
(2002) 07 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 1587 of 2002

Ramkrishna Mangesh Keni

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 ALLMR 54 : (2002) 104 BOMLR 814

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner is primarily aggrieved by the order of the Additional Municipal Commissioner (E. S.) of the Bombay Municipal Corporation passed by him on 13th June, 2002 holding the petitioner to be disqualified for being a Municipal Councillor u/s 16(1C)(a) of the Bombay Municipal Corporation Act, 1888 and declaring him deemed to have vacated the office on and from 30th May, 2002 on the basis of the decision of the Committee for Scrutiny and Verification of Tribe Claims, Konkan Division, Thane holding him not belonging to the reserved category of Mahadev Koli. The petitioner is therefore, principally prejudiced, hurt and injured by the decision of the said Committee dated 30th May, 2002 holding his caste claim of Mahadev Koli as invalid and cancelling his Caste Certificate issued to him by the Executive Magistrate, Bombay City vide No. MAG/CC/ST/1 / 1990 dated 31st January, 1990. The petitioner has given challenge to the legality and validity of both the aforesaid orders under Article 226 of the Constitution of India in the present writ petition. Since under the mandate issued by the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, such petitions are to be heard and disposed of within 3 months from the date of filing, I have given top priority to this petition. I have heard the learned Counsel on both the sides at length and I have gone through the proceedings and considered the case

law cited before me on behalf of the petitioner.

2. Shri Sakhare, the learned Senior Counsel for the petitioner has made a serious grievance against the decision of the Committee being totally baseless and perverse, Shri Sakhare submits that the Committee has not considered the voluminous documents produced by his client before the Committee to establish his claim that he was a Mahadev Koli by caste. According to him, the petitioner had produced several Caste and School Leaving Certificates of his relatives, kins and kiths from his paternal side as also from the maternal side which conclusively prove that he belongs to Mahadev Koli. Shri Sakhare further submits that this Court has accepted the caste claim of Mahadev Koli of his own son for medical seat by the judgment and order dated 24th June, 1988 in Writ Petition No. 2088 of 1986 between Manoj Ramkrishna Keni and the State of Maharashtra and Ors. The learned Counsel, however, fairly stated that the said judgement was not produced before the Committee. Shri Sakhare was at pains to take me through each and every certificate on record to satisfy me independently that his client belonged to the Tribe (caste) of Mahadev Koli: He also referred to the statement of his client recorded by the Vigilance Officer and also his Report submitted to the Committee. The learned Counsel also referred to a Marathi book by Dr. Govind Gare giving his observations about tribal life, customs, traits and other salient features of Mahadev Koli. This book appears to be the Author's research work on tribals in the area of Sahyadri. Shri Sakhare has assailed the findings and conclusions of the Committee that the petitioner belonged to Koli caste and not Mahadev Koli, the Scheduled Tribe, without any basis and foundation. In support of his submission, Shri Sakhare, the learned Counsel for the petitioner cited the following decisions of this Court as also the Supreme Court.

- (i) Abhay Shrawanji Parate Vs. State of Maharashtra and Others, ;
- (ii) Writ Petition No. 2260 of 1994 (Kantharia and A. P. Shah, JJ.);
- (iii) Writ Petition No. 6333 of 1997 (Ashok A. Desai and Dr. Pratibha Upasani, JJ.);
- (iv) Writ Petition No. 617 of 1997 (A. C. Agarwal and D. K. Trivedi, JJ.);
- (v) Writ Petition No. 1004 of 2000, F. I. Rebello, J.;
- (vi) Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, ;
- (vii) Writ Petition No. 2141 of 1987;
- (viii) Writ Petition No. 482 of 2000;
- (ix) Devidas Baburao Hajare and Anr. v. State of Maharashtra and Ors. AIR 1987 Bom. 354 : 1987 Mah. L. J. 801

The Supreme Court has cautioned us to decide each case on its own merits considering the individual facts. I have considered and decided the present

petition on the basis of the facts and merits of this case. The judgment of the Division Bench in the case of Abhay Parate (supra) in fact supports the contention that the caste mentioned in the School Leaving Certificate should be accepted as valid for the purpose of caste. In our case, the School Leaving Certificate and other certificates show that the petitioner belonged to Hindu Koli and not Mahadev Koli. In the case of Sandip Patil (supra) our Division Bench has observed while disposing of the petition at the stage of admission that various documents of near relations indicating their caste as Mahadev Koli were discarded by the Scrutiny Committee and that the approach of the Scrutiny Committee was totally unfair. The Division Bench has remanded the matter back to the Committee to examine documents and record their findings. In our case, the Scrutiny Committee has undergone that exercise and had recorded its reasons for accepting and discarding the certificates produced by the petitioner. I do not find any illegality in the conclusions of the Scrutiny Committee. In the other two judgments also the Scrutiny Committee appears not to have considered the documents produced before the Committee and, therefore, the Court had remanded the matter back to the Committee for fresh consideration. I do not find any other judgments cited by Shri Sakhare help his client in the present case in the face of clear findings recorded by the Scrutiny Committee.

3. Shri Mehta, the learned Counsel for the B.M.C., on the other hand reminded me of the limited parameters of the jurisdiction of this Court under Article 226 of the Constitution of India. According to him this Court is not required to reappraise and reassess the evidence before the Committee as a Court of Appeal. Shri Mehta submits that the Committee has gone through and considered the whole evidence produced by the petitioner and has recorded its findings on the basis of such evidence and, therefore, there was little scope for judicial review of the impugned decision of the Committee. He justified the conclusions of the Committee that the petitioner did not belong to the Mahadev Koli tribe. He also took me through the Caste/School Leaving Certificates to show that the petitioner's close relatives were described as Hindu Kolis throughout and not Mahadev Koli, as rightly observed by the Committee. Shri Mehta submits that the Committee has validly discarded all the documents produced by the petitioner. The claim of the petitioner that he belongs to Mahadev Koli was spurious and bogus, says the learned Counsel and he justifies the decision of the Committee and the consequential order passed by the B.M.C. to unseat him from the floor of the Municipal house and to declare him as disqualified to hold the office from the reserved constituency as a reserved candidate. He prays for dismissal of the petition.

4. Shri Sayed, the learned A.G.P. was also at pains to refer to all the documents to point out how the petitioner did not belong to the tribe of Mahadev Koli. He submits that the Caste Certificates of the maternal side of the petitioner cannot be relied on and he adds that the certificates of the paternal side relatives do not establish the claim of the petitioner. The learned A.G.P. specifically draws my attention to the old certificates wherein the grandfather of the petitioner had

truthfully stated that they belonged to the caste "Koli" and that they did not describe themselves as Mahadev Koli. According to the learned A.G.P. those documents carry greater evidential value. He generally supported the submissions of Shri Mehta.

5. I am fully conscious of the limitations of the judicial review under Article 226 of the Constitution of India. Time and again the Supreme Court has always cautioned the High Court about the self imposed restrictions in the writ jurisdiction. In the case of B.C. Chaturvedi Vs. Union of India and others, the Supreme Court has once again reminded us about the limits of the Article 226 as under. The relevant paragraph 12 is reproduced hereinbelow :-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by Competent Officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the Disciplinary Authority is entitled to hold that the Delinquent Officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the Delinquent Officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the Disciplinary Authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

Within the four corners of these limits, we have to scrutinise the decision of the Caste Scrutiny Committee in this matter.

6. The Supreme Court has, in the celebrated judgment of Kumari Madhuri Patil (supra) laid down the parameters of judicial review in the cases of Caste Certificates as under :-

14. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a Court of Appeal to appreciate the evidence. The Committee which is empowered

to evaluate the evidence placed before it when records a finding of fact it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and record a finding, though another view, as a Court of Appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts.

Bearing in mind the above limitations let us examine the present case in the light of this judgment of the Supreme Court There is no grievance made by the petitioners about the procedural aspect of the proceedings held by the Committee; nor is there any infirmity in the constitution of the Committee which is in compliance with the guidelines of the Supreme Court in the case of Kumari Madhuri Patil (supra). The Committee has considered the report of the Vigilance Officer who had recorded the oral statement of the petitioner and who had collected independent material in respect of the social status of the petitioner. There is no allegation of any bias or mala fides on the part of the Vigilance Officer on the Committee. The decision of the Committee reflects that it has considered all the material placed by the petitioner as also the other material, the copies of which were furnished to the petitioner and his say was recorded by the Committee. I do not find any infraction of the principles of natural justice in the matter before the Committee and its decision is procedurally absolutely legal. From the decision of the Committee, it appears that it has wholly appreciated and assessed the material placed before it and has recorded reasons for its every conclusion. The Committee is not expected like a Court of Law to write an elaborate judgment. Ordinarily it has to disclose that it has applied its mind to the entire material available before it. I have carefully gone through the decision and I find that the Committee has considered all the certificates produced by the petitioner before it. I have also independently perused those certificates on which the petitioner has placed heavy reliance. One fact is crystal clear from the certificates produced by and relied upon by the petitioner that his paternal relatives were all Hindu - Koli and none had claimed the caste of Mahadev Koli. School records of his other paternal relatives also show that they were Hindu Koli and not Mahadev Koli. The documents produced by the petitioner showing the caste of Mahadev Koli are the relatives from his wife's side which are not relevant and material to show his own caste by birth. The caste of real sister, cousins etc. is shown as Hindu Koli. On the basis of this strong material the Committee has concluded that the caste of the persons from the one and the same genetic tree cannot be different. No fault can be found with the conclusion that the petitioner could not be Mahadev Koli when his other relatives from the same genetic tree were Hindu Koli. There is not only preponderance of certificates showing the paternal relatives of the petitioner to be Hindu Koli but even their occupation is also shown as Fishing, which was never the avocation of

Mahadev Koli tribe which was found in the hilly areas where fishing was not their avocation. It is also pertinent to note that there are four such certificates wherein the grandfather of the petitioner had disclosed the caste as Hindu Koli and his occupation fishing. These certificates are of 1961 and 1955 when the benefits of reservation were available to the Mahadev Koli Tribe but the grandfather of the petitioner did not get tempted for such benefits and he truthfully stated in his applications as Kent and as Hindu Koli respectively. If the grand father was really Mahadev Koli he would have been truthful to say so. We must not forget that the people of the old generations were proud of their own respective individual castes and they were never known to change or shift their caste for any amount of benefits, come what may! I, therefore, attach greater weight to the statement of the grandfather.

7. In my opinion, the enquiry conducted by the Vigilance Officer is clinching evidence to demolish the case of the petitioner. The Vigilance Officer has done his job fairly well by collecting material from the old school records of the paternal relatives of the petitioner. The Committee has rightly preferred the evidence collected by the Vigilance Officer from the old school records of the paternal relatives of the petitioner to the interested evidence/ material of the petitioner. The Vigilance Officer's Report was furnished to the petitioner by the Committee and thereafter heard him and recorded its findings based on such cogent and reliable material against the petitioner. The judgment of the High Court wherein the petitioner's son was held to be Mahadev Koli was not produced before the Committee. Therefore, no fault can be found with the Committee that it did not consider the said judgment. Even that judgment is not of any help to the petitioner. The Caste Certificate was issued by the Presidency Magistrate who had no expertise to decide such socially complicated questions which required social specialised knowledge which cannot be attributed to or Imputed upon the Magistrate who appears to have issued such Caste Certificate on the basis of interested averments made by the applicant in affidavit of the petitioner. Such certificate cannot lend strength to the case of the petitioner even if it might be of his own son. Had the specialised body like the Committee examined and scrutinised it on the basis of usual tests employed in such matter, that would have been entirely different matter. Ordinarily, a Caste Certificate must be held to be reliable only when it has been subjected to the strict eye of the Scrutiny Committee as prescribed by the Supreme Court in the case of Kumari Madhuri Patil.

8. Further, the petitioner's School Leaving Certificate shows his own "race and caste" Hindu and not Mahadev Koli. Another certificate which indicates the caste Mahadev Koli is of his maternal uncle i. e. his mother's brother. The next certificate of his cousin sister is issued by the Additional Chief Presidency Magistrate, Bandra, issued on 8.12.1973 based on not a scrutiny but on her own statement and Samaj Certificate. Such certificates have created problems of abuse of the reservation benefits. The next is a Service Certificate of his uncle issued by his employer without any enquiry and on the basis of the statement

made by the petitioner himself. Even this certificate has little evidential value. Another School Leaving Certificate of 9.7.1986 of his cousin brother also has the least evidential value as would be a Caste Certificate issued to him by an Executive Magistrate without any scientific and proper enquiry. Same would be the value to be attached to a Caste Certificate issued by a Metropolitan Magistrate to his maternal uncle's daughter. All these self serving Caste Certificates will not help the petitioner to establish his claim of being Mahadev Koli particularly when the expert body has examined his case from every angle scientifically. In the face of the Scrutiny Committee's Report, it is not possible to accept the evidence of a very feeble nature. It will not be just and proper to discard the Committee's exhaustive and reasoned decision and instead to accept such evidence which has hardly any probative value. The Supreme Court in the case of Kumari Madhuri Patil (supra) has observed as under for our guidance:-

10. It is seen that admittedly the appellants reside in Muland area. In the first instance Suchita rightly approached the Tahsildar having jurisdiction over the concerned area who refused to give her Social Status Certificate as Mahadeo Koli, she filed an appeal and the High Court directed the Deputy Commissioner to dispose of the appeal who in turn without deciding the facts, directed the Tahsildar to issue the Certificate. In the meanwhile she had, by orders of the Court, got admission into the college and pursued her study. The Caste Certificate Scrutiny Committee, consist of the Secretary as Chairman and two members, and a Research Officer-cum-Director who have intimate knowledge in the identification of the specified Tribes, considered the entire material. The Committee has stated and as is seen that the appellant's father clearly accepted that his caste is recorded in the college as well as secondary school and college records as Hindu Koli only. This fact is strengthened by the candidate's father's school record (document at Sl. No. 1). In the new English School locality at Thane, the name of the candidate's father appeared in the Admission Register at Sr. No. 3733, and the caste clearly shown there was as H. Koli. This school record, comparatively, is not only oldest but it being the record pertaining to candidate's father's admission to school prior to independence, it carries greatest probative evidentiary value. The caste of the person, as stated earlier, is determined on the basis of the caste of their parents, basically for the reasons that the caste is acquired by birth. When the School record of the candidate's father shows his case as Koli, the documents which the candidates have produced (documents quoted at Sr. Nos. 3, 5 to 8, 11, 13 to 16) showing their caste as Mahadeo Koli cannot be relied upon. All these documents furnished by the candidates are those manipulated and fabricated with to knock of the seats in educational institutions defrauding the true Scheduled Tribes to their detriment and deprivation. As the school record of the candidate's father shows his caste as Koli, the Caste Certificates which have been issued to the appellants and their relatives by the Executive Magistrate, Greater Bombay (documents at Sl. Nos. 9, 10, 12, 17 to 19) are without proper enquiry and investigation, besides being without jurisdiction. Its reiteration in service record would not carry any

credibility or a ground to accept the caste as Scheduled Tribe. The Caste Certificate issued by Samaj being self-serving and subject to scrutiny, they cannot be held to be conclusive proof to determine the caste claim. The finding recorded by the Committee is based on consideration of the entire material together with sociological, anthropological and ethnological perspectives which Mahadeo Kolis enjoy and of the O.B.C. castes and sub-caste of the Kolis. The Addl. Commissioner as well, has minutely gone into all the material details and found that when a section of the society have started asserting themselves as Tribes and try to earn the concession and facilities reserved for the Scheduled Tribes, the tricks are common and that, therefore, must be judged on legal and ethnological basis. Spurious tribes have become a threat to the genuine tribals and the present case is a typical example of reservation of benefits given to the genuine claimants have been snatched away by spurious tribes.

9. Considering the matter from any angle I do not find any merit in the petition. I do not find and illegality or infirmity in the decision of the Committee and consequently, the impugned order of the B.M.C. is legal and proper and it warrants no interference under Article 226 of the Constitution of India. The net result is that the petition fails and the impugned decision of the caste Scrutiny Committee is upheld and the impugned order of the respondent Nos. 3 and 4 of the B.M.C. is also held to be legal and valid. The petitioner was not able to prove that he belonged to the reserved category of Mahadev Koli to be eligible and qualified to be a lawful candidate to contest elections from the reserved constituency and therefore, he has been rightly declared to have vacated the office of the Councillor u/s 16(1C)(a) of the B.M.C. Act.

10. Now the seat having become vacant fresh elections will have to be held, which would certainly mean again incurring huge amount of expenditure. Criminal waste of scarce money of the public. Such events can be avoided if the contesting candidates from the reserved constituencies are first required to get their Caste Certificates scrutinised by the Committee and obtain clear certificates from the Scrutiny Committee and attach them with their nomination forms as condition precedent. We presently follow exactly a reverse procedure and waste our valuable scarce resources. In fact the candidates like the petitioner should be ordered to bear the whole cost of the elections for having defrauded the public by contesting elections on spurious Caste Certificate. All such candidates should be ordered to get the Caste Certificates scrutinised well in advance of the elections, by the Scrutiny Committee. For such work number of such Committees may be increased to expedite the scrutiny. We must devise such procedure to save our valuable scarce resources and avoid the criminal waste of public money. Let the State and the Election Commission seriously consider this aspect and take suitable steps in this regard.

11. The Writ Petition is dismissed. Rule is discharged. No orders as to costs.

12. All concerned to act on a copy of this order duly authenticated by the Associate.