

(2015) 03 BOM CK 0285

In the Bombay High Court

Case No : Writ Petition No. 2935 of 2005, Civil Application Nos. 1700 of 2009, 9159 of 2012 and 3658 of 2015

Pradeep

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 BOM CK 0285

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

Bench : Division Bench

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

Final Decision : Partly Allowed

Judgement

1. The order dated 15-2-2005 made by the Committee (respondent No. 2), constituted under the provisions of the 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 is challenged in the present proceeding. The claim of the petitioner that he belongs to the caste, Rajput Bhamta, Vimukta Jati, is rejected by the respondent No. 2. Both the sides are heard. This Court has perused the original file of the Committee.

2. The caste claim of the petitioner was referred to the Committee for verification by his college. During enquiry the vigilance cell made investigation and it submitted report to the Committee. Copy of the report was supplied to the petitioner and opportunity was given to him to have his say on the report. He produced some record.

3. The Committee has not believed the record in respect of the school of the father and uncle of the petitioner which dates back to 1961. Reason is given by the Committee that the original record of the school was not available and it was

informed by the school that the original record was burnt. There was record of caste verification of cousin brother of the petitioner but the Committee held that the record was very recent and so it was not sufficient. The Committee has observed that there is no convincing record of the period pre-1961 and so the Committee has held that the petitioner has failed to prove that he belongs to the aforesaid Vimukta Jati. Subsequent to the order of the Committee, Sandip, real brother of the petitioner, got validity certificate from the Committee and that was in the year 2011.

4. As per the record, right from beginning, in the primary school the petitioner had given his caste as Rajput Bhamta and this record starting from 1991 is available. Similar record was available in respect of his brother Sandip. The school leaving certificate of the father of the petitioner namely Sitaram was produced to show that the father was born on 10-2-1953, he was admitted in primary school (First Standard) on 25-6-1961 and his caste was mentioned as Rajput Bhamta. This certificate produced by the petitioner is shown to be issued on 26-6-1969. This certificate further shows that petitioner's father had left the primary school for further education. In the past he was studying in a school from Lad Sawangi, a school of Zilla Parishad and from there he went to Zilla Parishad High School Badnapur, District Aurangabad. He was admitted in the high school on 28-6-1969 for 8th Standard. There was one more certificate of Zilla Parishad High School showing that he was shown to be admitted in 9th Standard in the same school on 23-7-1970 and he left the school on 31-5-1973 when he passed S.S.C. Examination in 1973. This document is dated 30-3-1982. The surname of the father of the petitioner was, however, mentioned as Dulhat. The petitioner relied on one more certificate of Lad Savangi school issued in respect of Chhotoram Chhagan Rajput and the petitioner contended that he is his uncle. Chhotoram was born on 28-10-1949 as per this certificate and he was admitted in the primary school on 20-6-1954. There is one more school leaving certificate in respect of one Tulsabai Chhagan Rajput, sister of the father of the petitioner, and she was also admitted in the same school from Lad Savangi and this record is similar in nature.

5. Thus, there was recordlike certificate issued by Lad Savangi Zilla Parishad Primary School in favour of the aforesaid three persons and there was certificate issued by the Head Master to the effect that school record was burnt in one incident and so the original record was not available. However, there was record to show that after leaving this school, father of the petitioner had gone to Badnapur Zilla Parishad School where he prosecuted subsequent studies. The report of the vigilance cell does not show that it made any attempt to visit the school from Badnapur to verify the certificate issued by this school as the record of this school must have been prepared on the basis of the record like school leaving certificate of the school from Lad Sawangi. Such steps were necessary from the vigilance cell.

6. Though it is true that the record of per-Constitution has more probative value,

the subsequent record also which was created prior to the making of the claim is relevant and due weight needs to be given to that record also. On this point learned counsel for the petitioner placed reliance on the case reported as 2009 (Supp.) Bom. C.R. 898 Aurangabad Bench (Mahesh Lad v. State of Maharashtra). Some observations are made by this Court in this case in respect of post Constitution period record. As the record from the Badnapur school was relevant, it was necessary for the vigilance cell to visit that school and then give the report. Thus, the procedure was not properly followed when it is expected that strictly procedure needs to be followed and it is the duty of the vigilance cell to verify the things.

7. Further, it can be said that, on the basis of the same record, validity certificate is now issued by the Committee in favour of the brother of the petitioner. This circumstance also needs to be taken into consideration though each claim is required to be scrutinized and verified separately. In view of the aforesaid circumstances, this Court holds that the matter needs to be remanded back to the Committee.

8. It appears that the petitioner wants to take admission in Post Graduate course from Vimukta Jati category and he has passed written tests. In view of this circumstance and the guidelines given by the Hon"ble Apex Court in the case of 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 the learned counsel for the petitioner submitted that the authority which is constituted for giving admission needs to consider the application of the petitioner from Vimukta Jati category. As this Court is setting aside the order of the caste scrutiny committee and the caste certificate issued by the authority is available, it is open to the authority to consider the claim of the petitioner for admission to Post Graduate course from Vimukta Jati category. Accordingly, this Court has made observations in the operative order made in Civil Application No. 3658 of 2015 on 19-3-2015. There was urgency of making such order as on that date the petitioner was to appear before the authority for counselling purpose.

9. In the result, the writ petition is partly allowed. The order of the Caste Scrutiny Committee invalidating the caste claim of the petitioner is set aside and the matter is remanded back to the said Committee for fresh consideration. The vigilance cell is to verify the material by making investigation in respect of the matter and give report. The procedure needs to be followed.

10. Civil Applications stand disposed. Rule is made absolute in the writ petition in aforesaid terms.