
(1989) 11 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 2141 of 1987

Narayan Deoji Koli

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 1 BomCR 557

Hon'ble Judges : S.M. Daud, J; R.G. Sindhakar, J

Bench : Division Bench

Advocate : C.J. Sawant, for the Appellant; V.A. Gangal, A.G.P., for the Respondent

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution takes exception to the decision of the Commissioner, Konkan Division, in an appeal said to fall under the provisions of Government Resolution No. CBC-1680/43669/D-V dated 29 October, 1980.

2. Petitioner joined service as Junior Assistant in the Rehabilitation Housing and Backward Classes Department of the Government of Maharashtra at Mantralaya in October 1955. He was transferred to the Labour and Social Welfare Department on the 1st November, 1955. Then he came to Education and Social Welfare Department and on 10 March, 1966 was promoted as a Superintendent. After returning from the Maharashtra Industrial Development Corporation, a Government undertaking to which he had been deputed, he was posted in the social welfare Cultural Affairs, Sports and Tourism Department. Petitioner was thereafter promoted as an Assistant Secretary on 1 April, 1955. Then came a second deputation to the Maharashtra Tourism Development Corporation, where he worked as a Junior Executive. Came another promotion as an under Secretary in the General Administration Department on 9 August 1977. On 2 March, 1982, petitioner was promoted and posted as a Deputy Secretary in the Legislative Affairs Department, Mantralaya. He was thereafter transferred to the General

Administration Department and there, he earned another promotion as a Joint Secretary and it is in that post that he is presently working. Initially recruited as one from an other Backward Community, the petitioner on 7 June, 1976 applied to the Chief Secretary through the Secretary of the Department in which he was then stationed, for rectification of the official record vis-a-vis his caste. The claim made in the application was that he had been recruited as a Suryawanshi Koli, whereas in fact he was a Mahadeo Koli which was a scheduled Tribe. The request made by the petitioner was acceded to vide Government Memorandum dated 9 July, 1976. The 5th respondent who is the Director of Tribes Research and Training Institute, Pune, addressed a letter to the petitioner on 11 May, 1982, requiring the petitioner to appear before him for the verification of his caste. Petitioner took objection to the process of re-verification. He did appear before the Scrutiny Committee and furnished additional information to support the claim of his being the member of Mahadeo Kolis, being a scheduled tribe. What exactly happened at the level of the 5th respondent is not known. The Commissioner, Konkan Division, who is the 2nd respondent to this petition, addressed a letter to the petitioner calling upon him to appear before him. Petitioner appeared before the said respondent and raised various submission. A detailed written representation was submitted by him. The documents tendered by him included a School Leaving Certificate, a Caste Certificate issued by the Executive Magistrate, Thane, Government memorandum dated 9 July, 1976 spoken of above, an abstract from the service book of the petitioner, primary and secondary school certificates of the petitioner's sister, caste certificates issued by three M.L. As testifying to the petitioner being a member of the Mahadeo Koli tribe, certain Government letter relating to his relations and affidavits of these relations. The 2nd respondent was unconvinced and on 29 January, 1987 passed the impugned order, the operative part whereof is worded as follows :

"In view of the above facts, I come to the conclusion that Shri N.D. Koli (petitioner) does not establish his caste claim as belonging to Mahadeo Koli by sound and reliable documentary evidence and that he does not belong to Mahadeo Koli as notified as Scheduled Tribe. I hold that the caste certificate issued to Shri N.D. Koli by the Executive Magistrate, Thane, as invalid and further direct that the executive Magistrate should take further action to cancel this caste certificate."

3. The contentions raised in this petition, are dealt with below : Firstly, it is submitted that the Commissioner, Konkan Division, had no power under the G.R. aforementioned to go into and verify the certificates issued prior to 29 October, 1980. Next, the Commissioner had erred in ignoring the certificate obtained by close relations of the petitioner testifying to their being Mahadeo Kolis wherefore it followed that the petitioner also was a Mahadeo Koli. Thirdly, the Commissioner erred in assuming that a School Leaving Certificate was the last word on the subject of a person's caste or tribe and that it prevailed over the other evidence. Lastly, it was contended that the Commissioner, who was an inferior of the Government, could not seek to reverse a decision taken by the Government and

expressed through the Secretary of the Department in which the petitioner was at the time of the said decision, about rectification of his caste. Respondents in their return have taken various contentions and these are no more than a reiteration of the correctness of what is to be found in the impugned order.

4. The first question is whether the Commissioner had jurisdiction to go into the correctness or otherwise of rectification carried out in the petitioner's service record, which rectification was made in the year 1976. Mr. Sawant submits that the G.R. contains an unmistakable indication about it not having any retrospective effect. First, there is the presumption that the legislation whether made by a legislative body or a delegate empowered with the power to legislate, is prospective in intent unless clearly shown to be retrospective in operation. Learned Counsel submits that there is nothing in the G.R. to show that it has retrospective effect. This apart, the following words in Clause 11 of the G.R. viz. "these orders shall come into force with immediate effect" show that the G.R. will be operative only from 29 October, 1980. Clause 6 of the G.R. also according to Mr. Sawant, gives in indication of the Commissioner's power being prospective rather than retrospective. This clause is worded as follows :----

"The Divisional Commissioner should be empowered to enquire into the appeals in respect of non-issuance of caste certificates and also into the complaints and allegations about issuance of caste certificate to persons who do not belong to Scheduled Tribes. These appeals should be considered in accordance with the detailed instructions accompanying these orders."

To supplement his reliance upon clause 6, Mr. Sawant refers us to Instruction 19 in Appendix "A" which is an annexure to the G.R. Instruction 19 speaks of the Divisional Officer being empowered to enquire into complaints or allegations regarding caste certificates issued by the competent authority. The contention taken by the learned Counsel is unanswerable. Apart from the normal presumption is respect of legislation, clause 11, in terms, speaks of the G.R. coming into effect immediately i.e. from the given date 29 October, 1980. Clause 6 when it refers to the empowering of Divisional Commissioner to enquire into appeals, cannot obviously refer to an appeal other than that provided by the G.R. In fact Mr. Sawant submits that the G.R. is not subordinate legislation at all being no more than executive instructions, and if that be the position these instruction can never have retrospective operations. But we shall assume the worst against the petitioner, viz. that the G.R. is a piece of subordinate legislation. There being nothing to indicate that it has retrospective operation, we must hold that the power exercised by the Commissioner was in pursuance of a non-existent jurisdiction.

5. The next contention advanced by Mr. Sawant is that the Commissioner had ignored evidence about the blood relations of the petitioner being Mahadeo Kolis and thereby misled himself into an error that the petitioner was not a Mahadeo Koli. That evidence of this nature cannot be overlooked is borne but by a number of decisions of different Courts including this High Court and the Supreme Court

of India. To quote only from one of them, viz., Writ Petition No. 4681 of 1987, the petitioner there had produced affidavits of his near relations who belonged to a particular tribe. That evidence was over looked and the Division Bench reversed this view. Next comes a decision of the Aurangabad Bench of this High Court in W.P. No. 972 of 1984 to which one of us (Daud, J.) was a party. In that case which also involved a Mahadeo Koli, documents ignored were those pertaining to a sister and other close relations of the petitioner. These had been neglected or over looked by the Scrutiny Committee appointed to go into caste claims. The State preferred an appeal to the Supreme Court vide Civil Appeal No. 2611 of 1987 and the Supreme Court turned down the said appeal. It is not necessary to quote from more cases, for it is well settled that evidence if relevant must be considered and the right conclusion drawn therefrom. Here Exh. P-1 is the school leaving certificate granted to the petitioner's sister Kunda which describes her as a Mahadeo Koli. The same recital is to be found in other school leaving certificate at Ex. P-2 again relating to Kunda. Exh. P-4 relates to M.B. Koli who claimed to be a Mahadeo Koli, which claim was accepted by the Government of Maharashtra in the Finance Department on 22 December 1978. M.B. Koli and the petitioner are grand-sons of two full brothers. Exh. P-5 is an order passed in appeal by the Government accepting the claim of on Kruttika Dwarkanath-the grand niece of M.B. Koli-being a Mahadeo Koli. Then comes the affidavits of M.B. Koli and Kruttika reciting their kinship to the petitioner, their belonging to the mahadeo koli caste and petitioner's also belonging to that caste. These are unimpeachable documents and could not be ignored except for strong reasons. The only documents to the contrary was a school leaving certificate relating to the petitioner. Therein, he was described as belonging to the Suryawanshi Koli Tribe. But the school leaving certificate is not the last word on the subject, and this again, is established by a variety of decisions. To quote from only one of them, in W.P. No. 1914 of 1983, a Division Bench of this Court disapproved of undue weightage being given to a school leaving certificate by the Director of social Welfare. When there was overwhelming evidence in the shape of affidavits and certificates aforementioned, the Commissioner was not entitled to go exclusively by the school leaving certificates as also the entry made in the service record of the petitioner at the time of his joining service. As a matter of fact, this entry was corrected by the Government itself after a due enquiry. According to the Commissioner the correction was made on the basis of the enquiry with the Akhil Bhartiya Koli Samaj, Thane, which association represented the Suryawanshi Kolis and not Mahadeo Kolis. Mr. Sawant is right in his submission that in case the Commissioner wanted to rely upon the stigma said to vitiate the enquiry made with Samaj aforementioned, papers pertaining to the same should have been made available to the petitioner so that he could make his submission thereupon. Vital information made use of by the Commissioner to disregard a piece of evidence in favour of the petitioner not having been shown to him, the said conclusion reached by the Commissioner is vitiated.

6. Last, there is the submission that the Commissioner had no jurisdiction to

review or vary an order passed by the Government, he being a subordinate of the latter. If the G.R. under which the Commissioner had purported to act, had empowered him to set at naught a decision of the Government, then he would certainly have that power. But this question need not detain us. Because as said either, the G.R. is prospective and not retrospective in operation. The result of the foregoing discussion is that the petition succeeds. Rule made absolute in terms of prayers (i), (ii) and (iv). Respondents shall bear own costs and pay those incurred by the petitioner.