
(2022) 04 BOM CK 0082
In the Bombay High Court
Case No : Writ Petition No. 10643 Of 2017

Rafeeq

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-04-2022

Acts Referred:

Citation : (2022) 04 BOM CK 0082

Hon'ble Judges : Ravindra V. Ghuge, J;S.G. Mehare, J

Bench : Division Bench

Advocate : Mukul Kulkarni, Suvidh S. Kulkarni, V.S. Choudhari, S.M. Vibhute

Final Decision : Dismissed

Judgement

S.G. Mehare, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is heard finally at the admission stage.
2. Petitioner is the rival election contestant of respondent no.4. He has impugned the order of respondent no.2, validating the case of respondent no.4 as 'Pinjari' in other backward class by its order dated 12.07.2017.
3. Respondent no.4 was elected as a member of Majalgaon Nagar Parishad in 2016, reserved for OBC. He was elected from a reserved seat. After the election, the caste certificate of respondent no.4 was sent to respondent no.2 for scrutiny and verification of the documents relied upon by him and other relevant facts. Respondent no.2 - Caste Scrutiny Committee was pleased to uphold the caste claim of the petitioner as Pinjari (OBC) by the impugned order.
4. Shri Kulkarni, the learned counsel for the petitioner submits that the caste scrutiny committee did not consider the documents placed by the petitioner before it. He further submits that the caste of respondent no.4 in the school record of Shri Siddheshwar Prathmik Vidyalay is shown as Muslim. However, respondent no.4 had not offered explanation about the absence of sub caste

Pinjari in his school record. No caste of respondent no.4 in revenue record more particularly in khasra and pahani patrak of his grandfather is mentioned. The caste certificate of respondent no.4's father is not validated by the competent authority. It is issued from the office of Tahsil of Majalgaon on 22.08.1973, wherein he only stated that the father of respondent no.4 resides at Nakhhalgaon and belongs to OBC category as sub caste Pinjari. In the absence of any inquiry of validity of such certificate as prescribed under the Act of 2000, respondent no.2 ought to have not considered the same, but erroneously relied upon the said certificate. The vigilance committee has also not performed the correct verification.

5. He also raised an objection that the school admission register of respondent no.4 at page 59 and 60, though are the same, but are of different dates. He has also pointed out that the document at page 156 dated 27.03.2018 is completely ignored by respondent no.2 by which the criminal action was directed against the then Head Master and the clerk of Zilla Parishad Secondary School, Majalgaon. He also pointed out that the school record of respondent no.4 was interpolated; hence, crime was registered against the concerned. The respondent no.2 / Committee has not considered the vigilance report carefully wherein the close relatives of respondent no.4 were examined. The scrutiny committee also failed to consider the documents at page no.78 that proves the interpolation in the caste recorded in the school register of respondent no.4. The information obtained under the Right to Information Act placed at page 108 dated 5.01.2017, which clearly indicates the interpolation of the caste in the school record, has also been tactfully avoided by the scrutiny committee. Lastly, the learned counsel for the petitioner submits that the overall evidence placed on record by the petitioner against respondent no.4 disproves his claim of Pinjari (OBC).

6. The learned counsel for respondent no.4, Shri P.N. Muley submits that in the year 1973, the Tahsildar had acted under the then prevailing practice regarding the issue of caste certificates. The vigilance cell has made a detailed inquiry about the Nikahnama, i.e. at page 74. Hence, the petitioner has no ground to raise a doubt. The vigilance inquiry report at page 73 supports respondent no.4. The vigilance report nowhere raises a doubt about the caste of respondent no.4. On the contrary, the detailed report supports respondent no.4. The report is very specific that there was no interpolation, but a slight difference was found in the caste mentioned in the school record of respondent no.4. Such slight difference was also explained that it might be possible due to the ink spilling on the letters. The validity is issued by following the due process and considering the complete documents and facts. The scrutiny committee has passed the judgment within the four corners of the law. Hence, the petition deserves to be dismissed.

7. We have considered the submissions of the petitioner and contesting respondent no.4 as well as the documents placed on record. We have also perused the impugned judgment.

8. No doubt, interpolation in the record of the caste relied upon by the claimant is a ground to raise a doubt on the genuineness of the claim. However, the evidence of interpolation should be strong enough to raise a doubt. So far as the fact that the caste shown as Muslim in the school record of Siddeshwar Vidyalaya is concerned, the law is settled that Muslim is not a caste. To disprove the caste claim of respondent no.4, the petitioner/complainant has relied on the school register of Siddeshwar Madhyamik Vidyalaya Majalgaon. He relied on the letter of Public Information Officer dated 26.12.2016 informing him that the copy of register he demanded could not be supplied as it was ragged. He also relied on the report of the Block Education Officer, Majalgaon, wherein it has been reported that the caste column is interpolated. He also relied upon the Nikahnama and affidavit of five persons.

9. The vigilance committee had made the inquiry about the caste of respondent no.4 and submitted the report on 16.05.2017. After a thorough investigation, the vigilance cell has specifically reported that there was no interpolation in the Nikahnama. The vigilance officer also opined that there was no interpolation in the caste column of the admission register of Zilla Parishad Middle School. Thereafter, on the complaint of the petitioner, the Block Development Officer inquiring without hearing respondent no.4 has abruptly concluded that the concerned headmaster and the clerk have interpolated the caste column.

10. It is not the case of the petitioner that respondent no.4 has any role to play in the alleged interpolation made by the then headmaster and the clerk. The petitioner did not ask for the handwriting expert opinion to verify whether the caste column was interpolated or not. In fact, the BDO was not supposed to make such an inquiry when the competent authority had already investigated the fact. Sufficient documentary, as well as the oral evidence of caste of respondent no.4 was available before the caste scrutiny committee.

11. After going through the said evidence available on record, we do not find any error committed by the caste scrutiny committee in appreciating the evidence. The caste certificate issued by the then Tahsildar, was issued according to the prevailing rules and practice in the year 1973. Before coming the Caste Certificate Act, 2000 into force, the Tahsildar was competent to issue the caste certificate. There is no material on record to doubt the caste certificate issued by the Tahsildar in favour of respondent no.4 and his father. On the basis of material available on record, we believe that the petitioner failed to disprove respondent no.4's OBC Pinjari caste claim.

12. In view of the aforesaid facts and the evidence, we agree with the reasoning given by the scrutiny committee and it warrants no interference.

13. In the result, the petition stands dismissed. No order as to costs. Rule is discharged.