) of the Rules for Admission (1982-83) for

Medical Colleges of Government of Maharashtra framed under Government Resolution No. CBS-1680-53396/499-DB dated 9th October, 1981, before the Divisional Commissioner, Nagpur (respondent No. 2). The respondent No. 2 also held some additional enquiry in which statement of the father of the petitioner was recorded and certain judgments of different High Courts were considered. The decision given by respondent No. 3 was confirmed.

3. We may, in the first place, shortly notice the substance of the reasoning adopted by respondent No. 3 -

- (i) Surname "Parate" is not found in Halba Tribe.
- (ii) Weaving occupation was not followed by Halba Tribe.
- (iii) This Tribe was not found in Nagpur district,
- (iv) Social Workers and Institution referred to by petitioner merely represented "Halba Koshti" and not "Halba Tribe".

The Divisional Commissioner recorded following additional reasons:

- (i) The School Leaving Certificate of the father of the petitioner who is a M.B.B.S. doctor records his caste as "Koshti" and not as "Halba".
- (ii) No effort to correct this certificate was ever made by him and his explanation that Koshti (weaver) represents the profession and not the caste, is not correct.
- (iii) The family showed their caste as "Halba" for the first time in 1964.
- (iv) Following the traditional profession of a particular caste does not make a person belonging to that caste.
- (v) No relationship between the petitioner and those who were held to belonging to "Halba" Tribe by certain judgments of Courts have been established.

It is a common ground that before its amendment by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the Constitution (Scheduled Tribes) Order, 1950 (Part VII-A-Maharashtra-item 5, entry 13) issued by the President of India under Article 342 of the Constitution, only "Halba-Halbi" from Garhchiroli and Sironcha talukas of Chandrapur district, Melghat Taluka of Amravati district and Yeotmal, Kelapur and Wani Talukas of Yeotmal district were specified as Scheduled Tribes. It is by the Act of 1976 that area restriction was removed.

4. Now, the father of the petitioner has made a statement before the Divisional Commissioner that in the year 1964 there was no motive for entering a false caste in the birth register of the petitioner as then the family was not entitled to any benefit of this caste in view of the area restriction. According to him, Koshti was their profession and not the caste and it was this profession which was mentioned in the School Leaving Certificate as his caste. Further he had a meritorious career as a result of which neither necessity nor occasion arose for

claiming any benefit of the caste and consequently no effort was made to have the necessary correction. Some judgments were also placed before the Divisional Commissioner in which it is held that one Madhukar Dekate and one Anna Parate have been held to be belonging to Halba Tribe. These are very old decisions. Affidavits of Madhukar Dekate and Anna Parate have been placed on record in which they admit their relationship with the petitioner. Anna Parate's affidavit shows that his son Prabodh has also been declared as belonging to Halba Tribe even recently by the Madhya Pradesh High Court in Writ Petition No. 1450 of 1981 decided on 21st January 1982. A Government Circular issued by the Social Welfare, Cultural Affairs, Sports and Tourism Department, Bombay, bearing No. CBC-1481/(703)/D-V, dated 31st July 1981 reading as under has also been placed before us:

Government is pleased to direct that until further orders, in so far as Halbas are concerned, the School Leaving Certificate should be accepted as valid for the purpose of the caste.

2. Government is further pleased to direct that the advantages accrued to the Scheduled Tribes under the Constitution will go to the Tribals to the extent of 7% and those going to Halbas who mainly reside in Vidarbha Region and large sections of whom earn their livelihood from weaving will be in addition thereto. Consequently after the selection of candidates belonging to Scheduled Tribes including Halbas is completed, the number of seats in respective educational institution should be increased to the extent of number of selected Halbas so that the Scheduled Tribes who are left out as a result of selection of Halbas are admitted.

By order and in the name of the Government of Maharashtra, Sd/- Assistant Secretary to Government.

It is conceded before us on behalf of the State that this resolution has not been superseded and is still in force. It is against this background that grievance of the petitioner has to be examined.

5. Shri Madkholkar, the learned counsel for the petitioner, placing heavy reliance on the aforesaid circular, has contended that both the respondents Nos. 2 and 3 committed an error in not noticing the said Circular and in not accepting caste mentioned in the School Leaving Certificate as correct. We see considerable force in the submission. It is unfortunate that attention of the respondents was not drawn to the said circular, which has a binding force. In the face of the said Circular it was futile to hold such an elaborate enquiry in the matter. Shri Jaiswal, the learned Assistant Government Pleader, has contended before us that in view of the instructions contained in the subsequent circular bearing No. CBC/1680/65396/(499)/D-V, dated 6th September 1983, the respondents Nos. 2 and 3 were perfectly justified in going behind the said circular of 1981 and to adjudicate upon the question after applying various tests laid down therein. It is not possible for us to accept this contention. Apart from the fact that these

instructions are issued subsequent to the decision of the respondent No. 2, dated 16th May 1983 they are general in nature and cannot have an overriding effect on circular dated 31st July 1981 which is issued with reference to a particular Tribe only. It is nobody's case that the said School Leaving Certificate is not genuine. Indeed, it is backed by the Primary School Leaving Certificate and birth certificate of the year 1964 when there was no motive for entering the incorrect caste.

6. Validity of the caste certificate can be upheld also on other grounds. Even in the guidelines dated 6th September 1983, it is mentioned, inter alia, that normally claim regarding caste should be held valid in case the caste tallies with the School Leaving Certificate. It is further mentioned that decisions on caste claims given in respect of certain blood relationship by the Government, Divisional Commissioner, High Court or Supreme Court should be accepted as valid provided affidavit of relationship is filed. Obvious object behind these guidelines seems to be not to reopen the same question again and again and to avoid conflicts of opinion on this otherwise difficult question of proving one's origin. It is true, as rightly submitted by Shri Jaiswal, that this part of the circular refers only to blood relations of a particular type, namely, brothers, sisters and first cousins but the spirit behind this circular and the evidentiary value of the old decisions in respect of other near relations cannot be ignored. There is no reason to discard the affidavits of Anna Parate and Madhukar Dekate about relationship and they cannot be ignored only because they were not filed earlier. We see no valid justification to reject the explanation of the father of the petitioner about out correcting his School Leaving Certificate.

7. Under these circumstances, the orders passed by respondents Nos. 2 and 3 invalidating the caste certificate dated 22nd June 1982 issued by the Executive Magistrate are set aside and the Caste Certificate mentioning the petitioner as "Halba" is held to be valid. The petition is allowed and the Rule is made absolute in the above terms. No order as to costs.