
(2016) 12 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 11394 of 2016

Jamadar Mehaboob Ghudubai

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 — Rule 12, Rule 13

Citation : (2017) 1 MhLJ 797

Hon'ble Judges : Naresh H. Patil and M.S. Karnik, JJ.

Bench : Division Bench

Advocate : Mr. Chintamani Bhangoji i/b Mr. R.K. Mendadkar, Advocates, for the Petitioner; Ms. R.A. Salunkhe, AGP, for the State

Final Decision : Allowed

Judgement

M.S. Karnik, J. - Rule, returnable forthwith. Heard finally by consent of the parties.

2. The petitioner challenges an order dated 22/08/2016 passed by the Divisional Caste Certificate Scrutiny Committee No. 1 ? Solapur (hereinafter referred to as the "Committee" for short) invalidating caste claim of the petitioner as belonging to "Julah" caste which is notified as Other Backward Classes (for short "OBC") in the State of Maharashtra.

3. The petitioner claims to profess Islam religion and the persons so professing Islam religion are interalia called as "Muslim" or "Musalman". In school, birth and death records, caste is not mentioned. According to the petitioner, since status of OBC is determined based on occupation, the petitioner has produced voluminous evidence to show that petitioner's family was carrying on traditional occupation of "weaving". Based on the evidence so produced, the Competent Authority was pleased to issue a caste certificate dated 12/10/2015 certifying that he belongs to "Julah" caste which is notified as OBC in the State of

Maharashtra.

4. The petitioner on the basis of the said caste certificate contested the election to the post of Member of ward No. 2 of the Najik Chincholi, Tal. Akkalkot, Dist. Solapur which was reserved for backward class of citizens. The petitioner was declared as elected in Gram Panchayat election. The petitioner moved respondent No. 2 ? Committee for verification of his caste claim.

5. The Committee referred caste claim of the petitioner for vigilance enquiry. The Vigilance Cell submitted a report dated 07/05/2016 after recording the statement of elderly residents namely Shri Anandappa Bhimraya Parit and Shri Manikrao Bhimrao Waghmode who stated that ancestors of the petitioner were in the occupation of weaving and they regard them as belonging to "Julah" caste. Thus, the Vigilance Cell concluded that traditional occupation of the family of the petitioner is weaving and the report was in favour of the petitioner.

6. The Committee issued show cause notice dated 06/08/2016 stating that the petitioner had not submitted any documentary evidence prior to 1967 to prove his caste claim and traditional occupation and called upon the petitioner to show cause why his caste certificate should not be invalidated.

7. The petitioner by his reply pointed out that insofar as Islam religion is concerned, there is no question of there being any documentary evidence which shows caste as "Julah". He, however, placed reliance on certain documents dated 15/05/1957 & 28/11/1959 to show that certain material was purchased by his father for weaving purpose.

8. The Committee by the impugned order did not agree with the Vigilance Cell report and for the reasons recorded invalidated the caste claim of the petitioner.

9. Learned Counsel appearing for the petitioner placed reliance on the decision of this Court in the case of Smt. Bismilla Mohammedsab Sayyed (Mujawar) @ Bismilla Allabaksh Shikkalgar v. Divisional Caste Certificate Committee No. 1, Solapur in Writ Petition No. 10577 of 2013 dated 21/02/2014, (2014 Mh.L.J. Online 36) to contend that in case of Mohameddians, there was no recognised castes or sub-castes and therefore, as in the case of Hindus, there is no likelihood of finding any entry of the caste of a person as Mohameddians religion in old records. This Court considered the provisions of Rules 12 & 13 of Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short "the said Rules") The relevant portion of paragraph 6 reads thus :

"...In the present case, the Vigilance Cell report is on record. Clause (d) of sub Rule 1 of the Rule 13 provides that the Vigilance Cell should collect information including sociological, anthropological, ethnological and genetical traits of the relevant Caste. In the present case, this exercise was necessary as we have already observed earlier that there is no likelihood of any entry of caste recorded

in old record in the case of Mohameddans. It was necessary for the Vigilance Cell to make an enquiry in terms of clause (d). An enquiry should have been made to ascertain the traditional occupation of the Mujwars. We have perused the Vigilance Cell report. We find that no such exercise has been made. Perusal of the impugned order shows that even the Caste Scrutiny Committee has not applied the affinity test. Therefore, we find that the entire approach of the Caste Scrutiny Committee is erroneous as in the facts of the case, the Caste Scrutiny Committee should have directed the Vigilance Cell to do the exercise under the provisions of Clause (d) of Sub Rule 1 of the Rule 13 the said Rules. The Caste Scrutiny Committee ought to have held the appropriate enquiry in the present case....."

10. Learned Counsel appearing for the petitioner also contends that the impugned order passed by the Committee is not in accordance with Sub-Rule 7 of the Rule 17 of the said Rules which requires the Committee to give reasons before discarding the Vigilance Cell report. According to the learned Counsel for the petitioner, this Court in the case of Smt. Ashvini Ramchandra Bhogam Alias Mrs. Ashvini Amer Ramane v. State of Maharashtra and ors. in Writ Petition No. 5699 of 2016 dated 05/08/2016, (2017 (2) Mh.L.J. 53) has held that the detailed procedure provided by the Rules clearly demonstrates that the Vigilance Cell inquiry is not a mere formality but it meant to assist the Committee for determining the caste claim and therefore, Sub-Rule 7 of Rule 17 requires the Committee to give reasons before discarding the Vigilance Cell report. In the present case, the Committee has discarded the Vigilance Cell report by giving reason that the same is not binding on the Scrutiny Committee.

11. Learned AGP appearing for the Committee has supported the order passed by the Committee. According to the learned AGP, the Vigilance Cell report is not binding on the Committee. Learned AGP submits that material placed on record is not sufficient to establish the caste claim of the petitioner and therefore, the Committee has rightly come to the conclusion that the petitioner's claim be invalidated.

12. Having considered the rival submissions, we are of the view that petitioner's caste claim needs to be considered afresh by respondent No. 2 ? Committee. The Committee while discarding the report of the Vigilance Cell, except observing that it is not in agreement with the Vigilance Cell report, has not given any reason for discarding report of the Vigilance Cell which is the requirement of Sub-Rule 7 of Rule 17 of the said Rules. The Vigilance Cell report as it stood, favours the petitioner and therefore, the Committee ought to have adverted to the Vigilance Cell report.

13. We also find that Vigilance Cell has not carried out enquiry as required by clause (d) of Sub-Rule 1 of Rule 13 which provides that the Vigilance Cell should include information including sociological, anthropological, ethnological and genetical traits of the relevant Caste. In the present case, this exercise was necessary as there is no likelihood of any entry of caste recorded in old record in

case of Mohameddams. It was necessary for the Vigilance Cell to make an enquiry in terms of clause (d). Perusal of the impugned order shows that the Committee has not applied the affinity test. This Court has already considered the provisions of Rule 13 of the said Rules in case of Smt. Bismilla Mohammedsabb Sayyed (Mujawar) @ Bismilla Allabaksh Shikkalgar (supra). In this case also we find that entire approach of the Caste Scrutiny Committee is erroneous as in the facts of this case, the Caste Scrutiny Committee should have directed the Vigilance Cell to do the exercise under the provisions of clause (d) of Sub-Rule 1 of Rule 13 of the said Rules. The Caste Scrutiny Committee ought to have held appropriate enquiry in the present case.

14. Considering the peculiar facts of the case, the Caste Scrutiny Committee shall make adjudication within a time bound schedule.

Hence, we pass the following order.

ORDER

i) The impugned order dated 22/08/2016 is quashed and set aside. Matter of caste verification is remanded to the 2nd respondent Caste Scrutiny Committee.

ii) We direct parties to appear before 2nd respondent ? Caste Scrutiny Committee on 23/12/2016 at 11.00 a.m.

iii) The Caste Scrutiny Committee shall call for fresh Vigilance Cell report in terms of Rule 13 and especially clause (d) of Sub-Rule 1 of Rule 12 of the said Rules. The Caste Scrutiny Committee shall make a fresh adjudication in accordance with law as expeditiously as possible and preferably within a period 03 months from today.

15. All contentions of the parties on merits are kept open.

16. Rule is made absolute in the above terms.