
(2017) 02 BOM CK 0125
In the Bombay High Court
Case No : Writ Petition No. 8759 Of 2015

Bharat Dattatray Chaudhari

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Citation : (2017) 2 AIRBomR 700 : (2017) 2 ALLMR 455 : (2017) 2 BCR 658

Hon'ble Judges : R.M. Borde and A.S. Gadkari, JJ.

Bench : Division Bench

Advocate : Mr. Y.S. Jahagirdar, Senior Counsel along with Mr. R.S. Apte, Senior Counsel i/b Mr. Sagar Ambedkar, Advocates, for the Petitioner; Mr. P.P. Kakade, Additional Government Pleader, for the Respondent Nos. 1 to 3; Mr. Manoj Badgujar i/b Mr. A.P. Kulkarni, PMC, for the Respondent No. 4

Final Decision : Allowed

Judgement

Per R.M. Borde, J. (Oral)- Rule. Rule is made returnable forthwith. Respondents waive service. By consent of parties, Petition is taken up for final disposal at the stage of admission.

2. Petitioner claims to be belonging to Kunbi Caste which is included in Other Backward Category. Petitioner is objecting to the decision rendered by the Divisional Caste Scrutiny Committee No.3, Pune dated 13.08.2015, directing invalidation of the Caste Certificate issued to the Petitioner. Petitioner obtained a Caste Certificate from the Sub-Divisional Officer, Bhore Sub-Division, Pune containing certification that he is a member of Hindu Kunbi Caste which is included in Other Backward Category. The Caste Certificate issued to the Petitioner was referred for verification to Divisional Caste Scrutiny Committee since the Petitioner contested elections to Municipal Corporation in the year 2012 as against the seat reserved for Other Backward Category. The Scrutiny Committee, on receipt of the proposal directed investigation through the Vigilance Cell. The Vigilance Cell constituted under the provisions of the Act conducted a detailed inquiry and submitted its report to the Committee on

24.01.2012. The Vigilance Cell submitted its report on examination of documents furnished by the Petitioner as well as on the basis of scrutiny of the original record and also after recording the statement of near relations of the Petitioner and the persons residing in the locality. Report of the Vigilance Cell supports the contention raised by the Petitioner. The Scrutiny Committee forwarded the report of the Vigilance Cell to the Petitioner, calling upon him to submit his comments. On receipt of the comments from the Petitioner in respect of the Vigilance Inquiry Report, the Scrutiny committee, after recording evidence and after extending an opportunity of hearing to the Petitioner, was satisfied as regards the genuineness of the claim of the Petitioner and, as such, directed validation of the Caste Certificate issued in favour of the Petitioner.

3. Respondent No.5 herein, who had contested elections to the Municipal Corporation opposing the candidature of the Petitioner, objected to the validation certificate issued to the Petitioner by Scrutiny Committee by presenting Writ Petition to this Court bearing No.2869 of 2013. It was the contention of the objector that the order passed by the Scrutiny Committee does not contain any reasons to support the conclusion. On consideration of the objection raised by the objector i.e. Respondent No.5, this Court was pleased to direct quashment of the validation certificate and remitted the matter for reconsideration to the Scrutiny Committee. After remanding of the matter to the Scrutiny Committee, the Committee once again called for the Report of the Vigilance Cell. The Vigilance Cell conducted local inquiry and tendered its report. Petitioner was directed to submit his reply in respect of the objections raised by the Scrutiny Committee to the report tendered by the Vigilance Cell. Petitioner tendered his explanation to the Scrutiny Committee on 28/10/2014. After considering the Report tendered by the Vigilance Cell, explanation tendered by the Petitioner in respect of objections raised by the Scrutiny Committee as well as on consideration of the objections raised by Respondent No.5 and on perusal of the documentary evidence produced by the Petitioner before the Committee for substantiating his claim, the Scrutiny Committee arrived at a conclusion that the Petitioner has failed to substantiate his claim and by order dated 13.08.2015 directed invalidation of the Caste Certificate issued to the Petitioner.

4. Petitioner contends that the Scrutiny Committee has not considered voluminous documentary evidence produced by him and has passed the order in casual manner. Petitioner, in order to substantiate his contention, placed on record more than 50 documents. The documents listed at Serial Nos. 6 to 46 in the Chart recorded in the order substantiate the contention of the Petitioner that he is a member of Kunbi Caste which is included in the Other Backward Category. Documents placed on record are the entries in the Birth and Death Register, which date back to 1886 and those entries are concerning ancestors/blood relations of the Petitioner. Documents at Serial Nos. 6 to 46 have been discarded by the Scrutiny Committee merely on the ground that the Petitioner has failed to substantiate his relations with the concerned persons. Petitioner has placed on record genealogy which is supported by his affidavit. One Bala Sai Kom was the

great grandfather of the Petitioner, whereas Tukaram Salu and Sakharam Salu were the great grandfathers of the Petitioner. One Salu was father of Tukaram and Sakharam, great grandfather of the Petitioner. Salu had a brother by name Kalu who died in 1899. Kalu had two sons by name Ananda and Manaji. Documents at Serial Nos. 6, 7, 8, 9, 10, 11, 12 upto serial No.21 relate to the members of the Branch of Kalu. Document at Serial No.23 is the entry in the Birth and Death Register of Tukaram Salu Chaudhari. His caste is recorded as Kunbi in the Register which is prepared in the year 1886. Similar is the case in respect of document at Serial No.26 which relates to entry in the Birth and Death Register concerning Bala Tukaram Chaudhari who was blessed with a son in the year 1914. Bala Tukaram Chaudhari was the great grandfather of the Petitioner. One Sai Kom Bala Tukaram Chaudhrai who was the great grandmother of the Petitioner died in 1919 and entry in respect of her death which has been recorded in the Birth and Death Register is placed on record at Serial No.29. There are old entries in respect of grandfather and great grandfather and great grandfather and his ancestors and they have been placed on record and there is consistent entry in respect of their caste as Kunbi. Petitioner contends that he has established his relationship by tendering relevant documentary evidence on record, however, Scrutiny Committee has not made efforts to refer to these documents. Petitioner has presented a compilation of documents which contains old revenue entries in respect of agricultural properties belonging to the family and the entries are recorded in modi language and date back to preindependence period. The Scrutiny Committee ought to have considered the evidence in the form of revenue entries which further establish his relationship with his ancestors and the document holders.. Petitioner has invited our attention to an old entry recorded in the Birth and Death Register maintained by the Revenue Department during the year 1872. The relevant entry relates to his great grandfather by name Salu Bin Balaji Chaudhari who died on 1st May, 1872. The relevant Register records the entry in respect of his caste as Kunbi. Similarly, there is record in the form of Birth and Death Register of the year 1886 wherein there is entry in respect of Birth and Death concerning Petitioner's great grandfather Bala Tukaram Salu Chaudhari and his date of birth is recorded as 14.07.1886. Copies of documents issued to the Petitioner are of the year 2011. Relevant entries are in modi language and translated copies are placed on record. It has been contended before the Caste Scrutiny Committee that the relevant record is in torn condition and, as such, the claim of the Petitioner based upon two entries does not hold good. The Scrutiny Committee proceeded to draw adverse inference against the Petitioner on consideration of the record in respect of the present condition of the original documents. Petitioner was issued, at the relevant time i.e. in 2011, certified copies of the documents duly verified by Tahsildar, Purandar, District Pune. An Affidavit of Tahsildar, Purandar, District Pune is placed on record of the instant Petition. It is recorded by Tahsildar in his affidavit that record of Birth and Death is kept by the Office of Tahsildar since prior to 1872. It is further recorded that by efflux of time and as a result of handling of the record at may occasions, substantial damage is caused to the

record. It is further recorded that in the year 2011, at the time of issuance of the certified copy of the relevant entry at Serial No.19, the record was in proper condition. However, when the certified copy of the said record was asked for in 2013, the record containing Entry No.19 was partially torn and, as such, certified copy was given certifying accordingly. It is further recorded that it is very difficult to preserve the old record and the quality of the old papers is also in very bad condition.

5. It will have to be concluded that in the year 2011 when the certified copy was issued, record was in proper condition and on perusal of the original entry, certificate came to be issued. There is no reason to disbelieve the statement of Tahsildar who is a Gazetted Officer who issued the certified copies which are placed on record. If at all any doubt is raised in respect of the statement made by Tahsildar, such doubt can be cleared by directing examination and cross-examination of the concerned Officer during the course of inquiry. On perusal of the order passed by the Scrutiny Committee, it is noticed that the Committee has not considered voluminous documentary record produced by the Petitioner. The Committee proceeded to discard almost 30 documents cursorily observing that the Petitioner has failed to establish his relationship with the concerned persons in respect of whom the entries find place in old record showing them as belonging to Kunbi Caste. The Scrutiny Committee has dealt with the case in a very casual manner. There are no cogent reasons recorded for discarding the claim of the Petitioner.

6. For the reasons recorded above, we are of the considered opinion that proper scrutiny in respect of the claim raised by the Petitioner deserves to be conducted. The Scrutiny Committee shall have to be directed to consider and scrutinize documentary evidence produced by the Petitioner and also extend an opportunity to the Petitioner to establish his relationship with the persons/ancestors in whose favour entries in respect of their Caste find place in old document of their belonging to Kunbi Caste.

7. Writ Petition is thus allowed. The order impugned in this Petition passed by the Scrutiny Committee on 13.08.2015 directing invalidation of the Caste Certificate issued to the Petitioner is quashed and set aside and the matter stands remitted to the Scrutiny Committee for reconsideration. The Scrutiny Committee shall, after extending an opportunity of hearing to the Petitioner as well as the objector, if any, and after receiving the evidence that may be led by parties, reconsider the claim of the Petitioner in observance of the procedure prescribed under law. The Scrutiny Committee shall take appropriate decision in the matter as expeditiously as possible, preferably within a period of six months from today. Rule is accordingly made absolute. There shall be no order as to costs.