
(2015) 05 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 9553 of 2013 and Civil Application No. 11738 of 2014

Chandrashekar

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Citation : (2015) 5 ABR 216 : (2015) 6 ALLMR 703 : (2015) 6 BomCR 71 :
(2016) 1 MhLj 94

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

Advocate : P.S. Pawar, for the Appellant; D.V. Tele, AGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

2. The petitioner by way of this petition challenges the order dated 30th October, 2013 issued by the Caste Validity Committee No. 1, Nashik Division, Nashik in File No. NAVI/JAPRAPPS/GACHANDDA/MAHAR/INVALID/ 2013-14/2950/Nashik invalidating the claim of the petitioner.

3. It is the contention of the petitioner that the entry in the revenue record i.e. Village Form No. 14 of the year, 1938 shows that the caste of petitioner's grandfather as "Mahar" (SC-37). In the year, 2001, the petitioner had taken admission in primary school of Zilla Parishad and his school leaving certificate shows his caste as Hindu Mahar. The school leaving certificate of the petitioner after passing 10th standard shows his caste as Hindu Mahar. It is contended that the caste certificate was issued in favour of the petitioner on 10.6.2011 as belonging to Mahar caste. The petitioner has been granted admission to 1st Year Engineering course at Mumbai for the year, 2013-14. On 17.6.2012, the respondent No. 2 committee received the case of the petitioner for the purpose

of issuance of caste certificate.

4. It is contended that the petitioner was required to give an undertaking that the caste validity will be submitted on or before 30.11.2013. The Vigilance Cell of the respondent No. 2 after verifying the revenue records and school records of the petitioner and his father and after verifying from the concerned authorities, who have issued documentary evidence in favour of the petitioner, submitted its report to the respondent No. 2 committee on 30.6.2013. The respondent No. 2 committee has invalidated the claim of the petitioner vide order dated 30.10.2013. Hence, this petition.

5. The learned Counsel for petitioner submits that, the committee has overlooked the certificate of the father of the petitioner as well as the school leaving certificate of the petitioner which show that in those certificates caste of the petitioner and his father has been mentioned as Mahar. It is further submitted that the committee has not considered the photographs of the marriage of the petitioner's father and mother, which show that the ceremony was performed as in Mahar caste and not as Christian. Therefore, the conclusion drawn by the committee on the basis of Vigilance Cell report is not proper. It is also ignored by the committee that father of the petitioner during the course of visit of the Vigilance Cell, specifically denied that the petitioner's family follows traits of the Christian community. It is submitted that in the revenue record of his grandfather, in caste column "Mahar" is mentioned and said document is of the year, 1938 and the same has been certified by the Tahsildar. However, the committee has not considered the said document and reached to erroneous conclusion thereby invalidating claim of the petitioner that he belongs to Mahar caste. The counsel for the petitioner also invited our attention to the copies of the documents and submits that the petition deserves to be allowed.

6. The learned Counsel for the respondent committee relying upon the findings recorded by the committee, submits that the committee has considered the documentary evidence and also Vigilance Cell report and reached to the conclusion correctly and, therefore, this Court may not interfere with the findings recorded by the respondent / committee.

7. We have given careful consideration to the submissions of the learned Counsel for the petitioner and learned AGP for respondents. With their able assistance, perused the pleadings and grounds taken in the petition, annexures thereto including the impugned decision of the committee and also original record made available for perusal by the learned AGP for the respondent Committee.

8. Upon careful perusal of the findings recorded by the respondent / committee, it appears that the committee has not considered the evidentiary value of the documents placed on record by the petitioner. It appears that, apart from the documentary evidence, during the visit of the Vigilance Cell, the petitioner and also his relatives and other persons from the community have stated that the petitioner and his family belong to Mahar caste. It is true that the father of the

petitioner stated during the inquiry that his name is Danial. However, he stated that he is named by his father. He also stated that his father used to go into the Church during his childhood but, mother did not go to the Church. It further appears that marriages in the family of the petitioner have been solemnized / performed as per the customs of Hindu Mahar caste. Merely because, the petitioner or his family members occasionally used to go to the Church for prayer, that itself cannot be a ground to hold that the petitioner or his father have converted into Christianity. It appears from perusal of the documents placed on record and in particular, document in respect of grandfather of the petitioner namely, Ankush Nathu, that the said document shows that son was born to said Ankush Nathu in the year, 1937 and in said document, caste is mentioned as Mahar. It appears that in the revenue record of 1938 in respect of grandfather of the petitioner, caste is mentioned as Mahar. Upon perusal of other documents on record, it appears that in caste column, it is mentioned as "Hindu Mahar" and "Mahar". It appears that the respondent / committee has not considered the documents placed on record by the petitioner and its evidentiary value properly and by assigning cryptic reasons, invalidated the caste claim of the petitioner. The respondent / committee recorded the findings / reasons as under:

9. Upon careful perusal of the aforesaid extracted portion from the judgment of the committee, it is abundantly clear that the inference drawn by the committee that the applicant / petitioner belongs to Christian religion only on the basis that during the visit of Vigilance Cell, it was found that there were rosary having photograph of Yashu Christ, hanging on the wall hook in the house of applicant.

10. The Supreme Court in the case of S. Anbalagan Vs. B. Devarajan and Others, AIR 1984 SC 411 : (1983) 2 SCALE 849 : (1984) 2 SCC 112 : (1984) 1 SCR 973 : (1984) 16 UJ 257 held that ordinarily a person who had earlier embraced another religion regains his caste, unless the community does not accept him. For reconversion to Hinduism no particular ceremony such as expiatory rites need be performed, unless the practice of the caste makes it necessary. In fact the practice of caste is so deep-rooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If such a convert becomes Hindu he will revert to his original caste. This appears to be particularly so in the case of members of the Scheduled Castes, who embrace other religions in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity. No different principle will apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion.

Yet in another judgment in the case of M. Chandra Vs. M. Thangamuthu and Another, AIR 2011 SC 146 : (2010) 10 JT 315 : (2010) 9 SCC 712 : (2010) 11 SCR 38 : (2010) AIRSCW 6362 while considering the somewhat similar fact

situation like the one in the present petition, the Supreme Court held that in order to claim benefits of reservation under the Constitution (Scheduled Castes) Order, 1950, a person must establish that the caste to which he belongs is notified in the Presidential Order and he is not professing a religion different from the Hindu, the Sikh or the Buddhist.

In case of Kodikunnil Suresh @ J. Monian Vs. N.S. Saji Kumar etc. etc., (2011) 6 JT 83 : (2011) 3 RCR(Civil) 194 : (2011) 6 SCALE 70 : (2011) 6 SCC 430 : (2011) 7 SCR 640 : (2011) 5 UJ 2915 , the Supreme Court held that appellant therein was required to plead and lead evidence that he was a member of the Cheramar caste and after his reconversion he was accepted by the members of the Cheramar caste. So long as he was pleaded and adduced reliable evidence to show that he was originally a member of the Cheramar caste and after his conversion has been accepted back as a member of the Cheramar caste, the Court cannot throw out his case only on the ground that he, did not know the thin distinction between the Cheramar and Pulayan castes.

11. If the findings of the committee are carefully perused, the finding of fact recorded by the committee that the applicant i.e. petitioner herein is a Christian by religion, is without any basis and said finding is perverse inasmuch as, there is no documentary evidence on record which would suggest that the petitioner professed Christianity by way of conversion. The committee has not kept in view the law laid down by the Supreme Court in the afore-mentioned authoritative pronouncements and proceeded to invalidate the claim of the petitioner only on the basis of Vigilance Cell report.

The Supreme Court in the case of Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, (2011) 13 JT 82 : (2011) 12 SCALE 446 , held in paragraph 22 of the judgment, thus:

"The genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral

evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

12. Therefore, the committee ought to have considered the documentary evidence and should have placed greater reliance on pre-Independence documents which would furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In the aforementioned judgment, the Supreme Court observed that the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim. However, in the present case, it appears that the findings recorded by the committee are only on the basis of Vigilance Cell report excluding the evidentiary value of the documents placed on record by the petitioner.

13. In that view of the matter, we are of the opinion that the impugned decision of the committee deserves to be quashed and set aside by giving further directions to the committee to reconsider the caste claim of the petitioner.

14. In the result, writ petition is allowed. The order dated 30th October, 2013 issued by the Caste Validity Committee No. 1, Nashik Division, Nashik in File No. NAVI/JAPRAPPS/GACHANDDA/MAHAR/INVALID/ 2013-14/2950/Nashik invalidating the claim of the petitioner, is quashed and set aside. The respondent No. 2 committee is directed to consider the caste claim of the petitioner afresh, as expeditiously as possible and preferably, within six months from today.

It is needless to observe that the committee shall give full opportunity to the

petitioner and keep in view the relevant provisions / procedure and the averments mentioned in the judgment of the Supreme Court while deciding the caste claim. Rule is made absolute in the above terms with no order as to costs. Petition stands disposed of.

So far as civil application is concerned, the order dated 28th November, 2014 passed in Civil Application No. 11738 of 2014 in Writ Petition No. 9553 of 2013 is confirmed and made subject to outcome of the decision of the respondent No. 2 committee. Application stands disposed of.