

(2010) 10 BOM CK 0277

In the Bombay High Court

Case No : Writ Petition No. 5772 of 2009

Ms. Bharati Balkrishna Dhongade

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 10 BOM CK 0277

Hon'ble Judges : N.D. Deshpande, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : R.V. Govilkar, for the Appellant; D.B. Sawant with Santosh Patil, for Respondent No. 6, Mr. C.R. Sonawane, AGP for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

1. By this petition, the petitioner challenges the order of the Scrutiny Committee dated 19.6.2009 holding that the claim of the petitioner that she belongs to Shimpi Other Backward Class is not valid. The Scrutiny Committee was verifying the validity of the caste certificate issued by the Additional District Collector, Mumbai suburban district dated 18.1.1997 certifying that the petitioner belongs to Hindu Shimpi caste which is recognised as Other Backward Class at Sr.No. 153. Sr.No. 153 in the Government Notification notifying list of other backward classes reads as under:-

153) Shimpi, Idrisi/Darji, Saisutar, Jain Shimpi, Sravak Shimpi, Shetwal, Shetwal, Saitwal, Saitwal.

Thus, Shimpi is a caste mentioned in the list of Other backward class issued by the Government of Maharashtra. The scrutiny committee, however, found that the petitioner does not belong to Shimpi Caste but she belongs to Namdev Shimpi caste which is not Other Backward Class. That order was challenged in Writ Petition No. 5112 of 2007 in this Court. That writ petition was decided by

order dated 15.9.2008. It appears that the Scrutiny Committee had held that though Namdev Shimpi caste is not mentioned in the Government notification because the caste Shimpi is mentioned and as the petitioner belongs to Other Backward Class. The Court noted that the petitioner's family, admittedly, hails from State of Karnataka and they have migrated from Karnataka State to Maharashtra State long back. The Court noted that in the list of Other Backward Classes prepared by the Karnataka State Namdev Shimpi caste is specifically included in the list of Other Backward Class. The Court, therefore, felt that this aspect has to be considered by the Scrutiny committee, and therefore, the matter was remanded back to the Scrutiny committee for fresh inquiry. The Scrutiny Committee, after remand, has made order dated 19.6.2009 holding that the petitioner does not belong to Shimpi caste but belongs to Namdev Shimpi caste which is not included in the list of other backward classes in the State of Maharashtra, and therefore, she is not entitled to the benefits available to the persons in the State of Maharashtra belonging to Other backward classes.

2. The learned Counsel appearing for petitioner submits that the main caste is Shimpi and Namdev Shimpi is sub-caste. He relied on the Government Resolution dated 3.6.1996, specially on what is stated in paragraph 25 of that Government Resolution, wherein as an example it is stated that if in the list main caste is there is no entry in the list about Tiloni Kunbi or Khairi Kunbi_ if persons are found to be belonging to Tiloni Kunbi or Khairi Kunbi caste, because their main caste is mentioned in the list, they would be entitled to the certificate that they belong to Kunbi caste. The learned Counsel submits that by the same analogy Namdev Shimpi would be entitled to the certificate that he belongs to Shimpi caste. The learned Counsel took us through the list of Other Backward caste in the Maharashtra to show that when the main caste is mentioned, the persons belonging to sub-caste are also regarded as belonging to other backward class. The learned Counsel also relied on the judgment of the Division Bench of this Court in the case Neha Ballabhdas Gahalot Vs. Chairman, Caste Scrutiny Committee (O.B.C.) and Divisional Social Welfare Officer and Others, to contend that in that case a person in whose case the backward caste list was only Nai, the Court has held that he is entitled to the benefits of other backward caste because Marwadi Nai is descriptive of the region from which he has migrated. The learned Counsel appearing for the Scrutiny Committee on the other hand submits that as per the direction of this Court the Scrutiny committee has considered the entries in the list of State of Maharashtra and entries in the list of State of Karnataka, and has come to the conclusion that Namdev Shimpi is different caste than Shimpi. In the Karnataka State it has been included in the backward class. But in the State of Maharashtra it has not been so included. Therefore, the benefits of Other Backward class cannot be made available to that caste. The learned Counsel appearing for Respondent No. 6 invited our attention to a letter from the State of Maharashtra dated 1.12.2007 that in the list of Other Backward Class Namdev Shimpi is not a caste mentioned. He also produced before us a list of Other Backward classes issued by the State of

Karnataka and compared that list with the list issued by the State of Maharashtra to contend that Namdev Shimpi is treated as different caste in the Karnataka State, whereas many of the castes which are mentioned in the Karnataka List are repeated in the Maharashtra List, but Namdev Shimpi is not repeated.

3. Now if in the light of these rival submissions, we perused the record, it becomes clear that the matter was remanded back by the Division Bench to the Scrutiny Committee to re-examine the matter in the light of the fact that the family of the petitioner admittedly hails from the State of Karnataka and admittedly their caste is recorded as Namdev Shimpi, and therefore, whether Namdev Shimpi can be termed as different caste than Shimpi caste and that was to be considered also in the light of the entries in the Karnataka list and the Scrutiny Committee was to find out whether Namdev Shimpi is really a sub-caste of Shimpi and therefore, whether though Namdev Shimpi is not mentioned as one of the castes in Maharashtra list, a person belonging to the caste e benefits available to the persons who belong to the caste Shimpi in the State of Maharashtra. Now perusal of the list of Other backward classes issued by the Government of Maharashtra shows that entry at Sr.No. 153 mentions Shimpi and it also mentions sub-caste of Shimpi viz. Jain Shimpi, Sravak Shimpi. Perusal of entry No. 293 shows that it again records one more sub-caste of Shimpi i.e. Shiv Shimpi. Entry No. 293 reads as under:-

293) Bhavgar, Shiv Shimpi, Namdev.

If one compares these entries in the list issued by the Government of Maharashtra with the list of Other backward classes issued by State of Karnataka, then entry No. 42 of that State which is relevant, it reads as under:-

Darzi, Bhavsar, Karshatriya, Chippi, Chippiga, Simpi Shimpi, Lingayat Simpy, Sivasimpy, Sai, Mirai, Rangari, Rangrez, Nilari, Namdev, Namdev Simpy, Rangare, Neelagar, Lingayat Neelagar

Perusal of this list also shows that in this list also there is an attempt made not only to mention the main caste but also to mention the names of all related caste or sub-caste. It shows that Shimpi as in the case of Maharashtra list is included. Shiv Shimpi which is included in the Maharashtra List is also included. Namdev as in the list of Maharashtra is also included in the list of Karnataka State. But though Namdev Simpy is included in the Karnataka, it is absent in the Maharashtra list. Therefore, Namdev Simpy is a caste which definitely exists in the State of Karnataka and has been included in the Other Backward classes in the Karnataka State. But the Government of Maharashtra for the reasons best known to it has chosen to exclude that from the list of Other backward caste. The question whether though a particular caste is not mentioned in the list, it can still be included as belonging to that caste, is really a question if it is at all possible to be considered as such a question to be considered by an expert body. The scrutiny committee consists of experts on the subject. They after considering this aspect of the matter, after taking into consideration the Karnataka list, have

recorded a finding that the petitioner belongs to Namdev Shimpi caste which is not entitled to the benefits of Other Backward Class in Maharashtra. In our opinion, in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India it would not be appropriate to interfere with the order impugned.

4. So far as the judgment of the Division Bench in the case Neha Ballabhdas Gahalot, referred to above, is concerned, that judgment in our opinion turns on the facts of that case and the entries which were considered there. It does not lay down a proposition of universal application. In the result, therefore, the petition fails and is dismissed. Rule discharged with no order as to costs. At the request of the learned Counsel appearing for petitioner, it is directed that the interim order which is presently operating will continue to operate for a period of eight weeks from today.