
(2003) 08 BOM CK 0100
In the Bombay High Court
Case No : Writ Petition No. 2185 of 2003

Abhijit Rajapure

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Citation : (2004) 2 BomCR 766 : (2004) 1 MhLj 361

Hon'ble Judges : R.J. Kochar, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : N.C. Phadnis, for the Appellant; Fulzele, A.G.P. for Respondent Nos. 1 and 3 and P.B. Patil, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Deshpande, J.—Rule. Rule made returnable forthwith. Heard finally Shri N. C. Phadnis, learned counsel for the petitioner, Shri Fulzele, learned A.G.P. for respondent Nos. 1 and 3 and Shri P.B. Patil, learned counsel for respondent No. 2.

2. The petitioner claims that he belongs to "Mala Jangam" scheduled caste. In support of his caste claim, the petitioner placed reliance on document filed at Annexure "P" which is a copy of register of Village Panchayat Committee, Gondi of the year 1939/40. Perusal of the copy of the said register reveals that the caste of the petitioner's father is recorded as "Jangam" and not "Mala Jangam". In the list of Scheduled Castes issued by the President of India in exercise of powers under Article 341, there is entry No. 42 in the State list in regard to "Mala Jangam". The Committee has rejected the caste claim of the petitioner by holding that the petitioner does not belong to "Mala Jangam" caste and as such he is not a Scheduled Caste candidate. By holding so, the committee proceeded to reject the caste claim and confiscated the certificate issued in favour of the petitioner by the Executive Magistrate. We have perused the order passed by the Caste Scrutiny Committee.

3. The learned Counsel appearing for the petitioner has relied on a judgment of

the learned Single Judge of this Court Shri D. G. Karnik in Sarangappa s/o Siddeshwarappa v. State of Maharashtra and Ors. reported in 2002(3) M.L.J. 290 . In the said judgment, the learned Single Judge has held that the entry in regard to Caste "Jangam" is not inconsistent with the claim of the petitioner that he belongs to "Mala Jangam" caste and proceeded to hold that "Jangam" or "Janglu" are synonymous to Mala Jangam. The perusal of the judgment clearly reveals that the Apex Courts' judgments which clinch the issue were not brought to the notice of the learned Judge. In view of the law laid down by the Constitution Bench of the Apex Court in A.C. Lakshmipathy and another Vs. A.M. Chakrapani Reddiar and five others, , we have no doubt that the judgment rendered by the learned Judge is not in tune with the law laid down by the Apex Court. The said judgment is per incuriam. The Apex Court has categorically concluded the controversy. In the conclusions drawn by the Apex Court, in paragraph 34(1), the Court ruled that it is not at all permissible to hold any enquiry or to let in any evidence to decide or declare that any tribe or tribal community or part of or group is included in the general name even though it is not specifically mentioned in the concerned entry. It further held that it is impermissible to hold that a given tribe or sub-tribe or a tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

4. If this be the position in law, the judgment of the learned Single Judge referred to hereinabove does not lay down correct position of law and being per incuriam, is overruled.

5. In the result, the Writ Petition is dismissed. Rule stands discharged. There shall be no order as to costs.