
(2019) 11 BOM CK 0104
In the Bombay High Court
Case No : Writ Petition No. 1356 Of 2018

Kishore

APPELLANT

Vs

Joint Commissioner & Vice Chairman And Ors

RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Maharashtra Scheduled Castes And Scheduled Tribes De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation Of Issuance And Verification Of Caste) Certificate Act, 2000 — Section 6, 6(1)
Maharashtra Scheduled Tribes (Regulation Of Issuance And Verification Of) Certificate Rules, 2003 — Rule 9

Citation : (2019) 11 BOM CK 0104

Hon'ble Judges : Sunil B. Shukre, J;Rohit B. Deo, J

Bench : Division Bench

Advocate : S.R. Narnaware, K.S. Joshi

Final Decision : Dismissed

Judgement

Sunil B. Shukre, J

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
2. Firstly, we would deal with the constitutional challenges raised in this petition.
3. According to the petitioner Section 6(1) of the Maharashtra Scheduled Castes and Scheduled Tribes De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste) Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001) and Rule 9 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short Act of 2000 & Rules 2003) are unconstitutional.
4. The ground taken is that the constitution of the Committee for the purposes of

scrutinizing and verifying of caste and tribe claims, insofar as, it concerns the case of the petitioner, is not in accordance with the directions given by the Hon'ble Apex Court in the cases of Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development, Thane and Ors. 1994 (6) SCC 241 and Madhuri Patil (2), 1997 (5) SCC 437 1081.

5. Learned counsel for the petitioner submits that the Chairman of the Scrutiny Committee, Shri Vinod Patil was the Joint Commissioner, and according to case of Madhuri Patil (II), it is only the Additional Commissioner (Revenue), who could have been the Chairman of the Committee and if it is not so, the constitution of the Committee has to be declared as invalid. He relies upon view taken by a Division Bench of this Court in the case of Mangesh Nirutti Kashid Vs. District Collector, Satara 2012 (5) Maharashtra Law Journal 473. The other ground is that even the Member Secretary who is a Research Officer of the Committee did not possess the qualifications, as required, in terms of the directions issued by Hon'ble Apex Court in two cases of Madhuri Patil.

6. We would have considered these objections had it been the case that the petitioner had not taken any part in the proceeding before the Scrutiny Committee in the present case. Here, the petitioner participated in the proceedings before the Scrutiny Committee and when he found that the Scrutiny Committee's decision was against him, it dawned upon the petitioner that the constitution of the Committee was improper. A person, who has taken a chance in this way, it is settled law, cannot be permitted to turn around and raise a challenge which ought to have been made before his participation in the process. Therefore, we are not inclined to entertain any challenge to the validity of Section 6 of the Act of 2000 and Rule 9 of the Rules, 2003 raised herein. Similar is the view taken by another Division Bench of this Court in the case of Ajaykumar Yadaorao Nikhare Vs. State of Maharashtra & Ors. 2012 (1) ALL MR 280. The view commends to us. Accordingly, the constitutional challenge is rejected.

7. Coming to the merits of the matter, we find that here also the petition is devoid of any substance. The Scrutiny Committee has found that there were some documents of the years 1957 and 1959, standing in the name of cousin brothers of the petitioner, and who were from the paternal side of the family of the petitioner, showing their respective castes to be "Koshti". There were some other documents standing in the name of the petitioner himself, which were of the years 1989, 2013, 1983, 1990 and 1992, which showed the caste of the petitioner as Halba. But the Committee found that the documents, which were the oldest amongst all the documents, indicated with greater reliability the social status of the blood relatives from the parental side of the petitioner as that of "Koshti", a non tribal community and, therefore, the Scrutiny Committee found that no reliance could be placed upon the subsequent documents. Even then, it is seen that the Scrutiny Committee has also considered the traits, customs, religious practices and mores of the community to which the petitioner claims to

be belonging on the basis of information submitted by the petitioner himself, in order to apply the affinity test and then the Committee has found that the petitioner has failed on this count as well.

8. The verification carried out by the Scrutiny Committee in this manner, in our opinion, cannot be found to be erroneous or illegal. It is based upon the settled principles of law, as applicable to the facts of the present case and as such, we are not inclined to make any interference with the impugned order.

9. Of course, it is the submission of learned counsel for the petitioner that the entry of "Koshti" was explained by the petitioner as indicative of an occupation followed by weavers and that it has been held in the case of *Priya S/o Pravin Parate Vs. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and Ors.* 2013 (1) Mh.L.J 180 that before the notification of 1993, the entry "Koshti" was only indicative of the occupation of Weavers Community. Learned counsel for the petitioner has also placed reliance upon the observations of an expert, R.V. Russel, contained in his book on Tribes and Castes of the of Central Provinces of India', published in 1916 which has been extensively dealt with in the judgment of Division Bench of this Court in *Priya P. Parate (supra)*. Learned A.G.P. submits that the observations made in *Priya P. Parate (supra)* are based upon the facts which are different from those involved in the present case and, therefore, would have no application to the present case. We find substance in submissions of learned AGP for the respondents/State.

10. On going through the judgment of *Priya P. Parate (supra)*, we find that the observations therein are based upon the facts involved in that case. In that case, there were some documents of the relatives of the petitioner from paternal side which showed their caste to be "Koshti" but, on a closer perusal of those documents, the Division Bench also found that though the caste of those relatives was written as "Koshti", there was also another entry showing profession of those persons and it was shown as weaving. In the context of these facts, the Division Bench held that a possibility could not be ruled out that such entries might be indicative of occupation simpliciter. Such are not the facts of the present case. In the present case, it could not be shown to us by learned counsel for the petitioner that in addition to the recording of the caste as "Koshti", there was also an entry of the profession of weaving in the documents. Besides, in the case of *Priya P. Parate*, it has not been held categorically that "Koshti", as a caste is non-existing. Similarly, although, there is a reference to the observations of the expert R.V. Russel in paragraph 10 of the judgment, the observations do not indicate that even the expert, R.V. Russel, is of the opinion that in Maharashtra or the concerned parts of Maharashtra or Vidarbha, "Koshti" as a caste never existed. So, in our respectful submission, *Priya Parate* would have no application here. This would lead us to believe that in the present case it was necessary to deal with the question as to whether "Koshti" as a caste existed or not. This aspect of the case, a material one, has been dealt with exhaustively in the impugned order and we do not find any infirmity in the conclusions drawn by the

Scrutiny Committee as a result of it's so dealing with the issue.

11. A careful scrutiny of the impugned order would show that the Scrutiny Committee has made a reference to the Book entitled People of India, Maharashtra, Part-II, Volume-XXX, reproducing the relevant observations. The Scrutiny Committee has further made a reference to Maharashtra State Gazetters, Nagpur District and reproduced some of the remarks contained in Chapter 3 thereof, on page 142. These observations and remarks reproduced in the impugned order show that "Koshti" is not only referable to an occupation of weaver but is also referable to several castes falling within the occupation of weaver. These castes, as has been taken note of by the Scrutiny Committee, are known as Devangan Koshti, Lad Koshti, Sut Sali, Koshti and so on so forth. No material has been placed before us to repel these findings of the Committee and as such no perversity could be noticed in the findings. They only make it clear that it cannot be accepted that "Koshti" as a caste never formed part of the Indian Castes System and that the word "Koshti" was always known and referable to the occupation of weavers only.

12. In the result, we find no merit in the petition. The petition deserves to be dismissed.

13. At this stage, learned counsel for the petitioner has sought protection of the service till the report of the Committee constituted in terms of Government Resolution dated 5th June, 2018 is submitted.

14. Learned AGP for the respondents/State submits that the relief cannot be granted for two reasons. Firstly, learned AGP submits that there is no prayer made in this regard and secondly, no such protection can be granted, in view of the law laid down by the Hon'ble Apex Court in the case of Chairman and Managing Directors Vs. Jagdish Bahira and Ors. 2017 (4) MHLJ 898 = AIR 2017 SC 3271 decided on 6th July, 2017.

15. As regards the prayer clause, we find that some interim relief in this relation has been sought in the petition. Even otherwise, the prayer so made would have to be considered on its own merit, whether there is a prayer specifically made or not.

16. Considering the prayer of the petitioner, on its own merit, we find that even the judgment of this Court in the case of, Organization for the Rights of Tribal, Nagpur vs. State of Maharashtra through the Chief Secretary and others, in Writ Petition No.3140/2018 decided on 28th September, 2018, does not categorically grant any protection, though heavy reliance has been placed thereon by the learned counsel for the petitioner. We reiterate that, this judgment does not favour the case of petitioner in any manner. It's careful reading would show that the judgment is based only upon the clarification given by the State and difficulties expressed by the State in implementing the directions of the Hon'ble Apex Court in the aforesaid case of Jagdish Bahira (supra). The State has made it clear that the action of termination of the services of the candidates

whose caste claims have been invalidated finally, would be completed by December, 2019 and the process of filling up vacancies that would arise consequent to the termination of services of such candidates, would also be completed by December, 2019. Accepting this clarification, this Court held that the clarification statement would be taken as an undertaking given to the Court and accepted by the Court. This Court also found that if any compliance with the aforestated statements was not made, it would entail an action for Contempt of Court against the Chief Secretary personally.

17. In view of above, we do not find that any more protection as sought for by the petitioner, could be granted in this case. The prayer made in this regard is, therefore, rejected.

18. In view of above, petition stands dismissed.

19. Rule is discharged. There shall be no order as to costs.