

(2015) 04 BOM CK 0156
In the Bombay High Court
Case No : Writ Petition No. 6257 of 2011

Mahadevi

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Citation : (2015) 3 ABR 401 : (2015) 5 BomCR 670

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

Advocate : N.R. Thorat, for the Appellant; V.H. Dighe, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.S. Shinde, J.—Heard.

2. Rule. Rule made returnable forthwith heard with the consent of the parties.

3. This Petition is filed with following prayers:

C] By issuing appropriate writ, directions or order in the like nature, the impugned judgment and order dated 7/4/2010 passed by Scheduled Caste, Vimukta Jati, Scheduled Tribes, Other Backward and Special Backward Class Caste Certificate Scrutiny and Verification Committee No. 1, Aurangabad Division, Aurangabad invalidating cast claim of petitioner for Jangam [58] [Other backward Class] may kindly be quashed and set aside.

D] By issuing appropriate writ, directions or order in the like nature the caste claim of petitioner for Jangam-[58] [Other Backward Class] may kindly be allowed and the caste claim of petitioner may kindly be held as valid and respondent be directed to issue certificate of validity of Jangam [58] OBC Caste in favour of petitioner for that purpose issue necessary orders.

Relevant facts disclosed in the Memo of the Petition, for proper adjudication of Writ Petition, are as under:

4. The petitioner claims that, she belongs to Jangam [58], which is recognized as "Other Backward Class" under the Government Resolution ESW Department No. CBC-1467/M, dated 13.10.1967 as amended from time to time as per the Government Resolution ESW No. CBC-1095/M, dated 24.10.1995. The Competent Authority has issued the caste certificate dated 21.08.2007 to that effect in favour of the petitioner.

5. The petitioner is studying in Law College. Her caste certificate was forwarded for scrutiny and verification before the Respondent No. 2 in the Year 2009. The Respondent No. 2 directed enquiry through Vigilance Cell, in turn Vigilance Cell submitted the enquiry report. It is further the case of the petitioner that, in order to prove her claim of Jangam [58] OBC Caste, the petitioner has brought on record School extract, dated 07.07.1992, issued by the Head Master, Central Primary School, Shingnapur, Taluka and District Parbhani, issued in favour of the petitioner, showing that, petitioner belongs to "Mala Jangam", it is submitted that, the grandfather of the petitioner, who admitted the petitioner in the School, is an illiterate person. Inadvertently, at the time of admission in School in the column of caste, the caste was recorded as "Mala Jangam" instead of "Jangam". It is further the case of the petitioner that, the petitioner has further brought on record the School Leaving Certificate issued by Principal, Nrusingha Higher Secondary School, Pokharni [N], Taluka and District Parbhani, dated 26.06.2002, issued in favour of the petitioner, which also shows the caste of the petitioner is "Mala Jangam", as the entry in the School record has been carried out in record of the college, which is taken inadvertently. The petitioner further brought on record the school extract issued by the Head Master, Central Primary School, Shingnapur, Taluka and District Parbhani, dated 03.08.1967 issued in favour of Dattatraya Baburao Mathpathi, who is real cousin brother of the petitioner, which states that, real cousin brother of the petitioner belongs to "Jangam Caste".

6. The petitioner has further brought on record the "Khasara Patrak" of the Year 1954-55 issued by the Tahsil Office, Parbhani in favour of Shri Bhujangaya Santaya, who is real grandfather of the petitioner, which states that, the grandfather of petitioner belongs to "Jangam" caste. The petitioner has further brought on record the service record of Shri Dattatraya Baburao Mathpati, who is real cousin brother of petitioner. Said service record shows that, cousin brother of the petitioner belongs to "Jangam", caste. The petitioner further brought on record the caste validity certificate dated 10.05.2007 issued by the Divisional Caste Certificate Scrutiny Committee, Latur, in favour of Jyotibai Shantappa Mathpati, who is real cousin sister of the petitioner. It shows that, the caste claim of cousin sister of petitioner for "Jangam" caste is validated by order dated 10.05.2007. The petitioner further brought on record the genealogical tree along with affidavits of her relatives in support of her caste claim for "Jangam [58]" OBC caste.

7. It is the further case of the petitioner that, the evidence brought on record by the petitioner in the nature of old document i.e. School Extract issued by the

Head Master, CPS, Shingnapur, dated 03.08.1967, which is issued in favour of cousin brother of petitioner proves beyond reasonable doubt that, real cousin brother of the petitioner, belongs to "Jangam" caste.

8. It is the further case of the petitioner that, the petitioner has also brought on record "Khasara Patrak" of the Year 1954-55 issued in favour of real grandfather of the petitioner, which proves beyond reasonable doubt that, the grandfather of the petitioner belongs to "Jangam" caste. It is the further case of the petitioner that, petitioner has brought on record the School record of cousin brother of the petitioner, which is old document, which shows the caste of cousin brother of the petitioner a "Jangam". It is the further case of the petitioner that, the Divisional Caste Committee, Latur, has issued caste validity certificate dated 10.05.2007, in favour of cousin sister of the petitioner. All these documents fully support the claim of the petitioner that, she belongs to "Jangam" caste.

9. It is the further case of the petitioner that, the respondent No. 2, without hearing the petitioner, in a hurried manner, observed that, the "Jangam" caste has been notified by the Government in Gazette on 13.10.1967, and therefore, the School or revenue record prior to the Year 1967 is necessary. The respondent No. 2 has further observed that, document at serial Nos. 2 and 3 show that, the caste of the petitioner is "Mala Jangam". The said caste comes under Scheduled Caste, and "Jangam" caste comes under "Other Backward Class". There is difference in the school record of the petitioner and caste certificate of the petitioner, but the petitioner has not taken steps in time to correct the school record. Therefore, the document Nos. 2 and 3 i.e. School extract dated 07.07.1992 and school leaving certificate dated 26.06.2002 is not reliable evidence to hold that, the petitioner belongs to "Jangam" caste. The respondent No. 2 has further observed that, the document at serial No. 4 to 7 belonged to cousin brother, grandfather and cousin sister, and those documents show that, caste of the relatives of the petitioner is "Jangam", but the caste of the petitioner in the school record is shown as "Mala Jangam". Accordingly, claim of the petitioner that, she belongs to "Jangam" has been turned down by the impugned decision.

Therefore, the petitioner has filed this Petition, challenging the Judgment and Order dated 07.04.2010 passed by the Divisional Caste Scrutiny and Verification Committee, Aurangabad Division, Aurangabad.

10. The learned counsel appearing for the petitioner submits that, the Respondent - Committee did not consider properly the old documents filed at serial Nos. 4 to 7, and also the fact that, the caste claim of cousin sister of the petitioner, from the parental side of the petitioner, has been validated by the Committee. It is submitted that, the old document i.e. Khasara Patrak of the Year 1954-55 issued by the Tahsil Office, Parbhani in favour of the real grandfather of the petitioner is also not considered. The learned counsel also invited our attention to the copies of the various documents, which are placed on record along with the Writ Petition. Therefore, relying upon the pleadings and grounds in

the memo of Petition, annexure thereto and the documents which formed part of the respondent No. 2's Committee record, the learned counsel appearing for the petitioner submits that, Petition deserves to be allowed.

11. On the other hand, the learned counsel appearing for the respondent No. 2 invited our attention the the findings recorded by the Committee and also fact that, the School record of the petitioner herself shows that, she belongs to "Mala Jangam". It is submitted that, the Committee has considered the entire material placed on record, and therefore, there is no reason for interference in the impugned decision of the Committee, invalidating the claim of the petitioner, hence, the Petition may be dismissed.

12. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, learned counsel appearing for the respondent No. 2 and the learned AGP for the respondent No. 1. We have also perused pleadings in the Petition, Annexure thereto and the original record and the proceedings made available for our perusal. Upon careful perusal of the reasons assigned by the Committee for invalidating the claim of the petitioner that, she belongs to "Jangam" [OBC]. The main reason assigned is that, in school record of the petitioner in caste column, "Mala Jangam" is mentioned. The petitioner has not clarified how in her school record in caste column "Mala Jangam" is mentioned, and there is no attempt on the part of the petitioner to get the said entry corrected within time.

13. We have carefully perused the documents available on record, it appears that, petitioner did file on record the School Leaving Certificate of one Dattatraya Baburao Mathpati, cousin brother of the petitioner, dated 3rd August, 1967, which shows entry as "Jangam" in the caste column. There is also copy of extract from the revenue record i.e. Khasara Patrak of Shri Bhujangaya Santaya of the Year 1954-55, in which caste is mentioned "Jangam". The petitioner claims that, said person is her grandfather. There is also extract from the service record of Shri Dattatraya Baburao Mathpati, cousin brother of the petitioner. In the said service record, his caste is mentioned as "Jangam". There is also copy of the caste validity certificate issued by the Divisional Caste Scrutiny Committee, Latur, in favour of Jyotibai Shantappa Mathpati, dated 10.05.2007, who is cousin sister of the petitioner. The relationship between the petitioner and the person's, whose names are referred herein above, is not disputed by the respondents.

14. The petitioner has stated in the Petition that, grandfather of the petitioner is illiterate, who admitted her in School, and therefore, he was unaware about the consequences of inadvertently mentioning "Mala Jangam" caste in the school record of the petitioner, and therefore, did not take immediate steps to correct the school record.

15. We have perused the Vigilance Cell report from the original record submitted by the learned counsel appearing for the respondent No. 2, for our perusal. Upon

careful perusal of the report of Vigilance Cell, it appears that, Vigilance Cell made a detailed home enquiry, and also enquiry from the various persons and after enquiry, the Vigilance Cell in concluding remarks observed that, upon enquiry and since the caste validity certificate is issued in favour of cousin sister [Chulat] namely Jyotibai Shantappa Mathpati, and therefore, it appears that, petitioner belongs to "Jangam" caste.

Therefore, the Vigilance Cell report supports the claim of the petitioner that, she belongs to "Jangam" caste.

16. Upon careful reading of findings recorded by the Respondent No. 2 Committee, there is no contra evidence brought on record by the Vigilance Cell so as to negate the claim of the petitioner that, she belongs to "Jangam" caste. The Hon'ble Supreme Court in the case of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, (1996) 3 AD 293 : AIR 1996 SC 1338 : (1996) 3 JT 405 : (1996) 3 SCALE 54 : (1996) 3 SCALE 53 : (1996) 3 SCC 685 : (1996) 3 SCR 466 , held thus:

"The rejection of the appellant's claim especially when there is no other evidence placed contra to suspect the proof produced by the appellant and without appreciating the vital document placed before the Committee, was not correct. The High Court also erred in dismissing the writ petition filed by the appellant by simply accepting the conclusions reached by the Committee without appreciating the probative value of the documents placed before it. In this case, except the documents produced by the appellant, nothing has been produced by the authorities concerned to arrive at a different conclusion. By a wrongful denial of the caste certificate to the genuine candidate, he/she will be deprived of the privileges conferred upon him / her by the Constitution. Therefore greater care must be taken before granting or rejecting any claim for caste certificate. Though in cases of this type, the burden heavily lies on the applicant who seeks such a certificate, but that does not mean that the authorities have no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. The authorities concerned must also play a role in assisting the Committee to arrive at a correct decision."

17. Upon careful perusal of the documents placed on record, and in particular extract from the Khasra Patrak showing the caste of the grandfather of the petitioner as "Jangam", and also extract from the service record of the cousin brother of the petitioner, which shows his caste as "Jangam", it clearly emerges that, petitioner's claim that, she belongs to "Jangam" caste, is genuine and supported by the documents and also the Vigilance Cell report.

18. In our opinion, the Committee has not properly appreciated the material placed on record, evidential value of the old documents, and also Vigilance Cell report and the fact that, there is no contra evidence brought on record during enquiry and reached to erroneous conclusion to reject the claim of the petitioner. In that view of the matter, impugned Judgment and Order dated 07.04.2010

passed by Scheduled Caste, Vimukta Jati, Scheduled Tribes, Other Backward and Special Backward Class Caste Certificate Scrutiny and Verification Committee No. 1, Aurangabad Division, Aurangabad, deserves to be quashed and set aside, and accordingly, same is quashed and set aside. The Writ Petition is allowed in terms of prayer clause "C" and "D". Rule made absolute on above terms.

19. Writ Petition stands disposed of, however, no order as to costs.