
(2007) 04 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 6288 of 2004

Malti

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 341, 342

Citation : (2007) 5 ALLMR 701 : (2007) 3 BomCR 572 : (2007) 109 BOMLR 895 : (2007) 4 MhLj 740

Hon'ble Judges : R.M. Borde, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : S.B. Talekar, for the Appellant; V.B. Ghadge, Assistant Government Pleader for Respondent No. 1 and Vijay Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the petitioner, learned Assistant Government Pleader for respondent No. 1 and learned Counsel for respondents Nos. 2 and 3.

2. The petitioner was appointed as Assistant Teacher on 29-12-1992 in the services of Zilla Parishad Jalgaon. Initially the petitioner claimed that she belonged to Tokre Koli, a Scheduled Tribe. A caste certificate was issued, according to the petitioner, by the Executive Magistrate Jalgaon on 10-12-1981. As the petitioner was appointed as a candidate belonging to Scheduled Tribe, the Chief Executive Officer, Zilla Parishad Jalgaon referred the caste certificate of the petitioner for verification to the Scrutiny committee vide letter dated 17-6-1996. During vigilance enquiry, the Tahsildar Jalgaon informed the Vigilance Officer that there was no entry found in the register maintained by the office of the Tahsildar Jalgaon regarding issuance of such a caste certificate in favour of the petitioner. Accordingly, the Vigilance Officer submitted report to the Scrutiny Committee on 25-11-1999. By judgment and order dated 29-12-2001 the Scrutiny Committee cancelled the caste certificate issued in favour of the petitioner as Tokre Koli and recommended criminal prosecution against the petitioner for obtaining fake caste

certificate.

3. The petitioner questioned the said order of the Scrutiny Committee in Writ Petition No. 5298 of 2001 before this Court. The writ petition came to be partly allowed. Operative portion of the order passed by this Court is as below:

In the result, the petition is partly allowed. Rule is made absolute to the extent of invalidating the caste claim as belonging to Tokre Koli is set aside. The rest of the order passed by the Committee holding the caste certificate bearing outward No. MAG/S.R./81/82 dated 10-12-1981 to be a fake caste certificate which was presented by the petitioner and order of initiation of criminal action against the petitioner is maintained. The rule is discharged to that extent. The petitioner, however, is free to apply for issuance of a caste/tribe certificate from the appropriate authority and in case the petitioner is issued such a certificate it should be first sent to the scrutiny committee for verification. No order as to costs.

4. The petitioner was issued a show cause notice dated 27-2-2004 / 18-3-2004 by the Chief Executive Officer Zilla Parishad Jalgaon. By the said notice it was brought to the notice of the petitioner that in the light of the order passed by the High Court the petitioner was to submit a fresh caste certificate as belonging to Scheduled Tribe issued in her favour but the same was not submitted in spite of repeated intimations issued by the office of the Zilla Parishad Jalgaon. The petitioner was therefore called upon to explain as to why the petitioners services shall not be terminated. This show cause notice is the subject matter of challenge in the present petition. The petitioner states that thereafter the petitioner obtained a caste certificate dated 28-4-2004 issued by the Sub Divisional Officer Jalgaon Division, Jalgaon as "Koli" which is recognised as a Special Backward Class.

5. The learned Counsel Shri. S.B. Talekar, appearing for the petitioner submitted that by virtue of the interim relief granted on 7-10-2004 in terms of prayer Clause "B" the petitioners services are protected. It was submitted that the petitioner obtained a fresh caste certificate as Koli (Special Backward Class) after the writ petition filed by the petitioner was finally disposed of by judgment and order dated 1st July 2002. The petitioner decided not to press her claim as a Scheduled Tribe. The petitioner seeks benefit of a Government Resolution dated 15th June 1995. The petitioner contends that under the said Government Resolution in case a candidate fails in establishing her caste claim as a Scheduled Tribe, then the services of such persons are required to be protected in accordance with the policy of the State. The State had adopted a policy that in such cases an employee shall not be terminated.

6. The learned Counsel for the petitioner placed reliance on the reported judgments. While referring to the case of State of Maharashtra v. Sanjay K Nimje 2007 ALL SCR 540, the counsel would submit that the said case is required to be distinguished on facts. According to the learned Counsel, in the case of Sanjay

Nimje the appointment order issued on 29th June 1995 was later in point of time to the Government Resolution which was issued on 15th June 1995 whereas in the present case the petitioner was appointed on 29-12-1992. The learned Counsel submits that considering the judgments reported in *M. Narayanappa Vs. Government of Karnataka and Another*, and *Union of India (UOI) Vs. H. Ramakrishna*, the petitioners services are required to be protected as the petitioner did not claim any relief as a Scheduled Tribe but insisted for benefits of a candidate belonging to Koli, which is recognized a Special Backward Class in the State of Maharashtra.

7. The learned Counsel for the petitioner further placed reliance on the following reported judgments in support of his contentions:

- (1) *Superintendent of Post Offices v. R. Valasina Babu* AIR 2007 SCW 1099;
- (2) *State of Maharashtra v. Ravi Prakash Babulalsing Parmar* AIR 2006 SCW 6093;
- (3) *Sandeep Subhash Parate v. State of Maharashtra* 2006 (6) ALL MR 71; and,
- (4) *Bank of India and Another Vs. Avinash D. Mandivikar and Others*,

We have perused the judgments cited (supra) by the learned Counsel for the petitioner. The judgments cited are not applicable to the facts of the case and more particularly in view of the judgment delivered by the Apex Court in the case of *Sanjay K Nimje* (cited supra) and the view adopted by the Division Bench of this Court in the case of *Nutan Vidarbha Shikshan Mandal* (cited supra). The provisions of Sections 7 and 10 of the Act of 2000 were considered in the cases of *Sanjay K Nimje* and *Nutan Vidarbha Shikshan Mandal*.

8. The learned Counsel Shri. Vijay Sharma, appearing for the Zilla Parishad submitted that the Scrutiny Committee had cancelled the caste certificate issued in favour of the petitioner as a candidate belonging to Tokre Koli, a Scheduled Tribe and had recommended criminal prosecution. Our attention was drawn by the counsel to para 5 of the affidavit-in-reply filed by the then Chief Executive Officer Zilla Parishad Pune who was working as Tahsildar Jalgaon from 9-9-1981 to 5-1-1982. It was mentioned that the present petitioner never applied to the Tahsildar / Taluka Executive Officer for issuance of caste certificate in the year 1981 and no such caste certificate was issued by the deponent on 10-12-1981 which was under verification of the Scrutiny Committee. The counsel would submit that it is a matter where the petitioner entered in service on the basis of caste certificate as a Scheduled Tribe which not was issued by the office of the Tahsildar / Executive Magistrate. According to the counsel, a person who played a fraud would not be entitled to claim any relief from the Court exercising jurisdiction under Article 226 of the Constitution. It was submitted that as the petitioner initially entered in the service on the basis of a certificate which was cancelled the petitioner has no right to be in service.

9. Learned Counsel Shri. Sharma places reliance on a reported judgment in

Nutan Vidarbha Shikshan Mandal v. The Presiding Officer, School Tribunal Amravati 2007 (2) ALL MR 60 delivered by a Division Bench of this Court.

10. The basic issue involved in this petition is as to whether the Government Resolution dated 15th June 1995 overrides the statutory provisions of the 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 Certificates Act 2000 (Maharashtra Act No. XXIII of 2001) While dealing with this issue the Apex Court in a recent judgment in State of Maharashtra v. Sanjay K Nimje 2007 (2) Sca 214 observed in paragraphs 16 and 17:

16. The 2000 Act being a legislative Act would prevail over any Government Resolution. A Government Resolution may be beneficent in nature but it is well-settled that a benefit under a Government Resolution cannot be extended to a person who does not satisfy the conditions precedent thereof.

17. In any event, the effect of the judgment of this Court as also the provisions of a statute in the light of the constitutional provisions contained in Articles 341 and 342 of the Constitution of India cannot be diluted by reason of a Government Resolution or otherwise.

11. In a recent judgment delivered by a Division Bench of Bombay High Court (Coram: R.M.S. Khandeparkar & S.R. Dongaonkar, JJ) the effect of a Government Resolution in identical situation was considered. The Court observed in para 42 thus:

42. It is settled law that the statutory provisions cannot be overridden by the Government resolution. Once the statutory provision denied protection to unscrupulous persons, no Government resolution providing protection contrary to such statutory provisions can be enforceable at law. The sphere which is covered by an act cannot be allowed to be encroached upon by any Government resolution. The law in this regard is well settled.

12. In the present case the petitioner claims benefit under the Government Resolution dated 15th June 1995. The petitioner entered in service as a candidate belonging to Tokre Koli, Scheduled Tribe. Her caste claim was rejected. After disposal of the writ petition the petitioner preferred not to apply for a fresh caste certificate as Scheduled Tribe candidate but preferred to obtain caste certificate as Koli which is recognised as Special Backward Class in the State of Maharashtra.

13. On behalf of the petitioner it was submitted that in identical situation two other candidates were retained in service by the Zilla Parishad. Therefore, the Zilla Parishad shall not be permitted to discriminate among the candidates. We reject this contention in view of the authoritative pronouncements of the Apex Court and the view adopted by this Court in the judgment cited supra. Learned Counsel for the petitioner submits that under the Government Resolution various

other candidates in the State of Maharashtra got benefit which accordingly be given to the petitioner. We find that the petitioner was appointed as a candidate from reserved category, based on a a caste certificate which was not at all issued by the concerned authority. The petitioner occupied a post which was reserved for a person belonging to Scheduled Tribes. A candidate who obtained caste certificate, which is later on found to be not issued by the authority, plays a fraud, and the consequences are inevitable.

14. In the light of the reasons and observations made above we find that the petition is devoid of substance and liable to be rejected.

15. The writ petition is accordingly rejected. Interim relief granted on 7-10-2004 stands vacated.

16. Learned Counsel Shri. Talekar for the petitioner at this stage prays for staying the effect and operation of this order for a period of four weeks for preferring a petition to the Apex Court. We do not find any justifiable reasons to stay operation and effect of our order. The prayer stands rejected.

17. The Assistant Government Pleader shall forward a copy of this order to the Secretary, School Education Department, State of Maharashtra.