

(2024) 01 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No.484 Of 2021

Harshal Ashok Aadekar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 18-01-2024

Acts Referred:

Citation : (2024) 01 BOM CK 0078

Hon'ble Judges : Vibha Kankanwadi, J; S. G. Chapalgaonkar, J

Bench : Division Bench

Advocate : C.R. Thorat, P.S. Patil, S.G. Karlekar

Final Decision : Partly Allowed

Judgement

Vibha Kankanwadi, J

1 The petitioner challenges invalidation of his Tribe Claim by respondent No.2 by Judgment and order dated 05.01.2021. The petitioner contends that he belongs to Mannervarlu Scheduled Tribe.

2 Heard learned Advocate Mr. C.R. Thorat for the petitioner, learned AGP Mr. P.S. Patil for respondent Nos.1 and 3 and learned Advocate Mr. S.G. Karlekar for respondent No.2 and perused the documents on record as well as the original record of the Committee.

3 It appears that the petitioner is relying on school extract of his cousin grandfather viz. Kanhaiyya Kishanrao Aadyalap (Aadekar) dated 29.05.1935, wherein the caste is allegedly written as "Telgu Manerwarlu" in the Municipal Council School, Jalna. It is the oldest and pre-constitutional record. It was relied in the matter of his father also and it is said that the petitioner's father got the validity certificate from the Caste Scrutiny

4 While considering the said point canvassed on behalf of the petitioner that the said oldest entry has not been considered by respondent No.2, it is pointed out by the learned AGP that the said record was considered. In fact, the Vigilance

Cell Officer had paid visit to the said school and took the coloured photo print of the said record, which is in fact in Urdu language and also got the translation of the entry from a retired Teacher and her statement to that effect has been recorded. It was also certified by the Headmistress of the said school that the said entry is in different ink and different handwriting. Respondent No.2 has stated that this appears to be a got up document or entry and there was observation in respect of same in the Vigilance Cell report, which was then made available to the petitioner and his say was called. The learned Advocate for the petitioner submits that the petitioner has denied that the said entry is in different handwriting and when the same entry was relying in the claim filed by his father and even at that time when the Vigilance inquiry was made the officer had given a favourable report.

5 Perusal of the record with respondent No.2 in respect of the present petitioner would show that the coloured photograph is available, which cannot be said certainly on the naked eye as to whether there is different ink or different handwriting, since it is in Urdu language. We are of the opinion that when such facts come before the Caste Scrutiny Committee, then the opinion of the Committee members after perusal of the original record would carry the importance. The fact then before respondent No.2 was that the Vigilance Cell Officer had opined that it is in different handwriting and ink and then it was denied. Respondent No.2 ought to have called the original record and then arrive at the conclusion. This exercise has not been made. It was the pre-constitutional document which would have carried importance and, therefore, a cautious approach ought to have been taken by respondent No.2.

6 The learned AGP also points out the contra entries which have been explained by the petitioner and it also. Further, it appears that respondent No.2 took note of the invalidity of two relatives of the petitioner. Those are Mr. Dinesh Ramgopal Aadekar, whose invalidity was denied on 21.09.1991 and another was Mr. Kailash Ramgopal Aadekar, whose validity was deied on 19.08.1996. It is then observed that by suppressing these two invalidities the father of the present petitioner has obtained the validity certificate. From the show cause notice as well as the entire File of the petitioner it can be seen that respondent No.2 never put the said circumstance to the petitioner and had not called upon the petitioner to explain the same. The principles of natural justice ought to have been adhered to and when the said fact was not mentioned in the report of the Vigilance Cell, the petitioner could not get an opportunity to explain his stand on the point of invalidity of those two persons. Therefore, taking into consideration all these aspects we are of the opinion that a fair opportunity has not been given to the petitioner and, therefore, case is made out for the remand/re-consideration of the claim by the petitioner before respondent No.2. In view of the same, following order is passed.

ORDER

1 The petition is hereby partly allowed.

2 The impugned Judgment and order dated 05.01.2021 is hereby set aside. The matter is relegated to respondent No.2.

3 Respondent No.2 should call the original record, which is of the pre-constitutional period, tried to be relied by the petitioner and preferably by getting the translation of the entire leaf/page, then only the observations to be made and opportunity to be given to the petitioner to inspect the said register.

4 Respondent No.2 should also give opportunity to the petitioner to explain the alleged invalidity of two persons.

5 Petitioner to appear before the Committee on 22.01.2024 and thereafter respondent No.2 to consider the claim of the petitioner in view of the observations in this order and decide the claim as per its own merits.