

(2022) 12 BOM CK 0098
In the Bombay High Court
Case No : Writ Petition No. 2193 Of 2022

Arti Sanjeev Baviskar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 22-12-2022

Acts Referred:

Citation : (2022) 12 BOM CK 0098

Hon'ble Judges : Ravindra V. Ghuge, J; Sanjay A. Deshmukh, J

Bench : Division Bench

Advocate : Parag Barde, Mohit S. Shah, S. G. Sangle

Final Decision : Allowed

Judgement

Sanjay A. Deshmukh, J

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. By this writ petition, the petitioner is challenging the order dated 20.12.2021, passed by the Scheduled Tribe Scrutiny Committee, Nandurbar, in case No. 7/499/Edu/102016106552.
3. The learned advocate for the petitioner submits that the petitioner belongs to Tokare Koli caste, which is recognized as Schedule Tribe-28. The Sub Divisional Officer has issued caste certificate in her favour as "Tokare Koli". She applied for verification of the caste certificate. However, respondent No.2, rejected it. Therefore, the legality and, correctness of the said order is challenged by the petitioner.
4. The petitioner is relying upon five validity certificates granted to her relatives. It is also contention of the petitioner that the committee has ignored those certificates and rejected her claim.
5. The learned advocate for the petitioner pointed out the validity certificate

granted to Pratap Waman Baviskar by the Additional Commissioner, Nashik, which was subjected to suo-motu scrutiny by the State Government. The forefather of Pratap only shows the entry as Koli, particularly the birth extract/register. The committee without considering this aspect, invalidated the petitioner's claim.

6. The learned advocate for the petitioner also pointed out the validity certificate of Rasiklal Jagannath Baviskar, dated 10.9.1987. The Scrutiny Committee invalidated the claim of the petitioner which is subjected to an appeal before the Additional Commissioner. The impugned order shows that the caste of Rasiklal's father, Jagannath, is Hindu Koli in the school record. The Additional Commissioner has validated the claim of Rasiklal, illegally.

7. The learned advocate for the petitioner submitted that there are multiple validities of close relatives of the petitioner, the authority has erroneously rejected the validity of the petitioner by relying upon the order passed in the case of Jayashree, who is a distant relative of the petitioner. There are six validities in the family of the petitioner and, therefore, considering the ratio laid down in Apoorva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee, 2010 (6) Mh.L.J. 401, the impugned order deserves to be quashed and set aside.

8. The learned A.G.P. submitted that the burden to prove the validity lies upon the petitioner. The petitioner failed to prove it. Though other validities are granted, those were granted without conducting the detail enquiry. Those can be challenged. The petitioner could not produce the evidence to show that she belongs to Tokare Koli (S.T.) prior to 1950. She also failed to establish the affinity, customs, traits of Tokare Koli community (S.T.). The learned A.G.P. further submitted that Rasiklal approached this Court by filing writ petition No. 1917 of 1996, for challenging the decision of the State Government to review its suo-motu power. This Court quashed and set aside the decision of the Secretary of the Tribal Development Department, dated 27.1.1989.

9. The learned A.G.P. further pointed out the validity certificates of Vandana Jagannath Baviskar (paternal aunt), Kum. Geetanjali Shriram Baviskar, dated 2.4.2005, Mahesh Vasant Baviskar, dated 2.4.2005. It is contended that there are consistent entries in the record of the relatives of the petitioner, as Koli, right from 1912 till 1979. Thus, the earlier validations were not on the basis of appreciation of evidence on merits but rather on some other considerations, which need a detailed probe and the committee in its wisdom can take a different view. The learned A.G.P. has pointed out page 122 of the paper book, which shows consistent record of caste as Koli, which is a testimony of glaring evidence starting from 1912 to 1977.

10. The learned A.G.P. relied upon the judgment of Hon'ble Supreme Court in the case of Raju Ramsing Vasave vs. Mahesh D. Bhivapurkar and others, reported in 2008 (9) SCC 54, wherein the Hon'ble Supreme Court, in para 20, has observed

as under:-

"20.Where factual foundation arrived at by a committee authorised in this behalf concludes that a person is not a member of the Scheduled Tribe would remain operative unless set aside by a superior court. The judgment of the High Court in favour of the respondent No. 1 was rendered on a wrong premise. The claim of the respondents may be that he belonged to the Halba tribe but, therefor, no factual foundation was placed before the High Court. The High Court relied solely on its earlier decision to hold that Koshti would come within the purview of the Scheduled Tribe of Halba or Halbi. The decision was rendered in 1988. The records maintained by the school where the respondent studied were not placed before the High Court. Only when the Caste Scrutiny Committee, a statutory committee, proceeded to enquire into the matter, the truth came out.

We do not mean to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another Committee while examining the case of other members of the family at some details. If it is found that in granting a certificate in favour of a member of a family, vital evidences had been ignored, it would be open to the Committee to arrive at a different finding."

11. The learned A.G.P. further relied upon *Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others*, (2011) Mh.L.J. 919 in which law is laid down that entries in the pre- constitutional documents have more probative value.

12. The learned A.G.P. also relied upon *Bhagwan Vithuji Nanaware vs The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli and others*, in PIL No. 11 of 2016 wherein this Court has observed as under:-

"By no stretch of imagination, the ratio in the case of *Apoorva d/o. Vinay Nichale* (supra) could be said to be holding that even when validity is granted to the candidate without following the procedure prescribed i.e. Vigilance Cell etc; even in such cases, the kith and kiln of a person who is granted validity, such person should also be granted Validity. The Division Bench in the case of *Shweta Ramlal Ghunavat* (supra) though has referred to the earlier Judgment in the case of *Apoorva d/o. Vinay Nichale*, (supra), the ratio laid down therein is that when the Validity Certificate is granted without following the procedure as prescribed by law, then merely because validity is granted to the family member of a candidate, it would not bind the Members to grant validity to other members of the family. It could thus be seen that if the Authorities correctly apply the law, there should be no confusion in their minds. When the validity is granted to one of the members of the family after entire procedure was followed including Vigilance Cell, home inquiry etc., then again requiring the brother, sister, father

and mother etc. of such a candidate to go through the same procedure would unnecessarily burden the work of the Committee, inasmuch as the material to be considered against the members of the family would be the same.

However, if on erroneous presumption or erroneously construing the documents and without undergoing the process of scrutiny, vigilance etc. validity is granted to a member in the family, then such a Validity Certificate will not ipso facto entitle other members of the family to claim Validity Certificate on the basis thereof. In such a case, the Committee will be fully justified in holding de-novo enquiry if it is found that the claim of such candidate is not supported by documentary evidence and there are contra documents available in denying the claim of such a candidate."

13. The learned A.G.P. submitted that the petitioner relies upon the order passed in writ petition No. 6653 of 2022 in the case of Sunil Chagan Baviskar vs. State of Maharashtra and others, which is based on earlier order passed in writ petition Nos. 1703 of 1993 and 1917 of 1996, for which sufficient justification was not given. The learned A.G.P. submitted that the petitioner cannot seek any parity with illegal order passed in respect of Vandana Jagannath Baviskar (paternal aunt), Kum. Geetanjali Shriram Baviskar, dated 2.4.2005, Mahesh Vasant Baviskar, dated 2.4.2005, Pratap Waman Baviskar and Rasiklal Jagannath Baviskar.

14. The learned A.G.P. lastly relied upon the judgment of the Hon'ble Supreme Court in the case of Col. (Retd) B.J. Akkara vs. Government of India 2006 (11) SCC 709, wherein the Hon'ble Supreme Court, in para 25 observed as under:-

"25. A particular judgment of the High Court may\ not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a 'pick and choose' method only to exclude petitioners on account of malafides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The Administrative Law principles of legitimate expectation or fairness in action are also not attracted.

15. We have considered the rival submissions of the respective parties. We have perused the impugned order and the petition paper book. The Scrutiny Committee has granted validities to the following six relatives of the petitioner:-

i) Geetanjali Shriram Baviskar, paternal cousin aunt,

- ii) Mahesh Vasant Baviskar, the paternal cousin uncle,
- iii) Vandana Jagannath Baviskar real aunt,
- iv) Rasiklal Jagannath Baviskar, real uncle,
- v) Rasiklal has got the status ratified by this Court and
- vi) Pratap Waman Baviskar, cousin grandfather.

16. The Scrutiny Committee has relied upon the rejected claim of Jayashree, who is distant relative of the petitioner. The petitioner's contention is not rebutted by any other evidence. The committee ignored that there were six validities in the family of the petitioner, as quoted above. The final orders of this court were ignored and the incorrect reasoning and findings are given. Some of the members of the family will have the status of Tokre Koli and they will get consequential benefits of such social status, but others, including the petitioner, would be deprived of such benefits, which is inequitable. The coordinate Bench of this Court, Principal Seat at Bombay, vide judgment dated 15.3.2022, in writ petition No. 11617 of 2017, in paragraph Nos. 4 and 5, has observed as under:-

"4. It may be stated here that caste or tribe validity certificate granted to any person is a conclusive proof of the social status of that person and it confirms the genuineness of the social status, whether caste or tribe, claimed by that person. A which stands as a conclusive proof for one person also stand as a conclusive proof of the social status of person, if such other person is a paternal relative of the person possessing the validity certificate except in a case the validation of caste or tribe certificate is vitiated by fraud, misrepresentation of facts or suppression of facts.

5. There is a rationale in this approach. In most parts of India, the families are organized on patriarchal basis and follow a patrilineal mode of succession. In such families, members take same caste or belong to same tribe as that of their ancestor traced patrilineally. In such a family, therefore, the relatives cannot be the members of different caste or tribes and must be considered to be in law as having same caste or tribe or community to which their common ancestor from paternal side belonged. It, therefore, appeals to reason that the validity certificate granted to any relative from the paternal side would equally constitute a conclusive proof for the social status of another member of the family, immediate or extended, from the paternal side except in circumstances noted above. This is the law laid down by the Hon'ble Supreme Court in the case of Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Ors. (2008) 9 SCC 54, which has been followed by the Division Bench of this Court in the case of Apporva d/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and Ors. 2010 (6), Mh.L.J.401."

17. Unless and until there is material to show that the tribe certificate was obtained by committing fraud or by misrepresentation or by suppression of facts, the validity certificate granted to any relative from paternal side of the petitioner

would constitute a conclusive proof of social status of another member of the family. We are of the view that respondent No.1 ought to have accepted the validity certificate issued as per the order of this Court as a reliable proof of the petitioner's claim. The committee failed to consider this aspect and, therefore, the order passed by the Committee deserves to be quashed and set aside. Therefore, this writ petition deserves to be allowed.

18. In view of the above, writ petition is allowed. The impugned order dated 20.12.2021, passed by the Scheduled Tribe Scrutiny Committee, Nandurbar, in case No. 7/499/Edu/ 102016106552, is quashed and set aside. Respondent No.2 Scrutiny Committee is directed to issue validity certificate to the petitioner as she belongs to Tore Koli- S.T., within one month from today.

19. Rule is made absolute in the above terms.