

(2018) 01 BOM CK 0070
In the Bombay High Court
Case No : 2296 of 2002

Jayesh s/o Mahadeorao Nandanwar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-01-2018

Acts Referred:

Citation : (2018) 01 BOM CK 0070

Hon'ble Judges : B.P. Dharmadhikari, Swapna Joshi

Bench : Single Bench

Advocate : Ashwin Deshpande, T.Khan

Judgement

1. Heard respective counsel.
2. At this stage, we do not find it necessary to go into any disputed facts.
3. On 21st December, 2017 after learning about indifference shown by petitioner, we directed him to deposit his Degree certificate. However, thereafter, he has contacted present Advocate and that Advocate has filed vakalatnama. He informed that petitioner presently is working in Defence Department of the Union of India.
4. Short submission of Advocate Deshpande is, though any of the document is not found doubtful, only on the basis of so called affinity test, caste claim has been invalidated. He relies upon judgment of Hon'ble Apex Court in the case of Madhuri Patil vs. Additional Commissioner, Tribal Development and others, reported

at AIR 1995 SC 9 4, more particularly paragraph 12 (5), to urge that vigilance enquiry

has not been conducted accordingly. He points out that this Court has, while issuing

notice in the matter, has protected education of petitioner. Petitioner accordingly completed the same and has also joined the Defence Department.

5. Learned AGP, on the other hand, points out that impugned judgment is passed when provisions of Act of XXIII of 2001 were not in force. As per situation then

prevailing, efforts have been made to verify all documents and on all occasions, opportunity to show-cause has been given to petitioner. She points out that petitioner

has replied to all vigilance enquiry reports and when he disputed relationship, that

relationship has not been looked into by the Committee. In response to last vigilance

report dated 22.7.2000, the petitioner did not take a specific stand that Dattatraya

Nandanwar is not his relative. However, that instance has also not been looked into.

6. She adds that because of a document with caste "Koshti" and the occupation "weaving", the caste claim has been invalidated. The petitioner and elderly

persons in the family were interviewed. They have answered questions and accordingly

affinity test has been applied.

7. Adv. Deshpande, in reply, submits that questions and answers put during personal hearing, have not been pointed out on record.

8. We find that there are two to three vigilance enquiries in the matter. All mostly pertain to documents. Only in vigilance report dated 22.7.2000 the police officer

mentioned that in some documents, occupation has been shown as weaving. He has

also mentioned that surnames like Nandanwar, Parate, Hedau, Sonkusare are

mostly

found in "Koshti" community. Then he mentioned that the name of Dattatraya Nandanwar and observed that Dattatraya Nandanwar is relative of petitioner. In earlier

vigilance enquiry also, there is reference to one Nandanwar and petitioner has, while

replying to that vigilance report, specifically submitted that he is not related with that

person.

9. It is after this that petitioner and his paternal uncle attended office of Scrutiny Committee. They filled in some questionnaire and the affinity test has been applied.

10. In Madhuri Patil's case (supra), the Hon''ble Apex Court has in paragraph 12 laid down guidelines for evaluation of such caste claims. In Guideline

No.5, Hon''ble Apex Court mandated formation of a vigilance cell consisting of senior

Deputy Superintendent and number of police inspectors to investigate into social status claims. A inspector has to go to local place of residence and original place from

which the candidate hails or usually resides. The vigilance officer has to personally

verify and collect all facts of social status claimed by the candidate or the parent or

guardian. He has to examine the school record, birth registration, if any. He has to

examine parent, guardian of the candidate in relation to said caste or some other person who has knowledge of social status of candidate. Then he has to submit report

to the Director of Committee together with all particulars as envisaged in proforma.

The Hon''ble Apex Court points out that such information should be relating to particulars, such as, anthropological and ethnological traits, deities, rituals,

customs,

mode of marriage, death ceremonies, method of burial of dead etc.

11. In present matter, the vigilance reports produced before us do not show any such attempt. The first exercise dated 14.12.1998 is only in relation to verification

of documents. Second exercise dated 31.3.1999 is again in relation to documents.

Along with show cause notice issued to petitioner by Scrutiny Committee, "Koshti"

document of one Uttam Nandanwar was enclosed. However it is not very clear as to

how said document came on record. The Scrutiny Committee has not used this document against petitioner. In last of the exercises dated 22.7.2000 Police Inspector

has conducted some enquiry into primary school and then recorded that occupation

has been shown as weaving. He has remarked that weaving is not the occupation in

"Halbi" community. Then he mentioned certain surnames and remarked that those

surnames are found in "Koshti" community. It is further mentioned that one Dattatraya

Nandanwar has taken education in the same school and the said person is relative of

family of petitioner. Then there is conclusion that "Halba" is sub-caste of "Koshti" caste

and petitioner is not Halbi but Halba Koshti. On what basis this conclusion or findings

have been reached is not clear.

12. In this situation, we find that the affinity test has not been conducted properly.

13. It is to be noted that from 18.10.2001, the provisions 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 Act, 2000 (hereinafter "Act No.XXIII of

2001") has come into force. The procedure for conducting home enquiry is now laid

down in 2003 Rules framed thereunder. The Scrutiny Committee, therefore, has now to

conduct home enquiry by adhering to those Rules.

14. Hence, we quash and set aside the impugned order dated 22.1.2001

and remand the matter back to respondent no.2-Committee for taking a fresh decision

as per law.

15. Considering the time lapsed, we grant grant petitioner an opportunity to

place on record additional documents including affidavits pointing out validities and

invalidities, if any, in the family. Petitioner shall do so by 21st February,2018 i.e. date on

which he shall appear before the Scrutiny Committee. The Scrutiny Committee shall

then proceed further as per provisions of Act No. XXIII of 2001 and complete the exercise within next eight months.

16. The degree certificate obtained by petitioner and his employment if it is

because of his degree/ caste claim, shall be subject to further orders of the Scrutiny

Committee in the matter.

17. The Writ Petition is, thus, partly allowed and disposed of. No costs.