

(2017) 09 BOM CK 0213
In the Bombay High Court
Case No : 25738 of 2017

Ankita Ashok Nimmalwar

APPELLANT

Vs

State of Maharashtra Through its Secretary, Tribal
Development Department, Mantralaya, & Ors.

RESPONDENT

Date of Decision : 25-09-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 09 BOM CK 0213

Hon'ble Judges : Shantanu S. Kemkar, G.S. Kulkarni

Bench : DIVISON BENCH

Advocate : R.K. Mendadkar, C.K. Bhangoji, A.A. Kumbhakoni, Akshay Shinde,
S.B. Kalel

Judgement

1. Rule, returnable forthwith. By consent of the parties, heard finally.
2. The petitioner in this petition under Article 226 of the Constitution of India challenges the order dated 29th August, 2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane (for short "Caste Scrutiny Committee") whereby the caste certificate validity claim of the petitioner belonging to the "Mannervarlu", Scheduled Tribe has been rejected.
3. It is the case of the petitioner that by birth she belongs to "Mannervarlu" tribe, which was notified as Scheduled Tribe under the Act of the Parliament No.108 of 1976. The petitioner was granted a caste certificate dated 7th April, 2007 by respondent no.5 / competent authority, which according to the petitioner was granted after necessary enquiry.
4. As the petitioner was aspiring to pursue higher education, she approached the Caste Scrutiny Committee seeking validity of her caste certificate. In support of her claim for a validity certificate, the petitioner placed on record of the Committee number of documents. The vital documents being school leaving

certificate of the father of the petitioner Mr.Ashok Laxman Nimmalwar, the petitioner's own caste certificate, as also the caste validity certificates granted by the Caste Scrutiny Committee to the petitioner's father, real sister - Archana Laxman Nimmalwar, real brother - Umesh Laxman Nimmalwar and real uncle - Mr.Maruti Laxman Nimmalwar. By the impugned order, the Caste Scrutiny Committee, though has referred to the caste validity certificates granted in favour of the said family members of the petitioner, however, discarded the same on a reasoning that in granting the said validity certificates to the said relatives the Caste Scrutiny Committee had not undertaken an appropriate vigilance enquiry. It was observed that the vigilance cell enquiry has not indicated any documentary evidence prior to 1950. The Caste Scrutiny Committee observed that the school leaving certificate of the petitioner as also the petitioner's father recorded the tribe as "Manervarlu" which is not the in the exact nomenclature as prescribed under the law.

5. Learned counsel for the petitioner in assailing the impugned order would urge that the Caste Scrutiny Committee has passed the impugned order in complete non-application of mind. It is submitted that firstly, the caste validity certificates granted to the father of the petitioner, real brother, real sister and real uncle could not have been completely discarded in view of any justifiable reason. It is submitted that secondly the reason as recorded by the Caste Scrutiny Committee that the petitioner does not belong to "Mannervarlu" tribe, referring only to the vernacular nomenclature used in the school leaving certificate issued to the father, is wholly unjustified, inasmuch as apart from "Mannarvarlu" tribe, there is no other caste of any such nomenclature. Our attention has been invited specifically to the specific averments to this effect made in the petition, namely ground No.(iv) at page no.13, to contend that in the column of tribe as referred to in the school leaving certificate of the father when it records the caste to be "Manervarlu", it would not make any difference, as there is no other caste or tribe of a similar nomenclature, as the school leaving certificate would indicate. It is next submitted that the Caste Scrutiny Committee has completely misinterpreted the requirement of the 1976 Act, which clearly incorporates "Mannervarlu" as Scheduled Tribe for the State of Maharashtra.

6. On the other hand, the learned Advocate General along with Mr.Akshay Shinde, the learned special counsel would oppose this petition on the ground that the vigilance enquiry, which was undertaken by the Caste Scrutiny Committee in granting the caste validity certificates to the petitioner's father, real brother, real sister and real uncle was not appropriately conducted. It is further submitted that the impugned order has taken into consideration all the relevant facts and it was therefore, appropriate for the Caste Scrutiny Committee to pass the impugned order. Learned special counsel has drawn our attention to the report of the Vigilance Cell dated 21st October, 2006, which was considered by the Caste Scrutiny Committee in granting a caste validity certificate to the father of the petitioner. It is submitted that this vigilance report shows that certain documents which are not of the relatives of the paternal side of the petitioner's father were

considered. It is thus submitted that the petition be dismissed.

7. We have heard the learned counsel for the parties. With their assistance, we have perused the impugned order. We have also gone through the caste validity certificates which are issued in favour of the petitioner's father, real brother, real sister and real uncle. We have also perused the report of the Vigilance Enquiry dated 21st October, 2006 conducted by the Vigilance Cell considered by the Scrutiny Committee while granting the caste certificate to the petitioner's father.

8. We may, at the out-set, observe that this is a peculiar case where the Caste Scrutiny Committee has discarded four vital documents viz. caste validity certificates issued by the Scrutiny Committee as granted to the petitioner's father, real brother, real sister and real uncle that they belong to Scheduled Tribe "Mannervarlu". We would not agree with the learned special counsel when he submits that the vigilance report which was undertaken while granting the caste certificate to the father of the petitioner was inappropriate or the vigilance officer did not consider any document from the petitioner's father's paternal side. The submission goes contrary to the report of the vigilance enquiry. The report of the vigilance enquiry clearly indicates that the Vigilance Cell had taken into consideration the caste certificates which were issued to the petitioner's uncle (father's brother) Mr. Maruti Laxman Nimmalwar and sister of the petitioner's father recording that both of them possess certificates belonging to "Mannervarlu" tribe. Learned special counsel is not in a position to point out any other serious deficiency in the vigilance report as undertaken in that regard.

9. As regards the facts of the present case, a perusal of paragraph 8 of the impugned order would clearly indicate that the observations as made therein to discard the four caste validity certificates granted by the Caste Scrutiny Committee are discarded without any justifiable reason. The other reason to reject the claim of the petitioner's description of the tribe / caste as referred is that in the school leaving certificate of the petitioner's father defers from the description / nomenclature as would be required under the law.

10. We are certainly not impressed with the above reasonings of the Caste Scrutiny Committee, as recorded in the impugned order. Merely to say that the vigilance enquiry undertaken while granting a validity certificate to the petitioner's father was casual and not appropriate is not sufficient. There is no discussion whatsoever in the impugned order to justify these reasons. In fact, the vigilance report as we have discussed above, would indicate that the documents from the paternal side of the petitioner's father were taken into consideration. Further there is no comments in regard to the vigilance enquiries as conducted in regard to the validity certificates issued to the other family members, than the father.

11. In our opinion, the approach of the Caste Scrutiny Committee in the present case is totally casual to say the least. The reasoning as set out are thoroughly unjustified to discard the caste claim of the petitioner. The Caste Scrutiny

Committee on the basis of such reasons, as referred above could not have discarded the caste validity certificates granted to four of the near relatives has no basis. In fact we are pains to note that there was no material before the Caste Security Committee which can lead to any inference that each of the vigilance enquiries in cases where the Caste Scrutiny Committee has granted caste validity certificate to the petitioner's father, sister and uncle were in any manner flawed.

12. As regards the description / nomenclature as referred in the school leaving certificate of the petitioner's father, when we asked the learned special counsel to take instructions and make a statement as to whether there was any "Mannarvarlu" caste or tribe in existence, so that it can be said that the petitioner does not belong to the tribe in question, the answer to the learned special counsel was that there is no other "Mannarvarlu" caste as sought to be referred to by the Caste Scrutiny Committee, to reject the claim of the petitioner. If this be the case, the petitioner would be justified in criticizing the observations as made in paragraph 5 of the impugned order, which are purely on the description / nomenclature of the tribe to refer "Mannarvarlu" instead of "Mannervarlu", in vernacular in the school leaving certificate issued to the petitioner's father.

13. Mr.Mendadkar, learned counsel for the petitioner has placed reliance on the decision of the Division Bench in case of Devika S. Gangawane vs. State of Maharashtra (Writ Petition No.7305 of 2014 dated 27th January, 2015) to contend that the Caste Scrutiny Committee in the present case could not have discarded the evidence which was presented in the form of caste validity certificate granted to the petitioner's father, real brother, real sister and real uncle. Mr.Mendadkar would also rely on the decision of the Division Bench of this Court in case of Mohammad Munaf Mohammad Hanif Bedre & Ors. vs. State of Maharashtra & Ors. in Writ Petition No.6614 of 2016 decided on 19th July, 2016. In this decision the Division Bench in paragraph 12 referring to the decision in Apoorva d/o Vinay Nichale vs. Divisional Caste Scrutiny Committee & Ors., 2010 (6) Mh.L.J. 401 has come to the conclusion that the recourse to the affinity test can be one of the test if any other conclusive material was not available. In the present case, in our opinion, there was sufficient material available in the form of caste validity certificate granted to the petitioner's father, brother, sister and the real uncle of the petitioner. Thus the reasons as recorded by the Caste Scrutiny Committee in the impugned order that these four vital documents cannot be considered are completely unjustified in the absence of any material that the said certificates were issued by the scrutiny committee without jurisdiction, or were obtained by fraud or were so palpably illegal that they cannot be accepted/referred in law. In our opinion if such reasoning is accepted which is without there being any basis then the entire sanctity in the whole process undertaken in issuing such caste validity certificates would be lost. The validity certificates issued by following a lawful procedure cannot be tinkered in the manner. The law in this regard is well settled. There is no whisper of any fraud being played by the real relatives of the petitioner to obtain those caste validity certificates.

Further it is also not the case of the respondents that the committee lacked jurisdiction to issue such caste validity certificates to the said near relatives of the petitioner. It is also not the case of the respondents that some other vital documents are discarded by the earlier Caste Scrutiny Committee in granting the caste validity certificates to the said near relatives of the petitioner. (See - Raju R. Vasave vs. Mahesh D. Bhiwapurkar & Ors., 2008(9) SCC 54.

14. In the light of above discussion, the only decision we can take is we allow the present petition. We accordingly quash and set aside the impugned order dated 29th August, 2017 passed by the respondent no.2 - Caste Scrutiny Committee. We direct the respondent no.2 - Caste Scrutiny Committee to grant a caste validity certificate to the petitioner, forthwith, on receipt of an authenticated copy of this order.

15. Rule is made absolute in aforesaid terms. No order as to costs.