
(2014) 06 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 3089 of 2013

Devram Laxman Bhoir

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Citation : (2014) 5 ALLMR 29 : (2014) 4 BomCR 772 : (2014) 4 MhLj 626

Hon'ble Judges : M.S. Sonak, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : P.K. Dhakephalkar, Senior Advocate, Mr. R.K. Mendadkar and Ms. Helan D. Koli Mandlik, Advocate for the Appellant; A.I. Patel, AGP for Respondents 1 to 3, Mr. A.Y. Sakhare, Senior Advocate, Mr. Chirag Shah, i/by J.J. Shah and Co. for Respondent No. 4 and Mr. A.R. Pitale for Respondent No. 5, Advocate for the Respondent

Judgement

Anoop V. Mohta, J.—Rule, returnable forthwith.

Heard finally, by consent of the parties.

2. The Petitioner, a third party, has challenged the orders passed by the Caste Scrutiny Committee (for short "the Committee"), validating the caste of Respondent No. 4, original claimant as "East Indian Christian". Both had contested the General Body Election of Thane Municipal Corporation. The Petitioner lost the election. The Petitioner's objection about the caste certificate was rejected, therefore this Writ Petition.

3. Respondent No. 4 born in Christian family and baptised accordingly, so also his father, uncles and forefathers. His family's place of residence is at Majiwade, Thane. His school leaving certificate is of 1987. On 1 March 2006, in view of recommendation of State Backward Commission, the caste "East Indian Christian" was included in the list of OBC as per the GR of State of Maharashtra. From 2009 onwards, a procedure prescribed by the Chancellor of Archdiocese of Bombay to grant permission to enter the caste in Baptism Certificate. On 19 April

2011, the Baptism Certificate of Respondent No. 4 with remark as "East Indian Christian" issued by the Chancellor. On 12 May 2011, an affidavit alongwith documents for caste certificate was filed. On 30 May 2011, the Caste Certificate issued by Sub Divisional Officer (SDO), Thane. On 5 September 2011, an application was made for verification of Caste Certificate. On 5 December 2011, an Application was filed for adding the caste of Respondent No. 4 in the School Leaving Certificate. The School Leaving Certificate dated 7 December 2011 was issued with remark "East Indian Christian", so also the Junior College Leaving Certificate. The Scrutiny Committee called for a report. The Vigilance Cell, verified the documents with original, visited area, considered the material for affinity and after complying with all the formalities, submitted its report on 6 December 2011 to the Committee certifying that Respondent No. 4 is "East Indian Christian".

4. On 11 January 2012, the Caste Verification Certificate was issued. The committee relied the following documents and the materials: a) Baptism Certificate, b) School Leaving Certificate, c) Land Record, d) Resident proof, e) Revenue Survey, f) Gazetteer of Thane, g) Affinity Test, h) Recommendation of State Backward commission dated 1st March, 2006 and i) Explanation furnished on tradition, custom etc.

5. In April, 2012, Order dated 11 January 2012 was challenged in Writ Petition No. 2473 of 2012 by the Petitioner, which was withdrawn, with liberty. On 22 May 2012, Petitioner filed a complaint before Respondent No. 2. On 22 August 2012, Criminal Writ Petition No. 2247 of 2012 was filed to register FIR against Respondent No. 4, the same was dismissed. In October, 2012, a SLP (SLP) challenging order dated 22 August 2012 was also dismissed. On 4 March 2013 the complaint was rejected.

6. The Petitioner's main contentions are revolve around the doctrine "suppressio veri", "suggestio falsi" and "fraud and misrepresentation" by submitting interpolated/fabricated school leaving certificate of St. Baptist High School and of St. John Baptist High School and Junior College, on the basis of following alleged facts and events:-

14.06.1976

The Opponent/applicant-Mr. Lawrence D'Souza was admitted in St. John Baptista High School, Thane at General Register No. 2941 and his caste was recorded as plain as ?Christian? in the column meant for caste with sub-caste.

31.05.1982

The opponent/applicant left his school on 31.05.1982. The school-leaving certificate dated 10.06.1982 shows his caste as ?Christian?.

23.06.1984

The opponent/applicant was thereafter, admitted in the St. John the Baptist

Junior College, Kambli Naka, Thane-400 601, where his caste was recorded as ? Christian? in the General School Admission Register at serial No. 1666.

01.08.2007

The opponent/applicant left the St. John the Baptist Junior College, Jambli Naka, Thane and he was issued school leaving certificate by the Head Master inter-alia showing his caste as ?Christian?.

February 2007

The election of Thane Municipal Corporation was held and the term was to come to an end in February, 2012.

30.05.2011

The opponent/applicant by keeping an eye on the upcoming elections to the Municipal Corporation, made an application for issuance of caste certificate of ? East Indian Catholic? on the basis of his own affidavit. The certificate was issued without following due procedure.

02.09.2011

Applied for verification before the committee and submitted his school leaving certificate bearing No. 1037, Gen. Register No. 1666 dated 1.8.1987 showing his caste as Christian, page No. 21 of the proceedings.

05.12.2011

The vigilance cell instead of personally examining the veracity of the said certificate, addressed a letter to the Head Master of said St. John Baptist High School, Thane. Page No. 32 of the proceedings.

07.12.2011

The opponent/original applicant, in connivance with the clerk Mr. Ivan Mathew, fraudulently tampered with the school record and interpolated/added the words ? East Indian? to the word ?Christian" in the column mentioned for the caste in the General Register No. 2941 in the St. John the Baptist High School, Jambli Naka, Thane.

After inserting the word ?East Indian" before the word ?Christian? in the column meant for Caste with Sub-caste, duplicate school leaving certificate from the Head Master of the St. John the Baptist High School, Jambli Naka, Thane was obtained and set to Vigilance cell.

07.12.2011

On the same day e i.e. 7.12.2011, a clerk Mr. Ivan Mathew, fraudulently tampered with the school record and interpolated/added the words ?East Indian? to the word ?Christian? in the column mentioned for the caste in the General Register No. 1666 in the S.T. John the Baptist Junior College, Jambli Naka,

Thane. On the basis of interpolated school admission register No. 1666, duplicate leaving certificate dated 7.12.2011 showing the caste as East Indian Christian when original entry was as plan as ?Christian? was prepared and set to vigilance cell.

13.12.2011

The Principal of St. John the Baptist High School and Jr. College, Jambli Naka, Thane who informed the Vigilance cell that there is no correction made in the General Register. Page Nos. 23, 25, 29 and 31 of the proceedings. Perusal of page No. 31 clearly indicates that the word ?East Indian? has been added subsequently in different ink and different handwriting and this has been done without any authority of law. This is admitted by the opponent by placing on record a communication dated 16.3.2012, page No. 8 of the Rejoinder filed by the opponent dated 6th November, 2012.

11/01/2012

Respondent No. 1 got his caste certificate validated on the basis of the abovesaid interpolated documents.

04/05/2012

The Head Master and Principal of St. Baptist High School and Jr. College informed this committee as to how, fraud was practised and requested this committee to treat school leaving certificate dated 7.12.2011 as void ab initio and cancelled.

7. Therefore, the caste "East Indian Christian" and/or "Christian" of Respondent No. 4 ought to have been discussed in detail in the order of granting/validating the certificate by the Committee. In the present case, the basic order is as under:-

True Translation of impugned order dated 11.01.2012.

Applicant present for hearing.

Applicant presented and submitted own Baptisma Certificate, School Leaving Certificate, Land Record, Residing from 1967. The Revenue Survey, Gazetteer, Thane and Affinity Test and Recommendation of State Backward Commission regarding inclusion of East Indian Caste as per list dated 01.03.2006 and explanation furnished on tradition, custom etc is found satisfactory. Therefore, Committee unanimously validated the caste claim of Applicant as East Indian Catholic.

(Valid-East Indian Catholic).

8. The Petitioner, therefore, filed the Writ Petition and challenged the genuineness and validity of certificate issued to Respondent No. 4, pending the caste claim Petition before the Scrutiny Committee. Ultimately, by order dated 4 December 2012, liberty was granted to withdraw the Petition and to raise all issues before the Scrutiny Committee, to be decided in accordance with law. The

Petitioner, apart from the averments/complaints, raised various contentions with regard to the genuineness and the way in which Respondent No. 4 obtained the caste certificate. To the show cause notice issued, a challenge was raised by Respondent No. 4 in High Court and ultimately the writ petition was disposed of as withdrawn with liberty to file a reply to the show cause notice. Apart from other, Respondent No. 4, admitted that school leaving certificate did not carry the name of his caste, which was updated by including the word "East Indian" in the caste column. The issue regarding correction of school record was also raised, as prior permission of the Education Officer was not obtained, before effecting the change in the Register. A criminal writ petition was also filed and thereby sought direction to register the Petitioner's complaint, dated 14 April 2014, as FIR. The dismissal of criminal writ petition, even if any, ought not be the reason for the Scrutiny Committee, not to consider the objections so raised with the supporting material. The unreasoned order of granting validating certificate therefore shows that there is no application of mind to the documents on record. The caste certificate ought not to have validated in such fashion. The subsequent justification given in the affidavit by the Scrutiny Committee and Respondent No. 4 are therefore also unacceptable. The Scrutiny Committee or any Authority cannot add reasons and/or supports their unreasoned orders by filing a separate and/or an additional affidavit and/or by passing additional orders and/or by giving additional reasons, justifying their earlier unreasoned order. The whole procedure is wrong, illegal and impermissible. A Division Bench of this court in *Balbirsinh Ishwarsinh Rathod Vs. State of Maharashtra and ors.*, Writ Petition No. 2510 of 2012, decided on 9 October 2012, reiterated the importance of giving reason by the quasi-judicial Authority, when it comes to deciding and/or granting and/or validating the caste certificate.

9. Section 6 of the Scheduled Castes, 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 (in short, "Act 23 of 2001") provides the functions of Scrutiny Committee. Respondent No. 3 is the Competent Authority for issuance of Caste Certificate. Section 10 contemplates the procedure to be followed by the Scrutiny Committee in case of false certificate and/or fabricated certificate. Therefore, it is obligatory on the part of the Scrutiny Committee to take note of the material placed on record, by following the procedure so prescribed under the Act and the Rules, apart from the judgment so read and referred by the parties, before granting/issuance of the caste certificate and/or validating it. The basic obligation, therefore, required to be performed at the stage of validating the certificate by passing the reasoned order.

10. The valid caste certificate is very important document, not only for the Petitioner, but also for the future generation to come. All the concerned, unless invalidated, are bound by the caste certificate for all the purposes of School, and private or public record. The procedure is prescribed right from the Application till the issuance of the certificate by the Competent Authority/Committee after

due verification and scrutiny, based upon the material available and/or placed on record. The Committee/Authority has no choice but to issue such certificate within the framework of law and the record. It is also necessary for the concerned Authority/Committee of the respective States to see and check that no false and/or fabricated and/or invalidate certificate issued to the scrupulous and/or other persons who are not belonging to the particular Tribe and/or caste.

11. In this procedure, normally it is the Applicant/Claimant one who applies for a caste certificate to place on record the material/document in support of his claim. The burden is upon him to prove his caste claim. Normally, there is no private opposite side to oppose such certificate. The Authorities; the Vigilance Committee/Officers/Investigating Officers/Research officers/Scrutiny Committee are the personnel and/or officers, on Application, initiate inquiry/investigate the caste by following the procedure so prescribed by collecting evidence/material, in most of the situation, unilaterally. The Committee, after verification of the report so submitted, calls upon the Applicant and/or concerned person, to justify and/or support the case. The Applicant/candidate gets the opportunity to lead evidence and/or bring on record material to justify the claim. The Authority/Committee requires to take note of the pleadings, claims and supporting documents, including of the caste traits, custom, cultural and usages required for affinity test, as well as, other inquiry as contemplated under the law, including in various judgments State of Maharashtra Vs. Milind and Others, , Shilpa Vishnu Thakur Vs. State of Maharashtra and Others, , and Madhuri Nitin Jadhav Vs. State of Maharashtra 2014 (3) Mh.L.J. 900.

12. Though provisions of CPC and Evidence Act are not strictly applicable, but the settled principles of law as referred above, are required to be followed by all the concerned. The quasi-judicial Authority like Scrutiny Committee/Tribunal, has required to determine the important rights of the party, therefore the principles of admissibility, relevancy, and the respective weight to be given to the documents and its contents, just cannot be overlooked. Equal and fair treatment required to be given to all the parties by following the principles of natural justice, fair-play and equity also.

13. The Scrutiny Committee is bound by the substantive law, and the procedural law-practice and principles, apart from the custom, trait, cultural usage of particular caste and community of the parties. It is very essential to analyze the evidence and the record. The Scrutiny Committee/Authority, therefore, bound to analyze and appreciate the evidence laid down by the parties by referring not only to the documents so referred, but by giving proper and correct considerations of its contents and the material placed on record by giving the reasoned order on the issues/points so raised.

14. The Scrutiny Committee/Authority therefore, required to take note of various doctrines including of "the precedent" "obiter dicta", "ratio decidendi", "estoppel", "acquiescence", "waiver" and "res-judicata", apart from natural justice, fair play and equity. All those principles are necessary to follow, as in most of the caste

scrutiny matters, various Supreme Court Judgments and the Judgments of the High Court are read and referred, for and against the issues so raised. Therefore, considering their scope and limitation, being quasi-judicial Authority but, at the same stroke, as it decides the caste claim and the important rights of the parties, the Authority/Caste Scrutiny Committee, just cannot overlook those doctrines, before passing any reasoned order/judgment.

15. In case of fraud and/or misrepresentation more detailed inquiry and scrutiny is necessary. Mere averments of fraud and/or misrepresentation itself are not sufficient. One who alleges fraud and/or misrepresentation, including the complainant, required to place on record the supporting materials to justify their defence/objection. In case, the fraud or misrepresentation is detected and/or proved, section 10 contemplates specific provisions which required to be followed by the concerned. They are under obligation and duties to pass reasoned order within the framework of law and record and the judgments so declared from time to time, apart from above basic principles. They are also under obligation to finalize the inquiry/report, as early as possible to conclude the caste claim to avoid further complications and/or delay in the matter.

16. In the present case, order dated 4 March 2013, thereby certificate dated 11 January 2012 is validated, is also challenged. The Scrutiny Committee rejected the complaint/objection so raised by the Petitioner by overlooking the above aspects including by not revoking earlier order dated 11 January 2012. The scheme and purpose of the Act nowhere permits such procedure to be adopted by the Scrutiny committee in case of complaints filed by the third person like the Petitioner. The nature of the complaint itself shows and supports the grounds and reasons for not accepting the caste claim of Respondent No. 4 in such fashion. The Scrutiny Committee ought to have given a composite fresh reasoned order by revoking the earlier order, by giving full opportunity to all the parties in every aspect. The procedure so adopted by retaining the original order and by rejecting the complaint so filed by the Petitioner is nothing but an attempt to justify the earlier unreasoned order.

17. The submission that the Petitioner's objection/application was dismissed by impugned order on 4 March 2013 and the certificate so granted in favour of Respondent No. 4 has attained finality, there is no question of interference, is unacceptable. The orders so passed, in our view, are required to be interfered.

18. Another factor in the matter is that prior to year 2006 the caste in question was not in the Constitutional list. Therefore, the concerned person used to mention the caste "Christian". Only after the recognition is given to "East Indian Christian" as OBC, most of such endorsements/certificates/school record have been surfacing. The parties/persons accordingly moved and started taking steps to obtain such caste certificate for all Constitutional benefits. Therefore, all Christians belonging to "East Indian Christian" or not, definitely requires detail hearing, material and scrutiny and exhaustive inquiry by the Vigilance Cell Authority itself. The submission, therefore, the words "East Indian" has been

added unauthorisedly as in the original the same was never endorsed and/or mentioned and what was mentioned was only "Christian", just cannot be overlooked. The Respondent/Scrutiny Committee, while granting caste validity certificate failed to record the above reasons. Subsequent justifications, merely because the complaint was lodged, in our view, no way sufficient to maintain the earlier order passed by the Scrutiny Committee in such fashion, only by referring to those documents but without discussing its contents as contended in the unreasoned order. We are also concerned with the contents of those documents. The reason now so given, therefore, without noting the contents earlier, after the objection so raised by the Petitioner, itself shows that the first order to validate the caste certificate was in breach of law.

19. All issues/objections so raised need to be decided by a composite order specifically when substantial question of law and the facts are raised with supporting material placed on record by the Petitioner and specifically when such caste claim of "East Indian Christian" (OBC) in view of 2006 entry, required new and supporting material. All Christians cannot be treated as East Indian Christians. The Scrutiny Committee, however, failed to consider all these aspects in detail.

20. The caste claim once decided has its own impact not only upon the generation, but the future generation also, the decision therefore, cannot be taken lightly specifically when material are placed on record to justify the case of misrepresentation/fabrication of record. In the present case, though the Scrutiny Committee by the decision dated 4 March 2013, referred to its earlier order granting caste validity certificate, mentioned that the school records are manipulated, but decided the caste claim in favour of Respondent No. 4, and thereby justified its earlier unreasoned order. The case falls within the ambit of the doctrine of "suppressio veri" and "suggestio falsi". The reasons so given by the Scrutiny Committee in various orders are self-contradictory and self destructive and, therefore, unsustainable in law.

21. The submission made by the learned senior counsel appearing for Respondent No. 4 based upon various judgments including Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, are in no way support their submissions in the present facts and circumstances of the case. The law so laid down is not in dispute. However, by applying the principles so laid down in these judgments including the power and jurisdiction of the Scrutiny Committee and the importance of the affinity test and the scope of inquiry for above reasons, which goes to the root, is an additional reason to interfere with the orders so passed by the Committee/Authority in view of the material about the misrepresentation and manipulation of school record and its effect, while granting such certificate.

22. In the present case, on examining the touchstone and parameters so laid down by the Supreme Court, as well as, High Court, we are inclined to interfere

with the matter. We are inclined to remand the matter to decide afresh in accordance with the relevant Rules, guidelines and the material placed on record, by giving equal opportunity to all the parties and by passing a common reasoned order. It should be decided as early as possible preferably within a period of four months. For the above reasons itself, we are not inclined to invoke Writ Jurisdiction power to set aside the caste certificate so issued, but certainly inclined to quash and set aside the impugned orders with direction to re-consider the issues, by keeping all the points open for the parties.

23. Respondent No. 4, based upon the certificate contested General Body Election of Respondent No. 5-Thane Municipal Corporation in February 2012, as Ward No. 19-A was reserved for the OBC Class of citizens. Based upon a certificate of Indian Christian of OBC he was declared elected and accordingly has been enjoying the post till this date. This Court has not granted any stay against Respondent No. 4.

24. Consequently, the following order:-

ORDER

a) Impugned orders dated 11 January 2012 and 4 March 2013 are quashed and set aside. The matter is remanded back for re-consideration on all the issues.

b) The Scrutiny Committee to decide the matter as early as possible, preferably within four months, by giving full opportunities to all, in accordance with law.

c) Rule is made absolute accordingly.

d) There shall be no order as to costs.

25. The learned counsel appearing for Respondent No. 4 prayed to stay this Judgment and order, for the reasons so recorded we see there is no case to stay the Judgment/order so passed. The request is rejected as no prejudice would be caused to Respondent No. 4.