
(2020) 03 BOM CK 0037
In the Bombay High Court
Case No : Writ Petition No. 7950 Of 2018

Milind Bhimsing Shirsath

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 09-03-2020

Acts Referred:

Caste Certificate Act, 2001 — Section 6(1)
Code Of Civil Procedure, 1908 — Section 11
Constitution Of India, 1950 — Article 226, 371D

Citation : (2020) 03 BOM CK 0037

Hon'ble Judges : S.S. Shinde, J; V.G. Bisht, J

Bench : Division Bench

Advocate : R.K. Mendadkar, Bhavana Khichi, A.S. Gaikwad, S.S. Bhende

Final Decision : Disposed Of

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the respective parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the order dated 25.05.2018 passed by respondent no.

2 committee thereby invalidating the caste certificate of the petitioner as belonging to Tokre Koli which is notified as Scheduled Tribe under SC/ST

(Amendment) Act, 1976 for the second time.

3. It is the case of the Petitioner that he by birth belongs to Tokre Koli tribe which is recognised as Scheduled tribe by the SC/ST Orders

(Amendment) Act, 1976. The tribe claim of the father of the petitioner was subjected to detail and elaborate scrutiny at the hands of the Caste

Scrutiny Committee constituted under Government Resolution dated 29.10.1980.

The said Scrutiny Committee initially invalidated the caste certificate of father of the petitioner by an order passed in the year 1983. Being aggrieved, the father of the petitioner filed substantive appeal as provided before the then appellate authority of exclusive jurisdiction. After hearing both sides, the appellate authority passed the order on 4th February 1983 thereby adjudicating the tribe claim of father of the petitioner and thus allowed the appeal by setting aside the decision of the scrutiny committee. Thereafter, the tribe claim of uncle of the petitioner by name Shri. Vijaysing Amarsing Shirsath was also subjected to detailed and elaborate inquiry by the scrutiny committee constituted under Section 6(1) of Caste Certificate Act, 2001. The scrutiny committee at Nasik after conducting school and home enquiry through vigilance cell passed an order dated 28th March 2005 thereby validating the tribe claim of the real uncle of the petitioner from paternal side. The said caste scrutiny committee, Nasik pleased to issue caste validity certificate in the prescribed form to the said real uncle of the petitioner.

It is the case of the Petitioner that he was granted caste certificate initially by the Deputy Collector, CFC, Pune on 26.08.2005. The said caste certificate was referred to Respondent No. 2 Committee for verification through SSTNS Base School and Jr. College, Kenedy Road, Pune-1.

However, the Respondent No. 2 committee passed an order dated 21.01.2012 holding that the said caste certificate granted to the petitioner by the

Deputy Collector, Pune is not in prescribed format and therefore, cancelled and confiscated the same with liberty to the petitioner to obtain fresh caste

certificate in form. Accordingly, the petitioner again approached the Deputy Collector, CFC, Pune and after considering the merits of the

case and after holding due enquiry, Deputy Collector, CFC, Pune issued caste certificate to the petitioner on 16.04.2012. The petitioner himself again

referred the caste certificate to Respondent No. 2 Committee for verification on 05.07.2012 alongwith relevant documents. In the year 2011, he sought

admission in the B.Sc (Agriculture) degree course in the Navalbhau College of Agriculture, Jailer Road, Amalner Dist. Jalgaon. The said college by a

letter dated 5.12.2011 also forwarded the application of the petitioner for verification of his caste certificate along with other documents to Respondent

No. 2-Committee. Since the admission of the Petitioner in B.Sc (Agriculture)

degree course was apprehended, he was constrained to file Writ Petition

No. 7921 of 2015 in this Honâ??ble Court. The said writ petition came to be disposed of on 14.08.2015 with direction to Respondent No. 2-

Committee to decide tribe claim of the petitioner expeditiously and pass an appropriate orders preferably within three months. It was also directed by

this Court that the said college should not take any coercive action against the petitioner till tribe claim of the Petitioner is decided by Respondent No.

2-Committee.

4. It is further the case of the Petitioner that the petitioner passed B.Sc (Agriculture) degree examination conducted by Respondent No. 5. Though

provisional passing certificate dated 27.08.2015 has been awarded to the petitioner, final degree certificate having passed, has not been issued by

Respondent No. 5 for want of caste validity certificate. However, in the said provisional passing certificate, it has been mentioned that the said

certificate is subject to final decision in Writ Petition No. 7921 of 2015. However, the writ petition has been disposed of by this Court on 14.08.2015.

After completion of B.Sc (Agriculture) degree course, the petitioner appeared for Common Entrance Test Examination conducted by Respondent No.

3 and after considering his merit, Respondent No. 3- Council granted admission to the petitioner in Respondent No. 4-College during the academic

year 2015-16 under reserved category of the Scheduled Tribe on 18th September 2015 in the M.Sc (Agriculture) degree course. Finally, the petitioner

took admission in Respondent No. 4-College and also obtained undertaking to submit caste validity certificate within a period of 3 months from the date

of admission. So far as tribe claim of the Petitioner is concerned, he has submitted all the documents which were in his possession and which have

been duly considered by then appellate authority of exclusive jurisdiction as also by the statutory caste scrutiny committee while validating the tribe

claim of the blood uncle as well as first cousin sister of the Petitioner from the paternal side. Being directed, the petitioner filed exhaustive reply on 09-

12-2013 to the enquiry report of Vigilance Cell. The Petitioner was called for hearing by Respondent No. 2-Committee finally on 25.08.2015 when he

placed on record caste validity certificate granted to his first cousin namely Aarti Vijaysing Shirsath by the statutory caste scrutiny committee Konkan

Division, Thane on 28th March 2014. The Petitioner has also placed on record

caste validity certificate in relation to Bansidhar Naval Shirsath who is cousin brother of the petitioner from paternal side dated 14.01.2005. The Petitioner has also placed on record caste validity certificate granted to Sheetal Chhagan Vakade who is paternal cousin of the Petitioner i.e. daughter of father's sister. During the course of hearing on 25.08.2015, Respondent No. 2-Committee also ascertained socio-Culture affinity test from the Petitioner's father which he duly furnished. After hearing, Respondent No. 2-Committee closed the case of the Petitioner for order. The Petitioner being aggrieved, filed substantive Writ Petition No. 11984 of 2015 in this Court principally on the ground that decision making process of Respondent No. 2-committee is vitiated for want of application of mind in as much as Respondent No. 2-Committee did not take into account caste validity certificate granted to the Petitioner's uncle Vijaysing Shirsath and first cousin Aarti and order in appeal passed in the case of his father and validity certificate issued by the competent scrutiny committee in favour of the first cousin Kum. Aarti from paternal side. The aforesaid matter was placed for admission on 21.03.2017 and upon hearing both the sides, this Court (Coram:- Shantanu Kemkar & Prakash D. Naik, JJ.) pleased to set aside the impugned order therein and remanded the matter to Respondent No. 2-Committee to follow the law expounded by this Court in the case of Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee reported in 2010(6) Mh.L.J. 401 as also in the case of Shailesh Baban Sehwalé Vs. State of Maharashtra and ors., in Writ Petition No. 8736 of 2013, decided on 20.09.2016. Hence, this writ petition.

5. Learned counsel appearing for the Petitioner invites attention of this Court to the grounds taken in the petition and the fact that the validity certificate is granted in favour of petitioner's real uncle and other close relatives on paternal side. In support of aforesaid contention that once the validity certificate is granted in favour of near relatives of the candidate, the caste validity certificate deserves to be issued in favour of the Petitioner, the learned counsel pressed into service the exposition of law in the case of Apoorva Vinay Nichale (supra).

Therefore, learned counsel appearing for the Petitioner submits that petition may be allowed.

6. On the other hand, learned AGP appearing for Respondent-State invites

attention of this Court to the averments in the affidavit in reply filed by

Respondent No. 2 so also findings recorded by the Committee and submits that the petition may be rejected.

7. We have given careful consideration to the submissions of the learned counsel for the Petitioner and learned AGP for Respondent-State. With their

able assistance we have carefully perused the pleadings and grounds taken in the petition, annexures thereto and reply filed by 2nd respondent and the

reasons assigned by the Scrutiny Committee while rejecting the claim of the Petitioner. It appears that, in spite of placing on record overwhelming

documents in the nature of validity certificates issued in favour of real uncle of the Petitioner, the documents showing Petitioner's father's

tribe claim has been validated by the then Appellate Authority and also validity certificates issued in favour of close relatives of the Petitioner. It needs

to be noted that in spite of two remand orders by this Court, Respondent No.2-Committee by reiterating same reasons has discarded the tribe claim of

the Petitioner.

8. It is admitted position that the Tribe validity certificate is issued in favour of real uncle of the Petitioner by name Vijaysingh Shirsath, cousin of

Petitioner- Bansilal Naval Shirsath on 14.01.2005 by the Nashik Committee, Shital Chagan Wakade-daughter of aunt of the Petitioner on 12.04.2004

and Vijayshing Ambar Koli (Shirsath)- cousin uncle of the Petitioner on 06.05.2005. The Petitioner has also submitted copy of the judgment passed on

04.02.1983 by the Commissioner, Nashik in Misc. Appeal No. 21/1982. The said appeal was allowed and the order by the Director of the Social

Welfare Department, Maharashtra State, Pune was set aside. Accordingly, the Petitioner's father has also been granted Tribe Certificate i.e.

Tokare Koli. The Petitioner has submitted all the validity certificates of his close relatives as well as copy of the said judgment in case of his father in

support of his Tribe Claim as Tokare Koli.

9. It appears that in spite of aforesaid Tribe validity certificates on record the Scrutiny Committee negated the claim of the Petitioner on the ground

that in the school record in the caste column the entry is made as Hindu Koli in case of father and uncle of the Petitioner. This Court in the case of

Approva Vinay Nichale (supra) in para 4 to 6 held as under:-

4. We have considered the matter and we are of the view that the petitioner's

caste claim that she belongs to Kanjar Bhat- Nomadic Tribe ought to have been accepted by the Committee merely on the basis that identical caste claim of her sister that she belongs to Kanjar Bhat has been allowed by the Committee, even apart from the Government Resolution.

We are of the opinion that the guidelines provided by the said Govt. Resolution are sound and based on sound principles. It would indeed be chaotic otherwise. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud.

5. The Division Bench of this Court in Mahesh Pralhadrao Lad v. State of Maharashtra - 2009(2) Mh.L.J. 90 has observed that in the absence of any power under the Rules conferred on the Government to issue a Govt. Resolution, the Govt. Resolution cannot be said to be binding on the committee nor the committee in exercise of its jurisdiction is bound to follow the same. The Division Bench further observed that the Government Resolution may be considered in the context of Rule 12 of the Rules and if the committee while exercising jurisdiction is satisfied that the caste validity certificate issued to a blood relative is genuine then instead of calling the Vigilance Cell Report it may proceed to issue the caste validity certificate. We are in respectful agreement with the view taken by the Division Bench. We would further add that the committee would be entitled to refuse to follow the caste validity certificate granted to a blood relative if it appears to the committee that the earlier caste certificate has been scrutinized by a Committee without jurisdiction or the validity order is obtained by committing fraud on the Committee.

6. The Supreme Court has laid down this position in the judgment in Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and ors., - 2009(1) Mh.L.J.

(SC) 1= (2008) 9 SCC 54. Para 30 to 38 of the said judgment reads as follows:

30. The principle of res judicata is undoubtedly a salutary principle. Even a wrong decision would attract the principle of res judicata. The said

principle, however, amongst others, has some exceptions e.g. when a judgment is passed without jurisdiction, when the matter involves a pure question

of law or when the judgment has been obtained by committing fraud on the court.

31. In Williams vs. Lourdusamy this Court stated the law, thus : (SCC p.650, para 11).

11. The principles of res judicata although provide for a salutary principle that no person shall be harassed again and again, have its own limitations. In

OS No.402 of 1987, Respondent no.2 was not impleaded as a party. In his absence therefore the issue as to whether respondent 2 had entered into an

oral agreement of sale or not could not have been adjudicated upon. The said court had no jurisdiction in that behalf. If that was decided in the said

suit, the findings would have been nullities.

32. Two legal principles which would govern a case of this nature are:

(i) A decision rendered without jurisdiction being a nullity, the principle of res judicata shall not apply.

(ii) If a fraud has been committed on the court, no benefit therefrom can be claimed on the basis thereof or otherwise.

33. In support of the first principle, we may at the outset refer to Chief Justice of A.P. Vs. L.V.A. Dixitulu wherein this Court, while discussing the

effect of Section 11 Civil Procedure Code on a pure question of law or a decision given by a court without jurisdiction, opined : (SCC p. 42, para 24)

24.... Moreover, this is a pure question of law depending upon the interpretation of Article-371-D.

If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction.

Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in this case.

34. A three-Judge Bench of this Court in Ashok Leyland Ltd. v. State of T.N. held : (SCC p. 44, para 118)

118. The principle of res judicata is a procedural provision. A jurisdictional question, if wrongly decided, would not attract the principle of res judicata.

When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural

principles like estoppel, waivers or res judicata. (See also Dwarka Prasad Agarwal vs. B.D. Agarwal; Union of India v. Pramod Gupta and National

Institute of Technology v. Niraj Kumar Singh).

35. So far as the second principle, noticed by us, is concerned, there is no dearth of authority. Fraud vitiates all solemn acts. When an order has been obtained by practising fraud on the court, it would be a nullity.

36. In Ganpatbhai Mahijibhai Solanki vs. State of Gujarat this Court held:

It is now a well-settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same.

It was further observed:

In T. Vijendradas vs. M. Subramaniam this Court held:

(SCC p. 766, paras 27-28)

27. When a fraud is practised on a court, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not required

to be complied with. (Kendriya Vidyalaya Sangathan vs. Ajay Kumar Das and A. Umarani vs. Registrar, Co-op. Societies).

28. Once it is held that by reason of commission of a fraud, a decree is rendered to be void rendering all subsequent proceedings taken pursuant

thereto also nullity, in our opinion, it would be wholly inequitable to confer a benefit on a party who is a beneficiary thereunder.

37. In K.D. Sharam v. Steel Authority of India Ltd. this Court opined:

Reference was also made to a recent decision of this Court in A.V. Papayya Sastry v. Government of A.P. Considering English and Indian cases,

one of us (C.K. Thakkar, J.) stated : (SCC p. 231, para 22).

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non

est in the eye of the law. Such a judgment, decree or order- by the first court or by the final court- has to be treated as nullity by every court, superior

or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.'

The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one

gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic

collateral act which vitiates all judicial acts, whether in rem or in personam.

10. In Para 9 the Court further held that 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, 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.

11. In the peculiar facts and circumstances of this case, and keeping in view the caste validity certificate issued in favour of real uncle of the

Petitioner, so also the caste validity certificate issued in favour of the Petitioner's father by the then Appellate Authority and other caste validity

certificates issued in favour of close relatives of the Petitioner, so also keeping in view exposition of law in the case of Apporva (supra), we are of the

considered view that petition deserved to be allowed. As already observed, though twice the matter was sent back to the Committee, the Scrutiny

Committee without keeping in view the observations made by this Court in earlier two orders once again invalidated the tribe claim of the Petitioner.

12. In the light of above and in the peculiar facts and circumstances of this case, we pass the following order:-

ORDER

1) Rule is made absolute in above terms.

2) The Respondent No. 2-Committee is directed to furnish the caste validity certificate to the Petitioner.

3) Accordingly, writ petition stands disposed of.