
(2013) 10 BOM CK 0066
In the Bombay High Court
Case No : Writ Petition No. 6069 of 2012

Mayur

APPELLANT

Vs

Scheduled Tribe Caste Certificate Scrutiny Committee,
Gadchiroli and Others

RESPONDENT

Date of Decision : 18-10-2013

Acts Referred:

Citation : (2014) 4 BomCR 730 : (2014) 1 MhLj 437

Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J

Bench : Division Bench

Advocate : R.S. Parsodkar, for the Appellant; S.M. Puranik for respondent No. 1, D.P. Thakare, AGP for respondent Nos. 2 and 7 and A. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

Z.A. Haq, J.—Heard. Rule. Rule made returnable forthwith.

2. The petitioner has challenged the decision of the Caste Scrutiny Committee invalidating his caste certificate of "Mana", Scheduled Tribe.

3. Shri R.S. Parsodkar, learned advocate for the petitioner has submitted that the Caste Scrutiny Committee has committed an illegality in invalidating the caste claim of the petitioner overlooking the fact that the Caste Validity Certificate of "Mana"-Scheduled Tribe is issued by the Caste Scrutiny Committee in favour of the petitioner's father-Shamrao Zitru Nannaware, petitioner's real sister-Payal, petitioner's cousin brother-Nitin Bapurao Nannaware, petitioner's cousin sister-Shilpa Ramkrushna Nannaware and petitioner's cousin brother Umakant Ramkrushna Nannaware. The learned advocate has submitted that the document of 1918-1919 (sale deed) refers to the petitioner's grandfather Zitru as "Mana". According to the learned advocate, the document is pre-constitution era and has more evidentiary value and it cannot be said that the petitioner's grandfather was shown as "Mana" to avail some benefit as at that time, no one could have

expected or anticipated that the Constitution (Scheduled Tribes) Order, 1950 will be coming into existence.

4. The Caste Scrutiny Committee has submitted that the petitioner's ordinary place of residence does not fall in the area scheduled for "Mana" and the petitioner has failed to prove that before the area restrictions are removed, the ancestors of the petitioner's were residing in the area scheduled for "Mana" tribals. The submission as made on behalf of the Caste Scrutiny Committee cannot be accepted specifically in view of the fact that the Caste Scrutiny Committee has issued Caste Validity Certificates in favour of the father, real sister, cousin brother and cousin sister of the petitioner.

5. The Caste Scrutiny Committee has not considered the documents of 1918 submitted by the petitioner on the ground that it does not refer the caste as "Mana-Scheduled Tribe". This approach of the Caste Scrutiny Committee has to be deprecated. No one could have referred "Mana" as Scheduled Tribe in 1918. Moreover, the Caste Scrutiny Committee is constituted to examine the caste claims of the tribals by properly appreciating the documents and to decide the caste claim of the candidates by properly considering the documents and entries in the documents. The facts on the record show that the Caste Scrutiny Committee is finding out ways and methods and is giving unacceptable reasons to invalidate the caste certificates of the tribals. Leave apart the fact that no one could have referred "Mana" as Scheduled Tribe in 1918, even now the claim of a candidate whose caste is recorded as "Mana" cannot be rejected on the ground that the entry should have been "Mana"-Scheduled Tribe.

6. The Caste Scrutiny Committee has refused to consider the Caste Validity Certificate issued in favour of the father and sister of the petitioner by making a general observation that it is not understood as to how those Caste Validity Certificates have been issued when their ordinary place of residence does not fall in the area scheduled for the "Mana" tribe. It is not the case of the Caste Scrutiny Committee that the Caste Validity Certificates have been obtained by the father and sister of the petitioner relying on forged or fabricated documents or by misrepresentation of facts. In the case of Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medical Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences, , the Division Bench of this Court has laid down as follows:

9. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment (employment), and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view

that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner.

7. The Caste Scrutiny Committee has invalidated the caste certificate of the petitioner on the ground that the petitioner has failed to establish his affinity and ethnic linkages towards "Mana", Scheduled Tribe. The Hon"ble Supreme Court in the case of Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, has laid down as follows:

While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes" peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

8. The Caste Scrutiny Committee is a quasi judicial authority constituted under 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 Certificate Act, 2000. It is high time that the Caste Scrutiny Committee should realize its statutory obligations and its statutory duties. The Caste Scrutiny Committee cannot give a go-by to the law laid down by the Hon"ble Supreme Court and this Court on the issues which fall for consideration before the Caste Scrutiny Committee. It has been repeatedly said in several judgments that if the Caste Validity Certificate is issued in favour of father, brother, sister, real blood relatives, then the Caste Validity Certificate should be issued to the candidate unless the Caste Scrutiny Committee comes to a definite view that the earlier Caste Validity Certificate in respect of near blood relatives are obtained by submitting forged and fabricated documents and/or obtained by misrepresentation. The Hon"ble Supreme Court in the case of Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others (cited supra) has specifically laid down that the affinity test cannot be the only criteria for rejecting the caste claim of the candidate and it can be used in

corroboration with the documentary evidence on record to determine the caste claim of the candidate. In view of the above, the impugned order passed by the Caste Scrutiny Committee is (sic: not) sustainable in law.

(i) The writ petition is allowed.

(ii) The impugned order dated 5-11-2012 is quashed and set aside.

(iii) The Caste Scrutiny Committee is directed to issue Caste Validity Certificate certifying that the petitioner belongs to "Mana"-Scheduled Tribe within four weeks from today.

(iv) The consequential reliefs prayed for by the petitioner regarding his admission are granted.

(v) In the circumstances, parties to bear their own costs.