

(2015) 09 BOM CK 0193
In the Bombay High Court
Case No : Writ Petition No. 2715 of 1999

Mahendra Rambhau Kale

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0193

Hon'ble Judges : B.P. Dharmadhikari and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : Anil S. Mardikar, Senior Advocate and Joshi, Advocate, for the Appellant; M.N. Hiwase, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Heard Shri Mardikar, learned Senior Counsel with Adv. Joshi for petitioner and Smt. Hiwase, learned Assistant Government Pleader for respondents.

2. Smt. Hiwase, learned Assistant Government Pleader points out that she is still awaiting instructions from respondent No. 2 Committee.

3. Short question raised for consideration is whether order dated 7/1/1982 passed by Divisional Commissioner, Amravati in appeal against adjudication by Caste Verification Committee as per procedure then prescribed, could have been overlooked by respondent No. 2 Committee ?

4. The petitioner got a caste certificate on 23/9/1981 from Executive Magistrate, Daryapur. This caste certificate was used by him when he applied for admission to Government Medical College, Nagpur and Government Engineering College at Amravati. He was given provisional admission and his certificate was then forwarded to Committee then constituted and functioning under a Government Circular. That Committee headed by the Director of Social Welfare examined said certificate and declared it invalid. The petitioner questioned that order in appeal before Divisional Commissioner and Divisional Commissioner on 7/1/1982

allowed the appeal, with the result, order of Committee invalidating caste claim of the petitioner was set aside and the caste certificate showing that petitioner belongs to "Koli Mahadeo" (Scheduled Tribe) became final. The petitioner completed his education and joined employment in 1991. After joining employment, in due course, again his caste certificate was sent for verification and the respondent No. 2 Committee has invalidated it on 24/5/1999.

5. Learned Senior Counsel Shri Mardikar states that forwarding of caste certificate to Scrutiny Committee again after joining employment was unnecessary as petitioner then already had a caste validity certificate. He further submits that as laid down by the Hon"ble Apex Court in the judgment in R. Kandasamy Vs. Chief Engineer, Madras Port Trust, , the order of Divisional Commissioner in appeal granting validity had become final and that certificate, which had become final, could not have been invalidated by later Committee on 24/5/1999. He also invites our attention to the judgment of Division Bench of this Court in Raju Burde Vs. Establishment Officer (III-B), Maharashtra State Electricity Board and Another, to urge that in identical facts, this Court has found re-scrutiny of caste claim without jurisdiction.

6. Smt. Hiwase, learned Assistant Government Pleader for respondents, submits that the procedure to examine caste claims properly was laid down by the Hon"ble Apex Court for the first time in its judgment in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and the caste claim of the petitioner was never examined before the said judgment as per that procedure. As such, there was no Vigilance Cell enquiry conducted and affinity test was also not applied. Hence, the employer rightly forwarded caste claim of petitioner for verification to respondent No. 2 Committee. The respondent No. 2 Committee after conducting vigilance enquiry invalidated caste claim of the petitioner. She has invited our attention to the judgment of Division Bench of this Court in the case of Vijaykumar Narayanrao Kale Vs. State of Maharashtra and Others, . She contends that as the caste claim of the petitioner is invalidated after following proper procedure, the technical objection being raised cannot prevail and petition is liable to be dismissed.

7. In brief reply, learned Senior Counsel Shri Mardikar submits that though he has not touched merits of the matter, affinity test was never applied even in the impugned order by respondent No. 2 and vigilance enquiry was restricted only to School in which petitioner had taken education. Thus, there was no enquiry at the native place of the petitioner or at his home from elderly persons.

8. Facts on record show that petitioner applied for caste certificate in accordance with law then prevailing and as his application was found in order, he was given the same. Thereafter following the procedure, which was in vogue then, he submitted certificate for grant of validity to Scrutiny Committee. The Scrutiny Committee then functioning and headed by Director of Social Welfare invalidated the caste claim of the petitioner. That invalidation was then questioned by the petitioner before appellate Authority, namely, Divisional Commissioner. The

Divisional Commissioner after hearing appellant allowed his appeal and granted caste validity certificate. Thus, this order dated 7/1/1982 which gave validity to claim of petitioner as belonging to "Koli Mahadeo" (Scheduled Tribe) became final. The petitioner then got employment in 1991 and submitted that validity certificate along with caste certificate to substantiate his claim for reservation.

9. In January 1982 or then in 1991 when petitioner got employment, nobody could have foreseen the events on which learned Assistant Government Pleader has placed reliance. The Hon"ble Apex Court was required to step in the year 1995 as there was no scientific approach in the matter of enquiry into caste claim. Thus, for the first time in the year 1995, Hon"ble Apex Court prescribed the necessary perspective and thereafter caste certificates have been looked into by the Caste Scrutiny Committees constituted as per that judgment. The Hon"ble Apex Court has also pointed out role of Research Officer and vigilance enquiry in the matter of determination of caste validity. All this ultimately led to enactment of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No. XXIII of 2001) in this State. That Act thereafter has evolved its own procedure for verification of caste claims. The procedure is more or less in consonance with directions of Hon"ble Apex Court in its judgment in the case of Ku. Madhuri Patil (cited supra).

10. In Vijaykumar Narayanrao Kale Vs. State of Maharashtra and Others, , Division Bench of this Court has considered the impact of later legislation on orders of invalidation, which were passed either before delivery of judgment by the Hon"ble Apex Court in the case of Ku. Madhuri Patil (cited supra) or thereafter, but without proper assistance of Research Officer or without proper vigilance enquiry. As orders were found vitiated, it became apparent that need for fresh enquiry and fresh scrutiny surfaced. This Court in that process also found that Act No. XXIII of 2001 recognised caste certificates issued prior to its coming into force and made distinction between caste certificate and validity certificate. The validity certificates issued prior thereto were not recognised.

11. In this matter, however, caste claim of the petitioner was not invalidated before delivery of the judgment in the case of Ku. Madhuri Patil. He was given validity on 7/1/1982 itself. As already observed above, the later events could not have been visualized then and hence, on the strength of these later events, we cannot set at naught validity obtained by petitioner in accordance with law way back in 1982. Education completed by him on the strength of such validity also cannot, therefore, be disturbed. If his validity cannot be disturbed for the purpose of education, it is apparent that it cannot also be disturbed qua employment, which he secured in accordance with law by providing said validity and caste certificate in 1995.

However, if his validity is sought to be used as a corroborative piece of evidence by any of his blood relations, a different perspective may be required to be

adopted. The need thereof or then how application of mind should be at that juncture are not the issues germane at this stage.

12. Accordingly, we quash and set aside the order dated 24/5/1999 passed by respondent No. 2 Committee and restore the order dated 7/1/1982 passed by the Divisional Commissioner, Amravati. The writ petition is allowed. The rule is made absolute accordingly. No costs.