
(2009) 08 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 6561 of 2008

Nillappa Mangleshwar Umbarje

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Constitution of India, 1950 — Article 342(1)

Citation : (2010) 4 BomCR 433

Hon'ble Judges : Ranjana Desai, J;A.A. Sayed, J

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; C.R. Sonawane, AGP and T.R. Dhondage, Research Officer from Scrutiny Committee, for the Respondent

Judgement

Ranjana Desai, J.—Rule. Respondents waive service. By consent of the parties taken up for hearing forthwith.

2. The petitioner claims to belong to Mahadeo Koli Tribe, which is recognized as Scheduled Tribe under the Presidential Notification issued under Article 342(1) of the Constitution of India. The 1st respondent is the Secretary, Tribal Development Department, State of Maharashtra. The 2nd respondent is the Scheduled Tribe Scrutiny Committee ("the Scrutiny Committee" for short). The 3rd respondent is the Sub Divisional Officer, who granted caste certificate to the petitioner.

3. It is necessary to begin with the facts of the case. The petitioner was granted caste certificate dated 20/10/05 by the 3rd respondent certifying that he belongs to Koli Mahadeo tribe which is recognized as Scheduled Tribe under the Constitution (Scheduled Tribe) Order, 1950. Being a student the petitioner was required to submit caste certificate for prosecuting higher studies after passing XIIth Standard examination. He, therefore, moved the Scrutiny Committee on 5/3/07 through his Junior College namely Sangameshwar College, Solapur, seeking verification of his caste certificate dated 20/10/05. According to the petitioner he filed 9 documents of pre-Constitutional period and 16 caste validity

certificates granted to his blood relatives from paternal side.

4. The Scrutiny Committee conducted home, school and other enquiry through the police inspector of Vigilance Cell. The police inspector submitted his report on 28/5/2007 to the Scrutiny Committee. The Scrutiny Committee issued a show cause notice to the petitioner on 11/6/08.

5. The petitioner remained present before the Scrutiny Committee and submitted his say. On 5/7/08 the Scrutiny Committee invalidated the caste claim of the petitioner. Being aggrieved by the said order dated 5/7/08 passed by the Scrutiny Committee, the petitioner has approached this Court.

6. Mr. Mendadkar learned Counsel for the petitioner submitted that the Scrutiny Committee wrongly discarded voluminous evidence produced by the petitioner in support of his claim. Mr. Mendadkar submitted that several documents having great probative value have been completely ignored by the Scrutiny Committee. Mr. Mendadkar pointed out that Headmaster of Z.P. School Auj has certified that because old registers were torn they were rewritten. But the Scrutiny Committee has ignored this observation and has got carried away by the statement made in the inquiry report that the school record was rewritten in the year 1992. Mr. Mendadkar submitted that the Scrutiny Committee has overlooked the fact that the several close relatives of the petitioner have been issued caste validity certificates by the Scrutiny Committee certifying that they belong to Mahadeo Koli Scheduled Tribe. They are related to the petitioner from paternal side. This fact should have been noted by the Scrutiny Committee. He drew our attention to the judgment and order dated 8/12/03 passed by the Division Bench of this Court (C.K. Thakkar, CJ. & Abhay S. Oka, J.) in *Pundalik Gursidhappa Umbarje v. State of Maharashtra and Ors.* Writ Petition No. 7846 of 2003. By the said judgment this Court has validated the caste certificate of the petitioner's uncle certifying that he is a Mahadeo Koli. He also drew our attention to judgment of another Division Bench of this Court to which one of us (Smt. Ranjana Desai, J.) was a party where this Court directed the Scrutiny Committee to issue caste validity certificate to the petitioner therein certifying that he is a Mahadeo Koli because two of his brothers were declared to belong to Mahadeo Koli Scheduled Tribe by the Scrutiny Committee.

7. Mr. Mendadkar submitted that the Scrutiny Committee erred in relying upon the judgment of this Court (Bilal Nazki & S.S. Shinde, JJ.) in *Kum. Seema S. Bhadekar v. State of Maharashtra and Ors.* in Writ Petition No. 2175 of 2008 dated 16/6/08. He submitted that that judgment must be confined to its own peculiar facts. In this connection Mr. Mendadkar drew our attention to the judgment of the Supreme Court in *Raju Ramsingh Vesave v. Mahesh Deorao Bhivapurkar and Ors.* 2009 (1) MLJ. 1 where the Supreme Court has held that it is only if there is a mistake can certificate issued to a member of the family be not conclusive while deciding the caste claim of another member of the family. Mr. Mendadkar submitted that such is not the case here.

8. Mr. Mendadkar further pointed out that the Scrutiny Committee has validated the caste claim of Satish Umbarje who is the cousin of the petitioner, on the same vigilance report which was considered by the Scrutiny Committee while invalidating the caste claim of the petitioner. Mr. Mendadkar submitted that the approach of the Scrutiny Committee is, therefore, wholly arbitrary and opposed to equity and fair play. Mr. Mendadkar submitted that this is, therefore, a fit case where this Court should set aside the impugned order and direct the Scrutiny Committee to issue caste validity certificate in favour of the petitioner.

9. Mr. Sonawane, learned AGP on the other hand submitted that no interference is necessary with the impugned order. He took us through the affidavit of Anil Shijale, Deputy Director, Scrutiny Committee and contended that the fact that some relatives of the petitioner have been declared to be Mahadeo Koli is not conclusive as regards the petitioner's claim that he is Mahadeo Koli. In this connection Mr. Sonawane relied on the judgment of this Court in Seema Bhadekar's case (supra). Mr. Sonawane submitted that, if the entire record is examined in its proper perspective the Scrutiny committee's judgment cannot be faulted. He submitted that the petition may, therefore, be dismissed.

10. From the impugned judgment it is evident that several documents were produced before the Scrutiny Committee. Voluminous record was cited before it. Undoubtedly in several old documents such as school record, relatives of the petitioner have been shown to be Koli. But there are several documents where they are shown as Hindu Mahadeo Koli. In some documents they are shown as Mahadeo Koli. The Scrutiny Committee has recorded in paragraph 3(6) that in the school record of the petitioner's paternal blood relatives, which pertains to pre-constitutional period, they are shown as Koli as well as Mahadeo Koli. We find from the table reproduced in the order that school record of the year 1947 of five uncles of the petitioner describes them as Hindu Mahadeo Koli. There are 15 other relatives of the petitioner whose school record range from 1950 to 1967. They are also described as Hindu Mahadeo Koli or Mahadeo Koli. What is significant are the entries which pertain to pre-constitution era. In respect of these entries the Scrutiny Committee has observed that the inquiry officer has observed that the school register is rewritten and not reliable. The Scrutiny Committee has observed that the inquiry officer has enclosed copy of the inquiry report in respect of inquiry conducted in the case of Pundalik Gursidhappa Umbarje (the petitioner's uncle). In that report it is stated that 1941 records were written in a register printed in 1942 and 1950 records were written in a register printed in 1952.

11. In our opinion, reliance placed by the Scrutiny Committee on the report in Pundalik Umaraje's case (supra) is misplaced because as we have already noted a Division Bench of this Court (C.K. Thakkar, CJ. & Abhay S. Oka, J.) has by its judgment in Writ Petition No. 7846 of 2003 filed by Pundalik Umbarje set aside the Scrutiny Committee's order invalidating his case certificate and declared that he belongs to Mahadeo Koli Scheduled Tribe. In that judgment the Division Bench

has observed that some of the close relatives of the petitioner such as elder brothers, cousins, paternal nephews etc. were granted certificates by the Scrutiny Committee certifying that they belong to Mahadeo Koli Scheduled Tribe and therefore, the petitioner i.e. Pundalik Umbarje (uncle of the present petitioner) is Mahadeo Koli. It must be presumed that while declaring Pundalik Umbarje as Mahadeo Koli, this Court perused the entire record. The respondents obviously were not successful in persuading this Court to dismiss the petition on the basis of the inquiry report on which the Scrutiny Committee has placed reliance. The said report, therefore, cannot help the respondents now. Moreover there is on record a certificate/noting made by the Headmaster Z.P. School Auj (Mandrup) that registers having become old and tattered their true copies are made. In such circumstances, in our opinion, the Scrutiny Committee erred in not placing reliance on school record of several relatives of the petitioner from paternal side pertaining to pre-constitution era showing them as Mahadeo Koli or Hindu Mahadeo Koli.

12. There is another significant aspect of this case which tilts the scales in the petitioner's favour. Mr. Mendadkar has drawn our attention to the certificate of validity issued by the Scrutiny Committee in favour of Satish Umbarje paternal cousin of the petitioner certifying that he is a Mahadeo Koli. We have been taken through the inquiry report submitted by the inquiry officer in Satish Umbarje's case, a copy of which is annexed to the petition. It is identical to that of the report in the petitioner's case. In order to verify this, we asked Mr. Sonawane, learned AGP to show us the original record of the petitioner and also that of Satish Umbarje. He showed us both the reports. The reports are identical. We fail to understand as to how, if on the same vigilance cell report Satish Umbarje was granted certificate of validity by the Scrutiny Committee, it could be denied to the petitioner.

13. Once close relatives from paternal side are declared to belong to a particular Scheduled Tribe, ordinarily it must be presumed that all other members of that family belong to the same Scheduled Tribe. This view has been taken by this Court in Pundalik Umbarje's case and in Suryakant Kamble's case. But there are exceptions to this rule. In this connection it is necessary to now turn to the judgment of the Supreme Court in Raju Vasave's case (supra).

14. In Raju Vasave's case respondent 1 therein claimed to be a member of Scheduled Tribe being belonging to 'Halba' Tribe notified in terms of the Constitution (Scheduled Tribes) Order 1950. The caste of his father in the school record was shown as 'Koshti'. Caste of his uncle was shown as Koshti which was later on corrected as 'Halba'. His cousin was also granted similar certificate. In *Milind Katware v. State of Maharashtra* 1987 M.L.J. 572, this Court held that it is permissible to enquire whether any subdivision of a Tribe though not mentioned in the Act is a part and parcel of the Tribe mentioned therein. This court held that Halba Koshtis are part and parcel of Halba/Halbi. This court held that Halba Koshti is a subdivision of main tribe Halba Halbi and every Koshti is not Halba

Koshti. This court further held that it is impermissible to take inconsistent view between the cases of near relatives in such matters. Relying on this decision that Koshti would come within the purview of the Schedule Tribe of Halba or Halbi, the petition filed by respondent 1 was decided in his favour by this Court. The record of the school where the 1st respondent had studied was not placed before the High Court.

15. The Supreme Court in the meantime in Milind Katware's case which was carried to it held that it is not permissible to hold any inquiry to decide that any tribe or tribal community or part of or group within any tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order 1950. Thus respondent 1's claim that he belongs to Koshti a sub-caste of Halba tribe was liable to be rejected. It was argued before the Supreme Court that no exception can be taken to this Court's judgment that respondent 1 should be declared to be belonging to 'Halba' tribe on the premise that his other relatives had been declared as such. It is against the backdrop of the above facts that the Supreme Court observed that an opinion formed by the Committee as regards the caste of near relative of the applicant would not be wholly irrelevant, but at the same time it must be pointed out that only because by mistake or otherwise a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another committee while examining the case of other members of the family at some details. The Supreme Court observed that, if while granting a certificate in favour of a member of a family, vital evidences had been ignored, it would be open to the Committee to arrive at a different finding.

16. Thus caste validity certificates issued in favour of the petitioner's close relatives are not irrelevant. They would be irrelevant only, if they were obtained without producing vital evidence or were issued on a wrong premise or mistakes. Such is not the case here. In this case the petitioner's uncle is declared to be Mahadeo Koli by this Court inter alia taking into consideration the fact that his close relatives were granted caste validity certificates by the Scrutiny Committee. The petitioner's cousin Satish Umbarje has been issued caste validity certificate on the basis of same vigilance report which was considered by the Scrutiny Committee in the present case. We are informed that about 26 near relatives of the petitioner have been granted caste validity certificates by the Scrutiny Committee certifying that they are Mahadeo Kolis. Mr. T.R. Dhondage Research Officer from Scrutiny Committee Pune is present in the court. We asked Mr. Sonawane, learned AGP to find out whether this is true. He confirmed that it is true. The present case, therefore, stands totally on a different footing from that of Seema Bhadekar's case.

17. In the peculiar facts and circumstances of the case, therefore, the petitioner's claim must be upheld. We, therefore, quash and set aside the impugned judgment and order dated 5/7/08 passed by the Scheduled Tribe Certificate

Scrutiny Committee Pune Region, Pune and direct the said Scrutiny Committee to validate the caste certificate of the petitioner as belonging to Mahadeo Koli Scheduled Tribe dated 20/10/05 issued by the Sub Divisional Officer Solapur Division Solapur, at the earliest and at any rate within a period of one month from the date of receipt of this order.

18. The petition is disposed of.