

(2019) 02 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 2153 Of 2017

Kiranlata

APPELLANT

Vs

Divisional Caste Certificate Scrutiny Committee And Ors

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Citation : (2019) 2 AllMR 349

Hon'ble Judges : R.K. Deshpande, J; Vinay Joshi, J

Bench : Division Bench

Advocate : N.B. Kalwaghe, A.S. Fulzele

Final Decision : Allowed

Judgement

Vinay Joshi, J.

1. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the parties.

2. The petitioner claims to be belonging to "Mahar" caste, which is included in Scheduled Caste Category. The petitioner has been appointed as Staff Nurse vide order dated 10.04.1995, at Medical College, Ambejogai, District Beed, by following due procedure. Then the petitioner started working on the same post at Indira Gandhi Medical College, Nagpur. Petitioners' caste certificate issued by Executive Magistrate, dated 23.10.1990, relating to "Mahar" Caste was referred to the Scrutiny Committee for scrutiny and verification. The Scrutiny Committee after obtaining Vigilance Cell report, observed that the petitioner is keeping faith and following traits, and customs of Christian community. Accordingly Committee has invalidated petitioners' caste claim vide impugned order dated 13.11.2014.

3. The Scrutiny Committee turned down the claim of the petitioner mainly on the ground that she failed to produce documents of pre-constitutional era, as well as the school leaving certificate of petitioner bears her religion as "Christian". During Vigilance inquiry, it was found that the petitioner believes in Christian

faith and attends church. The petitioner has married with Christian fellow, and by considering the adverse evidence in the form of school leaving certificate and vigilance cell report, the Committee invalidated caste claim of petitioner.

4. The learned Counsel for petitioner submitted that, the petitioner belongs to "Mahar" caste, which is a Scheduled Caste. She was born in the family which belongs to Mahar caste. Extract of kotwal book entry shows that a son had born on 15.02.1943 to the petitioners' grand father namely Nago, whose case is shown as Mahar. Petitioner would submit that her mother being maid servant in Christian family, she entered petitioners caste as Christian in the school record under influence of Christian family. Petitioner, though married with a Christian, she never converted into Christian by undergoing the ceremony of Baptism. The petitioner some time attends Church for prayers, only to accompany her ailing husband. By virtue of marriage petitioner never loses her original caste Mahar, and therefore, petitioner challenged the impugned decision.

5. The petitioner has produced in all 6 documents before the Scrutiny Committee. Un-disputedly, the petitioner has produced an extract of Kotwal book entry regarding birth of her father on 15.02.1943 in which Mahar Caste is shown of petitioners' grand father Nago. Neither the Vigilance Cell, nor the Scrutiny Committee denied or suspected the genuineness of said old pre-constitutional entry of "Mahar" caste in the name of petitioners' grand father. However, the Committee swayed by the vigilance cell report which resulted into ignoring the pre-constitutional document tendered by the petitioner. The vigilance cell report indicates that the petitioners' mother has entered petitioners caste as Christian during her schooling. The Vigilance Cell stated that the petitioner claims to be of Mahar caste and praying Dr. Babasaheb Ambedkar and Gautam Buddha, as well as observes the festivals like Diwali, Dusshera, Holi etc. The vigilance cell has merely recorded statement of one of the neighbour of her matrimonial house, namely Alice, who stated that the petitioner has married with Christian, and offering prayers in the Church. It was also stated by the neighbour that though petitioner is Mahar by caste, however, after marriage she became Christian, as per caste of her husband.

6. During house visit, the vigilance cell found that repairs work was going on due to which photographs of deity were removed, but, found one photograph of Lord Yeshu. On this material, the vigilance cell concluded that the petitioner belongs to Christian caste.

7. The pre-constitutional document of the year 1943 showing petitioners grand father's caste as Mahar (Scheduled Caste), has not been properly appreciated by the Committee. The Committee was influenced by the sole ground that, the petitioner married with Christian and attending Church. There is no evidence that the petitioner embraced Christianity by undergoing Baptism ceremony. Merely because husband of petitioner belongs to Christian community, that by itself is not sufficient to infer that the petitioner has abandoned Hindu faith and converted into Christianity.

8. The Vigilance Cell inquiry appears to be quite perfunctory. It has not verified the old right and customs which are being followed. There is no reference on the aspect of ceremonies performed in the marriages, reactions of dead body etc. The vigilance cell has recorded isolated statements of neighbour of the petitioner's husband, who is Christian. The vigilance cell has not endeavored to record the statement of petitioners parents or other close relatives.

9. The learned counsel for the petitioner made two fold proposition, firstly, in absence of ceremony of baptism, the petitioner cannot be held to be a Christian, and secondly by virtue of marriage, petitioner would not ipso facto become a member of Christian community. In this regard, he places reliance on some reported judgments, in cases of :

(1) 2016 (1) Mh.L.J. 94 Chandrashekhar Danial Gaikwad .vrs. State of Maharashtra and others.

(2) 2017 (5) Bom.C.R.252 Bhanudas Hona Gajbhiv vrs. State of Maharashtra and others.

(3) Writ Petition No. 6200/2013 09.01.2017 (Aurangabad Bench) Smt. Namrata Anand Alhat vrs. The State of Maharashtra and others.

(4) Writ Petition No. 836/2013 dated 19.12.2017 (Aurangabad Bench) Smt. Martha Devidas Rathod vrs. Scheduled Caste, De- notified Tribe (Vimukta Jaati), Nomadic Tribes and others.

10. It is apparent that the petitioner's grand father namely Nago, belongs to "Mahar" Caste which is evident from pre- constitutional entry. It is not in dispute that petitioner married to a persons belonging to Christian community. In this regard, the learned counsel for petitioner relied upon the Full Bench decision of this Court in case of Rajendra Shrivastava .vrs. State of Maharashtra and others 2010 (2) Mh.L.J. 198. In said case, the Full Bench in categorical terms ruled that a woman who is born into a scheduled caste or scheduled tribe, on marriage with a person belonging to a forward caste, is not automatically transplanted into the caste of husband by virtue of her marriage. Besides that we may refer to the decision of the Constitution Bench of the Hon'ble Apex Court in the case of V.V. Giri .vrs. D. Suri Dora (1960) 1 SCR 42. In said case, it is ruled that the caste is acquired by birth and the caste does not undergo a change by virtue of marriage and adoption. In view of the said settled position of law, the conclusion drawn by the Committee is totally erroneous.

11. Petitioner's marriage with a Christian or visiting church or keeping the photograph of Lord Yesu in house, would not denude her from the original caste to which she belongs. In terms of undisputed pre-constitutional document, the petitioners original caste is Mahar, therefore, onus lies on the vigilance cell to establish conversion is Christianity, which was not discharged. There is no material to show that the community has treated petitioner as Christian or she has undergone the ceremony of baptism. The Scrutiny Committee has

overlooked the vital documents of the year 1943. The vigilance cell has not conducted thorough inquiry by recording statement and verifying the things. Apart from that, the very ground of rejection is about petitioner's marriage with Christian, is unsustainable. Therefore, we hold that the impugned order is erroneous, resulting into a declaration of petitioners' caste as Mahar, which is a Scheduled Caste. In view of above discussion, we allow the Writ Petition and pass the following order.

(i) Writ Petition is accordingly allowed.

(ii) The order passed by respondent no.1 District Caste Certificate Scrutiny Committee No.3, Nagpur on 13.11.2014, impugned in this petition, is hereby quashed and set aside.

(iii) It is declared that petitioner has established her claim for "Mahar" in the List of Scheduled Caste in the State of Maharashtra. Respondent Scrutiny Committee is accordingly, directed to issue validity certificate in her name, within a period of three months from the date of receipt of this order.

(iv) Petitioner would be entitled to all the benefits of Scheduled Caste.

13. Rule is made absolute in aforesaid terms, with no order as to cost.