
(2015) 01 BOM CK 0090
In the Bombay High Court
Case No : Writ Petition No. 1636 of 2006

Nilima

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Citation : (2015) 2 ABR 96 : (2015) 5 ALLMR 879 : (2015) 5 BomCR 772 :
(2015) 2 MhLj 257

Hon'ble Judges : A.R. Joshi, J.;Anoop V. Mohta, J.

Bench : Division Bench

Advocate : R.S. Parsodkar, for the Appellant; A.D. Sonak, Assistant Government Pleader, Advocates for the Respondent

Judgement

Anoop V. Mohta, J.

1. Called out from final hearing Board. Heard finally by consent.
2. The petitioner who is stated to be belonging to "Rajput Bhamta" as per the caste certificate, has challenged order dated 18.2.2005 passed by respondent no. 2, the Scrutiny Committee, Amravati Division, Amravati, whereby her caste certificate is invalidated. That resulted into termination of her service in the year 2006 by orders dated 23.12.2005 w.e.f. 9.1.2006. Therefore, Writ Petition. The respondents resisted the same by filing reply dated 4.10.2006.
3. Both the Counsel read and referred the documents and the impugned order, apart from the provisions of the Maharashtra Scheduled Caste, Scheduled Tribes, Denotified Tribes (Vimukta Jati) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification) of Caste Certificate Act, 2000 ("the Act") and the Rules made thereunder ("the Rules") . The petitioner prayed to quash and set aside the impugned order and for all the consequential actions. The respondents supported and defended the impugned order stating it to be well within the framework of law and the record.

4. There is no serious dispute with regard to the scheme of the Act and the Rules so referred. Based upon the earlier order the matter was remanded. As per the procedure Rule, the favourable Vigilance Cell report dated 23.12.2004 was placed on record but the same was overlooked while passing the order by the Scrutiny Committee and came to the adverse conclusion. There is no contra material available on the record to disregard the findings given by the Vigilance Cell Committee/Officer, specifically with regard to the following material in favour of petitioner :-

(a) father's service record shows and mentions the caste as "Rajput Bhamta", merely because the original service record could not be placed on record,

(b) petitioner's cousin brother's certificate granted by Nasik Scrutiny Committee dated 22.6.2001 declaring the caste of son of a real uncle of petitioner, as "Rajput Bhamta". There is no denial to their blood relationship. These observations are based on supporting material including the affidavit as required as per the Rules.

(c) The Vigilance report also shows other detailed enquiry referring to the petitioner's predecessors and their community's background and rituals as required to be noted for the "affinity test". The law with regard to the favorable affinity test is also settled which is also relevant factor which needs to be taken into consideration by the Scrutiny Committee while assessing the caste claim.

All these aspects, in our view, are in favour of the petitioner. Therefore, there was no question, unless any contra material placed on record and/or pointed out by any authority and/or officer to disbelieve the same. According to us, it is an impermissible way of dealing with such reports.

5. The role and the power of Scrutiny Committee member is quite limited. The proceedings are summary in nature. There is no specific procedure required to be followed by them but at the same time, they are under obligation to consider the basic principles of law while deciding such caste claims. In the present case, the petitioner appeared in person. There was no assistance claimed and/or given to petitioner of any legal mind/advocate. The Scrutiny Committee, though being an expert body, proceeded further and gave the contrary finding not by misreading the principles while assessing the material available on the record.

6. This Court in *Madhuri Nitin Jadhav Vs. State of Maharashtra*, while dealing with caste verification procedure and its considerations held in paras 29 and 30 as under :-

"29. The requirement of affinity test in view of above, therefore, cannot be overlooked by any one. But it is also clear that it cannot be the sole criteria to reject and/or to grant certificate in every matter. If the case is made out, even the affinity test, though there are no supporting documents, and or vice-versa may be taken into consideration by the Committee while passing the reasoned order.

The Approach Needs To Be Changed :-

30. The basic burden is upon the Applicant/ Claimant, but at the same stroke, the Scrutiny Committee is also required to evaluate and/or review the material documents as it is a question of Scheduled Tribe for generation. Therefore, the detailed, unbiased and unprejudiced inquiry, information and reasoned decisions are required. Even the result/report of Vigilance Committee for the affinity test may be required to be re-visited, if the case is made out in accordance with law. There is no total bar. The facts and the law need to be tested by all on the touchstone of judicious mind and the judicial power, considering the principle of eco-social justice."

The importance of the relative's caste certificates and the related documents has been re-inforced as under :-

"36. We have also in Sanjay Pralhad Pardeshi Vs. State of Maharashtra, Writ Petition No. 6800 of 2013, by order dated 18 February 2014, by referring to the earlier judgments of this Court, granted the relief by observing as under:-

"4. In view of no contra material on record, the certificate, in our view, just cannot be overlooked basically when there is no finding of fraud and/or misrepresentation. It is difficult to accept the reason so provided by overlooking the above position, while rejecting the claim of the Petitioner and also in view of the Judgment of Division Bench of this Court Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medical Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences, . The Division Bench of this Court, (Anoop V. Mohta and Z.A. Haq, JJ) has also taken a view in Vaishali Chatarsing Ingale (Thakur) Vs. The Committee for Scrutiny and Verification of Tribe Claims, State of Maharashtra and Zilla Parishad, and noted in paragraph No. 5 as under:-

"5....Where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view of the same facts would not entitle the committee dealing with the subsequent caste claim to reject it....."

The Same view is also taken by another Bench of this Court in Mayur Vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli and Others, ."

"49. The caste certificates and/or orders validating the caste/tribe, based upon the procedure as followed prior to the Act are also required to be considered by the Authorities, unless case of fraud and/or mis-representation is made out. Those certificates, therefore, cannot be overlooked while passing the order for or against in the matters relating to the caste/tribe."

"53. The Scrutiny Committee is required to consider the relation certificates issued, on which reliance is placed by the Applicant/claimant for the same caste certificate/ benefits. It cannot be overlooked and/or denied merely because those

were obtained prior to the Act and/or without due inquiry and/or passing the affinity test, unless a case of fraud and/or misrepresentation is made out."

"55. Therefore, all these elements are necessary to be tested and considered by the Scrutiny Committee before passing any order for and/or against validating the certificate and/or grant of certificates on merits."

"58. The relation certificates, in view of above observations and the reasons so given, also just cannot be overlooked. The Apex Court, as well as, this Court after considering the facts and circumstances including the Certificates directed the Scrutiny Committee to validate the certificate in question."

7. Once the law is declared that the relatives'" certificates, unless contra material is placed on record and no case of fraud or misrepresentation is made out, the Scrutiny Committee is bound by the same. We have noted that the adverse finding is given by the Scrutiny Committee while rejecting the case of petitioner mainly on the ground that they have a power to deal with individual cases and, therefore, by overlooking even the Vigilance Cell report which covers the findings referring to the close relatives and affinity test by shifting burden wrongly upon the petitioner. This is also unacceptable approach.

8. In para 3 of the order, though reference is made to Government Resolution dated 12.9.1986 where it is specifically mentioned about the procedure to be followed while assessing the caste claim in case of doubts, whereby it is mentioned that the material placed on record relating to the case needs to be considered and so also the certificates of grandfather and father. This circular read with the judgment so recorded above, in our view, is sufficient to consider the case of petitioner as prayed. Some adverse statement, stated to be the admission of the petitioner who admittedly appeared in person only was recorded but the documents so placed on record, apart from the vigilance cell report, in our view, should have been given preference as petitioner's claim was to grant validity certificate of "Rajput Bhamta" and not for "Rajput".

9. In the present case, some doubt is raised about the father's service record also, but the fact of service record as noted by vigilance cell report remained intact. Petitioner's cousin brother's certificate of "Rajput Bhamta" just cannot be overlooked. Therefore, in the society such certificates and recorded caste of "Rajput Bhamta" of father and/or cousin and/or uncle cannot be different than the petitioner. The effect of the impugned order is that the Scrutiny Committee declared petitioner as not belonging to "Rajput Bhamta". In the same society or community, therefore, petitioner and/or her generation hereinafter required to be treated as per the impugned order not belong to "Rajput Bhamta" (Vimukta Jati caste). The father and cousin, however, as recorded above have been recognized as "Rajput Bhamta" in the society. Those certificates are kept intact and there is no case of fraud and/or misrepresentation even against them. The caste claim of petitioner, in our view, just cannot be denied merely because the petitioner, who appeared in person, was unable to satisfy the technicality and/or unable to place

on record the material to justify the father's service documents and/or related documents. There is no case of fraud and misrepresentation recorded and/or referred and/or observed even by the Scrutiny Committee while deciding the case. Therefore, we are inclined to observe that the petitioner's case in no way falls within the ambit of false caste certificate and/or fraud and/or misrepresentation .

10. The Scrutiny Committee consists of expert body. We have already observed that they are required to follow the basic principles of law including the procedural law while deciding such caste claims, which in our view, they failed to take note of, apart from the clear judgments so referred above dealing with the determinations and considerations of the caste claims of relatives.

11. Therefore, a case is made out to interfere with the order so passed and to direct concerned authority to issue caste validity certificate as ordered in Apoorva d/o Vinay Nichale .vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others reported in Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medical Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences, and other cases so cited. This is also for the reason that the petitioner lost her service because of the impugned order passed by the Scrutiny Committee in the year 2006 itself. The submission of learned Counsel appearing for the respondents to remand the matter, in the present background, we are not inclined to accept, as the petitioner is already out of service for so many years. We are convinced that instead of remanding the matter, it is a fit case where, as issue is covered so far as the relative's certificates are concerned and as even vigilance report is also in favour of the petitioner and as there is no case of fraud and/or misrepresentation, a case is made out for direction to issue/furnish the caste validity certificate to the petitioner as early as possible within six weeks from the date of receipt of certified copy of the order.

12. Admittedly, from the date of termination, the petitioner could not serve/work in the service. However, for the above reason, as we are directing to issue a validity certificate based upon the then existing material, including the caste certificate, the effect needs to be given even to the termination order also. The impugned orders caused injustice and hardship to the petitioner. Therefore, all the consequential benefits, including the back wages she is entitled for, as contended. However, as she did not work during this period, we are restricting the back wages only to 50%.

13. Therefore, the following order :-

(a) Order dated 18.2.2005 of the Scrutiny Committee is quashed and set aside. The concerned authority-respondent no. 2, is directed to issue the caste validity certificate to the petitioner as "Rajput Bhamta" within six weeks.

(b) The orders of termination dated 23.12.2005/9.1.2006 are quashed and set

aside. The petitioner be reinstated with all consequential benefits, including continuity of service and 50% back wages, immediately after receipt of certified copy of this order.

(c) Rule is made absolute in the above terms. No order as to costs.