
(2022) 10 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 7095 Of 2021

Prashant Hanmantrao Barlawar

APPELLANT

Vs

Scheduled Tribe Scrutiny Committee And Others

RESPONDENT

Date of Decision : 03-10-2022

Acts Referred:

Citation : (2022) 10 BOM CK 0015

Hon'ble Judges : Mangesh S. Patil, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : Ajay S. Deshpande, A.S. Shinde, A.S. Shinde

Final Decision : Dismissed

Judgement

Sandeep V. Marne, J

1. Rule, made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.
2. The petitioner assails the decision of the Scrutiny Committee dated 29.04.2021 rejecting his tribe claim of the 'Mannervarlu' community.
3. The facts in nutshell are as under :

The petitioner was issued 'Mannervarlu' tribe certificate on 19.06.2003 by the Sub Divisional Officer, Deglur, District Nanded. The tribe certificate was referred for validity before the Scheduled Tribe Scrutiny Committee, Aurangabad on 14.07.2003. By order dated 31.05.2004, the Committee was pleased to reject his tribe claim. The decision of Scrutiny Committee was assailed by the petitioner before this Court by filing Writ Petition No. 5405 of 2004. For reasons undisclosed, he choose to withdraw the Writ Petition on 16.09.2005.

4. The petitioner's brother Pravin came to be issued the validity certificate by the Scheduled Tribe Scrutiny Committee, Aurangabad by order dated 25.05.2007. On the strength of validity certificate issued in favour of Pravin, his father-Hanmant

was issued validity certificate in the year 2008. Similarly the petitioner's real cousin brother-Sudhakar was also issued validity certificate in the year 2010 relying on validity certificate of Pravin.

5. On account of validity certificates being issued in favour of brother-Pravin, father-Hanmant and cousin-Sudhakar, petitioner filed Civil Application No. 6835 of 2010 in Writ Petition No. 5405 of 2004 for recalling the withdrawal order. By order dated 11.07.2014, this Court proceeded to reject the same. The petitioner filed Special Leave Petition (C) No.8907 and 8908 of 2016 before the Supreme Court, challenging the order passed in Civil Application on 11.07.2014, as well as order passed in Writ Petition on 16.09.2005. When Special Leave Petition came up for hearing before the Supreme Court On 12-05-2016, Petitioner chose to withdraw it seeking liberty to move the Scrutiny Committee for review. Without commenting upon the merits of the case, the Supreme Court dismissed the Special Leave Petition as withdrawn granting liberty as prayed for.

6. In exercise of liberty granted by the Supreme Court, the petitioner filed Review Application dated 06.06.2016 before the Scrutiny Committee. Complaining that the Committee was not deciding his Review Application, he filed Writ Petition No. 9627 of 2017 before this Court. By order dated 18.08.2017, this Court directed the Scrutiny Committee to decide the petitioner's review application within the stipulated time frame. The Scrutiny Committee thereafter, proceeded to examine the review application and by the judgment and order dated 28.04.2021, rejected his tribe claim. The judgment and order dated 29.04.2021 is the subject matter of the challenge before us in the present petition.

7. Appearing for the petitioner Mr. Deshpande, the learned Advocate would submit that since the petitioner's blood relatives i.e. father, brother and real cousin were granted validity certificates, the Committee ought not to have rejected his tribe claim. That the mother has also been issued validity certificate. Inviting our attention to the application submitted by Pravin before the Committee in March 2017, he would submit the factum of rejection of the tribe claim of the petitioner was duly brought to the notice of the Scrutiny Committee. He would therefore question the correctness of the findings recorded by the Committee about suppression by Pravin about rejection of the petitioner's tribe claim while obtaining the validity in his favour. He would further submit that there was no suppression or fraud in grant of validity certificate to Pravin. Relying upon the decision of the Apex Court in Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1, Mount Road, Sadar, Nagpur and Anr. 2010 (6) Mh.L.J. 401, he would submit that the petitioner is required to be granted validity certificate relying on the certificates issued in favour of brother-Pravin, father-Hanmant and cousin-Sudhakar. He would further submit that so far, no action is taken by the concerned Committee about the validity certificate issued in favour of brother-Pravin, father-Hanmant and cousin-Sudhakar. As regards the finding of the Committee to the effect that some contra

entries were not considered by the Committee while issuing the validity to Pravin, Mr. Deshpande would contend that the vigilance failed to point out the said entries while determining the validity in the case of Pravin, the same cannot be a reason for completely discarding Pravin's validity certificate. He would submit that Pravin's case was twice referred to Vigilance and if contra entries were not noticed by Vigilance in two enquires, it cannot be the fault of Pravin. He submits that there was no system of making entries relating to caste till 1976 and therefore he questions the genuineness of the school records by even going to the extent of accusing the Vigilance Cell and the Head Master of generating the record.

8. Per contra, Mr. Shinde, the learned AGP would submit that there was gross suppression as well as fraud while issuing the validity certificate in the favour of Pravin. He would submit that contra entries were suppressed. That the rejection of petitioner's claim was not considered by the Committee while granting the validity to Pravin. He would submit that various contra entries were not brought to the notice of the Committee by the vigilance cell, while deciding Pravin's claim. He would submit that the validity certificate issued in favour of mother is inconsequential. To buttress his claim of fraud Mr. Shinde, invited our attention to the statement of father, in which he had stated that his real uncle late Irranna was illiterate, despite which a translation of alleged extract of school record in Urdu language was brought on record in respect of Irranna to show that there was entry of 'Mannervarlu' in his school records.

9. So far as the effect of various proceedings filed by the petitioner are concerned, Mr. Shinde contends that the order passed by the Scrutiny Committee invalidating the tribe claim of the petitioner on 31.05.2004 has not been set aside by any Court and that therefore, the same would continue to operate. He would submit that mere liberty granted by the Supreme Court to the petitioner to seek review of the decision of the Scrutiny Committee dated 31.05.2004, would not mean that the order dated 31.05.2004 was disturbed in any manner. He prays for dismissal of the petition.

10. Rival contentions of the parties now fall for our consideration.

11. As we have observed hereinabove, the petitioner's tribe claim was initially rejected by the Committee on 31.05.2004. Writ Petition No. 5405 of 2004 filed by him challenging the rejection of his tribe claim was dismissed as withdrawn. Thus, order dated 31.05.2004 had attained finality. It is the order passed by the Scrutiny Committee in the case of Pravin on 25.05.2007 which triggered an attempt by the Petitioner to reopen the finalized issue. Additionally, Pravin's validity further triggered issuance of validity certificates in favour of father-Hanmant and cousin-Sudhakar. Armed with the validity certificates issued in favour of brother-Pravin, father-Hanmant and cousin-Sudhakar, the petitioner sought review of the decision of the Scrutiny Committee dated 31.05.2004, after taking the route of filing Civil Application before this Court and later seeking liberty from Supreme Court, as observed hereinabove.

12. Thus, Pravin's validity certificate has acted as a fulcrum in respect of the tribe claims of the petitioner, father-Hanumant and cousin-Sudhakar. It would therefore be necessary to prima facie examine the manner in which Pravin's caste claim was decided by the Committee, even though the same is not under challenge before us.

13. We have gone through the vigilance report submitted in the case of Pravin and find that the Vigilance Cell did not highlight Petitioner's invalidation of tribe claim. Even the committee did not take into consideration invalidation of petitioner's caste claim while passing order dated 25.05.2007 upholding tribe claim of Pravin. By order running into just three pages, the tribe claim of Pravin has been upheld. We are certain that the Committee would not have upheld tribe claim of Pravin if rejection of claim of Petitioner was noticed by it. This, according to us, would water down the efficacy of Pravin's validity order, at least while deciding Petitioner's validity claim. The issue that, therefore, arises is whether to rely upon Pravin's validity certificate while examining the correctness of the order passed by the Committee is Petitioner's case. To find the answer, we proceed to delve further into Pravin's case.

14. While examining the tribe claim of the petitioner the vigilance has pointed out following entries in the School records of his relatives:

- a. Hnumant (Father) -- 'Munerwad'
- b. Datta (Uncle) -- 'Munerwad'
- c. Maroti (Uncle) -- 'Munerwad'.

15. These entries made in the School records of father and two uncles were not highlighted in the vigilance report submitted while examining tribe claim of Pravin. Thus, Pravin's tribe claim is decided by ignoring aforesaid entries made in the School records of father and two uncles. This would further dilute the weight of Pravin's validity order.

16. Contentions raised by Mr. Deshpande about genuineness of schools records containing above contra entries and accusation made against Vigilance Cell and Headmaster of 'generating' that records are required to be summarily rejected. Firstly, these contentions are not pleaded and arise out of ingenuity of Mr. Deshpande across the bar. Secondly, after service of copy of Vigilance Report, Petitioner did not raise all these contentions in his reply. Lastly, Petitioner has not impleaded any official as party Respondent while levelling reckless allegations, that too at the stage of arguments. We, therefore, proceed to reject these contentions summarily.

17. The contention of Mr. Deshpande about non-existence of system of recording caste in school records prior to 1976 also deserves little consideration as this contention is not supported by any rules, regulations or administrative instructions. The contention is also belied by the fact that courts have in several judgments given weightage to pre-constitutional entries of caste in school

records, indicating thereby that the system of entering caste in school records was prevalent even prior to 1976.

18. Mr. Deshpande's contention that Vigilance Report was twice sought while determining the tribe claim of Pravin appears to be incorrect. Apart from the fact that the Petitioner has himself placed only one vigilance report dated 11-06-2006 at Exhibit-O to the Petition (while describing Exh-O to contain two reports), the Scrutiny Committee in its Order dated 25-05-2007 has observed that "The Police Inspector of Vigilance Cell has submitted detailed inquiry report of the said case on 11-06-2016". There is no reference to any second vigilance report in the order dated 25-05-2007.

19. Faced with the position about Pravin's validity order, Mr. Deshpande, relied upon decision of Apex Court in Apoorva d/o Vinay Nichale (supra) to contend that in absence of existence of any fraud in deciding the tribe claim of Pravin, the order passed in his case could not be ignored and is required to be followed for granting validity to Petitioner. We, however, disagree. Rejection of tribe claim of real brother was the most vital factor which was required to be taken into consideration by the Committee while deciding Pravin's claim. Even though, Mr. Deshpande, attempted to contend that Pravin had brought rejection of petitioner's claim to the notice of Committee vide his application submitted in March, 2007, it is also true that Pravin did make a statement in the very same application that petitioner's tribe claim had not attained finality in the eyes of law. This was a false statement. As on March, 2007, petitioner's rejection of tribe claim had attained finality as he had withdrawn the Writ Petition No. 5405 of 2004 on 16.09.2005. Therefore, no solace could be found by in Pravin's application submitted in March 2007. In fact one can draw an inference on the basis of said false statement of Pravin that he misled the Committee. It is quite possible that on account of Pravin's misleading statement, the Committee could have proceeded to ignore rejection of Petitioner's tribe claim. It is difficult to hold that there was no misrepresentation while deciding Pravin's tribe claim. Therefore, reliance of Mr. Deshpande on the decision of the Apex Court in Apoorva (supra) would be of little assistance to petitioner's case.

20. On the other hand, the Scrutiny Committee has rightly relied upon the decision of this Court Jyoti Sheshrao Mupade Vs. State of Maharashtra, Writ Petition No. 1954 of 2009 decided on 22.08.2012 in which it is held as under :

"17. The fraud is, essentially a question of fact, the burden of proof is upon him who alleges it. He who alleges fraud, must do so promptly. There is presumption of legality in favour of statutory order. The order of respondent No. 1 Scrutiny Committee validating the tribe claim of the petitioner is presumed to be valid unless proved to be vitiated by misrepresentation or fraud.

18. If the order was obtained by fraud or misrepresentation by the party seeking it and if that comes to the notice of the judicial or quasi judicial authority and if such authority prima facie forms an opinion that the process was abused then

such order can always be interfered with and set at nought by the same authority exercising the very same authority exercising the very same power under which the original order was passed. This power is always retained by the authority or Court passing the order.”

21. Additionally, we have also gone through the file containing the original records and find considerable force in the submission of Mr. Shinde that the forged documents appear to have been produced in support of the Petitioner’s caste claim. The petitioner’s father Hanumant had given a statement on 25.01.2003 inter alia stating that his real uncle late Irranna was illiterate. However, contrary to the said statement, a translation of alleged extract of School record of Irranna in urdu language was produced on record to show that there was entry of ‘Munnervarlu’ in school records of Irranna. If Irranna indeed was illiterate, it is incomprehensible as to how there could be any school record pertaining to him. The extract is typewritten and shown to be a translation from Urdu to Marathi language. On account of specific statement by Hanumant, the said translation of the extract prima-facie appears to be untrue.

22. Undoubtedly, petitioner’s review petition filed before the Scrutiny Committee was premised essentially on the validity certificate issued in favour of Pravin and also in favour of (father) Hanumanta and (cousin) Sudhakar. 22. We have already made observations about the manner in which Pravin’s validity certificate has been issued. It is unsafe to rely upon Pravin’s validity certificate. The validity certificates issued in favour of (father) Hanumanta, (cousin) Sudhakar would also be of no avail to the petitioner, as both certificates were issued solely relying upon Pravin’s validity certificate. The validity certificate issued in favour of mother Godawari is irrelevant as rightly submitted by Mr. Shinde.

23. On the basis of observations recorded by us about Pravin’s validity certificate, we find that no ground existed for reviewing Committee’s earlier order dated 31.05.2004. As observed above, order dated 31.05.2004 has not been disturbed in any manner by any Court and that the same has attained finality. The Scrutiny Committee has recorded the detailed reasons while rejecting petitioner’s tribe claim by considering the relevant factors and by eschewing irrelevant considerations. The view taken by the Committee is supported by documents on record and is a plausible view. In exercise of power of judicial review, we are not able to find any error being committed by the committee while rejecting Petitioner’s tribe claim. Thus, no case is made out for interference in the order passed by the Scrutiny Committee.

24. Mr. Deshpande has relied upon decision of this Court in Miss Madhu Narayan Bikale vs. State of Maharashtra, Writ Petition No. 8372 of 2018 decided on 11-04-2022. In that case, this Court has recorded a finding that the committee had nowhere recorded a finding that the cousin brother of the Petitioner therein had obtained caste certificate by fraud. Contrary to this, specific findings of fraud and suppression are recorded by the committee in the present case. The judgment is therefore clearly distinguishable. The decision of this Court in

Saikiran Ramrao Totawar V.s State of Maharashtra, Writ Petition No. 3726 of 2022 rendered in facts of that case, would not assist the Petitioner.

25. We are, therefore, of the view that petition filed by the petitioner is devoid of any merits and the same is dismissed without any orders as to costs. Interim protection granted earlier stand vacated.

26. Rule is discharged.

27. Original record be returned to the learned A.G.P.