
(2009) 04 BOM CK 0108

In the Bombay High Court

Case No : Civil Application (review) No. 317 of 2009 in Writ Petition No. 4054 of 2008

Mayuri Manohar Bende

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-04-2009

Acts Referred:

Citation : (2010) 3 BomCR 812

Hon'ble Judges : Joshi A.H., J;Chaudhari A.B., J

Bench : Division Bench

Advocate : R.S. Parsodkar, for the Appellant; Anoop Parihar, A.G.P. for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Joshi A.H., J.—Rule. Rule is made returnable forthwith and is heard by consent.

2. Petitioner claimed that she belongs to Scheduled Tribe -Halba. Her Tribe Claim Certificate, which was forwarded to Scrutiny Committee, has been invalidated and confiscated under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Act, 2000 [hereinafter referred to as "the Act" for brevity].

3. In view of the invalidation of petitioner's caste claim, petitioner's admission to MBBS Course was cancelled by communication dated 29th March, 2008.

Writ Petition No. 1958 of 2008

4. Petitioner filed Writ Petition No. 1958 of 2008 and challenged the order of invalidation, and made an alternate submission that in the event the challenge to the invalidation fails, her admission to MBBS Course could be protected.

5. This Court dismissed said writ petition by order dated 5th August, 2008, however, granted liberty to the petitioner to submit a representation to the

respondent-Director of Medical Education & Research, with a direction that such representation be decided within eight weeks, and that petitioner's admission to MBBS course shall remain protected till the decision on her representation.

6. Petitioner then submitted a representation with a forwarding letter which is dated 22nd August, 2008.

7. Petitioner's representation has been rejected by the Director of Medical Education & Research by order dated 6th September, 2008.

Writ Petition No. 6056 of 2006

8. Petitioner had challenged the said order dated 6th September, 2008 by filing Writ Petition No. 4054 of 2008. The relief, which was sought in the petition, reads as follows:

A) That, by passing a suitable writ, order or direction in the nature of mandamus quash and set aside the order/communication at Annexure-A dated 6.9.2008 bearing No. DMER/WP No. 1958/08/Ku. Mayuri M. Bende/1-A passed by the respondent No. 2, Directorate of Medical Education and Research, through its Director, Mumbai.

B) It be held and declared that in view of the law laid down by the Apex Court petitioner is entitled for protection in her education and further she be permitted to complete her studies and to appear for examination and she is entitled for degree upon successful completion of her MBBS Course.

[Quoted from Page Nos. 12 and 13 of the paper-book of decided Writ Petition No. 4054 of 2008].

9. Writ Petition No. 4054 of 2008 has been rejected by this Court by its speaking order dated 7th October, 2008.

10. Petitioner seeks exception to the said order and has, therefore, filed present Review Application.

11. The points, as raised in the writ petition and Review Application, are one and the same.

12. We have heard learned Advocate Mr. R.S. Parsodkar for the petitioner and learned A.G.P. Mr. Anup Parihar for the respondents. We have called for the records of [1] Writ Petition No. 2657 of 1993, [2] Writ Petition No. 3401 of 2005, and [3] Writ Petition No. 1958 of 2008, for perusal.

Submissions

13. Crux of the matter can be grasped from the petitioner's representation dated 22nd August, 2008 submitted to the respondent No. 2, [copy whereof is at page 76 of the writ petition]. In this representation, the petitioner has urged following points:

[a] The petitioner was admitted to MBBS Course furtherance to orders of this Court.

[b] The Scrutiny Committee did not observe in its order that the Tribe Certificate obtained by the candidate from the Competent Authority is false, bogus, or secured by playing fraud etc.

[c] In view of the Judgments of Hon Tale Supreme Court in cases of [1] Sandeep Subhash Parate Vs. State of Maharashtra and Others, and [2] (Raju Ramsingh Vasave v. Mahesh Deorao Bhivapurkar and Ors. 2009 (Supp.) Bom.C.R. 342 (S.C.) : 2008 DGLS (soft) 993 : 2009 (1) Mh.L.J. 1 [citations referred later], the petitioner is entitled to protection of her education and secure the degree by re-compensating the State on payment of such costs as may be quantified.

[d] The petitioner is about to complete her Final Year of MBBS Course.

14. Reliance is placed by learned Advocate for the petitioner on contents of para 15 of the reported judgment of Hon'ble Supreme Court in case of Sandeep Subhash Parate Vs. State of Maharashtra and Others, [cited supra], as referred and relied upon in later judgment of Hon Tale Supreme Court, namely Raju Ramsingh Vasave v. Mahesh Deorao Bhivapurkar and Ors. 2009 (Supp.) Bom.C.R. 342 (S.C.) : 2008 DGLS (soft) 993 : 2009 (1) Mh.L.J. 1.

15. After conclusion of hearing, however, learned Advocate for the petitioner had tendered a compilation of citations of following cases to support his contention:

[a] The State of Maharashtra and Ors. v. Om Raj 2000 DGLS (soft) 1673 : 2001 (1) S.C.C. 32 [Civil Appeal No. 3102 of 1988 with Civil Applications therein], decided on 12-12-2000 by Hon'ble Supreme Court [Coram : S. Rajendra Babau & S.N. Variava, JJ.],

[b] State of Maharashtra v. Milind and Ors. 2001 (1) Bom.C.R. 620 (S.C.) : 2000 DGLS (soft) 1666 : 2001 (1) Mh.L.J. 2.

[c] Kum. Jyoti Pralhad Sangle Vs. The State of Maharashtra,

[d] Sandeep Subhash Parate Vs. State of Maharashtra and Others,

[e] Extract of S.C.C. Digest pertaining to judgment in case of State of Maharashtra v. Om Raj 2007 (14) S.C.C. 488.

[f] Yogesh Ramchandra Naikwadi Vs. The State of Maharashtra and Others,

[g] Moh. Azhar Khan Vs. Scheduled Tribe Scrutiny Committee and Divisional Controller, Maharashtra State Road Transport Corporation,

Points involved

16. Merit of application for review depends on questions involved, which, according to us, are as follows:

[1] Is this a case of invalidation of petitioner's tribe claim on account of any

technical folly, without any blame as to fraud, misrepresentation or suppression etc. on the petitioner?

[2] Is this a case of cancellation of Status Certificate done much after completion of petitioner's education? And, whether petitioner's case falls within the bracket of the judgments of Hon"ble Apex Court in Sandeep Parate's case and Raju Vasave's case [supra]?

Discussion & Reasons

Point No. 1 : Is this a case of invalidation of petitioner's tribe claim on account of any technical folly, without any blame as to fraud, misrepresentation or suppression etc. on the petitioner?

17. Petitioner has not produced copy of the judgment of the Caste Scrutiny Committee as an Annexure to this Review Application. Its copy was even not enclosed as an Annexure to the Writ Petition No. 4054 of 2008. Findings of the Scrutiny Committee invalidating petitioner's tribe claim are the primary and relevant document. Therefore, while considering this Review Application, it became necessary to once again ascertain as to what was held by Scrutiny Committee as a conclusion leading to invalidation.

18. We have, therefore, called for the papers of decided Writ Petition No. 1958 of 2008, in which the judgment of Scrutiny Committee was challenged. We have perused the decision of the Scrutiny Committee.

19. The relevant finding of the Scrutiny Committee is recorded in para 15 of its judgment. Relevant portion whereof reads as follows:

15 ...Where an application is made to the Competent Authority u/s 3 for the issuance of Caste Certificate in respect of Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category and in any enquiry conducted by the Competent Authority and Scrutiny Committee for the Appellate Authority under this Act or trial of offence under this Act, the burden of proof that the person belonged to such caste, tribe or class shall be on such claimant applicant.

But in the present case the applicant has suppressed the vital evidence i.e. school record in respect of her grandfathers and has also failed to submit convincing explanation on the entries of the caste Koshti in respect of her paternal grandfathers. As these caste entries made prior to the promulgation of the Scheduled Tribes Order, 1950, it has more probative value of evidence.

[Quoted from page No. 41 of the paper-book of decided Writ Petition No. 1958 of 2008].

20. The Scrutiny Committee has observed in its judgment that the record relating to grand-father of the petitioner pertains to the years 1937 and 1941, where the caste mentioned is "Koshti" and occupation as "weaving." The finding in relation to these documents is recorded in para 8 of the judgment of the

Scrutiny Committee, which reads as follows:

8] The applicant has filed the school record in respect of Pralhad Balkrushna Bende and Vishnu Natthuji Bende, but has failed to produce any documentary evidence to prove her relationship with them. On the other hand the applicant has denied the school record in respect of her grandfathers, which has been obtained by the Police Vigilance Cell, without giving any proper reason thereof. The perusal of the case file of the applicant's father in the office of the Committee reveals that the applicant's father has suppressed the school record in respect of his father and uncle, wherein their caste is recorded as "Koshti" and occupation as "weaving" in the year 1937 and 1941 respectively. It is now during the course of verification of the tribe claim of the applicant the said record is placed before the Committee by way of Vigilance enquiry, which reveals that the applicant has also suppressed the said record which is adverse to her claim.

[Quoted from page No. 36 of the paper-book of decided Writ Petition No. 1958 of 2008].

21. In the judgment delivered in Writ Petition No. 1958 of 2008, this Court [Coram : D.D. Sinha and A.P. Bhangale, JJ.] held to the effect that:

[a] Petitioner's grand-father -Mahadev and Mahadev's brother Shyamrao's caste record was "Koshti."

[b] This record relating to father and uncle of petitioner's father was not brought by the petitioner before the Authorities issuing the Certificate, or Committee, which was traced by Vigilance Cell.

[c] In the process of hearing before the Scrutiny Committee, the petitioner had simply denied the said record and relationship with Mahadev and Shyamrao.

22. In the body of Writ Petition No. 1958 of 2008, petitioner had given a family tree, where she admits that Mahadev is father of Manohar [petitioner's father] and father of Mahadev is Maroti, while Shyamrao is the son of Maroti and father of Mahadeo. This genealogy is given in para 4 of the petition.

23. While petitioner had denied the relationship with Mahadev and Shyamrao, said denial is seen to be bald, and she does not say that Mahadev and Shyamrao, who are respectively father and uncle of petitioner's father, are not the same persons whose records were secured by Vigilance Cell. The evidence of Headmaster secured by Vigilance Cell falsified petitioner's claim in addition.

24. Petitioner's claim seems to be that cancellation of her tribe Certificate is not done being "bogus and secured by way of forgery."

25. We are satisfied from revelation from record that by no means, a Certificate secured by suppression of antecedents could stand to the test of a Certificate obtained genuinely and bona fide. It is a clear case of suppression vary and suggestio false .

26. We see from these facts that the very foundation of petitioner's claim, namely that cancellation of her certificate and confiscation thereof is on account of a finding of fact as to fraud etc., is, thus, factually correct and very well based on record.

27. In the judgment, which is sought to be reviewed, this Court had recorded a finding in para 15 as follows:

15] In the instant case, the petitioner had claimed to belong to Halba -Scheduled Tribe on the basis of a false caste certificate which was directed to be confiscated. The Scrutiny Committee has also held die petitioner guilty of suppressing of vital evidence i.e., the school record in respect of her grandfather. The petitioner is still studying for the M.B.B.S. Course and it is not her case that she was already obtained M.B.B.S. Degree and is either doing her internship or seeking admission to the Post degree Course for medicine....

[Quoted from page No. 39 of the paper-book of Review Petition].

28. Perusal of Review petition does not disclose that this finding is brought into question or issue as erroneous on the face of record, or otherwise erroneous. Moreover, this finding referred to above is reiteration of what is found by the Scrutiny Committee at the first stage and then found by this Court while deciding Writ Petition No. 1958 of 2008.

Point No. 2 : Is this a case of cancellation of Status Certificate much after completion of petitioner's education? And, whether petitioner's case falls within the bracket of the judgments of Hon"ble Apex Court in Sandeep Parate's case and Rah Vasave's case [supra]?

29. Petitioner has spent about three years in medical education and has completed first as well the second term. In order to mitigate the loss of three and-half-year, she is claiming that, may be on costs byway of re-compensation of loss to the Government, her period of education spent may be given some weightage, and by protecting her admission, she may be permitted to complete the MBBS Course.

30. Considering that basic question is relating to career of a student, with peace and patience, we have scrutinized the pleadings.

31. Petitioner has shown in Paragraph 12 of the Review Application that she has completed three-and half year course of MBBS. The duration of MBBS Course of instructions is four-and-half-year, excluding the internship. It is that the petitioner has just secured admission to Final Year MBBS Course, and may have spent a few months thereafter, and yet has to complete even duration of full year, much less full term and tenure of the course.

32. Contents of representation submitted by the petitioner do not discloser

[a] The date on which the petitioner was admitted to Final Year MBBS Course;

[b] The date of commencement of instructions, practicals etc.;

[c] Exact duration for which the petitioner has undergone the training, and

[d] Exact duration of remainder spell of course instructions.

33. Petitioner's claim that her education is almost complete is again an incomplete and incorrect statement. On her showing, she has completed terms of MBBS Course, and was about to complete half year in the third term.

34. The petitioner has not given the date when the instructions and examination of the second term of MBBS were complete, the date when the result was announced and the date when she took admission to Final Year MBBS. Petitioner barely states that she has completed about three-and-a-half-year course. It is not even made clear as to whether instructions and practicals have commenced after she was admitted to Final Year MBBS course. Had really some academic instructions been already complete, she would not have hesitated making her averments to that effect.

35. By leaving these aspects vague and suspicious, the petitioner seems to be claiming to take the benefit of ambiguity. Petitioner's representation submitted to the Director of Medical Education 8B Research is also silent on this. On the other hand, even before the Director of Medical Education 8B Research, reliance is on the case of Sandeep Parate, to pay for the wrong committed by her, and on said consideration, protect her admission.

36. As we notice from the order passed by respondent No. 2 that he has applied mind to this aspect and recorded a finding which reads as below:

The issue raised in the case of Yogesh v. State of Maharashtra is mainly related to recalling the degree conferred after 13 years after admission the said course wherein admission was given through ST category and he secured degree more than four years back of the time of the judgment, the claim which was subsequently rejected. In the instant case the admission authority has already acted as per the rules of admission and decision of Caste Scrutiny Committee based on relevant statute.

[Quoted from page No. 17 of the paper book of decided Writ Petition No. 4054 of 2008]

37. We also see that Sandeep Parate's case was very well before the Bench while the order sought to be reviewed was passed. May be that the aspect of recompensating the State "on costs of petitioner" for protecting her admission was not given emphasis, yet the primary condition thereof that cancellation of Certificate to be an accidental fallout was not sustained; lest the finding recorded by the Court in Para 15 quoted in foregoing para was not to arrive.

38. Since most of the judgments cited by learned Advocate for the petitioner were already before the Bench while deciding the writ petition, those do not require any further and detailed discussion gain.

39. It is, thus, seen that the petitioner stands on extremely fragile footing, as she is not in a position to dispute fact-finding which has reached finality.

40. In these premises, the claim made by the petitioner that her case falls within the bracket of the class carved out by Sandeep Parate's case is an argument which does not have any factual foundation.

41. In these circumstances, we see no merit in the Review Application and the same is dismissed. Rule is discharged.