

(2009) 10 BOM CK 0097

In the Bombay High Court

Case No : Criminal Writ Petition No. 340 of 2003

Rajkumar Gaulkar

APPELLANT

Vs

The State of Maharashtra, The Scheduled Castes, Vimukta Jatis, OBCs and Special BCs Welfare Caste Certificate Verification Committee and Divisional Social Welfare Officer, Division Aurangabad, The Tahsildar and Taluqa and Navnath Kotsulwar

RESPONDENT

Date of Decision : 16-10-2009

Acts Referred:

Constitution of India, 1950 — Article 20, 226
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 11, 11(1), 11(2), 7

Citation : (2009) 111 BOMLR 4679

Hon'ble Judges : Shrihari P. Davare, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : S.B. Talekar, for the Appellant; B.J. Sonwane, Additional Public Prosecutor for Respondents Nos. 1 to 3, G.D. Kale and R.T. Nagargoje, for the Respondent

Final Decision : Allowed

Judgement

Naresh H. Patil, J.—The petitioner contends that he belongs to Jangam, Other Backward Class. A caste certificate to this effect was issued on 20th March 1995 by the Taluka Executive Magistrate, Ahmedpur. The said caste certificate was sent for verification and the Caste Scrutiny Committee, respondent No. 2 herein, validated the caste claim of the petitioner as Jangam, Other Backward Class.

2. The petitioner contends that he had earlier applied for caste certificate as belonging to Mala Jangam, a Scheduled Caste. He was issued such a certificate on 18th July 1979 by the Executive Magistrate, Ahmedpur.

3. The petitioner contested the elections to the Zilla Parishad against a seat

reserved for the backward class of citizens along with several candidates including respondent No. 4 - Navnath Ramrao Kotsulwar. The petitioner got elected to the Zilla Parishad from Hadolati Circle. A complaint was filed by respondent No. 4 dated 21-3-2002 to the Returning Officer alleging that the petitioner was elected on a bogus caste certificate and had obtained a caste certificate in the year 1979 as belonging to Mala Jangam, Scheduled Caste. During the course of hearing of the caste claim of the petitioner, the Scrutiny Committee had issued a notice to the petitioner which was replied by the petitioner on 6-11-2002 wherein, according to the petitioner, it was clarified that a xerox copy of the caste certificate dated 18-7-1979 as Mala Jangam, Scheduled Caste issued by the Tahsil office Ahmedpur was forwarded to the scrutiny committee and the original was submitted already with the Tahsil office. The petitioner specifically contended that he did not avail of any benefits on the basis of the earlier caste certificate of Mala Jangam, Scheduled Caste, except availing benefit of scholarship amount available to the students in the year 1979-80 while the petitioner was studying in Shri. Havagiswami College, Udgir. But as the said scholarship was not sanctioned by the Government the amount of the scholarship, to the tune of Rs. 285 was returned to the college administration.

4. The petitioner challenges the order of the Scrutiny Committee directing lodging of prosecution against the petitioner for obtaining certificate of Mala Jangam, Scheduled Caste in the year 1979 u/s 11(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.XXIII of 2001) (hereinafter referred to as "the Act of 2000").

5. The learned Counsel Shri. S.B. Talekar appearing on behalf of the petitioner submitted that the provisions of Section 11 of the Act of 2000 are not applicable to the facts of this case. The petitioner had fairly surrendered his caste certificate as Mala Jangam as he realised that he would not be in a position to establish his claim as belonging to Mala Jangam, Scheduled Caste. He did not contest any elections on the basis of the caste certificate of Mala Jangam, Scheduled Caste, neither he obtained any benefits except the scholarship of a paltry sum of Rs. 285 while he was studying in the year 1979-80 in a college at Udgir which too was returned by the petitioner. It was further submitted that the Scrutiny Committee was called upon to verify the caste certificate of the petitioner as Jangam, OBC and not the caste certificate as Mala Jangam, Scheduled Caste. The Scrutiny Committee validated the caste claim of the petitioner as Jangam, OBC, but arrived at an erroneous conclusion that the earlier caste certificate of Mala Jangam, Scheduled Caste was to be confiscated by ordering prosecution against the petitioner. The learned Counsel for the petitioner has placed heavy reliance on the provisions of Article 20 of the Constitution of India which read thus:

20. Protection in respect of conviction for offences.

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of offence.

6. The learned Counsel further submitted that the caste certificate of the petitioner obtained earlier in the year 1979 as Mala Jangam was never verified by the Scrutiny Committee. Even there was no occasion for the forum or any authority available at that time to scrutinize the caste certificate. In the submission of the counsel, issuance of a caste certificate earlier to the enactment of the Act of 2000 would not attract penal consequences and so no prosecution could be launched against him under the mandate of the provisions of Section 11 of the Act of 2000.

7. The learned Additional Public Prosecutor Shri. B.J. Sonwane submitted that the surrender of the caste certificate as Mala Jangam by the petitioner to the authorities could not be construed as evidence of innocence of the petitioner. The writ petition itself was premature. As the prosecution was launched, the petitioner approached this Court and obtained interim relief in terms of prayer Clause (C) which reads thus:

(C) To grant interim injunction restraining the respondent No. 1, its agents, subordinates and servants from taking any adverse action including arrest of the petitioner and investigation into the offence, pursuant to the registration of offence being Crime No. 3053/2003 registered at Police Station, Ahmedpur, Dist. Latur, pending hearing and final disposal of this petition.

8. The crime ought to have been investigated by the police and after police reached some conclusion and in case it was found to be adverse to the petitioner then the petitioner still had alternate remedy for redressal of his grievances, if any. In the submission of the learned Additional Public Prosecutor the provisions of Section 11 of the Act of 2000 operates retrospectively.

9. The learned Additional Public Prosecutor further submitted that surrendering the earlier certificate of Mala Jangam obtained in the year 1979 could not be termed as a bona fide mistake. The petitioner's surrender of the earlier caste certificate and obtaining a new certificate as Jangam, OBC was brought to the notice of the authorities after a complaint was filed by respondent No. 4. Therefore, petitioner's conduct is not unblame worthy, fair and transparent. The learned Additional Public Prosecutor has referred to the provisions of Section 7 of the Act of 2000 and submitted that the penal law applies to certificate which was issued before or after commencement of the Act of 2000 and therefore neither the confiscation of the certificate as Mala Jangam could be objected to and challenged by the petitioner nor the consequent order of directing lodgment of the prosecution under the provisions of Section 11(2) of the Act of 2000.

10. The submissions of the learned Additional Public Prosecutor Shri. B.J. Sonwane were supported by the learned Counsel Shri. R.T. Nagargoje appearing

for respondent No. 4.

11. The provisions of Sections 7 and 11 of the Act of 2000 read thus:

7. Confiscation and cancellation of false caste certificate.

(1) Where before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, Denotified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India.

11. Offences and penalties.

(1) Whoever

(a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or

(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, Denotified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or Cooperative Society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate; shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee for this purpose.

12. The Act of 2000 i.e. Maharashtra Act No. XXIII of 2001 received assent of the Hon"ble the President of India and was published in the Maharashtra

Government Gazette on 23rd May 2001. The Act of 2000 was enacted to provide for the regulation of the issuance and verification of the Caste Certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, Denotified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category and for matters connected therewith or incidental thereto.

13. The provisions of Section 11 of the Act of 2000 specifically provide that whoever obtains a false caste certificate by furnishing false information or filing false statement or documents or by any other fraudulent means and secures any benefits or appointments exclusively reserved for backward castes/tribes, shall on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years or with fine which shall not be less than two thousand rupees. Sub-section (2) of Section 11 provides that no court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee for the said purpose.

14. We may refer to the Full Bench judgment of the Bombay High Court in the case of Sujit Vasant Patil Vs. State of Maharashtra and Others, wherein it was observed by the Full Bench in para 24 while defining what is false caste certificate as under:

24. If the Caste Certificate is cancelled by the Caste Scrutiny Committee, it obviously means that the Caste Certificate has been obtained by that person from the Competent Authority on incorrect facts or erroneous representation. It is not necessary that such claim or declaration must involve turpitude of mind. There may not be any deliberateness in it. The failure on the part of the candidate to establish his caste claim before the Scrutiny Committee and the declaration that the Certificate obtained from the Competent Authority is invalid and thereby cancelled leads to necessary inference that such person made a false claim of his caste belonging to the reserved category to which he did not belong

15. We have not been pointed out by the counsel that the petitioner got elected to any of the elections on the basis of the certificate as Mala Jangam, Scheduled Caste. It is true that the petitioner had obtained scholarship of Rs. 285 in the year 1979-80 while he was studying in Shri. Havagiswami College Udgir. But, as the said scholarship was not sanctioned, the petitioner had returned the amount of scholarship in the year 1984 with the college authorities. One of the interesting feature in this matter is that the caste scrutiny committee was called upon to verify the caste certificate of the petitioner as Jangam, OBC, and not the caste certificate of Mala Jangam, Scheduled Caste. Admittedly the petitioner's caste certificate as belonging to Jangam, OBC was verified and his claim was upheld by the Scrutiny Committee but in the operative portion of the order the Scrutiny Committee referred to petitioner's obtaining a caste certificate of Mala Jangam, Scheduled caste in the year 1979 which accordingly came to be

confiscated by the committee and prosecution was directed to be launched.

16. Article 20 of the Constitution of India clearly mentions that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence. There is no dispute on the point that prior to the Act of 2000 the petitioner had obtained the caste certificate as Mala Jangam, Scheduled Caste in the year 1979. The petitioner's said caste certificate was not put to verification. Therefore, there was no occasion for any quasi judicial, judicial or any other forum to verify the caste claim of the petitioner as Mala Jangam. We, therefore, find substance in the submissions of the learned Counsel Shri. Talekar that penal provisions mentioned in Section 11 of the Act of 2000 could not be made applicable to the facts of the present case. And if it is allowed to do so, then Section 11 of the Act of 2000 would be operative retrospectively. There is substance in the submission of the counsel that penal provisions of the said statute do not apply retrospectively and if tried to be applied then, it would go contrary to the spirit of Article 20 of the Constitution of India. In the facts emerging out of this case as put up before the Court we are inclined to accept this submissions of the counsel.

17. During the course of hearing learned Counsel Shri. S.B. Talekar has placed reliance on the following reported judgments:

(1) Swami Kalavati Sidhilingappa v. State of Maharashtra 2008 (Supp.) Bom. C.R. 238 wherein on the facts of the said case, the Division Bench of this Court (Coram: S.J. Vazifdar and P.R. Borkar, JJ.) set aside the order of the committee to the extent it sanctioned action against the petitioner therein u/s 11 of the Act of 2000.

(2) Rattan Lal Vs. State of Punjab, . The learned Counsel placed reliance on para 6 of this judgment which reads thus:

6. ...Every ex post facto law is necessarily retrospective. Under Article 20 of the Constitution, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. But an ex post facto law which only mollifies the rigour of a criminal law does not fall within the said prohibition. If a particular law makes a provision to that effect, though retrospective in operation, it will be valid. The question whether such a law is retrospective and, if so, to what extent depends upon the interpretation of a particular statute having regard to the well settled rules of construction....

(3) Transmission Corporation of A.P. Vs. Ch. Prabhakar and Others, . The Apex Court, in the facts of the said case, observed in paragraphs 14, 15 and 21 thus:

14. Concerned as it is with the liberty of a person, a liberal construction has to be given to the language used in Clause (1) of Article 20 and not a narrow one. The interpretation given to Section 9 of Article 1 of the American Constitution by the

US Supreme Court may also be kept in mind for the purpose of understanding the true content and scope of guarantee enshrined in Clause (1) of Article 20 of the Constitution of India.

15. Whether constitutional guarantee enshrined in Clause (1) of Article 20 is confined only to prohibition against conviction for any offence except for violation of law in force at the time of the commission of the act charged as an offence and subjection to a penalty greater than that which might have been inflicted under the law in force at the time of commission of offence or it also prohibits legislation which aggravates the degree of crime or makes it possible for the accused to receive greater punishment even though it is also possible for him to receive the same punishment under the new law as could have been imposed under the prior law or deprives the accused of any substantial right or immunity possessed at the time of the commission of the offence charged is a moot point to be debated.

21. However, as the interpretation of Article 20 as to its scope and ambit is involved in these proceedings, we refer the question formulated in para 15 of this order to a larger Bench for consideration.

18. As regard the reference of the question framed and formulated in para 15 issue was referred to the larger Bench by the Apex Court, we have not been pointed out whether the said issue was considered by the larger Bench of the Apex Court.

19. In the case of *Kaisaroddin Jahiroddin v. Divisional Caste Verification and Scrutiny Committee* 2009 (1) Bom. C.R. (Cri.) 466 a Division Bench of this Court (Coram: Naresh H. Patil and P.R. Borkar, JJ.) in para 14 referred to paragraph 16 of the judgment of the Full Bench in the case of *Sujit Vasant Patil* (cited supra).

20. We are clear in our view that in the facts and circumstances of the case the Scrutiny Committee has exercised its powers of directing prosecution under the provisions of Section 11 of the Act of 2000 erroneously. It is a discretionary power which the committee exercises, according to the evidence brought before it in a given facts and circumstances of a case. We have perused the judgments cited before us.

21. Considering the facts of the case, we find that the petitioner had surrendered his caste certificate as Mala Jangam to the authorities granted to him on 18-7-1979. He obtained another certificate of Jangam, OBC, on 8th December 1999 and in the same year the earlier caste certificate as Mala Jangam was returned to the Tahsil office. The Collector had forwarded the caste certificate of the petitioner as belonging to Jangam, OBC for verification on 15-4-2003 and the scrutiny committee verified the certificate on 2-7-2003.

22. In the facts of the case we are of the opinion that even on merits we do not find that the petitioner is liable to be prosecuted in exercise of powers under the provisions of Section 11(1) of the Act of 2000. The petitioner is even protected in

view of the provisions of Article 20 of the Constitution of India. The petitioner's prayer for setting aside the direction of the Scrutiny Committee to lodge prosecution against the petitioner is required to be considered and accepted.

23. The order of the Caste Scrutiny Committee dated 2nd July 2003 directing prosecution u/s 11(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. XXIII of 2001) against the petitioner is quashed and set aside. The Criminal Writ Petition is allowed to that extent. Rule is accordingly made absolute with no order as to costs.