

(2023) 08 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 6049, 6050 Of 2020

Mohsin Khan And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 08 BOM CK 0020

Hon'ble Judges : Mangesh S. Patil, J;Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Sunil M. Vibhute, A.S. Shinde, K. M. Suryawanshi

Final Decision : Dismissed

Judgement

Shailesh P. Brahme, J

1. Heard learned Counsel for the respective parties. Rule. Rule made returnable forthwith. The matter is taken up for final disposal at the admission stage.

1. The petitioners in both the petitions are children of one Aslam Khan. They claim to be members of scheduled tribe 'Tadvi Muslim'. Their caste claim was invalidated by common judgment and order dated 18.03.2020 passed by the respondent no.2/Scrutiny Committee. There is a common record for the assessment of their caste claims. Hence both the petitions are being decided by this common order.

2. The petitioners are relying upon the validity certificate issued to their father Aslam Khan. Besides that they have placed on record the vigilance report, affidavit, genealogy, mortgage deed of 1931 and its translation. Besides this record the school record of the close relatives was also placed before the Scrutiny Committee.

3. The learned AGP supports impugned judgment and order. According to him the school record does not support the petitioners' claim. There is no consistency in

respect of the caste mentioned in the record. There was manipulation of the school record. The mortgage deed is not useful to decide a caste status. He would further submit that the petitioners failed to satisfy the test of area restriction. There was vigilance enquiry and affinity test was against them.

4. The Scrutiny Committee invalidated the claim of the petitioners for the following reasons :

(i) Though the petitioners' father, uncle, aunt and other relatives were educated, their school record was not produced. The school record of the father and uncle of the petitioners was verified and transpired that the caste was mentioned as Islam, which is incompatible with the claim of the petitioners.

(ii) The manipulation was noticed in case of school record of petitioner/Mohsin Khan. There is inconsistency in the record.

(iii) The validity certificate of the father was void because it was issued by an incompetent authority i.e. the Scrutiny Committee, Pune of Social Welfare Department. It should have been issued by Committee at Nashik from Tribal Welfare Department.

(iv) The mortgage deed of the year 1931 produced by the petitioners was not registered, appears to be forged considering the pattern of writing, ink used and the caste.

(v) It was transpired that the petitioners and their ancestors were resident of Taluka Kandhar, District Nanded which was not the original place of abode of the tribe in question.

(vi) Considering the record of the relatives of the petitioners, their surnames, marital relations, resemble the non-tribal community. (vii) The affinity test did not support the petitioner.

5. The caste validity certificate of the father of the petitioners is placed on record, which was issued on 16.04.1994 by the Scrutiny Committee, Pune of the Social Welfare Department. There was disintegration of Tribal Welfare Department from Social Welfare Department in the State of Maharashtra on 01.05.1983. The Scrutiny Committee was established under the auspices of Director, Tribal Re-search and Training Institute, Pune on 23.01.1985. Thereafter, by Government Resolution dated 03.06.1992, Scrutiny Committee was established at Nashik and Nagpur. Aurangabad region was covered by the Scrutiny Committee at Nashik. Therefore it is incomprehensible how the validity certificate of the father was issued on 16.04.1994.

6. The father should have secured validity certificate from the Scrutiny Committee at Nashik which was under the auspices of Tribal Development Department. The petitioners and their father failed to explain this anomaly when they were having an opportunity before the Scrutiny Committee. The validity of the father is not beyond a pale of doubt. The finding recorded by the Scrutiny

Committee for discarding the validity certificate of the father of petitioners does not appear to be illegal or improbable.

7. The petitioners have placed reliance upon a mortgage deed of 1931 purportedly executed by great grandfather, Rehmat Khan. Caste of great grandfather in this document is recorded as Tadvī Pathan. It is submitted that there is greater probative value as the document is of pre-independence period. We have perused the translated copy of the mortgage deed. The caste of Rehmat Khan was shown to be Tadvī Pathan. The document appears to be of private transaction. No caste of the executor of the document Mr. Bismilla Baig Mehmood is mentioned like that of great grandfather of the petitioners. Even at the concluding part of the document, no caste of the executor is mentioned. The petitioners did not produce any affidavit or the statement of the translator Mr. M. A. Rauf who happens to be a lawyer. The petitioners could have produced corroborative evidence to rely on the document. We find that the petitioners failed to discharge the burden.

8. It is noticed that in The Constitutional (scheduled tribe) order, 1950 Entry no.13 reads thus: "Dhanka, Tadvī, Tetaria, Valvi."

. In the above entry, there is no word 'Pathan'. Therefore even if the mortgage deed is accepted still the tribe stated therein is not a scheduled tribe. Though the document is of a pre-independence period, it appears to be suspicious and it is not compatible with the claim of the petitioners. We, therefore, confirm the findings recorded by the Scrutiny Committee of not relying upon the mortgage deed.

9. It is seen from the original file that statement of the father of the petitioners was recorded. The close relatives of the petitioners are educated. The petitioners could have produced school record of the close relatives to fortify their claim. But such a record was not produced. On the contrary, school record of the father and uncle of the petitioners mentions religion as a 'Islam' and the column of the caste is blank. Therefore the claim of the petitioners appears to be doubtful. The school entries of the petitioner-Mohsin Khan which are in the form of school leaving certificate and admission register do show caste 'Tadvī'. However the photocopy of the admission form of Mohsin Khan bearing no. 1367 dated 12.06.2006 shows that in column of sub-caste word 'Tadvī' is written in different ink. The school leaving certificate of Mohsin Khan shows word 'Tadvī' apparently inserted subsequently. Therefore the Committee has drawn the conclusion on the basis of the school record which according to us is possible conclusion based on the material on record. We do not find any infirmity in the same.

10. So far as the findings recorded by the Scrutiny Committee on area restriction are concerned, as the area restrictions are removed after 1976, we do not confirm the findings on area restrictions but that does not take the case of the petitioners any further.

11. We are exercising jurisdiction under Article 226 of the Constitution of India

and not an appellate jurisdiction. We find that the Scrutiny Committee extended due opportunity of hearing to the petitioners and thereafter decided the matter. The Committee has taken a possible view. The petitioners failed to point out any perversity or patent illegality in the findings recorded by the Scrutiny Committee. No case is made out to interfere with the impugned judgment and order.

12. The petitioners also could not point out any perversity or infirmity in the findings recorded in the affinity test. We confirm the said findings.

13. For the reasons stated above, the petitions fail. The petitions are dismissed. Rule is discharged.