
(2012) 08 BOM CK 0235
In the Bombay High Court
Case No : Writ Petition No. 509 of 2012

Mrs. Rashmi Rajan Lambor	Vs	APPELLANT
Scrutiny Committee and Another		RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 38, 43

Citation : (2013) 2 ABR 1004

Hon'ble Judges : U.V. Bakre, J;A.P. Lavande, J

Bench : Division Bench

Advocate : S.G. Dessai and Pavithran A.V, for the Appellant; A.N.S. Nadkarni, General, Pankaj Vernekar, Addl. Govt., S.D. Lotlikar and H. Kankonkar, for the Respondent

Judgement

U.V. Bakre, J.—Heard learned Senior Counsel for the parties. Rule. By consent heard forthwith. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the judgment dated 16/06/2012 passed by the Scrutiny Committee for verification of Caste Certificate (respondent No. 1) and to direct the respondent No. 1 to scrutinize/affirm the OBC Certificate issued by the Deputy Collector/SDM, Quepem, dated 4/2/2010.

2. Previously, the petitioner had filed Writ Petition No. 135 of 2012 before this Court against the same respondents, whereby she had prayed that the order dated 16/01/2012 passed by the respondent No. 1 be quashed and set aside and certificate issued by the Deputy Collector/SDM, Quepem, dated 6/1/2006 be ordered to be scrutinized by respondent No. 1, in accordance with law. This Court by order dated 22/02/2012 had allowed the said Writ 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.

3. In view of the said order in the Writ Petition No. 135 of 2012, respondent No. 1 took up the same issue of caste certificate of the petitioner, for fresh consideration. By impugned judgment dated 16/06/2012, the respondent No. 1 quashed and set aside the caste certificate issued by the Deputy Collector Quepem.

4. The petitioner had filed Affidavit-in-Evidence dated 13/05/2012 before the respondent No. 1 wherein she stated that she belongs to Gowli Community in Davangiri District of Karnataka State which is notified as Other Backward Class ("OBC" for short) in the State of Karnataka. She produced a copy of OBC certificate issued by the Competent Authority in the State of Goa. She further submitted that her family was engaged in the business of selling milk from cow, buffalo and goats, being a shepherd family. After her education, she got married to Dr. Rajendra Lambor of Dharbandora, Goa, in the year 2003, who belongs to Dhangar Community i.e. OBC in the State of Goa. The said marriage was solemnized under the regime of Communion of Assets and she is entitled to enjoy all the honours of her husband. She also submitted that Dr. Rajendra Lambor belongs to the same Community as per customs of her Community. Thereafter, in the year 2006, she approached the Deputy Collector/SDM, Quepem for issuance of OBC Certificate. The Deputy Collector, based on the report of Talathi, counter signed by Mamlatdar of Sangeum, issued OBC Certificate dated 06/01/2006 certifying that she belongs to Dhangar Community registered as OBC under the Government of India Resolution No. 12011/68/930-BCC (C) dated 10/09/1993 and Resolution No. 12011/44/96-BCC (C) dated 06/12/1996. After the expiry of aforesaid OBC certificate dated 06/01/2006, she obtained fresh OBC certificate dated 04/02/2010 from the Office of the Deputy Collector, Quepem. Gomantak Dhangar Samajonnati Mandal has also issued a certificate certifying that the petitioner belongs to Dhangar Community. However, since the same was objected to by the respondent No. 2, the matter was referred to the Scrutiny Committee.

5. The petitioner in the said Affidavit-in-Evidence before the respondent No. 1

further stated that she belongs to Gowli Community which is notified as OBC in the State of Karnataka and that Gowli Community in Karnataka is akin to Dhangar Community in the State of Goa which has similar or identical anthropological and ethnological traits and religious rites, wedding ceremonies, death ceremonies, life style, way of living, etc. and therefore Gowli Community of the State of Karnataka and Dhangar Community of State of Goa is one and the same, recognized by two different names. She has stated the similarities, in detail.

6. The petitioner relied upon the Vigilance Report of the police for verification of caste certificate. She also relied upon the status report submitted to the Government of Goa by the Committee constituted by the Government regarding the similarity between the Gowli and Dhangar in the State of Goa. She pointed out in her Affidavit-in-Evidence that the Government has notified various schemes for the welfare of the families belonging to Gowli (Dhangar) Communities and that the Government of Goa, by order dated 4/10/2011, has appointed Welfare Committee named as "Dhangar and Gowli Samaj Welfare Committee", to look after the interest of Gowli Community.

7. The respondent No. 2 also filed her Affidavit-in-Reply before the respondent No. 1 and she submitted that the petitioner belongs to Gowli Community from the State of Karnataka and not of State of Goa and that the petitioner obtained OBC certificate in the State of Goa by swearing a false affidavit dated 03/02/2010 stating therein that her parents belong to Dhangar Community and that she is born in Dhangar Community of State of Goa. The respondent No. 2 objected to the report of Talathi and the Certificate issued by Gomantak Dhangar Samajonnati Mandal certifying that the petitioner belongs to Dhangar Community. The respondent No. 2 stated that the said Gomantak Dhangar Samajonnati Mandal is not authorized to issue Certificate stating that Gowli and Dhangar are one and the same Community. She further submitted that as per the notification issued by the State of Goa declaring OBC Community, the Dhangar Community is included in OBC category and not Gowli Community and therefore the petitioner is not belonging to OBC category in the State of Goa.

8. The respondent No. 1, vide the impugned judgment, held that though the Gowli and Dhangar Communities in the State of Goa are akin to some extent, however, the Gowli Community is not notified as OBC Community in the State of Goa. It held that it cannot be established that Gowli Community of Karnataka is akin to Dhangar Community of Goa and therefore Gowli Community which is OBC Community in the State of Karnataka cannot be considered akin to Dhangar Community of Goa. It also held that the petitioner, merely by virtue of marriage to a person belonging to Dhangar Community in the State of Goa, cannot be considered as OBC in the State of Goa. It therefore quashed and set aside the Caste Certificate issued by the Deputy Collector, Quepem.

9. Mr. Surendra Dessai, learned Senior Counsel appearing on behalf of the petitioner, contended that the petitioner is not given appropriate opportunity by

the respondent No. 1 to adduce her own evidence and also she was not given opportunity to cross-examine respondent No. 2. He submitted that the procedure prescribed by the Government of Goa to be followed by the respondent No. 1 in order to verify the caste certificate has not been followed by it. It is his grievance that though the Vigilance Cell had submitted report certifying that the petitioner belongs to OBC, however, the respondent No. 1 has only referred to the said report but has not found any fault with the same and has not rejected the same. He argued that the respondent No. 1 has rejected relief to the petitioner only on the ground that Gowli community is not notified as OBC in the State of Goa and that by virtue of marriage to a person belonging to Dhangar Community in the State of Goa, the petitioner cannot be considered as OBC in the State of Goa.

10. Mr. Dessai, learned Senior Counsel, invited our attention to the provisions of Chapter V of the Family Laws which pertains to the conjugal union. Relying upon Article 43, the learned Senior Counsel argued that in terms of this provision there is formation of a single entity of husband and wife, as a result of marriage. He pointed out that though the respondent No. 1 has referred to communion of assets, however he has not considered the import of the provisions of Chapter 5 of the Family Laws, and this in spite of the statements made, in this regard, by the petitioner in her Affidavit-in Evidence.

11. Learned Senior Counsel on behalf of the petitioner relied upon Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, : Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and submitted that the respondent No. 1 has not complied with the procedure prescribed by this authority, for scrutiny of the caste certificate. He further contended that the respondent No. 1 has also not complied with the directions issued by this Court in writ petition No. 135 of 2012. According to him, the petitioner had made several averments in paragraphs 18 to 24 of her Affidavit-in-reply, filed before the respondent No. 1 but the same have not been considered. He therefore urged that the impugned judgment of the respondent No. 1 be quashed and the matter be remanded to it again for fresh decision.

12. On behalf of the respondent No. 1, Mr. A.N.S. Nadkarni, learned Advocate General, contended that the caste is determined by birth and that in Goa "Gowli" Community is not OBC Community. He further contended that by marriage, one does not lose his/her caste, which is acquired by birth. He has relied upon Mrs. Valsamma Paul Vs. Cochin University and others, , wherein, it has been held that a candidate born in forward class and transplanted in backward class by marriage, adoption or any other voluntary act, is not entitled to benefit of reservation for SC/ST. He also relied upon the Notification No. 13/8/91/SWD/Part/2008 issued by the Department of Social Welfare, in this regard. He therefore argued that in view of the peculiar claim of the petitioner, the petitioner will have to seek declaration that Gowli of Karnataka and Dhangar of Goa is the same community.

13. Learned Advocate General invited our attention specifically to Clause No. 5 of paragraph 13 of the judgment of the Hon"ble Apex Court in case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . He then submitted that in paragraph 3 of the order dated 22/2/2012 in Writ Petition No. 135/2012, this Court had observed that the respondent No. 1 did not discuss the contents of the vigilance report or the material 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, culture, religious rites, traits and customs and that this opportunity has been taken away and that the procedure as mentioned in paragraph 13 of the case of "Kumari Madhuri Patil" (supra) and the directions given by this Court in order dated 22/02/2012 in Writ Petition No. 135 of 2012 have not been strictly followed by the respondent No. 1. He therefore stated that he would have no objection if the matter is remanded to the respondent No. 1 for fresh consideration.

14. On the other hand, Mr. S.D. Lotlikar, learned Senior Counsel on behalf of the respondent No. 2, relied upon the case of Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, , wherein it has been held that a candidate recognised as a member of SC/ST in his original State on his migration to another State is not entitled to get benefit of reservation of seats. It has been further held that it is for the legislature to make appropriate legislation to effectively deal with the situation where migration is involuntary such as due to transfer of place of employment or profession of the candidate's parent. He, therefore, argued that caste is acquired by birth and one cannot get a different caste by migration by virtue of marriage. According to the learned Senior Counsel, mere equivalence of caste, as alleged, does not help the petitioner and the Scrutiny Committee cannot do the exercise of deciding equivalence and that it is for the legislature to do so. He pointed out that in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , the Hon"ble Apex Court refused to consider equivalence between the two castes namely "Koli" and "Mahadeo Koli". The learned Senior Counsel pointed out that in the affidavit dated 03/02/2012, the petitioner has admitted that she is Dhangar. He further pointed out that migration to Goa, on account of marriage, is also admitted. He invited our attention to the circular dated 3/9/1998 issued by the Goa Government (Department of Social Welfare) according to which OBC category cannot be acquired by marriage. Learned Senior Counsel read paragraphs 33, 34 and 36 of the judgment in Mrs. Valsamma Paul Vs. Cochin University and others, . He therefore contended that merely because the husband of the petitioner is of Dhangar community which is OBC in Goa, the petitioner, who is of Gowli community. which is not OBC in Goa, cannot claim that she is OBC as she is married to a person of OBC. He then pointed out that the affidavit filed by the petitioner before the respondent No. 1 specifically states that she is not claiming the status of OBC on account of her marriage. He therefore urges that the petition be dismissed.

15. In rejoinder, Mr. Dessai, learned Senior Counsel appearing for the petitioner, invited our attention to paragraphs 18 to 24 of the Affidavit-in-Evidence filed by the petitioner before the respondent No. 1 and submitted that there is absolutely no finding given by the respondent No. 1 on the averments made in the said paragraphs. He contended that marriage law in Goa being different and since there is integration of persons on account of marriage in Goa, the case of "Marri Chandra" (supra), is not applicable to the present case.

16. We have carefully perused the petition and annexures thereto.

17. This Court vide the order dated 22/02/2012 passed in Writ Petition No. 135 of 2012 had observed that the respondent No. 1 would abide by the procedure laid down in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . The procedure is laid down in paragraph 13 thereof. Clause 5 of paragraph 13 of Kumari Madhuri Patil's case provides as under:

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

18. As per Clauses 11 and 12 of paragraph 13 of the case of "Madhuri Patil", (AIR 1955 SC 94) (supra), the order passed by the Scrutiny Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution and no suit or other proceedings before any other authority should lie. Therefore the duty allotted to the Scrutiny Committee is not to be casually performed. The Scrutiny Committee is bound to consider all the materials placed before it and dispose of the matter by giving reasons.

19. The Vigilance Cell by Certificate dated 06/07/2011, after due inquiry and after collection of relevant information, held that the petitioner belongs to Gowli/Dhangar Community i.e. OBC, by her birth. It is seen that the respondent No. 1 has made some reference to the vigilance report of the police. However, there is absolutely no finding given by the respondent No. 1 on the said report of the Vigilance Cell as to whether the same is valid. There is no reason stated by the

respondent No. 1 as to why the same is not considered.

20. Equivalence of caste may be something different. The question, inter-alia, was whether the petitioner, on the strength of the other material produced on record, is to be considered as of OBC Community due to the peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. These requirements have not been considered by the respondent No. 1.

21. In the order dated 22/02/2012, passed by this Court in Writ Petition No. 135 of 2012, it was observed that the Committee erred in relying on the circular and closing the case. It was said that this was 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, culture, religious rites, traits and customs. It was observed that this opportunity has been taken away. It was also observed that the petitioner must get an opportunity 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. The petitioner in paragraphs 18 to 24 of the Affidavit-in-Evidence filed before the respondent No. 1 had stated various circumstances in support of her claim of status of OBC. The respondent No. 1 does not appear to have considered whether on account of anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the Gowli Community of State of Karnataka and Dhangar Community of Goa, the petitioner could be held to be belonging to OBC Community.

22. In terms of Article 38 of the Family Laws pertaining to conjugal union, the spouses are bound:

- (1) to maintain mutually conjugal fidelity;
- (2) to live together;
- (3) to reciprocally assist and help one another.

Article 43 provides as under:

a wife shall enjoy all the honours that the husband is entitled to and which are not merely inherent to the post he holds or has held, and shall maintain them, as well as, the right of using his name, until such time as divorce is granted or, in case of widowhood, until she contracts a second marriage.

23. Though the respondent No. 1, in the impugned judgment, has stated that the petitioner in her affidavit has stated that her marriage was solemnized under the regime of Communion of Assets, however it does not seem to have considered the applicability of the provisions of Family Laws, with regard to the conjugal union.

24. In the light of above, we are of the considered opinion that the respondent No. 1 has failed to comply with all the directions issued by this Court in the Writ Petition No. 135 of 2012, fully. Therefore we are constrained to remand the matter to the respondent No. 1, again. We therefore allow this petition in the following terms:

(a) The judgment dated 16/06/2012 passed by the respondent No. 1 in case No. 3/2011/3632/2872 is quashed and set aside.

(b) The matter stands remanded to the respondent No. 1 for fresh decision in terms of the directions given by this Court in Writ Petition No. 135 of 2012 and in terms of the procedure laid down in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, .

(c) All contentions of both sides in relation to the claim and status of the petitioner, are kept open.

(d) The respondent No. 1 shall dispose of the matter within a period of two months from today.

(e) The parties to appear before respondent No. 1 on 03/09/2012 at 11.00 a.m.

The petition stands disposed of in the aforementioned terms. No order as to costs in the facts and circumstances of the case.