

(2016) 05 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 7320 of 2009

Mohan Babli Ransing

APPELLANT

Vs

State of Maharashtra through its Secretary, Tribal
Development Department Mantralaya and others

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 ALLMR 837 : (2016) 5 BCR 426 : (2016) 4 MhLJ 50

Hon'ble Judges : Anoop V. Mohta and A.A. Sayed, JJ.

Bench : Division Bench

Advocate : R.K. Mendadkar, Advocate, for the Appellant; V.N. Sagare, AGP, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J. (Oral) - By this Petition the Petitioner has challenged order dated 23 December 2008 passed by Respondent No.2-Caste Scrutiny Committee, whereby the caste validity certificate dated 19 September 1983 issued to the Petitioner was declared to be invalid and the claim of the Petitioner as belonging to "Thakar-Schedule Tribe" was dismissed. By order dated 3 April 2003 in Writ Petition No.4005 of 1996 filed by the present Petitioner, the Division Bench of this Court considering the then existing provisions of law and the facts including Affidavit dated 10 March 2003, whereby it was averred and not controverted by anyone that the concerned Caste Scrutiny Committee had validated the caste claim of the Petitioner's son, nephew and niece as belong to Thakar-Schedule Tribe and set aside the order dated 7 December 1995 and directed the Caste Scrutiny Committee to reconsider the case of the Petitioner.

2. We have noted that those findings in favour of the Petitioner's paternal side relatives are supported by evidence and material on record and remained unchallenged. There is no case of alleged fraud or misrepresentation made and/or proved against the Petitioner. There was no reason not to consider the case of

the Petitioner based upon the Caste Scrutiny Committee validated certificates issued to the Petitioner's son, nephew and niece. Such Caste Scrutiny Committee's decisions bind all other and specifically so far as the parental relatives, who are claiming the similar caste certificate.

3. We have gone through the reasonings given by the learned Caste Scrutiny Committee Members. In spite of the above facts, the rejection of the caste claim of the Petitioner is contrary to law and the record. There is no justification and/or reasons given by the Caste Scrutiny Committee. The learned AGP is also unable to point out any contra material based upon the Affidavit placed on record on behalf of Respondent No.2, except stating that there was material suppression of facts. Para 5 of the Affidavit is relevant, which reads as under:

"5. I say that in para 11(1) of the impugned order dated 23- 12-2008 issued by Respondent No.2-Committee while invalidating caste claim of the Petitioner, it is mentioned that there is material suppression of facts. The said averment is mentioned for the following main reasons:

(i) Vide Government Resolution dated 21 November 1961 the `Thakar" community from Sindhudurg is mentioned in the list of Nomadic Tribe at entry No.22.

(ii) Vide Government Resolution dated 2-6-2004 the said entry No.22 was deleted from the list of Nomadic Tribes.

(iii) The `Thakar" community throughout State of Maharashtra is also mentioned at Sr.No.200 in the list of `Other Backward Class".

(iv) Vide Government Resolution dated 26 July 2000 the said Sr.No.200 was deleted from the list of `Other Backward Class".

(v) Only thereafter the Petitioner had applied for Schedule Tribe certificate.

As the above said facts were not mentioned and/or disclosed by the Petitioner while applying for the Caste Validity Certificate, in the said impugned order dated 23-12-2008 it is mentioned that there is material suppression of facts."

4. The above submissions/contentions in no way persuade us to overlook the admitted position on record as regards the grant of caste validity certificates to the Petitioner's son, nephew and niece by following due procedure of law at the relevant time. The Petitioner is entitled for the certificate based upon same circumstances and situation as applied earlier also. The Respondent did not refer to earlier decisions of the Caste Scrutiny Committees in some of Petitioner's relatives. There is nothing on record and/or pointed out that the Government has taken any steps and/or instructed to take steps to revoke and/or cancel those caste certificates issued to the Petitioner's son, nephew and niece. Mere allegation of suppression of fact by the Scrutiny Committee are not sufficient. The above averments, even if made, are required to be proved in accordance with law. The situation is, in the present case that the Petitioner's son, nephew

and niece are treated in the Society being belong to Thakar-Schedule Tribe, whereas the Petitioner-father/uncle, who had no occasion to move for such caste validity certificate by the impugned order, being treated as not belonging to Thakar-Schedule Tribe. This is, in our view, unacceptable position.

5. The Respondents, if are so serious about the stated misrepresentation, ought to have taken steps at the earliest. Respondent No.2-Caste Scrutiny Committee cannot sit over the decisions as the Appellate Authority, and/or even against the observations of this High Court, by overlooking the validated caste certificates of the Petitioner's son, nephew and niece. The whole procedure is unjust and impermissible and contrary to law.

6. This is also in the background that those caste certificates were issued prior to enactment 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 Certificate Act, 2000. We are, therefore, inclined to observe that whole action of Respondent No.2 of rejecting the caste claim and passing the impugned order is unjust and contrary to law. This also in the background that this Court in many judgments followed the judgment of Division Bench of this Court in Apoorva Vinay Nichale v. . Divisional Caste Certificate Scrutiny Committee No.1 & ors., 2010 (6) Mh.L.J. 401, wherein it is held that if the kith and kin of a candidate is already granted validity certificate, such candidate should also be granted validity certificate.

7. In this case, as recorded, the Petitioner, whose son has already granted validity certificate, is required now to validate his caste claim of 1983. The decision of the Caste Scrutiny Committee denying the same is contrary to the judgment of this Court in Apoorva Vinay Nichale (supra) and also innumerable judgments of this Court following the same.

8. We have also observed by referring to various judgments on similar issue in earlier decision Sanjay Bajirao More and anr. v. State of Maharashtra and ors., 2013 (6) Mh.L.J. 822 as follows:

"The State Government, in our view, required to take steps against such Scrutiny Committee and/or officers who are passing such orders by overlooking the judgments passed by the Supreme Court and this courts directly on the issues after taking into consideration the relatives" caste validity certificates. Appropriate circular and/or direction is required to be issued in this regard so that it will save time and energy of every one including of Courts."

9. Therefore, in view of above position of law and admitted facts on record, we are of the view that the case is made out by the Petitioner for the reliefs so sought. Therefore, the Petition is required to be allowed. Hence, the following order:-

ORDER

(i) The Petition is allowed in terms of prayer clause (b), which reads as under:

(b) That this Hon"ble Court be pleased to issue Writ of Certiorari and/or any order or direction in the nature of Certiorari quashing and setting aside the impugned order dated 23 December 2008 passed by Respondent No.2-Committee, with further direction to the said Committee to issue Caste Validity Certificate in respect of the caste certificate dated 19-9-1983 issued by the Competent Authority of jurisdiction in favour of the Petitioner.

(ii) Rule is made absolute accordingly. No order as to costs.

(iii) In view of above, all consequences to follow.