

(2019) 06 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 10679 Of 2017

Kantabai Ramchandra Sutar

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 27-06-2019

Acts Referred:

Maharashtra And Zilla Parishadas And Panchayat Samities Act, 1961 — Section 2(2)
Constitution of India, 1950 — Article 15(3), 15(4), 16(4), 39, 46, 226

Citation : (2019) 06 BOM CK 0076

Hon'ble Judges : R.M. Borde, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : A.V. Anturkar, Prathamesh B. Bhargude, S.B. Kalel

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India takes exception to an order dated 16th August 2017 passed by the District Caste Scrutiny

Committee, Satara whereby the claim of the petitioner of being a member of 'Sutar, Other Backward Class' has been negatived and consequently

the caste certificate dated 22nd September 2015 issued by the competent authority has been invalidated.

3. The background facts can be summarized as under :—

The maiden name of the petitioner is 'Kantabai Krishna More'. In the year 1993, the marriage of the petitioner was solemnized with Ramchandra

Kondiba Sutar. On the application of the petitioner, the competent authority issued a caste certificate, dated 22nd September 2015, certifying that the

petitioner belongs to 'Sutar, Other Backward Class'. The petitioner contested the election for the post of 'Member', Panchayat Samiti, Javali,

District Satara, which was reserved for the Backward Class citizen (Woman). The petitioner was elected from the said electoral college. The

petitioner applied to the respondent No.4 Scrutiny Committee for verification of her caste claim. The respondent No.4 Committee, after evaluation of

the material, was persuaded to negative the claim of the petitioner of being a member of 'Sutar, Other Backward Class'. The Committee, thus,

invalidated the caste certificate dated 22nd September 2015 by the impugned order dated 16th August 2017. The Committee noted that the material

indicated the petitioner and her paternal relatives are members of 'Hindu Lohar', a recognized Nomadic tribe, and not 'Sutar, Other

Backward Class'. The invalidation of the caste claim entails the consequence of disqualification for the elective office of member of the Panchayat

Samiti, which the petitioner holds. Hence, this petition.

4. We have heard Shri A.V. Anturkar, the learned Senior Counsel for the petitioner and Mr.S.B. Kalel, the learned AGP for the State at some length.

5. Without controverting the findings of facts recorded by the Committee, Shri Anturkar canvassed a two pronged submission :

Firstly, the approach of the Scrutiny Committee in negating the claim of the petitioner, despite having found that there was ample material to

demonstrate that the petitioner belonged to Hindu Lohar caste, was hyper-technical. This submission was advanced as a foundation for the

proposition that Maharashtra and Zilla Parishadas and Panchayat Samities Act, 1961 (hereinafter referred as 'The Act, 1961') envisages the

reservation of seats for backward class of citizens as a group. Sub-section (2) of Section 2 defines 'Backward Class of citizens' means such

classes or parts of or groups within such classes as are declared, from time to time, by the State Government to be Other Backward Classes and

Vimukta Jatis and Nomadic Tribes. Thus, the petitioner was found to belong to 'Hindu Lohar', a recognized Nomadic Tribe (and not

'Sutar', Other Backward class, which the petitioner claimed) is of little consequence as both Other Backward Class and Nomadic Tribe are

included in the broad umbrella of backward class of citizens for whom the reservation is provided in the Act, 1961, urged the learned Senior Counsel

for the petitioner.

Secondly, it was submitted that the petitioner having been married to a person who is a member of the caste Sutar, Other Backward Class, she is

entitled to claim the benefits available to the caste to which she has been transplanted post-marriage.

6. We have given anxious consideration to the aforesaid submissions. In our view, none of the submission carries conviction and advances the cause

of the petitioner. The first submission appears ingenious and appealing at the first blush. However, it crumbles traceless when subjected to close

scrutiny. The question sought to be raised by canvassing the second submission is no longer res integra. However, Shri Anturkar endeavoured to

infuse a new lease of life into the said submission based on voluntary mobility into reserved caste/tribe by pressing into service a judgment rendered by

a Division Bench of this Court in the case of Veena Ashok Godse & Veena Hemant Sonawane Vs. The State of Maharashtra Writ Petition No.8017

of 2017 dt.2.08.2017 at Aurangabad Bench. Hence, we proceed to deal with the submissions.

7. It is indisputable that the petitioner had applied to, and obtained a certificate, from the competent authority of being a member of 'Sutar Other

Backward Class'. 'Sutar' is included at Sr. No.174 in the list of 'Other Backward Classes'. It is an admitted position that initially the caste 'Hindu

Lohar' was also included in the list of 'Other Backward Classes' and in terms of the Government Resolution dated 1st March 2006, pursuant to the

recommendations of State Commission for Backward Classes, 'Lohar' came to be included in the list of 'Nomadic Tribe' at Sr.No.8 and the

corresponding entries (Sr.No.92 and 313) in the list of 'Other Backward Classes' of 'Lohar' came to be deleted.

8. The submission on behalf of the petitioner that since the Nomadic Tribe 'Lohar' and the Other Backward Class 'Sutar' both form part of the Other

Backward Classes under Section 2(2) of the Act, 1961, the petitioner does not incur disqualification, despite her claim of being a member of 'Sutar

Other Backward Class' having been invalidated, cannot be countenanced for the reason that the Scrutiny Committee is constituted to scrutinize the

correctness and validity of the specific Caste claim, which is tendered by the person, who intends to take the benefit thereof. In the case at hand, the

petitioner had approached the Committee with a positive claim that she is a member of Other Backward Class. The exercise by the Scrutiny

Committee, after appreciation of the material and evaluation of the documents and report of vigilance enquiry, to note that the material indicated that

the petitioner and her paternal relations were 'Hindu' was for the purpose of the negation of the claim of the petitioner. The observations of the

Committee that the documents and the material collected during the enquiry revealed that the petitioner and her paternal relations were 'Lohar' were

made to demonstrate that there was no material to support the positive claim of the petitioner of being a member of 'Sutar, Other Backward Class'. In

our view, the Committee cannot be said to have independently evaluated and recorded a finding that the petitioner belongs to 'Hindu' caste and

thereby certified that the petitioner is a 'Hindu' Nomadic Tribe'.

9. Undoubtedly, the petitioner is not precluded from obtaining a fresh certificate of being a member of 'Hindu' caste from the competent

authority and, thereafter, getting her claim scrutinized from the competent Scrutiny Committee. The course adopted by the petitioner to obtain a

certificate of being a member of 'Hindu' caste and thereafter voluntarily submit it to the Scrutiny Committee for its verification was at her own

peril. The petitioner cannot be now permitted to turn around and urge that since the Committee has observed that the material indicated that the

petitioner appeared to belong to 'Hindu', her claim be validated, and she be insulated from the consequences of disqualification by resorting to

the inclusive definition of 'Other Backward Class' under Section 2(2) of the Act, 1961.

10. As indicated above, the second submission also does not merit acceptance. We are persuaded to observe that the said submission deserves to be

noted for the purpose of being repelled only, in view of the legal position which has by now crystallized. As the learned counsel for the petitioner

placed strong reliance on the observations of the Division bench of this Court in the case of Veena Ashok Godse & Veena Hemant Sonawane

(Supra) in support of the submission that the marriage of the petitioner with a member of Other Backward Class confers the benefit available to that

caste upon her as well, we propose to deal with the said submission in a little detail.

11. In the case of Veena Ashok Godse (Supra), the petitioner therein, who had successfully contested election to the post of President of Municipal

Council, Jejuri, which was reserved for Other Backward Class, claimed to be a member of the caste 'Wani-OBC'. The concerned Scrutiny

Committee, after verification of her claim, concluded that the petitioner did not belong to Wani, Other Backward Class. The petitioner therein had

assailed the said order of invalidating her caste claim by the Scrutiny Committee. The Division Bench did not find any reason to interfere with the

findings recorded by the Scrutiny Committee. However, while reaching the said conclusion, the Division Bench observed, inter alia, in paragraph

No.13 as under :—

“13 We do not have before us anything, which would indicate whether the petitioner a OBC, married a OBC person or otherwise. We do not know

the Caste or Tribe of Hemant Sonawane. The Committee proceeded on the basis that the petitioner can derive the benefit of reservation meant for

OBC in Elective Posts even after her marriage. This was without ascertaining the Caste or Tribe of Hemant Sonawant. If he is OBC, then, there is

no difficulty but if he is not, then, whether he is belonging to a Scheduled Caste or Scheduled Tribe, Vimukta Jati Nomadic Tribe, Special Backward

Class, has not been indicated at all. This has a vital bearing on the controversy.”

(Emphasis supplied)

12. Laying emphasis on the penultimate sentence (emphasis supplied by us), the learned Senior Counsel urged that by marriage the petitioner can be

said to have been transplanted into the backward class (Sutar) and, therefore, the petitioner is entitled to continue to hold to the elective office. We are

afraid to accede to this submission. We are of the view that the aforesaid observations cannot be read torn out of context. It is trite that the words in a

judgment cannot be read and construed like the words of a statute. The Division Bench has not dealt with the question of the petitioner therein being

entitled to the benefit of the caste of her husband. In fact, the Court observed that there was no factual foundation for such consideration. If we

peruse the aforesaid judgment as a whole, it does not appear that the aforesaid judgment or even the observations extracted above, lay down a

proposition that by marriage simpliciter with a person belonging to a backward

class, the first person becomes a member of the backward class to which the second person belongs.

13. It is pertinent to note that the aforesaid observations in paragraph 13 were made after referring to the three Judge Bench judgment of the Supreme

Court in the case of Mrs.Valsamma Paul Vs. Cochin University & Ors. AIR 1996 Supreme Court 101 1In the said case, the Supreme Court

formulated the following question for its consideration :

“Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso

facto, becomes entitled to claim reservation under Article 15(4) or 16(4), as the case may be?”

The Supreme Court answered the said question in the negative. It may be necessary to refer to the observations of Supreme Court in paragraph

No.31, in addition to the observations in paragraph 34, wherein the said question came to be answered, which read as under :“

31. It is well settled law from *Mussumat Bhoobun Moyee Debia v. Ramkishore Achari Chowdhary* (1865) 10 MIA 279 that judiciary recognised

a century and half ago that a husband and wife are one under Hindu law, and so long as the wife survives, she is half of the husband. She is 'Sapinda'

of her husband as held in *Lallu Bhoy v. Cassibai* (1979) 7 IA 212. It would, therefore, be clear that be it either under the Canon law or the Hindu

law, on marriage wife becomes an integral part of husband's marital home entitled to equal status of husband as a member of the family. Therefore,

the lady, on marriage, becomes a member of the family and thereby she becomes a member of the caste to which she moved. The caste rigidity

breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted.

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34. In *Murlidhar Dayandeo Kesekar V. Vishwanath Pandu and R. Chandevaramappa Vs. State of Karnataka*, this Court had held that economic

empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus,

education, employment and economic empowerment are some of the programmes, the State has evolved and also provided reservation in admission

into educational institutions, or in case of other economic benefits under Articles

15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also undergo have had same the handicaps, and must have been subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) and 16(4), as the case may be. Acquisition of the Status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.â??

(Emphasis supplied)

14. It becomes evident that the exposition of law on the aspect of eligibility to get the benefit of reservation, on the strength of voluntary mobility into the caste/tribe, for whom reservation is provided, is abundantly clear. Mere transplantation into the caste/tribe by marriage or otherwise, without the attendant social disadvantages and handicaps, is of no avail to claim the benefits available to the said caste/tribe. However, the observations in paragraph No.31 extracted above, if read in isolation, may lead to some confusion.

15. It may be imperative, therefore, to immediately notice a judgment of the Supreme Court in the case of Rameshbhai Dabhai Naika Vs. State of Gujarat & Ors. (2012) 3 Supreme Court Cases 400 wherein, after reference to the aforesaid observation in the case of Mrs. Valsamma Paul (Supra), the ratio thereof was further clarified. In Rameshbhai Dabhai Naika (Supra), it was observed in clear and explicit terms that the view expressed in paragraph 31 of Mrs.Valsamma judgment that in an inter-caste marriage or a marriage between a tribal and a non-tribal the woman must in all cases take her caste from the husband, as a rule of Constitutional Law is a proposition, the correctness of which is not free from doubt. And in any case it is not the ratio of the Valsamma decision and does not make a binding precedent. It was further observed that the reasoning of Mrs.Valsamma (Supra) in paragraph 34 (extracted above) is the true ratio of the decision in

Mrs.Valsamma (Supra). The aforesaid pronouncement of the Supreme Court in the case of Rameshbhai Dabhai Naika (Supra) makes it beyond cavil that Mrs.Valsamma (Supra) cannot be banked upon in support of the proposition that a lady on marriage, ipso facto, becomes a member of the caste to which she moves and therefore automatically entitled to the benefits of the said caste to which she has been transplanted to.

16. In view of the aforesaid settled legal position, it seems to be too late in the day to make an effort to obviate the consequences of disqualification,

on account of invalidation of the stated caste claim, by clinging to the caste of the husband of the petitioner.

17. The upshot of the aforesaid consideration is that the petition is devoid of substance and deserves to be dismissed.

18. The petition stands dismissed. However, there shall be no order as to costs.

19. Rule stands discharged.

20. At this stage, the learned counsel for the petitioner seeks extension of interim order granted earlier by this Court. In view of dismissal of the instant

petition and for the reasons recorded in the order passed by us, so also in view of the judgment of the Division Bench in the matter of Dattatraya

Ramrao Thorat Vs. State of Maharashtra & Ors. 2003(5) Mh.L.J. 539, the judgment of the Full Bench in the matter of Sojit Vasant Patil Vs. State of

Maharashtra & Ors. 2004 (3) Mh.L.J. 1109 and the judgment of the Full Bench in the matter of Anant H. Ulahalkar Vs. Chief Election Commissioner

& Ors. 2017(1) Mh.L.J. 431, the prayer made by the learned counsel for continuation of the interim relief granted earlier stands rejected.