
(2016) 04 BOM CK 0126

In the Bombay High Court

Case No : Writ Petition No. 1404 of 2014

Kum. Nehashree Dnyaneshwar Sonkusare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-04-2016

Acts Referred:

Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 — Rule 11, 12

Citation : (2016) 5 BCR 644 : (2016) 4 MhLJ 467

Hon'ble Judges : S.C. Dharmadhikari and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : Mr. Vedchetan Patil i/b Mr. Kailash Rawandhe, Advocates, for the Appellant; Mr. G.W. Mattos Assistant Government Pleader, Mr. Karan Bhosale a/w Ms. Tanmayi Bhavsar i/b Ms. Neha D. Bhosale, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Kulkarni, J.—This petition under Article 226 of the Constitution of India challenges the order dated 19th August, 2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane (for short "Caste Scrutiny Committee") whereby the application of the petitioner for validation of her caste certificate, certifying that she belongs to "Halba scheduled tribe" has been rejected invalidating the caste certificate issued to the petitioner.

2. Conspectus of facts as would fall for our consideration are thus :

The petitioner is a student of Bachelor of Dental Sciences course. In June 2012 at the time of filing of the petition the petitioner was studying in the first year in respondent No.3 Institution. The petitioner claimed to belong to the "Halba" tribe which is listed as a schedule tribe in the Presidential Order. A caste certificate was issued to the petitioner by the Deputy Collector and Special Land Acquisition Officer, Mumbai Suburban District dated 30th June 2012 certifying that the petitioner belonged to the "Halba" tribe.

3. For education purposes, the petitioner had made an application to the caste scrutiny committee seeking validity of the caste certificate. This application was forwarded through the Principal, N.G.Acharya and D.K.Marathe College of Arts, Science and Commerce, Chembur, Mumbai. In support of her claim, the petitioner submitted several documents which inter alia included her School leaving Certificate, School leaving certificate of her father, Domicile certificate, Caste certificate of her cousin sister, cousin brother, School leaving certificate of her uncle etc. All these documents according to the petitioner would show that the petitioner and her relatives belonged to "Halba" schedule tribe. These documents are set out seriatim in paragraph 2 of the impugned order passed by the Caste Scrutiny Committee.

4. The Caste Scrutiny Committee which is governed under provisions of the Maharashtra Scheduled Castes, Scheduled Tribes Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificate Act, 2000 and Rules framed thereunder proceeded to consider the application of the petitioner. The petitioner's case was accordingly handed over for a vigilance inquiry to the "Vigilance Cell" which submitted a report on 7th June, 2011. The report recorded certain information about the traditional occupation of the petitioner's tribe and further recorded that the documents submitted by the petitioner show that she belongs to the Halba tribe. The Research Officer of the Vigilance cell however made a remark that the petitioner's original place of residence was Kurud, Taluka Desaiganj District Gadchiroli. The Caste Scrutiny Committee, therefore, by its letter dated 11th January 2012 called upon the petitioner to submit her explanation on the said report of the vigilance cell. By her letter dated 17th January 2012, the petitioner submitted an explanation to the said report. A personal hearing was granted to the petitioner on 10th July, 2012, wherein the petitioner's father appeared and requested to submit some more documents. Again on 30th October, 2012 the petitioner along with her father were called for a personal hearing wherein the petitioner's father conceded to the position that the permanent place of residence of the petitioner's family was Taluka Desaiganj, in Gadchiroli District though the application was made before the Caste Scrutiny Committee at Thane.

5. The Caste Scrutiny Committee, thus thought it appropriate that as the actual place from where the petitioner's family hails is Gadchiroli District, it was desirable that the Committee forwards the matter to the Gadchiroli Committee to undertake further vigilance enquiry so that the vigilance cell attached to the said Committee can visit the original place of residence of the petitioner and accordingly submit a report. The vigilance Committee attached to the Gadchiroli Caste Scrutiny Committee conducted an inquiry and submitted a report dated 13th May 2013, to the Thane Caste Scrutiny Committee. The vigilance Cell of the Gadchiroli Committee recorded a statement of the petitioner's cousin grandfather Shri Kevalram Sitaram Sonkusare aged 90 years (elder brother of the petitioner's grand father) who furnished information inter alia on the traits,

characteristics, customs and traditions of the community to which the family of the petitioner belonged. Shri Kevalram, the cousin grandfather, stated that their caste was "Koshti" and the family originally belonged to Kudur, Taluka Vadsa (De) District Gadchiroli. It was stated that they did not possess any agricultural land from their ancestors. It was stated that the traditional occupation of the community was weaving. The genealogy of the petitioner's family was also furnished by him as also a copy of an extract of the school admission general register of the petitioner's parental relatives namely the cousin uncle and cousin aunt which showed the caste as "Koshti". The Research Officer attached to the vigilance cell of the Gadchiroli Committee recorded that the traits, characteristics, customs etc of the petitioner do not match with that of "Halba" schedule tribe community.

6. This report of the vigilance cell of the Gadchiroli Committee was forwarded to the petitioner vide letter of the Thane Committee dated 17th May, 2013. The petitioner was called upon to submit her explanation. The petitioner submitted an explanation by her letter dated 20th June, 2013. A personal hearing was thereafter granted to the petitioner and her father on 10th July, 2013.

7. The Committee taking into account and scrutinising all the documents also as submitted by the petitioner observed that these documents as submitted by the petitioner of her parental relatives though show that the petitioner belonged to the "Halba" tribe, these documents were documents post Presidential Order, which were having less probative value. It was observed that the petitioner's family in fact hailed from Kudur Taluka Vadsa (De) District Gadchiroli. In the light of the second vigilance cell inquiry, it was found that the petitioner belonged to "Koshti" community and was not belonging to "Halba" tribe as claimed. The Committee observing that the petitioner has failed in the affinity test, rejected the caste claim of the petitioner and directed that the caste certificate dated 13th June 2010 issued to her by the Deputy Collector be cancelled and confiscated. The Committee also observed that persons like the petitioner are ready and willing to abandon her original caste and jump into Scheduled Tribe category and this act is a wholesale fraud on the facilities and concessions meant for genuine, Scheduled Tribes in the State of Maharashtra.

8. In assailing the impugned order, learned counsel for the petitioner submits that the impugned order passed by the Caste Scrutiny Committee is erroneous inasmuch as the Caste Scrutiny committee has invalidated the claim of the petitioner only on the basis of the affinity test disregarding the documents placed on record which conclusively proved that the petitioner's belonged to "Halba" tribe. It is submitted that the petitioner's father, cousin brother and cousin sister were holding caste certificate belonging to "Halba" tribe. He submits that the impugned order could not have been passed on the basis of the statement of the petitioner's cousin grandfather who was 90 years of age and relying on the extract of School Admission General Register in respect of the petitioner's cousin uncle Shri Nakatu Kevalram Sonkusare and cousin aunt Smt. Sumitra Kevalram

Sonkusare that they belong to "Koshti" caste. It is submitted that the first vigilance cell's report of the Thane Committee was in favour of the petitioner and therefore, the second vigilance report could not have been taken into consideration by the Caste Scrutiny Committee. It is submitted that the Committee ought to have appreciated that forefathers of the petitioner were inhabitants of Maharashtra and all were belonging to "Halba" caste. The Committee could not have overlooked the documents pertaining to the petitioner's father, her cousin sister Ms. Pooja Visheshwar Sonkusure and her cousin brother Shri. Rahul Vishveshwar Sonkusare which went to show that the Petitioner belonged to the Halba" tribe. Further the caste certificate of the petitioner's uncle Vishweshwar Mahadeo Sonkusare dated 26th May 1987 also recorded his caste as "Halba". It is therefore, submitted that the impugned order passed by the Caste Scrutiny Committee be set aside on the ground that it is erroneous and violative of the petitioner's right guaranteed under Articles 314, 21, 14, 15 (4) and 16 (4) of the Constitution of India. In support of the submissions, the learned counsel for the petitioner has placed reliance on the following decisions :

(i) Sharad Yadav v. The Scheduled Tribe Caste Scrutiny Committee & Anr. (Dated 10.10.2013) (Writ Petition No.6171 of 2012).

(ii) Sou. Priya P. Parate v. Scheduled Tribes Caste Certificates Scrutiny Committee & Ors. (Dated 4.10.2012) (Writ Petition No.2571 of 2001)

(iii) Pravin G. Kumbhare v. The State of Maharashtra & Ors. (Dated 25.10.2012) (Writ Petition No.2177 of 2010)

9. On the other hand, the learned Assistant Government Pleader appearing for respondent nos.1 and 2 has supported the impugned order passed by the Caste Scrutiny Committee.

10. We have heard learned counsel for the parties and with their assistance we have perused the documents as placed on record on this petition as also the impugned order.

11. In the present case, the Caste Scrutiny Committee initially conducted a vigilance inquiry through the vigilance cell attached to it which supported the report on the basis of the documents as submitted by the petitioner. These documents were principally documents of the petitioner namely Birth certificate, School leaving certificate, and Caste certificate dated 30th June, 2010 issued by the Deputy Collector and Special Land Acquisition Officer Mumbai Suburban Region, Mumbai and the documents of her father, cousin sister and cousin brother. These documents though recorded the caste of the petitioner and of those relatives as "Halba" tribe, however not a single caste certificate was validated by any Caste Scrutiny Committee. The oldest document as submitted by the petitioner was the school leaving certificate of the petitioner's uncle Shri Vishweshwar Mahadeo Sonkusare issued by Shri Kolbaswami High School, Gandhibag, Nagpur, showing the caste as "Halba" and date of admission as 15th

August, 1978 as also the Caste Certificate issued in his favour by the Executive Magistrate, Nagpur dated 26th May 1997 showing the caste recorded as "Halba. Further the Caste certificate issued to the petitioner's father (name of the issuing authority being illegible) was also of a subsequent period, being issued on 27th August, 1981. These documents admittedly are documents Post Presidential Orders and would have less probative value. Further, what these documents reveal, also needs to be substantially corroborated by other cogent material namely any pre-Constitution documents, affinity test etc.

These documents solely could not have assisted the Petitioner to succeed in the claim before the Caste Scrutiny Committee.

12. The Vigilance Cell attached to Thane Caste Scrutiny Committee considering the material placed before it recorded that the petitioner's original place of residence was Kurud, Taluka Desaiganj District Gadchiroli, as informed to the Vigilance Cell by the petitioner's letter during the course of inquiry. The Committee therefore, appropriately forwarded the case of the petitioner for an inquiry to be conducted by the Vigilance Cell attached to Gadchiroli Caste Scrutiny Committee. As noted by us in the foregoing paragraphs, the vigilance Cell recorded the statement of the cousin grandfather of the petitioner who was 90 years of age as also collected documents of petitioner's cousin uncle and cousin aunt. An extensive inquiry conducted by the Gadchiroli vigilance cell revealed that the petitioner belonged to "Koshti" caste and not to the "Halba" tribe as claimed by her. All traits, characteristics, customs of the petitioner's family were studied by the vigilance cell and it was noticed that they did not match with that of "Halba" schedule community. There was a large scale discrepancy, in the information as obtained in the vigilance inquiry and more particularly the affinity test both of which did not match with the traits of "Halba" tribe. This completely falsified the claim of the petitioner that she belonged to the "Halba" tribe. Further, the documents which were submitted by the petitioners being of a recent origin had less probative value. Moreover, all these documents were post Presidential Order.

We therefore, do not find any infirmity or perversity in the observations of the Committee in regard to the documents as made out in paragraph 8 of the impugned order. It cannot be overlooked that the petitioner and relatives on her parental side were not in a position to give any traits, tradition, customs, peculiar to "Halba" tribe while making a claim that they belong to "Halba" tribe. If this was the position then it can certainly be said there was no error on the part of the Committee in observing that the petitioner had failed to succeed in the affinity test. The affinity test cannot be disregarded and more so when the documents which the petitioner has relied upon by no chance could be considered to be so conclusive that the affinity test can be regarded to be secondary or of a nature that it would become inconsequential. In our opinion, in the present case the affinity test had become all the more vital to reach a concrete conclusion as to whether the claim of the petitioner as made is genuine.

13. We have also examined the decisions as relied upon on behalf of the petitioner. In all these cases, there were old, pre-Constitution documents and documents pre-Presidential Order and considering these documents the Court had made observations that the affinity test may be used to corroborate the documentary evidence and should not be sole criteria to reject the claim. In those cases, these pre-Constitution documents were overlooked and failure of the affinity test was considered more relevant by the Caste Scrutiny Committee. Considering the facts of the present case, certainly this is not the position, in fact, it is just the reverse. There are no documents either pre-Constitution or prior to the issuance of the Presidential Order. In these circumstances, the affinity test had become all the more vital and pertinent. The affinity test revealed that the petitioner and her relatives on parental side were not in a position to support any of the traits, characteristics, customs of the "Halba" tribe. Solely the documents as submitted by the petitioner as observed by us, were of no assistance to the petitioner to succeed in her claim before the Caste Scrutiny Committee.

14. In the facts of the present case as noted above, we are of the considered opinion, that the findings of the Caste scrutiny committee that the petitioner has falsely obtained the caste certificate are appropriate. The petitioner was having full knowledge that she does not belong to "Halba" tribe. In the present case, the petitioner has not pleaded and/or proved her bonafides in staking her claim that she belongs to "Halba" tribe. Such act of making a false claim in fact would take away the entitlement of a bona fide scheduled tribe candidate. The petitioner falsely asserting that she belonged to "Halba" tribe had obtained admission for the Bachelor of Dental Sciences course. In this context, it would be useful to refer to the observations of the Constitution Bench decision of the Supreme Court in the case of "State of Maharashtra & ors v. Milind & Ors. AIR 2001 Supreme Court 393 wherein the Supreme Court has categorically observed that if such benefits are taken away by those for whom they are not meant, then this would bring about a noble and laudable object to confer certain privileges and benefits on people belonging to scheduled tribe, by way of reservation in educational institutions and/or appointment in services of the State, to be defeated. It would lead to making mockery of the very reservation against the scheme of the Constitution. The observations of the Supreme Court need to be noted and read thus:

"34. In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with others in the society, certain privileges and benefits are conferred on such people belonging to Scheduled Tribes, by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately even some better placed persons

by producing false certificates as belonging to scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognising and identifying the needy and deserving people belonging to Schedule Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their suffering will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution."

15. In "Punjab National Bank & another v. Vilas S/o Govindrao Bokade & Another, (2008) 14 SCC 545 in dealing with a similar case, pertaining to the "Koshti" and Halba" tribe in his concurring judgment, Justice V.S.Sirpurkar (as His Lordship then was) made the following observations :

"20. The situation is no different in case of the present respondent. He also came to be appointed and/or promoted way back in the year 1989 on the basis of his caste certificate which declared him to be Scheduled Tribe. Ultimately, it was found that since a "Koshti" does not get the status of a Scheduled Tribe, the Caste Scrutiny Committee invalidated the said certificate holding that the respondent was a Koshti and not a Halba. I must hasten to add that there is no finding in the order of the Caste Scrutiny Committee that the petitioner lacked in bonafides in getting the certificate. I say this to overcome the observations in para 21 in Sanjay K.Nimje case. But it is not a case where the respondent pleaded and proved bonafides. Under such circumstances the High Court was fully justified in relying on the observations made in Milind case. The High Court has not referred to the judgment and order in Civil Appeal No.3375 of 2000 decided on 12.12.2000 to which a reference has been made above. However, it is clear that the High Court was right in holding that the observations in Milind case apply to the case of the present respondent and he stands protected thereby."

16. The decision in Punjab National Bank v. Vilas (supra) was considered by the Supreme Court in the case of "Kavita Solunke v. State of Maharashtra & others (2012) 8 SCC 430 wherein Their Lordships made the following observations :

"20 The decision of this Court in State of Maharashtra v. Sanjay K.Nimje relied upon by the learned counsel for the respondent was distinguished even by V.S.Sirpurkar, J. in Vilas case. The distinction is primarily in terms whether the candidate seeking appointment or admission is found guilty of a conduct that would disentitle him/her from claiming any relief under the extraordinary powers of the Court. This Court found that if a person secures appointment or admission on the basis of false certificate, he cannot retain the said benefit obtained by him/her. The courts will refuse to exercise their discretionary jurisdiction depending

upon the facts and circumstances of each case."

17. In "Shalini v. New English High School Association & Ors. (2013) 16 SCC 526 the Supreme Court taking into consideration catena of decisions on the issue observed thus :

"9. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes which almost always work to the pecuniary detriment of the assessee must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with the scheduled Castes or Scheduled Tribes etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant authority not to fall within the particular group envisaged for protected treatment. In the former group persons would justifiably deserve the immediate cessation of all benefits including termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated they would be dis entitled to claim any further or continuing benefit on the predication of belonging to the said Scheduled Caste./Scheduled Tribe."

18. In view of the above clear position in law as enunciated in the above decisions as applied to the facts in hand, we have no hesitation to come to a conclusion that the Petitioner had falsely obtained the caste certificate and further the application before the Caste Scrutiny Committee to ascertain validity of such caste certificate, was also far from bona fide.

19. In view of the above deliberation, we find that there is no illegality or any perversity in the findings recorded by the Caste Scrutiny Committee in passing of the impugned order. The writ petition is devoid of merits and is accordingly rejected. No order as to costs.