
(2015) 03 BOM CK 0261

In the Bombay High Court

Case No : Writ Petition No. 12179 of 2013

Arunsing Venkatsing Gaud

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Citation : (2015) 4 BomCR 634

Hon'ble Judges : Anoop V. Mohta, J;K.R. Shriram, J

Bench : Division Bench

Advocate : C.K. Bhangoji and Helen Koli Mandlik i/b. R.K. Mendadkar, for the Appellant; A.I. Patel, A.G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J—Rule made returnable forthwith. Heard finally by consent of the parties. The petitioner has claimed belonging to "Rajput Bhamta" (Vimukta Jati), inspite of various documents on record, including School Leaving Certificate dated 4 May 1967 of his father referring to caste "Hindu Bhamta", wherein the date of joining the school is 15 April 1942 and the date of leaving the school is 29 August 1945. The birth record of the petitioner's father, item No. 8, in the list noted by the Scrutiny Committee, the caste is shown as "Rajput Bhamta". The petitioner's first cousin's Caste Certificate dated 12 February 2009, has been relied upon in support of the caste claim of "Rajput Bhamta" by relying upon the term "relative" as provided in the Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short, "the Caste Certificate Rules"). The definition "relative" reads as under:

"(h) "relative" means a blood relative from paternal side of the applicant as per the genealogy except Nomadic Tribes or any particular caste as notified by the Government from time to time;"

2. The petitioner has also relied upon the judgments of this Court, including (Siddheshwar S/o. Ramkisan @ Ramkrushna More Vs. The Divisional Caste Certificate Scrutiny Committee and Ors), (Writ Petition No. 326 of 2015, dated 30 January 2015) (Nagpur Bench) and other connected matters whereby, it is observed that:

"11. We have ample experience of the Scrutiny Committee, time and again it is found that in spite of remand and in spite of direction by the Court to consider the validity certificate of the blood relatives, the Scrutiny Committee goes on repeating the same orders and goes on invalidating the claims of the petitioners by ignoring not only the validity certificate granted in favour of the close relatives, but also in ignorance of the law laid down by this Court in the case of Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medical Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences, (2011) 2 BomCR 824 cited supra. In that view of the matter, we do not want another exercise to be done by the respondent Scrutiny Committee, so as to compel the petitioners to have another round of litigation before this Court. We have already discussed herein above as to how the claim of all the three petitioners is substantiated by the documents placed on record, the validity certificates given in favour of their close relatives and also in view of the reports of the Vigilance Cell. In that view of the matter, we find that the petitions deserve to be allowed."

3. After considering the rival contentions, including the finding so given by the Scrutiny Committee based upon the documents so placed on record by the petitioner, we are not inclined to grant the certificate of "Rajput Bhamta" so prayed by the petitioner, in the facts and circumstances of the case. This is also for the reason that the father's caste needs to be the caste of son and/or daughter and therefore, inspite of the existence of father's documents, the reliance and/or submission made by the learned Counsel appearing for the petitioner based upon the cousin's certificate, in our view, is unacceptable. The Scrutiny Committee, also in view of the settled position of law and the directions so issued, from time to time by this Court including so referred above, failed to consider the father's documents for the reason which are not sufficient to deny the caste claim. The submission of the learned Counsel appearing for the petitioner based upon the cousin's certificate also cannot be accepted, as the findings need to be given by the Scrutiny Committee based upon the materials/ documents placed on record and specifically of the father of the petitioner. The concept "relatives", in the present facts and circumstances, cannot be read and/or interpreted to mean that inspite of the father's certificate, the Scrutiny Committee and/or the petitioner-son can insist to rely upon the caste related document of other relatives. In absence of any documents from the father's side, in a given case, the document/certificate from the paternal side of the petitioner, as defined above, may be utilized. We are concerned with the situation where, there are father's documents/certificate on record. The Scrutiny

Committee therefore, required to consider those documents and pass order in accordance with law, as referred above.

4. The submission that the petitioner's claim be allowed in view of the orders so passed above, is not acceptable. However, we are inclined to remand the matter for reconsideration for the above reasons.

5. The petitioner is in service since 1987. Therefore, this Court, by order dated 3 February 2014, protected his services by granting ad interim relief in terms of prayer Clauses (c) and (d). The interim relief, therefore, needs to be continued till the disposal of the caste claim. The Scrutiny Committee to decide the same, as early as possible by giving opportunity to all the concerned. Resultantly, the following order:

ORDER

- a) Impugned order dated 22 November 2013 is quashed and set aside.
- b) The matter is remanded back for reconsideration.
- c) The Scrutiny Committee to reconsider the caste claim of the petitioner, in accordance with law, and decide the same, as early as possible, preferably within 8 months from today.
- d) Interim order granted by this Court on 3 February 2014 to continue till the disposal of the Caste claim of the petitioner and four weeks thereafter, if the adverse order is communicated to the petitioner.
- e) Writ petition is accordingly allowed. All points are kept open.
- f) Rule made absolute accordingly.
- g) There shall be no order as to costs.