

(2019) 02 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 1361 Of 2017

Leena Sanjeev Thakur

APPELLANT

Vs

State Of Maharashtra And Ors.

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2019) 02 BOM CK 0035

Hon'ble Judges : S.C.Dharmadhikari, J;M.S.Karnik, J

Bench : Division Bench

Advocate : Ramchandra Kanu Mendadkar, V.M.Mali, Rajshekhar V.Govilkar

Judgement

M.S.Karnik, J

1. Rule. The respondents waive service. By consent, Rule is made returnable forthwith.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the judgment and order dated 21/12/2016 passed by respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane (hereinafter referred to as 'Committee' for short). The petitioner prays for direction to respondent No.2 for issuance of certificate of validity in relation to caste certificate dated 31/07/2007 issued by respondent No.3- Sub-Divisional Officer, Thane Division, Thane. The facts of the case in brief are as under :

3. The petitioner applied for caste certificate as belonging to Thakur, Scheduled Tribe to Respondent No.3. A caste certificate dated 31/07/2007 is issued by respondent No.3 in her favour. As the petitioner intended to go for higher education in the field of medicine, she applied for validity of her caste claim through her Junior College where she is pursuing her M.B.B.S course. As the College was contemplating taking coercive steps against the petitioner for want of the validity certificate, she approached this Court by way of filing Writ Petition. The said Writ Petition came to be disposed of on 18/02/2015 with directions to

the respondent No.2 to decide the caste claim of the petitioner within 9 months. Respondents No. 4 and 5 were directed not take any coercive action against the petitioner in the meantime.

4. The petitioner appeared before the Committee and furnished documents in support of her caste claim. We are not referring to all the documents that have been produced, for the reason that the present Petition deserves to be allowed on the basis of some material documents in favour of the petitioner which are sufficient to grant him the certificate of validity in view of the decision of this Court in the case of Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others 2010 (6) Mh.L.J. 401 and also in view of the decision of this Court in Motilal S/o. Namdeo Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik in Writ Petition No. 07 of 2014.

5. Before the Committee, the petitioner relied upon the validity certificates issued in respect of petitioner's paternal relatives viz. (a) Santosh Ramsing Thakur (b) Subhash Vinayak Thakur and (c) Bhausing Vinayak Thakur. It is not in dispute that they are the paternal relatives of the petitioner. The reason why the Committee did not place reliance on the certificates of Subhash Vinayak Thakur and Santosh Ramsing Thakur is that the then Committee might have issued these validity certificates, primarily on the basis of the prevailing legal position during that period of time. The validity certificate issued in favour of Bhausing Vinayak Thakur is issued on the basis of the judgment of Aurangabad Bench of this Court in Writ Petition No. 10035 of 2010 in the matter of Bhausing s/o Vinayak Thakur Vs.The State of Maharashtra and others.

6. Despite these materials and the decision of this Court in Writ Petition No. 10035 of 2010 granting validity certificate in favour of Bhausing Vinayak Thakur - paternal relative of the petitioner, the Committee again appreciated the entire evidence on record, the prevailing legal position, by observing petitioner's failure in the crucial affinity test and also his failure to establish affinity towards the restricted area, invalidated the caste claim of the petitioner. This approach of the Committee, in our opinion, is completely contrary to the law laid down by this Court and untenable.

7. The Committee has not rendered a finding that validity certificates relied by the petitioner are not those of his close relatives from the paternal side. It would be material to refer to the judgment and order of this Court dated 05/05/2014 in Writ Petition No. 10035 of 2010 in Bhausing's matter. Based on the documents in the nature of copies of validity certificates issued in favour of the relatives of Bhausing, this Court issued a validity certificate in favour of Bhausing. It is specifically observed that there is no reason for not accepting the validity granted in favour of the real brother of Bhausing or any other relatives, unless the said validity certificates are obtained by playing fraud. The caste claim of Bhausing was directed to be validated.

8. The decision of this Court in Writ Petition No. 10035 of 2010 would cover the

petitioner's case also as there is no dispute that Bhausing Vinayak Thakur is a paternal relative of the petitioner. The genealogy indicating the relations is on record in the form of affidavit which is at page 100 of the paper- book. The decision of this Court is binding on the Committee. Once this Court, based on the materials and after considering the documents on record, renders a finding that the paternal relative of the petitioner belongs to Thakur - Scheduled Tribe, we fail to understand as to how the Committee could take a contrary view completely disregarding the decision of this Court in Bhausing's case. This Court in the case of Apoorva d/o Vinay Nichale (supra) has held that when during the course of inquiry, the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the Committee may grant such certificate without calling for Vigilance Cell Report. This Court further held that if the Committee finds that the earlier caste certificate is tainted by fraud or vitiated by suppression of material facts and is granted without jurisdiction, the Committee may refuse to grant certificate to the applicant before it. We do not find that the Committee went into the question that earlier validity certificates granted in favour of close blood relatives of the petitioner are tainted by fraud or the same are granted without jurisdiction. In any case, unless and until the persons to whom the validity certificates are issued are heard and due opportunity in compliance with the principle of natural justice is given to them, such finding cannot be rendered.

9. In this view of the matter, the Committee should have followed the decision of this Court in the case of Bhausing Vinayak Thakur (supra) and issued the validity certificate in favour of the petitioner. Not only this, but the petitioner has placed on record validity certificates of two of her close blood relatives.

10. There is also a subsequent development now brought on record during the pendency of this Petition. Even Darshan, the younger brother of the petitioner has been issued a certificate of validity on 06/12/2018 which is Exhibit 'B' at page 137 of the paper-book. There is nothing adverse in the Vigilance Cell report.

11. We may also make a reference to the decision of this Court dated 28/06/2018 in the case of Narayan Ganesh Khairnar Vs. State of Maharashtra and ors. in Writ Petition No. 6891 of 2018 which also pertains to grant of validity in respect of same scheduled Tribe i.e. Thakur. Some scathing observations have been made by this Court which we refrain from reproducing. Suffice it to observe that a similar approach adopted by the Committee therein as in the present case was deprecated.

12. In this view of the matter, the impugned order is unsustainable. The same is accordingly quashed and set aside. The Petition is allowed in terms of prayer clause (a).

13. Needless to further state that in the light of the above order and also because we had permitted the petitioner to continue her service the Validity Certificate now having been directed to be issued, the Maharashtra University of

Health Sciences should declare the result of the petitioner for the final year MBBS Examination. In the event the petitioner has succeeded, then, all the documents in relation to such result of success be released in her favour. The degree certificate should also be released. The Scrutiny Committee is directed to issue the Validity Certificate within a period of ten (10) days.

14. Rule is made absolute in the above terms.