
(2017) 06 BOM CK 0171
In the Bombay High Court
Case No : 5244 of 2008

Lisha Digambar Dudhare

APPELLANT

Vs

State of Maharashtra Through its Secretary, Tribal
Development Department Mantralaya, & Anr.

RESPONDENT

Date of Decision : 20-06-2017

Acts Referred:

Citation : (2017) 06 BOM CK 0171

Hon'ble Judges : B.R. Gavai, Riyaz I. Chagla

Bench : DIVISON BENCH

Advocate : R.K. Mendadkar, B.V. Samant

Judgement

1. The Petitioner is a citizen of India claiming to be belonging to "Mannewar" Scheduled Tribe, which is recognised as a Scheduled Tribe in the State of Maharashtra.
2. Respondent No. 1 is the Secretary, Tribal Development Department, State of Maharashtra having overall superintendence over Respondent No. 2. Respondent No. 2 is the Committee for Scrutiny and verification of Tribe claims at Amaravati ("the Scrutiny Committee"). Respondent No. 3 is the College in which the Petitioner is studying in the second year of B.Sc.
3. The Petitioner by this Petition is challenging the order dated 16 January 2008 ("the impugned order") passed by Respondent No. 2 invalidating the caste certificate of the Petitioner as belonging to Mannewar, Scheduled Tribe. The Petitioner had been granted the caste certificate on 3 June 1996 by the Competent Authority. The Petitioner had applied to Respondent No. 2 for verification of the caste certificate and submitted the requisite documents under the standing orders of the Government. The Petitioner had amongst the documents supplied a duplicate school transfer certificate of the Petitioner's grandfather issued by the Corporation Marathi Boys School No. 4, Temple Garden, Ramdas Peth, Akola, wherein it is clearly recorded that the grandfather

of the Petitioner by name Laxman Badayya was admitted in primary school at Akola on 3 July 1939 and his caste was recorded as Mannewar, Scheduled Tribe. However, Respondent No. 2 Committee relied upon a document produced by the Petitioner's father viz a duplicate school leaving certificate from New Era High School, Akola where the Petitioner's father's date of birth is shown as 27 May 1955 and date of admission as 28 June 1965 and the caste of the Petitioner's father is recorded as "Telgu". The case certificate issued to the Petitioner's father by the Tahsildar and Executive Magistrate, Akola on 3 August 1976 was also produced. An enquiry report was prepared by Respondent No. 2 Committee and sent to the Petitioner and to which the Petitioner's had given his reply. A hearing was also provided and the statement of the Petitioner's father was recorded. The Petitioner was called for a hearing when her father and grandfather appeared before Respondent No. 2-Committee and represented her case.

4. Respondent No. 2-Committee passed an impugned Judgment and Order on 16 January 2008 invalidating the caste certificate of the Petitioner. The Respondent No. 2 placed reliance on the school leaving certificate of the Petitioner's father, wherein the caste of the Petitioner's father is recorded as "Telgu". The impugned order has found that the Petitioner has not been able to prove her affinity with the Mannewar, Scheduled Tribe.

5. The Petitioner by this Petition seeks quashing of the impugned Judgment and Order dated 16 January 2008 passed by Respondent No. 2 and for this Hon'ble Court to hold and declare that the caste certificate issued to the Petitioner is valid and subsisting.

6. Shri. Mendadkar, the learned Counsel for the Petitioner has submitted that the Petitioner had produced a preconstitutional document viz. The duplicate school transfer certificate of the Petitioner's grandfather wherein his caste was recorded as "Mannewar" in the year 1939.

7. Shri. Mendadkar has placed reliance upon the Division Bench Judgment of this Court "Nagpur Bench" dated 10 April 2017, where one of us was a part of the Bench and has submitted that the present Petition is squarely covered by this Judgment. It is clear from the Judgment that Respondent No. 2 Committee had erroneously relied upon the school leaving certificate of the Petitioner's father wherein the caste was mentioned as "Telgu". The Division Bench of this Court in the Judgment had held that "Telgu" or "Telangi" refers to a region which was part of Andhra Pradesh and now a separate state. The Division Bench has in turn placed reliance upon the Judgment of the Apex Court in the case of Anand Katole Vs. Scheduled Tribe Caste Certificate Scrutiny Committee, 2011(6) Mh.L.J. 919, wherein it was held that preconstitutional document will have to be given a greater probative value than the affinity test. Shri. Mendadkar has submitted that in the present case the Petitioner had supplied the preconstitutional document of the Petitioner's grandfather wherein the caste was clearly recorded as "Mannewar" in the year 1939.

8. Shri. Mendadkar has submitted that in the light of the Division Bench Judgment of this Court dated 10 April 2017, the present Petition also ought to be made absolute and the impugned order be quashed on the same reasoning given in the Judgment.

9. Shri. Samant, the learned Counsel for the Respondent No. 1 countered these submissions by contending that Respondent No. 2 Committee had in its order dated 16 January 2008 come to the correct finding that the Petitioner had not been able to prove an affinity with Mannewar, Scheduled Tribe. Shri. Samant has placed reliance upon the Judgment of this Court "Nagpur Bench" to contend that the Scrutiny Committee had applied the affinity test in that case and held that the Petitioner has failed to establish any affinity. It is to be observed that in the Judgment relied upon by Shri. Samant, the order of the Scrutiny Committee had been quashed and set aside by this Court and that reliance was placed on a prior Judgment of the Division Bench of this Court in a case Anil Ramdas Mede Vs. State of Maharashtra & Ors., 2004(0) BCI 384, wherein it was noted that Telgu is not caste, but official language declared under the VIIIth Schedule of the Constitution of India. In that Judgment, the Division Bench had in the light of undisputed documents found it not proper to rely upon the vigilance cell report.

10. We are of the considered view that the judgment relied upon by the learned Counsel for the Respondent No. 1 in fact supports the Petitioner and in that case also the Scrutiny Committee was directed to issue validity certificate as "Mannewar" Scheduled Tribe in favour of the Petitioner. We are of the considered view that the Judgment of this Court Nagpur Bench dated 10 April 2017 squarely applies to the present Petition and particularly since the Petitioner had produced the preconstitutional document of the Petitioner's grandfather which had established that his caste is that of Mannewar, Scheduled Tribe.

11. We are of the view that the Hon'ble Apex Court in Anand Katole Vs. Scheduled Tribe Caste Certificate Scrutiny Committee (supra) has held that preconstitutional document will have to be given a greater probative value than the affinity test. Merely because the Petitioner's father's school leaving certificate and his caste certificate mentioned the caste as "Telgu" in 1976, this cannot override the preconstitutional document of the Petitioner's grandfather which had recorded his caste as Mannewar in the year 1939. Further, the Judgment of this Court in Balayya alias Balraj s/o Hiralal Pagade (Pagale) Vs. State of Maharashtra, Writ Petition No. 4432 of 2003 dated 04.04.2016 also supports the Petitioner's case as it is found that "Telgu" cannot be considered as a caste, but is an official language and that the caste would be Mannewar which is a Scheduled Tribe. We are of the considered view that the Respondent No. 2 Committee in the impugned order had erroneously found that the Petitioner had not been able to prove affinity with the Mannewar, Scheduled Tribe.

12. We are unable to sustain the impugned order dated 16 January 2008 passed by the Respondent No. 2-Committee. The impugned order dated 16 January 2008 passed by the Respondent No. 2 Committee is accordingly, quashed and set

aside.

13. We hold and declare that the caste certificate describing the Petitioner's caste as "Mannewar, Scheduled Tribe" is valid, legal and subsisting.

14. Respondent No. 2 scrutiny committee is directed to issue valid certificate to the Petitioner within a period of four weeks from today.

15. Rule is made absolute in the aforesaid terms with no order as to costs.