

(2016) 12 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 6925 of 2016 with Civil Application No. 2158 of 2016

Madhuri Dhananjay Nalawade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Evidence Act, 1872 — Section 90

Citation : (2017) 1 MhLJ 814

Hon'ble Judges : Naresh H. Patil and M.S. Karnik, JJ.

Bench : Division Bench

Advocate : Mr. R.K. Mendadkar, Advocate, for the Petitioner; Mr. A.M. Kulkarni i/ b. Mr. V.R. Gaikwad, Advocates, for the Applicant in CAW No. 2158 of 2016; Mr. P.P. Kakade, AGP, for the State

Final Decision : Allowed

Judgement

Shri M.S. Karnik, J. - Rule, returnable forthwith. Heard finally by consent of the parties.

2. The Petitioner challenges the order dated 20th May, 2016 passed by the Scheduled Tribe Certificate Scrutiny Committee, Pune Region, Pune (herein referred to as the Committee for short) invalidating the caste claim of the Petitioner as belonging to the Thakar ? Scheduled Tribe.

3. It is the Petitioner's case that she was granted a caste certificate as belonging to Thakar ? Scheduled Tribe by the Competent Authority on 15th July, 2013. As the Petitioner intended to contest election of Gram Panchayat, Kanheri in the Scheduled Tribe category, by a letter dated 16th October, 2015 she requested the Committee to decide her tribe claim expeditiously. The Petitioner filled her nomination form from Mahatma Gandhi Ward No. 1 on 17th October, 2015. The Petitioner undertook to produce her Caste Validity Certificate within six months failing which, she will be disqualified retrospectively. The Petitioner who was elected as a member of Gram Panchayat, Kanheri from Scheduled Tribe category

on 4th October, 2011 was elected as a Sarpanch on 10th December, 2015.

4. The Petitioner's caste claim was referred to the Vigilance Cell Department for inquiry. The Vigilance Cell Department recorded the statement of the Petitioner as well as the statement of one Shri Dattatray Bhausaheb Shinde an elderly person in the village where the Petitioner claim to be the native. The Vigilance Cell Department also verified genuineness of the various documents submitted by the Petitioner as well as the other documents obtained during the course of inquiry. The Vigilance Officer was of the opinion that the Petitioner does not belong to the Thakar ? Scheduled Tribe. The Committee upon considering the material record invalidated the caste claim of the Petitioner as belonging to Thakar ? Scheduled Tribe.

5. Learned Counsel for the Petitioner assailed the order passed by the Committee on the ground that the Committee has not considered as many as twelve pre-constitutional documents relied upon by the Petitioner in support of her caste claim in its proper perspective. According to him the documents of Shri. Balwanta Ravji Thakar dated back to 15th July, 1910. The document of Shri Babu Ravji Thakar indicating his caste as Thakar dates back to 15th March, 1913. The document pertaining to Shri Ramchandra Tukaram Thakar is dated 15th June, 1914. These documents are discarded by the Committee on the ground that in the School records in the remarks column the date on which they are admitted in the School does not appear. The learned Counsel, therefore, contends that the old documents of the year 1910, in respect of the cousin great grandfather of the Petitioner have great probative value. He relied upon the decision in the case of *Desh Raj v. Bodh Raj* (2008) 2 SCC 186 to contend that the documents more than 30 years old attracts the presumption under Section 90 of the Evidence Act. These documents clearly indicate the caste of her blood relatives, the caste of her ancestors as Thakar ? Scheduled Tribe and therefore, the same should be treated as clinching evidence having great probative value.

6. Learned Counsel for the Petitioner would further contend that the affinity test has not been correctly applied in the present case. More over the Committee has completely erred in applying the area restrictions as the same has been removed by the Act No. 108 of 1976 passed by the Parliament. According to the learned Counsel for the Petitioner after the removal of area restrictions with effect from 17th July, 1977 it cannot be legally insisted that the claimant must come from specified area so as to make available facility and concession meant for scheduled tribe in the State of Maharashtra.

7. The learned Counsel further contends that the Committee has committed an error in overlooking caste certificate of the cousin uncle of the Petitioner viz. Rajendra Ramchandra Nalawade. The finding of the Committee that the caste validity certificate granted to Rajendra was on the basis of the legal position then prevailing is an erroneous approach adopted by the Committee. According to the learned Counsel for the Petitioner the same runs counter to the law laid down by this Court in the case of *Apoorva d/o Vinay Nichale v. Divisional Caste Certificate*

8. On the other hand learned AGP appearing on behalf of the Respondent Committee supported the impugned order. According to him the Committee has considered the entire materials on record and has given cogent reasons for discarding the documents relied by the Petitioner. According to him the old documents pertaining to Shri Balwanta Ravjee Thakar, Babu Ravjee Thakar and Ramchandra Tukaram Thakar are rightly discarded on the ground that the school records do not indicate the date on which they are admitted. He also submitted that the document pertaining to Shankar Maruti Thakar is tampered by scoring the word "Maratha" and instead "Thakar" has been written in different ink and handwriting. The learned AGP further submitted that the Committee has after taking into consideration the statement of the Petitioner rightly concluded that the Petitioner has failed to prove the affinity test.

9. The learned AGP submits that even prior to the removal of area restrictions the Petitioner and her ancestors are admittedly living at village Kanheri, Tal: Khandala, District: Satara. The native place of the Petitioner, therefore, is not even remotely connected with the areas where persons belonging to the Thakar ? Scheduled Tribe were residing. It is in this light, so the learned AGP submits, that the Committee rightly arrived at the finding that the area restriction as regards the Petitioner would be applicable.

10. The learned AGP further submits that in respect of the caste validity certificate of the Petitioner's blood relatives Rajendra Ramchandra Nalawade was issued in the year 2002 and the same was issued as per the legal position then prevailing. The learned AGP submits that the Committee is, therefore, justified in not giving any weightage to caste validity certificate of Rajendra Ramchandra Nalawade in view of the changed legal position presently. The learned AGP submits that no infirmity can be found in the order passed by the Committee.

11. The learned Counsel appearing for the Intervenors generally adopted the submissions made by the learned AGP and contends that this Court may not intervene with the well reasoned order passed by the Committee. He also submits that the real uncle of the Petitioner whose caste is shown as Hindu Thakar ? Other Backward Class is not shown in the genealogy and therefore, the Petitioner is guilty of material suppression also.

12. Having considered the submissions advanced on behalf of the learned Counsel for the respective parties, we are of the view that the matter needs to be remanded back to the Committee for a fresh consideration.

13. The Petitioner has relied upon the caste validity certificate issued to her cousin uncle Rajendra Ramchandra Nalawade. The reasoning of the Committee that the said caste validity certificate cannot be considered in favour of the Petitioner as the same was granted on the basis of the legal position then prevailing cannot be countenanced. In our opinion once the caste validity certificate has been validly issued in accordance with the rules and regulations

prevailing at the time of the issuance of the caste validity certificate, the same cannot be discarded merely because the rules for issuance of the caste validity certificate have subsequently undergone a change. Once the blood relation of the Petitioner viz: Rajendra Ramchandra Nalawade has been granted a caste validity certificate, the Committee ought to give due weightage to the same while considering the issuance of validity certificate to the Petitioner in accordance with the law laid down in the case of Apoorva (supra). The Petitioner's caste claim thus calls for reconsideration.

14. Further more, in our view, the Committee has committed an error in applying the area restrictions to the Petitioner after the removal of the same and according to us, therefore, the decision of the Committee is contrary to the law laid down in the case of Pandurang Rangnath Chavan v. State of Maharashtra & Ors. 1998(2)Mh.L.J. 806. The case of the Petitioner, therefore, will have to be considered on its own merits without applying the area restrictions.

15. The Petitioner has relied upon various documents which have been discarded by the Committee on the ground that in the School records the date on which the student was admitted in the School is not found. The documents which have been relied upon by the Petitioner being old documents have great probative value. More over as observed by the Apex Court in the case of Desh Raj (supra) wherein it has been held that the document more than 30 years old attracts the presumption under Section 90 of the Evidence Act, 1872, the Committee before discarding these documents must adopt a cautious approach. The Committee before discarding old documents should give cogent reasons.

16. In this view of the matter we have no hesitation in setting aside the impugned order passed by the Committee and remanding back to the Committee for fresh consideration.

17. We may hasten to add that we have not expressed any opinion on the merits of the matter and the Committee is free to decide the caste claim of the Petitioner on its own merits and in accordance with law.

18. In view of the various contentions raised by the Petitioner over and above the contentions dealt with by us in this order, it is necessary that the Committee rehear the Petitioner and the applicant intervenor as well before passing a fresh order.

Hence, the following order:

1. The impugned order dated 20th May, 2016 passed by the Respondent Committee is quashed and set aside.
2. The caste claim of the Petitioner is remanded back to the Respondent No. 2 Committee for a fresh consideration on its own merits and in accordance with law.
3. The Committee shall give an opportunity of hearing to the Petitioner as well as the Applicant intervenor and pass a reasoned order within a period of 3 months

from today. The petitioner and the intervenor to appear before the Committee on 23/12/2016 at 11.00 a.m.

4. No order as to costs.

19. Rule is made absolute in the above terms.