
(2015) 03 BOM CK 0355

In the Bombay High Court

Case No : Writ Petition No. 10690 of 2010 and Civil Application No. 3365 of 2015

Prabhakar

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 — Section 10, 6, 8

Citation : (2015) 03 BOM CK 0355

Hon'ble Judges : T.V. Nalawade, J; I.K. Jain, J

Bench : Division Bench

Advocate : S.B. Talekar, for the Appellant; V.D. Godbharle, AGP, Advocates for the Respondent

Judgement

1. The petition is filed to challenge the order of rejection of caste claim of petitioner by respondent No. 2, the Committee constituted for scrutiny and verification of the tribe claims in Maharashtra (hereinafter referred to as "the Committee" for short) under the provisions of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of), Caste Certificate Act, 2000 (hereinafter referred to as "the Act" for short). Both the sides are heard.

2. The petitioner claims that he belongs to "Dhangar" community, which is declared as Nomadic Tribe (NT) in the State of Maharashtra. He was provisionally admitted in M.B.B.S. course on the basis of caste certificate issued by authority. As he could not produced the validity certificate within prescribed period, there was possibility of cancellation of his admission and so, he approached this Court. Some interim protection was given to the petitioner and due to that, he completed the course. The Committee has decided the claim against the petitioner by holding that he is not entitled to receive benefits as at the relevant time, in the year 1961, his parents were residents of Karnataka State and they

had come to Maharashtra after the relevant date. The State Government has issued Government Resolution, declaring that after the date mentioned in notification, the persons who come to the State from other State will not be entitled to get the benefit of the caste.

3. The Committee, respondent No. 2 has observed that the petitioner could not produce the relevant record even when opportunity was given to him and direction was also given to him to produce such record. He was not having the record which is mentioned in Rule 11 of the Rules framed under the Act. The report of Vigilance Cell was also against the petitioner. Copy of the said report was supplied to the petitioner and opportunity was given to him to establish his claim. The petitioner mainly relied on the affidavits filed by some villagers and he produced some record in respect of his uncle. The petitioner contended that his parents are illiterate and so, he is not in a position to produce the record like birth extract of his parents or even his own birth extract. The Committee has observed that there is not a single document in respect of affidavits of some persons of village and so, not much weight can be given to those affidavits. The law developed on this point is considered by the Committee.

4. The Vigilance Report shows that during investigation, it became clear that the petitioner was admitted in primary school from Ekamba, Tahsil Basavkalyan, District Bidar, Karnataka State. He did not give particulars of the place of birth and so, verification of that circumstance could not be done. When he could have produced the record like ration card, voters list to show that his parents or other predecessors had come to Maharashtra prior to the relevant date viz. 21.10.1961, he did not produce such record.

5. Tulshiram, uncle of petitioner, appeared before the Committee with the father of petitioner. It was submitted that father of petitioner was illiterate. It was given in writing before Vigilance Cell that the native place of petitioner is Ekamba and they had shifted to Maharashtra after 1965-1970. In view of this admission and also similar admission given by the petitioner, there was no alternative before the Vigilance Cell than to give adverse report. Similarly, due to the admission, the Committee had also no other alternative than to reject the claim.

6. The petitioner produced a school leaving certificate to show that he was admitted in a school from Latur in 1990 and he left the school in 2003. This school is from Maharashtra. But, this document itself shows that prior to taking admission in this school, the petitioner was receiving education in a school from Karnataka State. In this record, the date of birth is mentioned as 20.9.1965, but he avoided to produce the birth certificate. It appears that his uncle Tulshiram got admission in Maharashtra and he got service also in Maharashtra. However, there was no record to show that he was given the benefit of this caste. It can be said that in the school record, the caste was mentioned as "Dhangar", but there was no record with the petitioner to show that they had shifted to Maharashtra prior to aforesaid, relevant date.

7. During arguments, the learned counsel for petitioner submitted that recently on 27.11.2013, the uncle of petitioner namely Tulshiram got validity certificate and so, that circumstance needs to be considered in support of the claim of the petitioner. The provision of section 6 of the Act shows that each and every claim is required to be scrutinized and verified separately by the Committee. This position is made clear by the Apex Court in the case reported as 2009 (1) Mh.L.J. 1 SC [Raju Ramsingh Vasave v. Mahesh Deorao Bhivapurkar and Ors.]. When there is the record of aforesaid nature against the petitioner, it was not possible for Committee to give decision in favour of the present petitioner.

8. The provision of section 8 of the Act shows that the burden of proof in such cases is on the petitioner. The provisions of Rule 11 and Rule 12(9)(b) framed under the Act show that the documents which are mentioned in those Rules are to be treated as relevant and it is necessary for the petitioner to satisfy the Committee in respect of his claim. The Committee consists of experts. In view of these provisions, the Courts are not expected to lightly interfere in the order made by the Committee. It is not disputed that principles of natural justice were followed and sufficient opportunity was given to the petitioner to establish his claim. The aforesaid discussion shows that the Committee has not committed any error, it has considered all the record produced by the petitioner and after that it has given the decision. This Court holds that it is not possible to interfere in the decision of the Committee in view of the record of the present case. The record and admitted facts of the present case show the following things:--

"(i) The petitioner received education in Ekamba, Karnataka State up to the year 2003.

(ii) He avoided to produce birth extract to show that he was born in Maharashtra and there is clear probability that he was born in Karnataka State.

(iii) Tulshiram, uncle of petitioner, was born on 20.5.1961. His birth certificate was also not produced and the primary school record of Tulshiram was also not produced.

(iv) No record is there with the petitioner to show that he or his relatives on parents side own landed property in Maharashtra State prior to the aforesaid date. There is not even the record of voters list or ration card to show that they had even resided in Maharashtra for some time prior to the relevant date.

(v) There is no record of the caste certificates of the parents of the petitioner."

9. Some affidavits of persons of village Renapur are produced to the effect that in or about 1955, the father of petitioner was living in Latur District and he was keeping sheep and goats. The record, however, shows that when the claim was made, the parents of the petitioner were living in Latur proper and not at Renapur. It is already observed that there is no record to show that they were residents of Renapur at any time. In view of these circumstances, the Committee could not have given any weight to the affidavits.

10. The learned counsel for petitioner placed reliance on the decision given by this court in Writ Petition No. 925/2014 [Shobhana Kanhyasing Tehra v. The State of Maharashtra] dated 11.12.2014 and submitted that on the basis of record, the Committee ought to have given the validity certificate. This submission is not at all acceptable in view of the discussion already made. The facts of the present case are altogether different.

11. On the disputed point, reference can be made to the reported cases like Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, (1990) 2 JT 285 : (1990) 3 SCC 130 : (1990) 2 SCR 843 : (1990) 3 SLJ 18 : (1990) 2 UJ 117 and Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, (1994) 4 JT 423 : (1994) 3 SCALE 358 : (1994) 5 SCC 244 : (1994) 1 SCR 714 Supp . In view of the law laid down in these cases and the facts of the present case, this Court holds that the view taken by the Committee is possible view and interference is not warranted.

12. The record of the present case shows that only due to the interim relief granted by this Court, the petitioner could complete M.B.B.S. course. This matter was moved at eleventh hour by the learned counsel for the petitioner for getting one more interim relief. Without taking permission of the Court, the petitioner had applied for post graduation course and he had appeared for central examination held for such course. The matter came before this Court on 18.3.2015. There are specific directions given by the Apex Court in the case reported as Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, AIR 1995 SC 94 : (1994) 5 JT 488 : (1994) 3 SCALE 935 : (1994) 6 SCC 241 : (1994) 3 SCR 50 Supp to decide such matters expeditiously and even the period is also mentioned. If it is not possible to dispose of the matter as expeditiously as mentioned in Madhuri Patil's case, the Courts are expected to dispose of the matters within reasonable time. As only due to the order of this Court the petitioner could complete the M.B.B.S. course, this Court asked the learned counsel for petitioner to argue the main matter on merits and get the decision on merits. After hearing the main matter, it came to be decided and decision came to be declared on 19.3.2015. When this Court declared that the petition is dismissed, the learned counsel for petitioner requested for making observation that the authority may consider the claim of the petitioner from open category and as he has passed in entrance test. He submitted that he wanted to challenge the decision of this Court by filing appropriate proceeding in Supreme Court. In view of these submissions, this Court observed that it was open to the concerned authority to consider the claim from open category, if the petitioner is found otherwise eligible. In this regard, the provision of section 10 of the Act needs to be kept in mind which provides for withdrawing of all the benefits obtained under the certificate which is declared as invalid. Such steps follow after rejection of the claim even if the education is received due to interim orders made by this Court. Such interim orders are always subject to the ultimate decision of the main matter and in ordinary

course, the provision of section 10 of the Act needs to be used. Only due to the circumstance that the petitioner wants to challenge the decision of this Court, it was made clear that it was open to the Committee to consider the claim from open category. In the result, the following order.

ORDER

The writ petition as well as civil application are dismissed. Rule is discharged in writ petition. No order as to costs.