

(2012) 02 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 135 OF 2012

Mrs. Rashmi Rajan Lambor alias Saggubai B

APPELLANT

Vs

Scrutiny Committee For Verification of Caste Certificate and
Another

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 02 BOM CK 0031

Hon'ble Judges : U.V. Bakre, J;S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : S.G. Dessai, with Mr. Pavithran A.V. and Mr. S.Keny, for the Appellant; M.Salkar, Government Advocate for respondent No.1, Mr. S.D. Lotlikar with Mr. D.Naik, Advocate for respondent No.2, for the Respondent

Final Decision : Allowed

Judgement

1. By this petition under Article 226 of the Constitution of India, what the petitioner prays is that an order dated 16th January, 2012, being Exhibit P-1 to the petition, passed by respondent No.1 be quashed and set aside and that the Certificate issued by the Deputy Collector/SDM Quepem, Exhibit P-10 to the petition, be ordered to be scrutinised by the Scrutiny Committee-respondent No.1, in accordance with law. By the order under challenge, the Scrutiny Committee of Caste Certificate at Porvorim, Goa has held that there was evidence on record placed by both the parties and detailed arguments were canvassed. Even the Vigilance Report is on record. The contents of the Vigilance Report are referred to, but, ultimately, relying upon a circular issued by the Government of Goa on 13th August, 1991, that the Scrutiny Committee concluded that in order to claim Other Backward Class ("OBC" for short) status, the parents of the petitioner are required to migrate to the State of Goa before 19/02/1968. According to the Scrutiny Committee, the case of the present petitioner is that she started residing in Goa from 5th May, 2003. There is no evidence to show that the parents of the petitioner were settled in Goa before

19th February, 1968. Therefore, in view of the above circular, the members of "Gowli" Community in Karnataka are not entitled to avail the benefits of Dhangar OBC in the State of Goa.

2. Mr. Dessai, learned Senior Counsel had raised several contentions before us. His first contention was that the Gowli Community in the State of Karnataka is recognized as OBC qua that State. At the same time, the persons from this community migrating to the State of Goa are recognized as Dhangars which is classified as OBC for the State of Goa. For all purposes, Gowlis from Karnataka are similar and identically placed as Dhangars in the State of Goa. He submits that the circular relied upon by the Scrutiny Committee is inapplicable, as its application is restricted to the benefit of admission in the Colleges of Goa which is being secured against quota reserved for SCs/STs. His contention was that for this circular to apply, it must be construed as being applicable to the OBCs. Assuming it can be so construed, but without admitting it, its applicability is restricted to admissions against reserved quota in Colleges in the State of Goa. Mr. Dessai submits that the Scrutiny Committee fell in patent error in applying this circular to the facts of the present case, wherein the issue of the petitioner's status, as OBC, has been raised in an election dispute/petition filed by the contesting respondent to this writ petition. Further the Scrutiny Committee's inquiry is with regard to the certificate, certifying the petitioner as belonging to Dhangar Community. It is that certificate which was to be scrutinized by the Scrutiny Committee. That is how the matter was understood and was being processed. That is why the evidence was permitted to be led and it was also referred to for report by the Vigilance Committee. If such is the procedure which is adopted bearing in mind the decision of the Hon'ble Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , then, midway, the Committee erred in relying on this circular and closing the case. This is some abrupt conclusion, on the basis of only the circular and without discussing the contents of the vigilance report or by referring to the materials on record which would entitle the petitioner to prove that Dhangar Community of Goa is identical to Gowli Community of Karnataka in matters of dress, language, cultural, religious rites, traits and customs. That opportunity has been taken away and, therefore, the impugned order should be set aside on this ground alone.

3. Mr. Lotlikar, learned Senior Counsel appearing on behalf of the contesting respondent, on the other hand, urges that the petitioner is seeking to assert her status as OBC on the strength, firstly, of migration to the State of Goa which is by virtue of her marriage to an OBC in the State of Goa. It is well settled, according to Mr. Lotlikar, that caste is acquired by birth. One does not get transferred into a caste by virtue of marriage or adoption. If that is the fundamental principle on which the law proceeds, then, no further inquiry was necessary. The Scrutiny Committee's conclusion can be supported by relying on this settled principle. Assuming that the petitioner claims independent status as OBC in the State of Goa on the basis of the caste certificate issued in her favour,

even that is claimed on the basis of migration. It is not that the caste status can be said to be proved by migration from Karnataka to Goa of an OBC. Every thing depends upon the facts of each case and, therefore, going by the principle laid down in the case of Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, that unless there is a legislation in the field, the Court cannot direct any inquiry into the status of the petitioner, on the strength of migration to the State of Goa. For all these reasons, and the circular also being in place, he submits that the petition be dismissed.

4. On the earlier occasion, we had heard both the learned Senior Counsel, at length. With their assistance, we have perused the petition and the annexures thereto. Upon a query from the Court as to whether the petitioner asserts her claim or status as OBC only on the basis of her marriage to OBC in the State of Goa, what was argued is that the petitioner has acquired, independent of her marriage, a caste certificate as well as the OBC certificate issued on 4th February, 2010. Reliance is also placed upon a recognition given by a Society, concerned with Dhangar Community by issuing a certificate on 5th November, 2003, on the strength of which the Deputy Collector/SDM, Quepem issued OBC Certificate on 6th January, 2006 (Exhibit P-7). It is, therefore, contended that from 2003, the petitioner, by virtue of this certificate has been treated as belonging to Dhangar Community, which is an OBC in the State of Goa. This is independent of her marriage to an OBC in the State of Goa. If the embargo in so far as date of migration as per the Circular of 1991 is inapplicable to the petitioner, then the scrutiny into this certificate was warranted and necessary.

5. On such submissions before the Court made orally by Mr. Dessai, we called upon him to take instructions from the petitioner and to file a complete affidavit, so that the claim of the petitioner is amplified and clarified.

6. Accordingly, after taking instructions, an affidavit has been filed by the petitioner, duly affirmed on 21st February, 2012, copies of which have been handed over to both, the Government Advocate, as also the contesting respondent.

7. The petitioner has stated in this affidavit that by Certificate dated 7th September, 1993, issued by the Tahshildar of Channagiri, in the State of Karnataka, she is certified to be belonging to Group A of Backward Classes. It may be that a reference is made to the marriage of the petitioner in this affidavit, but, in paragraph 4 of this affidavit, the petitioner states thus :

Gowli community in Karnataka is akin to Dhangar community in Goa because of similar or identical anthropological and ethnological trades and religious rites, wedding ceremonies, death ceremonies, lifestyle, way of living, etc., so much so, the Government of Goa has made available nonconventional source of energy scheme, not only to Gowli community in Goa but also Dhangar community in Goa, thereby considering the two communities as one as Other Backward Class. The scheme is available to Gowli/Dhangar Backward Class in Goa.

8. Reliance is then placed on paragraphs 6 and 7, in which both the certificates issued by the Gomantak Dhangar Samajonnati Mandal, and the Deputy Collector/SDM, Quepem, certifying that the petitioner is belonging to OBC Dhangar community in the State of Goa, have been referred.

9. For such reasons, what the petitioner terms is that the Memorandum dated 18th May, 1998, issued by the Department of Personnel, Government of Goa which has been relied upon must be seen in the light and in the backdrop of Notification dated 3rd September, 1998, issued by the Department of Social Welfare, Government of Goa, prescribing guidelines for issuance of OBC certificates, even with regard to claims through marriages and then, it is asserted that being a Gowli which is an OBC by birth and notified by the State of Karnataka as OBC and which is notified Dhangar as OBC in the State of Goa, that the said certificates have been rightly issued in her favour.

10. In our view, the Scrutiny Committee has fallen in patent error in not considering all these claims and the contentions based thereon. Equally, the Scrutiny Committee should have considered the aspect as to whether the migration to the State of Goa or marriage to an OBC person in the State of Goa and, thereafter, migrating to Goa, are matters which would entitle the petitioner to claim such status or whether they are completely to be kept out of consideration, even if any notification or circular is issued in that behalf by the State of Goa. To our mind, when the matter was pending before the Committee for such a long duration and relevant materials were allowed to be produced by petitioner, then all that was expected from the Committee was to carefully scrutinise and verify the caste claim of the petitioner. The contention of Mr. Dessai that abrupt conclusion of the process by the Committee has resulted in serious prejudice to the petitioner and there is a fear in the mind of the petitioner being unseated as an elected member of South Goa Zilla Panchayat, from 14-Dharbandora Constituency, reserved for OBC Women. An election petition in that behalf is pending and, according to Mr. Dessai, the findings and the conclusion of the Committee would definitely weigh with the authority before whom the said petition is pending. In such circumstances, and when aforementioned and noted vital issues and points were raised for due consideration of the Committee, the least that was expected of it is that it would abide by the procedure laid down in Kumari Madhuri Patil's case. Ultimately, the scrutiny and verification of the caste claim, is an issue in both the cases, viz., the election dispute, as also the instant one. Somewhere, the petitioner must get an opportunity to establish and prove her claim either by marriage and migration or independent thereof. She must also be able to prove that the certificate issued to her is because of her status being recognized as OBC by the State of Karnataka and reciprocally accepted in the State of Goa. In such circumstances, by keeping all objections which have been noted by us and which may be permissible to be raised, we set aside the order of the Scrutiny Committee and remand the case to the Scrutiny Committee for verification and scrutiny of the caste claim of the petitioner, on merits and in accordance with law. Needless to state that we have

noted the rival contentions only with a view to emphasize that the matter involves serious issues which merits determination and consideration by the Scrutiny Committee. It could not have, therefore, proceeded with the matter in a casual and insensitive manner, ignoring these issues and abruptly concluding the inquiry. In such circumstances, by keeping all the objections, including those raised by Shri Lotlikar and permitting the second respondent as well to contest the claim of the petitioner before the Scrutiny Committee, we allow this petition in the following terms :

(A) Order of the Scrutiny Committee dated 16th January, 2012 is quashed and set aside.

(B) The matter stands remanded to the Scrutiny Committee for de novo inquiry and consideration of the caste claim and status of the petitioner as an OBC and particularly, Dhangar in the State of Goa.

(C) The Scrutiny Committee shall permit the petitioner to rely on such materials which are already on record and produce additional such documents and materials which are relevant and germane to the controversy. Equally, the second respondent can bring forward and place before the Committee such material which is necessary and relevant for contesting the claim of the petitioner. Based on necessary and required evidence and the reports, the Committee shall conclude the inquiry within a period of three months from today.

(D) All contentions of both sides in relation to the claim and status of the petitioner, including on the point of migration and marriage, are kept open.

The petition is allowed in the aforementioned terms, but, without any order as to costs.