
(2009) 08 BOM CK 0173
In the Bombay High Court
Case No : Writ Petition No. 1633 of 2009

Omprakash Arya (Suryawanshi)	Vs	APPELLANT
The State of Maharashtra and Others		RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 08 BOM CK 0173

Hon'ble Judges : P.V. Hardas, J;A.V. Potdar, J

Bench : Division Bench

Advocate : S.S. Deo, for Mr. V.D. Gunale, for the Appellant; V.B. Ghatge, A.G.P. for respondents No. 1 to 3, Mr. P.R. Tandale, Advocate for respondent No. 4, Mr. R.N. Dhorde, Advocate holding for Mr. S.B. Gastagar, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a petition under Article 226 of the Constitution of India by which the petitioner takes exception to an order passed by the respondent Scrutiny Committee dated 25.5.2009 invalidating the caste claim of the petitioner as belonging to "Khatik" - Scheduled Caste.
2. It appears that earlier three petitions had been filed; two at the instance of the petitioner herein and one at the instance of the original complainant and pursuant thereto this Court had remitted the matter back to the Scrutiny Committee for a decision afresh. Pursuant to the orders of this Court, the impugned order has been passed by the respondent -Scrutiny Committee invalidating the tribe claim of the petitioner. The petitioner, it appears, had contested the elections on the strength of the certificate issued to him as belonging to "Khatik" -Scheduled Caste. The aforesaid certificate came to be referred to the respondent -Scrutiny Committee for verification.
3. The respondent -Scrutiny Committee, for reasons which are to be found in the impugned order, invalidated the caste claim of the petitioner, principally on the

grounds (i) that there was overwhelming contra evidence in the shape of the documents on record which indicated that the caste claim set up by the petitioner was contrary to the aforesaid entry as the caste "Kalal" had been recorded in the said documents; (ii) the document at sr. No. 27, namely an unregistered sale deed could not be relied upon in order to establish that the petitioner belongs to "Khatik" caste and (iii) the Committee accepted the explanation of the Head Master in respect of conflicting entries of "Khatik" and "Kalal" in the admission register pertaining to the petitioner.

4. Mr Deo, learned Counsel for the petitioner has invited our attention to the unregistered sale deed which was document No. 27 in the order of the Scrutiny Committee. The aforesaid document of sale deed is a principal document alleged to have been executed by the father of the petitioner some time in the year 1941. Undisputedly, the aforesaid document is an unregistered document. An attempt has been made by the learned Counsel for the petitioner to canvass before us that registration of the said document was not mandatory or necessary and consequently the probative value of the said document is not reduced in account of its non-registration.

5. It is true that the claim set up by a candidate, may in certain given circumstances be established even on the basis of an unregistered document. Merely because a document is unregistered is no ground to refuse to examine the said document. Registered document establishes the authenticity and genuineness of the document, particularly vis-a-vis the recitals in the said document. Even on the basis of an unregistered document a candidate may be successful in establishing that he belongs to the caste or the tribe which is stated in the said document. The candidate, however, has to establish the genuineness and the authenticity of the said document. Merely because the document is produced before the Committee is no ground for urging that genuineness and the authenticity of the said document is established. The genuineness and authenticity of the said document has to be independently established de hors of the production of the original document. In the present case, apart from mere tendering of the said document no affidavit has been filed by the petitioner or of some other persons who were conversant with the recitals or were present when the said document was executed in order to establish the authenticity and genuineness of the said document. On our questioning the learned Counsel for the petitioner, the learned Counsel for the petitioner very candidly admitted that no affidavit had been filed in respect of the said document. Therefore, according to us the Committee cannot be faulted for not placing any reliance on the aforesaid unregistered sale deed. We hasten to add that since the authenticity and genuineness of the said document has not been established, the Committee cannot be faulted for not relying on the said document.

6. Mr Deo, learned Counsel for the petitioner then invited our attention to a validity certificate issued to the nephew of the petitioner. The aforesaid validity certificate has been annexed to the petition as Exhibit H collectively. The

aforesaid document which was enlisted as document No. 6 before the respondent -Scrutiny Committee is a document issued to one Priyaratna s/o Jagdish Suryawanshi. The petitioner claims that the said Priyaratna is the son of real brother of the petitioner and consequently this document would far outweigh in its probative value to the other contra evidence.

7. We find that apart from filing of affidavit of Priyaratna, the petitioner had not taken any steps at establishing the relation of Jagdish with the present petitioner by proving the genealogy. According to Shri Deo, learned Counsel for the petitioner it could not be disputed that the said Jagdish is the cousin of the petitioner. Assuming that the said Priyaratna is the nephew of the petitioner, the fact remains that merely because a close relative has been granted a validity certificate is no ground to axiomatically grant validity certificate to the other relatives. A candidate who sets up a claim as belonging to a particular caste or a tribe has to establish the same on the basis of the evidence. No doubt, a validity granted to a close relative is a weighty piece of evidence meriting consideration by the Committee, but by itself would not be a document which would outweigh in its probative value to the contra evidence. In the present case, the certificate issued to the petitioner by the Head Master clearly indicates that the caste which was recorded was "Kalal" and not "Khatik". Similarly, the school register extracts relating to the petitioner and his sister clearly indicate that their caste was recorded as "Kalal" and not "Khatik". The contra evidence, in our considered opinion, therefore, far outweigh the evidentiary value attached to the validity certificate of the nephew of the petitioner.

8. It appears that in the school register the caste of the petitioner had been recorded as "Khatik". Subsequently when readmission was sought by the petitioner, his caste came to be recorded as "Kalal". The learned Counsel for the petitioner, therefore, contends before us that in the light of the contradictory entries in the school register, the validity granted to the nephew of the petitioner and the recitals in the sale deed would have far greater probative value. The Committee had called for the explanation of the Head Master. The Head Master, in so many words, do not admit that the caste in the old register, in which entries were made in Urdu, showed that the caste of the petitioner was recorded as "Khatik" but subsequently when the petitioner sought re-admission in the school, his caste came to be recorded as "Kalal". It appears that the petitioner made no efforts at getting his caste corrected, which according to him was incorrectly recorded as "Kalal". The further career by the petitioner depicts that his caste was recorded as "Kalal". Not only in the case of the petitioner but in the case of the brother of the petitioner caste was recorded as "Kalal". We need not dilate on the other aspect of evidence regarding the filing of complaint by the Head Master against the present petitioner on the allegation that the petitioner had coerced the Head Master on issuing the certificate of "Khatik" as according to us that is not germane. The fact that the petitioner belongs to "Kalal" is recorded in the school record of the brother of the petitioner as well as the sister of the petitioner. We have already given reasons as to why in our opinion the

unregistered sale deed and validity certificate issued to the nephew of the petitioner cannot displace the evidence of caste "Kalal" being recorded in the school register of the petitioner as well as the brother and sister of the petitioner. In the face of such contra evidence, according to us the Committee cannot be faulted for its reasoning.

9. We have examined the findings recorded by the Committee and we do not notice any perversity in the reasoning of the Committee to warrant any interference in this petition filed at the behest of the petitioner. It was faintly urged before us by the petitioner that the original complainant did not have any locus standi to appear before the respondent -Scrutiny Committee and tender documents. The proceedings before the Committee were initiated at the behest of the complaint of the original complainant. The original complainant had also filed a petition and two petitions had been filed by the petitioner in this Court. In none of the petitions filed by the petitioner any exception was taken to the right of the complainant to participate in the enquiry before the Committee and produce documents. Not only this, before the Committee also no objection was raised by the petitioner about participation of the original complainant. In the light of the said fact, therefore, we do not entertain the submission made by the petitioner before us.

10. After giving our anxious consideration to the submissions advanced before us by the learned Counsel for the parties, according to us no case for interference is made out and consequently this petition is, therefore, summarily dismissed with no order as to costs.

11. At this stage Shri Deo, learned Counsel for the petitioner prays for continuation of the interim stay granted by this Court on 20.3.2009. The Division Bench of this Court while issuing notice to the respondents had granted ad interim relief in terms of prayer clause (C). Prayer clause (C) to the petition is for grant of stay to the effect, operation and implementation of the judgment and order dated 25.2.2009 passed by the Committee. Since we have already dismissed the petition upholding the correctness of the order of the Committee, the interim relief granted to the petitioner by the Division Bench of this Court on 20.3.2009 cannot be continued. In the light of that, prayer for continuation of the said relief is refused.