
(2013) 03 BOM CK 0092
In the Bombay High Court
Case No : Writ Petition No. 11241 of 2012

Ravindra Pralhadrao Khare

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 ALLMR 644 : (2013) 4 MhLj 406

Hon'ble Judges : K.K. Tated, J;A.S. Oka, J

Bench : Division Bench

Advocate : R.K. Mendadkar and Ms. Helan Koli-Mandlik, for the Appellant; C.R. Sonawane, AGP, for the Respondent

Judgement

A.S. Oka, J.—By this Petition under Article 226 of the Constitution of India, the Petitioner has impugned the judgment and order dated 8th October 2012 passed by the Scheduled Tribes Certificate Scrutiny Committee, Konkan Division, Thane (hereinafter referred to as "the Scrutiny Committee"). The matter of verification of the caste claim of the Petitioner was referred to the Scrutiny Committee. The Petitioner claimed that he belongs to the caste "Thakur" which is a Scheduled Tribe. The Petitioner was employed with the Fire Brigade of the third Respondent - Municipal Corporation and the caste claim of the Petitioner was forwarded to the Scrutiny Committee for verification. Earlier, the caste claim of the Petitioner was invalidated by the Scrutiny Committee and, thereafter, a Writ Petition was filed by the Petitioner in which an order of remand was passed. The judgment and order has been passed after remand. The learned counsel appearing for the Petitioner submitted that the Scrutiny Committee has completely ignored that the Petitioner had filed a reply to the report of the Vigilance Cell. He pointed out that the school record of the Petitioner's father shows that the caste of the Petitioner's father was recorded as "Thakur" way back in the year 1948. He pointed out that the death extract of the grand father of the Petitioner shows that in the year 1947, his caste was recorded as "Thakur". He submitted that the said material documents have been brushed aside by the Caste Scrutiny

Committee. He submitted that the documents have been discarded on the ground that the same are not conclusive. He submitted that the Caste Scrutiny Committee has gone by the affinity test which is not conclusive. He placed reliance on a decision of the Apex Court in the case of Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, . He submitted that the impugned judgment and order is perverse. The learned AGP supported the impugned judgment and order. He invited our attention to the observations made by the Caste Scrutiny Committee in Paragraphs 10 and 11 of the impugned judgment and order and submitted that the Petitioner claimed caste status only with the intention to take undue advantage of the similarity in the nomenclature of the caste. He, therefore, submitted that no interference is called for.

2. We have carefully considered the submissions. It will be necessary to make a reference to the impugned judgment and order. The Caste Scrutiny Committee has referred to the school record of the Petitioner's father which discloses that in the year 1948, his caste was recorded as "Thakur". The Scrutiny Committee has also referred to the death extract of the grand father of the Petitioner which shows that in the year 1947, his caste has been shown as "Thakur". The third important document referred to by the Scrutiny Committee is the service book of the Petitioner's father which shows that his caste was "Thakur". These three documents have been brushed aside by the Scrutiny Committee by making following observations:

... As said earlier, the only caste entry as Thakur does not clarifies whether the incumbent belongs to Thakur, Scheduled Tribe or Thakur, non-tribal group. Hence, though the document is oldest, the same cannot be treated as conclusive in nature while determining the tribe claim of the applicant.

3. We fail to understand as to how the Caste Scrutiny Committee expects the documents of the years 1947-1948 to mention as to whether the caste "Thakur" belongs to the category of Scheduled Tribe or the category of non-tribal. In the years 1947-1948, such entries could not have been made. Another finding recorded by the Tribunal is that the Petitioner could not establish his affinity to the caste and to the area. On this aspect, it will be necessary to make a reference to what is held by the Apex Court in the case of Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, in Paragraph 22. The Paragraph 22 of the said decision reads thus:

18. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant:

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

(Underlines added)

4. The Apex Court has held that the affinity test may be used to corroborate the documentary evidence but should not be the sole criteria to reject the caste claim.

5. In the present case, three material documents which we have referred to earlier have been brushed aside by the Scrutiny Committee by recording reasons which are not at all justified and thus, the claim is rejected primarily on the basis of the affinity test. In view of the law laid down by the Apex Court in the case of Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, , only on the basis of the affinity test, the caste claim of the Petitioner could not have been rejected.

6. As there is no consideration of material documents produced by the Petitioner and there is no consideration of the reply filed by the Petitioner to the Vigilance Cell, only option before us is to send back the matter to the Caste Scrutiny Committee. We accordingly pass the following order:

ORDER:

- (a) The impugned judgment and order dated 8th October 2012 is quashed and set aside and the matter is remanded to the second Respondent - the Caste Scrutiny Committee;
- (b) We direct the Petitioner to appear before the second Respondent on 1st April 2013 at 11.00 a.m. On that date, the Petitioner shall produce an authenticated copy of this order before the second Respondent;
- (c) The second Respondent shall proceed to adjudicate upon the caste claim of the Petitioner in accordance with law;
- (d) The final order shall be passed by the second Respondent within a period of four months from the date of appearance;
- (e) If the Petitioner is still in the employment of the Fire Brigade of the third Respondent-Corporation, we direct that till the final order is passed by the Caste Scrutiny Committee, the employment of the Petitioner shall not be terminated only on the ground of his failure to produce caste validity certificate;
- (f) If the order of the Caste Scrutiny Committee is adverse to the Petitioner, the employment of the Petitioner shall not be terminated for a period of four weeks from the date of communication thereof to the Petitioner;
- (g) We make it clear that we have not made any adjudication on the caste claim of the Petitioner;
- (h) The Petition is partly allowed on above terms;
- (i) The second Respondent to act upon an authenticated copy of this order.