

(2017) 04 BOM CK 0197
In the Bombay High Court
Case No : 6175 of 2010

Ku.Yogita Jagansing Thakur

APPELLANT

Vs

Divisional Caste Scrutiny Committee

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

Citation : (2017) 04 BOM CK 0197

Hon'ble Judges : Vasanti A Naik

Bench : SINGLE BENCH

Advocate : R.R.Deshpande, Ambarish Joshi, P.B.Patil, S.J.Kadu

Judgement

1. Since the issue involved in these petitions is identical and the petitionersiblings have challenged similar orders of the scrutiny committee invalidating their claim of belonging to Rajput Bhamta Vimukta Jati, they are heard together and are decided by this common judgment.

2. Kum. Yogita, the petitioner in Writ Petition No.6175 of 2010 and Shri Virendra, the petitioner in Writ Petition No.488 of 2011 are the daughter and son of Jagansing Thakur. The petitioners claim to belong to Rajput Bhamta Vimukta Jati. On the basis of the caste claim, the petitioner in Writ Petition No.6175 of 2010 was employed in Amravati Zilla Parishad and the petitioner in Writ Petition No.488 of 2011 was employed in Zilla Parishad Shikshak Sahakari Bank Limited, Amravati. The caste claim of the petitioners was referred by the respondentemployers to the scrutiny committee for verification. The scrutiny committee has, by the separate orders dated 10/12/2010 invalidated the caste claim of the petitioners. In support of their caste claim, similar documents were tendered by the petitioners before the scrutiny committee to substantiate their claim. Apart from recent documents, the petitioners also relied on two old documents pertaining to the father and uncle of the petitioners, namely Shri Jagansing Thakur and Shri Daryavsing Thakur. The said entries were relatively old, as they were made in the admission record of the schools in which Shri Jagansing and Shri Daryavsing were admitted in the years 1958 and 1949

respectively. A vigilance enquiry was conducted in the caste claim of the petitioners. Since the vigilance cell had not inspected the school record of the petitioners' father and uncle, Shri Jagansing and Shri Daryavsing, the scrutiny committee called for the original record i.e. the school admission register from the concerned schools where the father and the uncle of the petitioners were admitted. It was noticed by the scrutiny committee, on verification of the original admission register that initially only word "Rajput" was recorded in the caste column and subsequently the word "Bhamta" was written with a dot pen in different handwriting and different ink. It was further found that in the original admission register, at Sr.No.81 pertaining to Daryavsing, the uncle of the petitioners, the word "Rajput" was written in black ink and the word "Bhamta" was subsequently written in blue ink in different handwriting. The petitioners did not prove their affinity towards Rajput Bhamta Vimukta Jatis. On an appreciation of the material on record, specially the original admission register, which showed some interpolation, the scrutiny committee rejected the caste claim of the petitioners. The scrutiny committee observed that the handwriting expert had also opined that the word "Bhamta" was subsequently inserted in the admission register pertaining to the father of the petitioners in different ink. The scrutiny committee found that though the petitioners had produced the caste validity certificates issued in favour of Vijay Solanke and Jaising Madmat, the petitioners had not proved their relationship with them. The orders of the scrutiny committee, invalidating the caste claim of the petitioners are challenged by the petitioners in these petitions.

3. Shri Deshpande, the learned counsel for the petitioners, submitted that the scrutiny committee was not justified in observing that the word "Bhamta" was subsequently inserted in the entries pertaining to the father and uncle of the petitioners of the years 1958 and 1949, by personally verifying the original record. It is submitted that the cousin brother of the petitioners and the son of their uncle Daryavsing had filed Writ Petition No.245 of 2006 challenging the invalidation of his caste claim and this court had, by the judgment dated 27/06/2007, allowed the writ petition after holding that the old entries in the admission register of Jagansing and Daryavsing should have been considered by the scrutiny committee for granting the validity certificate in favour of Shailendra. It is stated that in the case of Shailendra, who is closely related to the petitioners, this court has held that the vigilance cell had not found any discrepancy in the entries in the admission register pertaining to Jagansing and Daryavsing and this court had also perused the original record. It is submitted that when this court had perused the record while deciding Writ Petition No.245 of 2006 in the matter of Shailendra, the cousin of the petitioners, it would not be proper for this court to take another view in the matter. It is submitted that it would not be appropriate to hold that one member of the family belongs to the Vimukta Jatis and the other members do not belong to the said jatis. It is submitted that in view of the judgment in the case of Shailendra and the grant of validity certificates in favour of Vijay Solanke and Jaising Madmat, this court may

allow this writ petition and direct the scrutiny committee to issue the validity certificates in favour of the petitioners.

4. Shri Ambarish Joshi, the learned Assistant Government Pleader appearing for the scrutiny committee, has opposed the prayer made in the petition. It is submitted that the judgment in Writ Petition No.245 of 2006, in the case of Shailendra cannot be made the basis for granting a validity certificate in favour of the petitioners. It is stated that in that case, this court has observed that the scrutiny committee should not have drawn an adverse inference against Shailendra merely because he did not deposit a sum of Rs.6,000/before the scrutiny committee for seeking the opinion of a handwriting expert. It is submitted that such is not the case here. It is submitted that in the instant case, the opinion of the handwriting expert was secured. It is further stated that while deciding the writ petition filed by Shailendra, the original admission register pertaining to the admission of Jagansing and Daryavsing was not produced before this court and this court had only considered the photostat copies of the relevant admission register relating to the entries pertaining to Jagansing and Daryavsing and not the original admission register. It is submitted by taking this court through the original admission register that is produced in this court that it is apparent that the entry "Bhamta" is subsequently inserted with a dot pen in different ink and handwriting and the entry is of recent origin though the register pertains to the years 1949 and 1958. It is submitted that the petitioners have played fraud on their employer as well as the scrutiny committee by manipulating the entries in the original admission register.

5. Shri Patil, the learned counsel for the Amravati Zilla Parishad and Shri Kadu, the learned counsel for the Zilla Parishad Shikshak Sahakari Bank Limited, strongly opposed the prayers made in the petitions. It is submitted that though the petitioners have heavily relied on the validity certificates issued in favour of Vijay Solanke and Jaising Madmat, the petitioners have not proved their relationship with the said persons. It is submitted that the names of Vijay Solanke and Jaising Madmat do not appear in the family tree tendered by the petitioners before the scrutiny committee. It is submitted that this court may not grant any relief in favour of the petitioners as the petitioners have played fraud, not only on the committee but also on their respective employers by falsely claiming that they belong to Rajput Bhamta Vimukta Jati. The learned counsel sought for the dismissal of the writ petitions.

6. Before considering the submissions made on behalf of the parties, we would like to record that when a civil application filed by the petitioner in Writ Petition No.6175 of 2010 for a direction against the zilla parishad to pay salary to the petitioner in the regular pay scale, came up for consideration, the prayer made by the petitioner was strongly opposed by the respondents. It was stated that the petitioner had produced forged and fabricated documents before the scrutiny committee. It was stated that even the opinion of the handwriting expert went against the petitioners. In view of the said statement, we had called for the

original admission and school leaving record pertaining to the father and the uncle of the petitioners, namely Jagansing and Daryavsing from the concerned school at Morshi through the education officer. The original admission register and school leaving record was produced in this court. On a perusal of the original record, we had found that the entry in respect of Jagansing, the father of the petitioners was recorded as entry 281 in the admission register and the word "Bhamta" was inserted in the said entry with a dot pen though the entire entry was written in ink. The handwriting in the original entry is extremely good, whereas the word "Bhamta" is written in a bad handwriting with different ink. There is a vast difference in the handwriting in the entire entry pertaining to Jagansing and the word "Bhamta" which is inserted with a dot pen, subsequently. We had expressed in the order dated 13/10/2014 that there was no doubt whatsoever that the word "Bhamta" was inserted in the entry in respect of the petitioners' father at a subsequent point of time. Also, we had noted that in the admission register, the entry pertaining to Daryavsing was initially written in ink and subsequently the word "Bhamta" was inserted in a very small space in an extremely cramped manner between the two entries i.e. 81 and 82. Entry 81 pertained to Daryavsing and there was actually no space to write the word "Bhamta" in between entries 81 and 82 but still the word "Bhamta" was subsequently inserted in a bad handwriting in the admission register. We had observed in the order dated 13/10/2014 that there is no doubt about the fact that there is a forgery in the original admission register in respect of the entries pertaining to the father and the uncle of the petitioners. We had shown the original admission register on the said date to Shri Anil Kilor, the learned counsel for the petitioner, who was then appearing for the petitioner and the learned counsel had fairly stated that there cannot be any dispute that there is a subsequent insertion of the word "Bhamta" in the entries pertaining to the father and the uncle of the petitioner. We had observed in our order dated 13/10/2014 that the petitioners had not approached the scrutiny committee with clean hands and since the claim of the petitioner was mainly based on the two entries of the years 1958 and 1949, the prayer made by the petitioner in the application for a direction against the Amravati Zilla Parishad was rejected. We had rejected the prayer made by the petitioner and also observed in the order that the counsel for the respondents should ensure that the order dated 13/10/2014 is brought to the notice of this court when the matter is heard finally.

7. As expected, after the order dated 13/10/2014 was passed, the petitioners changed the counsel, who had fairly made a statement on 13/10/2014 that there was no dispute that there was a subsequent insertion of the word "Bhamta" in the admission register pertaining to Jagansing and Daryavsing. As expected, the petitioners changed the counsel and the new counsel engaged by the petitioners is working out the matter. The matter was called for hearing during the last week and the learned counsel for the petitioners disputed the statements made in the order dated 13/10/2014 by saying that he did not have an opportunity to peruse the entries. Though the record of the court is sacrosanct and the order dated

13/10/2014 speaks for itself, and also records the fair admission made by the counsel for the petitioner, who was then appearing, we again called for the original admission record pertaining to the father and the uncle of the petitioners namely Jagansing and Daryavsing. The original admission register was produced in the court yesterday and is before us today also. We had asked the learned counsel for the petitioners to peruse the entries. In our view, no person to whom these entries would be shown, except the petitioners and their counsel would dispute the interpolation and insertion of the word "Bhamta" in the entries pertaining to Jagansing and Daryavsing. Even if these entries are shown to a school going child, he would clearly say that the word "Bhamta" is inserted in a bad handwriting with a dot pen and the word "Bhamta" is of a recent origin as compared to the old entries of the years 1949 and 1958.

8. On a perusal of the original admission register and the school leaving register pertaining to Jagansing and Daryavsing, we record that there is no doubt about the fact that the entries pertaining to Jagansing and Daryavsing in the original admission register are forged. The word "Bhamta" is added subsequently and has a recent origin. It is not in dispute that the caste "Rajput" does not fall in the Vimukta Jatis whereas "Rajput Bhamta" falls in Vimukta Jatis. It is well settled that there is a presumption that in case of a forgery, the forgery would be attributable to the persons, who would be benefited by the commission of the same. In the case of the petitioners, as soon as the scrutiny committee noticed the fraud, a notice was served on the petitioners asking them to show cause in respect of the insertion of the word "Bhamta" in the admission register. An opportunity was granted to the petitioners but the petitioners could not explain satisfactorily.

9. In Writ Petition No.243 of 2006 filed by Shailendra, this court had not called for the original admission register like we had done in this case on two occasions, once when we had passed the order on 13/10/2014 and now when we are hearing the writ petitions on merits. In the writ petition filed by Shailendra this court had only perused the photostat copies of the relevant entries in the admission register. We are aware that photostat copies may not give a correct picture of the original entries. A photostat copy will never show that one entry is in ink and the other entry is made with a dot pen or with a different coloured ink. Since in the case of Shailendra this court had not called for the original admission register and we had called for the same, it would not be for this court to simply rely on the judgment in the case of Shailendra to set aside the orders passed by the scrutiny committee. Not only has the scrutiny committee perused the original register and found the entries to be forged, but the handwriting expert has also opined that the word "Bhamta" is inserted subsequently in the entries pertaining to the father and uncle of the petitioners. We find that the petitioners have not approached the scrutiny committee or this court with clean hands. The entries of the years 1949 and 1958 pertaining to the uncle and the father of the petitioners are the oldest documents that are produced by the petitioners before the scrutiny committee. All the other documents are of recent origin. The oldest

documents are forged. The petitioners have failed in the affinity test and have not proved their affinity to Rajput Bhamta Vimukta Jati. Though two validity certificates issued by the Aurangabad Committee in favour of Vijay Solanke and Jaising Madmat were tendered by the petitioners before the scrutiny committee, the petitioners have not proved that Vijay Solanke and Jaising Madmat have any relationship with the petitioners. It is in fact held by the scrutiny committee on a perusal of the family tree and the other material that the petitioners have no relationship with Vijay Solanke and Jaising Madmat. In the facts and circumstances of the case, it cannot be said that the scrutiny committee has committed any error in invalidating the caste claim of the petitioners. While rejecting the claim of the petitioners, we also reject the submission made on behalf of the petitioners that it would always be necessary for a court to grant the validity certificate to a near relative of a person to whom a caste validity certificate is issued by the scrutiny committee. We find that if the basis on which a claim is made, is tainted by fraud, it would not be necessary to blindly rely on the validity certificate of the relatives, by ignoring the fraud. In any case, we have held that in the case of Shailendra this court did not have an occasion to peruse the original admission register which undoubtedly demonstrates that there was a forgery pertaining to the entries in respect Jagansing and Daryavsing and the word "Bhamta" was inserted subsequently.

10. Since the orders of the scrutiny committee are just and proper, we dismiss the writ petitions with no order as to costs. At this stage, the learned counsel for the petitioners seeks a stay of this judgment for a period of four weeks. The prayer made on behalf of the petitioners is strongly opposed by the learned Assistant Government Pleader and the learned counsel for the Amravati Zilla Parishad and Zilla Parishad Shikshak Sahakari Bank Limited. It is submitted that in a case where the petitioners have played fraud and have not approached this court with clean hands, this court may not extend the interim relief even for a day. We uphold the objection raised on behalf of the respondents and reject the prayer made on behalf of the petitioners for extending the interim relief. Order accordingly.