

(2008) 07 BOM CK 0071
In the Bombay High Court
Case No : Writ Petition No. 2032 of 2008

Chetan Swami

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Constitution of India, 1950 — Article 16, 341, 342
Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 — Rule 11, 12

Citation : (2008) 6 MhLj 762

Hon'ble Judges : Santosh Bora, J;F.I. Rebello, J

Bench : Division Bench

Advocate : H.I. Pathan, for the Appellant; N.B. Patil, for the Respondent Nos. 1 and 4 and B.L. Sagar Killarikar, for the Respondent

Judgement

F.I. Rebello, J.—Rule. Heard forthwith.

2. The petitioner had applied for verification of his caste claim as belonging to Mala Jangam Scheduled Caste. A caste certificate had been issued in favour of the petitioner by the Tahsildar and Taluka Executive Magistrate, Dharur, District Beed on 19th July, 1994. According to the petitioner his caste claim was forwarded in October, 2000 by the Principal of Dayanand College, Latur for verification. As the constituted Committee did not take up the matter for scrutiny the petitioner had to apply for admission to Engineering Course from open category. The Committee by order dated 20th June, 2005 refused to verify the claim of the petitioner on the ground that he had not sought admission from reserved category. That order was challenged before this Court in Writ Petition No. 6345 of 2005. This Court by order dated 13th June, 2006 directed the Committee to scrutinise and verify the caste claim of the petitioner as expeditiously as possible. This Court also directed the petitioner to submit relevant documents. These documents included the documentary evidence from School Registers, which showed the petitioner's caste as Mala Jangam. Similar document of his father including his service record as also document of his

brothers, sister and other close relatives showing caste as Mala Jangam. The caste validity certificate issued in favour of his cousin brother was also annexed as also the document in the name of his great grand father pertaining to transaction of land purchase. Though the petitioner's claim was belonging to Mala Jangam, Scheduled Caste, we find from the order of the Committee that they proceeded on the basis that the petitioner had applied for verification of caste "Rajput Bhamata". Either this would amount to typographical error or a total non-application of mind on the part of the Committee. On considering the documents the Committee proceeded on the footing that the documents are of recent origin meaning thereby subsequent to the Presidential Notification notifying Mala Jangam as a Scheduled Caste. The document of sale was not considered though of 20th February, 2004 on the basis that it was unregistered. On that basis the Committee proceeded to hold that the petitioner could not establish that he belonged to Mala Jangam Scheduled Caste. We may only note that an additional event which took place after the order of this Court dated 13th June, 2006 in Writ Petition No. 6345 of 2005. As the petitioner's claim was not being verified the petitioner filed Contempt Petition being Contempt Petition Stamp No. 23 of 2008. That was withdrawn on the basis that the claim of the petitioner had by then being decided.

3. On behalf of the petitioner it is submitted that the decision of the Committee suffers from error of law apparent on the face of the record in as much as not only have the judgments of the Supreme Court and this Court not being considered, but also the provisions of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rule 2003 framed thereunder are not being followed. For the sake of brevity we may refer to the Act as "the Act" and the Rules as "the Rules". A learned Bench of this Court in Prabhu S/o Narayan Survase v. State of Maharashtra and Ors. 2004 (4) All M.R. 815 after placing reliance on the judgment of the Supreme Court in Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, has clearly held that it is not open to the Committee to reject documentary evidence produced mainly on the ground that it is of recent origin without considering the probative value. It was further observed that no doubt, a burden is on the candidate, but when the documents are produced, those documents will have to be considered on the touchstone of appreciation of evidence considering that the jurisdiction of the Civil Court is ousted. The genuineness of the documents can always be examined by asking the Vigilance Officer to conduct an enquiry, in the event the Committee is not satisfied about the genuineness of the documents. The documents cannot be rejected on the specious plea that they are of recent origin. The object behind reservations and the provisions as contained in Article 341 and 342 of the Constitution as also Article 16 of the Constitution, pre-supposes economic and social backwardness of the people belonging to the communities which have

been notified as Scheduled Tribe or Scheduled Caste. This would presume that their parents many a times had no access to education. Rule 11, contemplates production of the documents in the form of School records and other documents of the father as set out therein. The Rule further contemplates that if the father is illiterate the primary school leaving certificate of the near relatives on the paternal side of the applicant and extract of school admission register can be considered. We cannot be unmindful of the fact that even now a large section of our children have still no access to primary education. Neither this Court nor the Committee can close its eyes to this harsh reality of life. The Committee, therefore, in rejecting the documents on the ground that they were post-Presidential Notification did not apply its mind to the matter or the law laid down by the Supreme Court or this Court.

4. An affidavit in reply has been filed on behalf of the respondent No. 3 by Sanjay s/o.Radhakishan Dane, Govt. Service-Research Officer. The lengthy affidavit sets out what in his opinion the position of the law commencing from burden of proof. Reference is also made to various judgments which are being adverted thereto.

5. The various documents produced were not considered. The Committee seems to be oblivious to the provisions of the Evidence Act as to public and private document and the manner of proving them. A sale deed which is not registered would be a private document as also a sale deed which is registered. On registration the sale deed does not become a public document. The sale deed continues to be a private document. The petitioner had also produced a caste validity certificate of his cousin brother Sachin Mallaya Swami. This document was again rejected on the ground that it was of a recent origin. The State Government has issued a G.R. dated 22nd August, 2007 in which it is set out that if close blood relative is issued a caste validity certificate the committee need not ask for other documents. It is no doubt true that this G.R. would not be binding on the Committee considering that the Committee is governed by the provisions of the Act and the Rules. However, this G.R. can be considered in the context of Rule 12 of the Rules, which sets out, that if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry. The Rules define "relative" to mean a blood relative from paternal side of the applicant and includes father, real brother/sister in case of Scheduled Caste, Vimukta Jati, Nomadic Tribe, Other Backward Class and Special Backward Class. It is also set out that if other family members submit their caste certificate for verification placing reliance of the caste validity certificate of a blood relation, then at the time of issuance of validity certificate no other documents be asked for.

6. The caste validity certificate produced by the petitioner of his cousin brother would not fall within the expression "blood relative" for the purpose of the G.R. Nevertheless it would be evidence which had to be considered by the Committee.

It is only in the event that the Committee was of the opinion that the said certificate is a creature of a fraud based on the material in their possession, could the Committee disregard such evidence. In *Gayatri laxmi Bapurao Nagpure* (supra) the Supreme Court noted that the burden heavily lies on the applicant who seeks such a certificate, but that does not mean that the Authorities have no role to play in finding out the correctness or otherwise of the claim for issue of caste certificate and the Court was of the view that the Authorities concerned must also play a role in assisting the Committee to arrive at a correct decision. Under the Act, considering Section 8, the burden is cast on the Application to prove his caste/Tribe claim.

7. Having said so we are clearly of the opinion that on the facts of the present case the Committee not only disregarded the law laid down as also the provisions of the Act and the Rules by totally misdirecting itself in law.

8. We may also note that the Vigilance Report had been submitted to the Committee its report on 29th August, 2003. The Vigilance Report included home enquiry which included the statement of the father of the candidate and other persons who had deposed that the grand father of the candidate was doing "Bhikshuki" and was doing the religious ritual of Mang, Chambhar, Dhor community. We cannot be unmindful of what the Supreme Court has observed in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, . No doubt in that case the issue was of a Scheduled Tribe. But this is what the Court observed:

The entries in the school register preceding the Constitution do furnish great value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records, as the then census rules insisted upon. Undoubtedly, Hindu social order is based on hierarchy and caste was one of the predominant factors during pre-Constitution period. Unfortunately instead of dissipating its incursion it is being needlessly accentuated, perpetrated and stratification is given legitimacy for selfish ends instead of being discouraged and put an end to by all measures, including administrative and legislative. Be it as it may, people are identified by their castes for one or the other is a reality.

9. For the aforesaid reasons we set aside the order of the Committee. On the facts of this case in our opinion it would be appropriate that the matter is heard by another Committee. We, therefore, direct that the records and proceedings of the case be sent to the Committee No. 1 sitting at Aurangabad which will consider and dispose of the petitioner's claim in terms of what we have set out in our judgment.

10. The Committee to decide the matter at any rate not later than three months from the date of receipt of the record and proceedings. The Committee No. 1 to call for records and proceedings forthwith whereupon the records will be

forwarded within seven days of the request for records being received.

11. The petitioner has passed the entrance examination for M.B.A. Course. He be granted provisional admission. That admission will be subject to the final order or decision of the Caste Scrutiny Committee. The petitioner will not claim any equity in the event the Committee rejects his caste claim.