

(2008) 02 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 1594 of 2006

Kawarsingh Bainade

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 ALLMR 650 : (2008) 2 MhLj 802

Hon'ble Judges : S.P. Kukday, J; P.V. Hardas, J

Bench : Division Bench

Advocate : V.J. Dixit and S.W. Munde, for the Appellant; Deelip Bankar Patil, A.G.P. for Respondent Nos. 1, 3 and 4, B.L. Sagar Killarika and D.V. Soman, for the Respondent

Final Decision : Dismissed

Judgement

1. This Petition under Article 226 of the Constitution of India, questions the correctness of the findings recorded by the respondent Scrutiny Committee in its Judgment dated 21-2-2006 invalidating the tribe claim of the petitioner as belonging to "Rajput Bhamta", Vimukta Jati.

2. The petitioner had contested the election of the Aurangabad Municipal Corporation from a Ward which was reserved for Vimukta Jati. The petitioner on the strength of the certificate issued to him, contested the election and was declared as elected as Councillor. The claim of the petitioner as belonging to "Rajput Bhamta" caste, as per the procedure came to be referred to the Scrutiny Committee. The petitioner in support of his claim as belonging to "Rajput Bhamta" caste has tendered before the Committee about 15 documents. The documents submitted by the petitioner are enlisted in the order of the Scrutiny Committee. The main plank on which the petitioner has based his claim of "Rajput Bhamta" caste are:

(i) The school record of the petitioner in which his caste is recorded as "Rajput

Bhamta".

(ii) The validity certificate issued to one Kapil Shivsingh Bainade, who is said to be a close relative of the petitioner from the paternal side.

3. The respondent Scrutiny Committee invalidated the tribe claim of the petitioner for various reasons. The respondent Scrutiny Committee found that no reliance whatsoever could be placed on the document at serial No. 2, which was the extract of the admission register pertaining to the petitioner dated 29-6-1969. This, admittedly was the oldest document available with the petitioner. The respondent Scrutiny Committee found that there was difference in the ink in respect of noting of the caste of the petitioner. This Court had called for the original register and the original register which was produced, was kept in the Court's custody and the same is made available for our perusal when this Petition is called out for hearing. On perusal of the register, particularly entry at serial No. 25 reveals that the aforesaid entry pertains to the petitioner and in the column which is meant for recording the caste of the person, in a different ink in a vernacular, it is written as "R.B.". This is obviously written to denote that the petitioner belongs to "Rajput Bhamta" caste. The aforesaid writing relating to the caste is written in different ink and a different pen appears to have been used. While the entire register appears to be written in ink pen, the word "Rajput Bhamta" appears to have been written in dot pen. It also appears that word "Rajput Bhamta" has been written subsequently. No explanation, much less satisfactory explanation, was tendered in respect of the entry regarding the caste of the petitioner. The Scrutiny Committee therefore found that since no reliance could be placed on the entry in this register pertaining to the Caste of the petitioner, no reliance also could be placed upon regarding his caste in the admission register of the Secondary School.

4. In respect of the validity certificate issued to Kapil Shivsingh Bainade, the Committee has no doubt observed in its order that notice has been issued for recording statement of Kapil Shivsingh Bainade and statement of Kapil Shivsingh Bainade is recorded, but the record and proceedings made available to us by learned Counsel Mr. Killarikar appearing for the respondent Scrutiny Committee for our perusal, indicates that inadvertently the Scrutiny Committee has stated that statement of Kapil Shivsingh Bainade has been recorded, whereas in fact the statement of Kapil Shivsingh Bainade has not been recorded.

5. Mr. V.J. Dixit, learned senior counsel appearing for the petitioner has urged before us that the respondent Scrutiny Committee has completely misappreciated the documents. No satisfactory reasons have been advanced by the Scrutiny Committee for disregarding the validity certificate issued to Kapil Shivsingh Bainade. Shri Dixit, learned senior counsel urged before us that Kapil Shivsingh Bainade and his father have both sworn affidavits and had submitted before the Committee and had also stated on oath in respect of relation of the petitioner with them. It was therefore, submitted before us that, the respondent Scrutiny Committee has fallen in error in not relying upon the validity certificate

issued to Kapil Shivsingh Bainade. The learned senior counsel has also pointed out that from the record and proceedings it appears that notices have been issued to Kapil Shivsingh Bainade, yet there is no acknowledgement that Kapil Shivsingh Bainade has been served notices.

6. Mr. Killarikar, learned Counsel appearing on behalf of the respondent Scrutiny Committee has urged before us that it is the primary duty of the candidate who claims to be belonging to particular caste, to lead evidence and file documents in support of his claim. The respondent Scrutiny Committee had issued notices to Kapil Shivsingh Bainade and it was the responsibility of the petitioner to keep the witness available for examination. It is also urged before us by learned Counsel Mr. Killarikar that in the light of the obviously fabricated document relating to the admission register wherein the caste is recorded subsequently in different ink, would clearly indicate the falsity of the claim of the petitioner. It is also urged before us by the learned Counsel appearing on behalf of the respondent Scrutiny Committee that the vigilance cell had conducted its enquiry and the proceedings in respect of verification of the caste of the petitioner had been conducted strictly according to the rules and there is no infirmity in the procedure warranting interference in the exercise of writ jurisdiction.

7. As pointed out by us above, the entry in respect of caste of the petitioner in the admission register, which has been made available, clearly indicates that as the caste of the petitioner appears to have been written at a different point of time and in a different ink, no reliance at all could be placed on such document. No fault, therefore, could be found in not placing any reliance on the said document. If the basic document regarding petitioner's admission register of Primary School is found to be a suspicious document, subsequent entry alleged to have been made in the admission register in Secondary School cannot have any force. We further find that the relative of the petitioner by name Kapil Shivsingh Bainade has sworn an affidavit and had produced his genealogy. The genealogy produced by Kapil Shivsingh Bainade, obviously is an incomplete genealogy. Father of Kapil Shivsingh Bainade i.e. Shivsingh Suppadsingh Bainade had also sworn an affidavit in respect of relationship and had produced the genealogy. We find that there is tremendous difference in both the genealogies on record. Curiously the petitioner has not produced a genealogy and has not established the fact that Kapil Shivsingh Bainade was his close relative and therefore the validity certificate issued to Kapil Shivsingh Bainade ought to have been relied upon by the Scrutiny Committee. The petitioner has obviously failed in his attempt of establishing that Kapil Shivsingh Bainade is his close relative. In any event, the relationship of Kapil Shivsingh Bainade and the petitioner, even according to the genealogy, is of fourth or fifth generation. According to the genealogy the father of Kapil Shivsingh Bainade and the petitioner are fourth cousins of each other. The petitioner happens to be cousin uncle of Kapil Shivsingh Bainade. As pointed out by us above, the Committee has come to the finding that the petitioner and Kapil Shivsingh Bainade have failed in establishing the relationship, and therefore no reliance can be placed on the validity

certificate issued to Kapil Shivsingh Bainade.

8. Mr. Dixit, learned senior counsel has lastly urged before us that the vigilance cell has conducted an enquiry and the report of the vigilance cell clearly indicates that the petitioner had referred to the various customs and traits observed by "Rajput Bhamta" community. According to the learned senior counsel for the petitioner, the Scrutiny Committee has not at all referred to this part of the report of the vigilance cell.

9. The findings of the vigilance cell do not themselves constitute evidence. They have persuasive value and beyond that no value can be attached to the finding of the report of the vigilance cell. It was the sole responsibility of the petitioner to establish and prove his claim as belonging to "Rajput Bhamta" caste. The petitioner has miserably failed in his attempt of establishing that he is a person belonging to "Rajput Bhamta" caste. The Scrutiny Committee has accorded every opportunity to the petitioner and the principles of natural justice have been followed. We do not find any lacuna either in the procedure or reasoning to warrant any interference in the exercise of writ jurisdiction under Article 226 of the Constitution of India. Consequently this Petition fails and summarily dismissed with no order as to the costs. It is needless to mention that all interim orders stand vacated.

10. At this stage Mr. Dixit, learned senior counsel appearing on behalf of the petitioner states that the interim relief granted to the petitioner by this Court on 28-2-2006 be continued for a period of six weeks to enable the petitioner to file appropriate proceedings before the Supreme Court. Interim relief to continue for a period of six weeks from today. The original register be returned to Mr. Killarikar, learned Counsel appearing on behalf of the respondent Scrutiny Committee.