

(2020) 11 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 8253 Of 2019

Arshad Faizan Shah

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Citation : (2020) 11 BOM CK 0015

Hon'ble Judges : R. K. Deshpande, J;V.M. Deshpande, J

Bench : Division Bench

Advocate : S.S. Dhengale, I.J. Damle

Final Decision : Disposed Of

Judgement

R. K. Deshpande, J

1. Rule made returnable forthwith. Learned AGP waives notice for respondents. Heard finally by consent of the learned counsels appearing for the parties.

2. This petition challenges order dated 07.11.2019 passed by the District Caste Verification and Scrutiny Committee, Amravati Division, Amravati invalidating the claim of the petitioner for Chhaparband, Vimukta Jati (A). When the matter was listed before us initially on 17.12.2019, we passed an order as under:

"Heard.

Father of the petitioner was granted Caste Validity Certificate on 5.12.2009 by the Scrutiny Committee at Amravati for 'Chhaparband (V.J.N.T.)' category. However, the same Committee has invalidated claim of the petitioner for the same caste by the impugned order. The Validity Certificate in the name of father was produced before the Scrutiny Committee.

Issue notice for final disposal of the matter returnable on 25.2.2020.

Mr. Amit Madiwale, learned Assistant Government Pleader waives service of notice for respondent Nos.1 and 2.

In the meantime, effect and operation of the order dated 16.10.2019 passed by the Committee shall remain stayed."

3. In response to the aforesaid order no reply is filed till this date by the respondents. The petitioner has filed Civil Application No.1177 of 2020 for appropriate order to expeditiously dispose of his writ petition as the petitioner has already appeared for National Eligibility Cum Entrance Test (UG)-2020 and is required to produce the validity certificate for admission. Copy of this civil application is tendered to the respondents on 16.10.2020 but no reply is filed to it till this date.

4. The order passed by the Scrutiny Committee is in exercise of the quasi judicial power recording reasons for rejection of the claim, which cannot be supplemented by additional reasons by filing a affidavit. We, therefore, do not find any reason to grant time to the respondents to file reply in this matter, which has been asked by the learned AGP.

5. Before the Scrutiny Committee the petitioner produced nine documents in support of his claim for Chhaparband, Vimukta Jati (A) category. These documents including at serial No.8 of caste validity certificate issued by Chhaparband, Vimukta Jati (A) to the father of the petitioner. In two documents, the caste is recorded as 'Jogi Fakir' and 'Fakir '. The Committee has, therefore, after taking into consideration these documents, invalidated the claim.

6. It is not in dispute, rather, it is a finding recorded by the Scrutiny Committee that the document at serial No.8 is caste validity certificate issued in the name of the father of the petitioner by the same Scrutiny Committee on 05.12.2009. The documents regarding entries of 'Jogi Fakir' and 'Fakir' are of earlier point of time. Such documents must have been taken into consideration while issuing the caste certificate in the name of father of the petitioner. There is no finding recording by Scrutiny Committee that the father of the petitioner obtained validity certificate by suppressing certain material facts or misrepresentation or by practicing fraud. In the absence of any such finding, the issue is concluded by the Division Bench of this Court in Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others reported in 2010 (6) Mh.L.J. 401.

7. After going through the order passed by the Scrutiny Committee, we find that caste validity certificate issued to the of father of the petitioner dealt with in paragraph 5. It is recorded that such validity certificate was issued in the name of father of the petitioner on the basis of Circular dated 23.03.2011, which has been cancelled on 16.02.2015 and, therefore, validity certificate would not be a valid proof in support of the claim of the petitioner. It is however not disputed that such a validity certificate has not been cancelled by the scrutiny committee till this date. Be that as it may, this aspect has been dealt with by the Division Bench of this Court in its decision in Writ Petition No.5163 of 2018 rendered on 16.10.2019; Ms. Iftesam D/o Rajjak Shaha Vs. The State of Maharashtra and others. Para 6 of the said decision is reproduced below:

"6. It is seen from the Circular dated 16.2.2015 that now the Government has taken its stand in the matter and accordingly has withdrawn the Circular dated 23.3.2011. But, while doing so, the Government also has taken its stand regarding validity certificate already granted to the various persons before 16.2.2015. The Circular dated 16.2.2015 is silent on this aspect of the matter. We are of the view that the State of Maharashtra must decide its further course of action as regards the validity certificate already granted to different persons on the basis of 2006-letter and subsequent Circular. We hope that in future, definite decision would be taken by the State of Maharashtra."

8. In view of aforesaid finding recorded by this Court, the reasons given by the Scrutiny Committee cannot be sustained for the reason that the caste validity certificate in the name of father of the petitioner was issued on 05.12.2009 and cancellation of Circular dated 23.3.2011 was done on 16.2.2015. As has been rightly held by this Court, there is no decision taken in respect of this validity certificate issued prior to cancellation of such certificates. We, therefore, concur such view taken by the Division Bench of this Court.

9. In view of above, this writ petition needs to be allowed and hence we pass an order as under:-

(i) Order dated 16.10.2019 passed by District Caste Verification and Scrutiny Committee, Amravati Division, Amravati on 07.11.2019 is hereby quashed and set aside.

(ii) The petitioner has established the claim for 'Chhaparband, Vimukta Jati (A)' category and the Scrutiny Committee is accordingly directed to issue caste validity certificate to the petitioner within a period of one week from today.

Rule is made absolute in the above terms. No order as to costs.

10. In view of above, the civil application does not survive and accordingly disposed of.