
(2016) 06 BOM CK 0108
In the Bombay High Court
Case No : Writ Petition No. 2692 of 2012

Abhilash Hasrath Savale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 ALLMR 407 : (2017) 2 BCR 50 : (2016) 4 MhLJ 873

Hon'ble Judges : Anoop V. Mohta and A.S. Gadkari, JJ.

Bench : Division Bench

Advocate : Mr. R.K. Mendadkar a/w C.K. Bhangoji and Tanaji Jadhav, Advocates, for the Appellant; Mr. V.N. Sagare, AGP, Mr. C.M. Lokesh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J. (Oral) - The Petitioner has filed this petition thereby challenging the impugned Order passed by the Caste Scrutiny Committee (Respondent No.2) dated 19 January 2012 whereby his caste claim of "Tokare Koli" Scheduled Tribe, has been rejected though there are validity certificate issued by the same Caste Scrutiny Committee, in favour of Petitioner's cousin namely Ganesh A. Sawale dated 06.08.2005 and Rajesh A. Sawale dated 30.04.2008 (sons of real uncle). Both these certificates are part of record, show that the first cousins (paternal side) of the Petitioner have been granted the caste validity certificate being belong to "Tokare Koli" Scheduled Tribe.

2. There is nothing on record to show that the Respondent and/or any Authority have challenged and/or tested the validity of those certificates at relevant time and till this date though time was sought for the same. Last affidavit which is placed on record dated 15 June 2012 filed by the State Government only shows their intention to challenge the same. This Court by an Order dated 29.10.2012 therefore directed the State Government to file affidavit as to why those certificates were accepted and acted upon. There is no such affidavit filed on

record.

3. Even otherwise considering the Judgment of the Supreme Court including Judgment passed by this Court in the case of (1) Apporva Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee & Ors. reported in 2010 (6) Mh. L.J. 401 and (2) Sanjay Bajirao More v. State of Maharashtra & Ors. 2015 (6) Mh. L.J. 822, and other similar reportable of this Court including Mohan Babli Ransing v. State of Maharashtra and Ors. in Writ Petition No.7320 of 2009 dated 6 May 2016, whereby we have accepted the similar contention so far as grant of validity certificates to the paternal side relatives and its effect on the other relative like Petitioners who rely upon the same. This is also in the background that there is no case of fraud and/or misrepresentation made out and/or proved. We are inclined to observe if any case of fraud or misrepresentation is made out by sufficient material and if it is proved, the Respondents are at liberty to initiate appropriate proceeding in accordance with law against the concerned parties.

4. In the present case we are inclined to observe that in case such challenge by the State Government if accepted and/or sustained in favour of the Petitioner's cousins or the Petitioner, they are free to initiate proceeding in accordance with law.

It is therefore clear that in view of the Judgment so referred above and even otherwise considering the law that the paternal side relatives certificates once granted, the other relatives similarly situated are also entitled for the similar benefit including caste validity certificate unless case of fraud or misrepresentation is made out.

5. The learned Tribunal, in our view, therefore though proceeded to deal with the merits of the matter, but failed to take note of the Judgments of this Court and so also the provisions so referred above. Therefore in the interest of justice and to avoid further delay we are inclined to allow the present petition in terms of prayer clauses (a) and (b). However, this is subject to liberty in case the caste validity certificate of the Petitioner and of the cousins are declared bad in law on the ground of fraud or misrepresentation, the State Government is at liberty to initiate the proceeding in accordance with law.

ORDER

6. (i) The petition is allowed in terms of prayer clauses (a) and (b). The prayer clauses (a) and (b) so granted read as under:

"(a) That this Hon"ble Court be pleased to issue Writ of certiorari and/or any other writ, order or Direction on in the nature of certiorari thereby quashing and setting aside the impugned order dated 19-1-2012 passed by the Respondent No.2 committee with further direction to Respondent No.2 committee to issue certificate of validity in respect of caste certificate dated 23-7-2009 issued by the Respondent No.4 competent authority.

(b) That this Hon"ble Court be pleased to hold and declare that the caste

certificate dated 23-7-2009 issued by the Respondent No.4 competent authority in favour of the petitioner is legal, valid and subsisting."

(ii) No costs.