

(2017) 05 BOM CK 0150
In the Bombay High Court
Case No : 8207 of 2016

Dheeraj

APPELLANT

Vs

The State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

Citation : (2017) 05 BOM CK 0150

Hon'ble Judges : R.M.Borde, K.L.Wadane

Bench : SINGLE BENCH

Advocate : S.R.Barlinge, M.A.Deshpande

Judgement

1. Rule. Learned A.G.P. waives service of notice on Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing at the admissions stage.

2. The petitioner is challenging the communication/order of the Caste Scrutiny Committee/respondent no.2 dated 30.6.2016.

3. The petitioner belongs to Tokre Koli Scheduled Tribe and has received a certificate to that effect from the competent authority on 21.11.2014. The tribe claim of the petitioner was referred to the Scrutiny Committee by his college on 26.12.2014. In support of the tribe claim of the petitioner he submitted several documents including validity certificate of his father, his mother and the decision of this Court validating the tribe claim of his brother namely Rohit Dnyaneshwar Salunke.

4. The Scrutiny Committee had invalidated tribe claim of the brother of the petitioner on 31.8.2012, wherein it had considered the same documents which the present Scrutiny Committee has considered in respect of the petitioner. The decision of the Caste Scrutiny Committee in the case of Rohit Salunke was challenged in Writ Petition No. 2902 of 2013 and this Court, after considering all the documents and on verification of the record of the Scrutiny Committee allowed the said Writ Petition on 14.10.2014.

5. Despite the above referred decision in favour of the brother of the petitioner, the same Scrutiny Committee has invalidated the tribe claim of the petitioner and it is further contended that the State of Maharashtra is going to challenge the decision of this Court in the case of Rohit Salunke before the Hon"ble Apex Court. The tribe claim of the near blood relation of the petitioner is validated and the validity certificate is not obtained by fraud or representation. In such circumstances, it would not be open for the Scrutiny Committee to take contrary view. In this view of the matter, the decision of the Scrutiny Committee dated 30.6.2016 deserves to be quashed and set aside.

6. The affidavit in reply is filed on behalf of respondent no.2 and it is contended that in the matter of Rohit Salunke the members of the Committee want to mention that the Government of Maharashtra has decided to challenge the order passed by this Court before the Hon"ble Supreme Court.

7. We have heard the arguments of Mr. S.R.Barlinge, learned counsel for the petitioner and Mrs. M.A.Deshpande, learned A.G.P. for the respondents/State.

8. It is undisputed fact that tribe claim of the father and the mother of the petitioner was validated by the concerned Caste Scrutiny Committee and those certificates are still in force and the same have not been set aside by the competent authority. It is not the case of the respondents that the validity certificate of the tribe claim of the father and the mother of the petitioner were obtained by fraud or that the concerned Caste Scrutiny Committee was having no jurisdiction to decide the tribe claim.

9. In such circumstances, it cannot be said that the validity certificates of father and mother of the petitioner were obtained by suppressing material facts by fraud.

10. It is not in dispute that, the father of the petitioner Dnyaneshwar Salunke, so also mother of the petitioner Mrs. Surekha Salunke have been issued with the validity certificates and their tribe claims as belonging to Tokare Koli (Scheduled Tribe) have been validated. The same is done after the vigilance enquiry report and conducting the affinity test. It is undisputed that, all the evidence which is considered in the present case was available and produced on record at the time of issuance of validity certificate of father and mother of the petitioner.

11. No doubt, the argument canvassed by the learned counsel for respondent No. 2/Committee that validity certificates issued in favour of near relatives cannot be the sole basis for issuing validity in favour of the petitioner and the basic documents are required to be considered and they will play an important role, cannot be disputed. However, considering the documents on record showing the tribe as Tokare Koli and only in one or two documents the caste is mentioned as Backward Class and Koli would not be sufficient to negate the claim of the petitioner, more particularly, when on the basis of same evidence led by the father of the petitioner, the petitioner's father's tribe claim is validated. The petitioner was minor. The father has given the statement and while giving

statement regarding affinity, it was observed that, the same is not in consonance with the actual traits, custom of Tokare Koli. However, the same evidence led by the father while considering case of the petitioner's father was accepted to have passed the affinity test. A diagonally opposite view is taken in the present matter and tribe claim of the petitioner was turned down by the same Committee.

12. Mr. Barlinge, learned counsel for the petitioner has relied upon the observations in the case of Apporva d/o Vinay Nichale vs Divisional Caste Certificate Scrutiny Committee, reported in 2010 (6) Mh.L.J. 401, wherein it is observed that : " 4. We have considered the matter and we are of the view that the petitioner's caste claim that she belongs to Kanjar BhatNomadic Tribe ought to have been accepted by the Committee merely on the basis that identical caste claim of her sister that she belongs to Kanjar Bhat has been allowed by the Committee, even apart from the Government Resolution. We are of the opinion that the guidelines provided by the said Govt. Resolution are sound and based on sound principles. It would indeed be chaotic otherwise. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud. "

13. The above observations of the Hon''ble Apex Court are squarely applicable to the facts of the present case. Further more, it is material to note that the evidence placed on record at the time of examination of the tribe validity of the father and the mother of the petitioner is placed on record by the petitioner in the present matter, in which a different view is taken by respondent no.2 Committee. In fact, there was no reason for respondent no.2 Committee to disbelieve the evidence led by the petitioner in support of his tribe claim. It is contended that the State is intending to challenge the decision of validating the tribe claim of the brother of the petitioner, before the Hon''ble Apex Court, however, the respondent failed to produce any record to show that the decision of this Court in the case of Rohit Salunke was challenged before the Hon''ble Apex Court and the same was either stayed or set aside.

14. Considering all the afore said aspects of the matter, the judgment of the Committee cannot sustain. As such, the same deserves to be set aside.

15. In the result, the Writ Petition is allowed. The impugned judgment and order passed by respondent no.2 Committee dated 30.6.2016 is quashed and set aside. Respondent no.2 Committee is directed to issue validity certificate in favour of the petitioner as belonging to Tokre Koli (Scheduled Tribe).

16. Rule is accordingly made absolute in the above terms. There shall be no order as to costs.