
(2019) 07 BOM CK 0245
In the Bombay High Court
Case No : Writ Petition No. 7034 Of 2018

Santosh

APPELLANT

Vs

State Of Maharashtra Through Its Secretary Tribal
Development Department And Others

RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Citation : (2019) 07 BOM CK 0245

Hon'ble Judges : Sunil B. Shukre, J; S.M. Modak, J

Bench : Division Bench

Advocate : Prashant P. Dhok, I.J. Damle

Final Decision : Allowed

Judgement

Sunil B. Shukre, J

1. Rule. Heard forthwith by consent of parties.
2. Respondents no. 1 and 2 have not filed any reply. Learned Assistant Government Pleader submits that he has not received any instructions from the concerned respondent i. e. respondent no. 2. In spite of no assistance having been rendered by respondent no. 2, we have taken up this petition for final disposal for the reason that such course is possible by considering the facts established on record and the reasons given by respondent no. 2 Scrutiny Committee while appreciating the established facts.
3. First document is revenue P1 form and it is of the year 1924-25 standing in the name of Rama s/o Kanhu as belonging to "Mana" caste. Rama s/o Kanhu is the great grand-father of the petitioner from paternal side and there is no dispute about the relationship. However, the Committee has rejected this document only on the ground that the caste "Mana" shown in this document cannot be necessarily understood as equivalent to Scheduled Tribe. We do not think that the reasoning so resorted to by the Scrutiny Committee can be accepted as a valid ground for rejecting this document. The reason being that

the document is pre-Constitutional document, which was of the period when the concept of reservation benefits by declaring certain communities as scheduled tribes was yet to be born. The whole idea of caste and tribe based reservation came into being after adopting the Constitution of India in the year 1950. Before the year 1950, the identification of a person was by way of referring to his/her caste and reference to the tribe was unknown. The tribals, when it came to disclosure of their caste, would show their respective tribe as similar to caste and that is how the Government record created before 1950 entered even the name s of the tribes under the column "caste" of the concerned person.

4. In the instant case, the Scrutiny Committee has also commented that the social status of "Mana" shown in the pre-Constitutional document cannot be accepted with certainty to be disclosing a tribe. If this comment is accepted, the question would arise as to what is the nature of the social status "Mana" recorded in the pre-Constitutional document or in other words, is "Mana" shown in the pre-Constitutional document a caste? The Scrutiny Committee has not made any further comments that the word "Mana" could also be understood as disclosing the caste of Rama s/o Kanhu for the reason that the word "Mana" also denotes caste in some cases. The Scrutiny Committee having not considered this, we would say, has committed an illegality and, therefore, on this ground alone, the impugned order cannot be sustained in the eye of law.

5. Ordinarily, we would have chosen to remand the matter back to the Scrutiny Committee for a fresh consideration, but for the availability of validity in the family. Yuvraj Sakharam Gaikwad is admittedly a paternal uncle of the petitioner and he has been granted validity by the Scrutiny Committee on 30th March 2010 as he belonging to "Mana" Scheduled Tribe. When the relationship is admitted, we see no reason for the Scrutiny Committee to have rejected the tribe claim of the petitioner only on the ground that while granting validity to Yuvraj Sakharam Gaikwad no vigilance enquiry was made before issuing the validity certificate was issued to him. In fact, validity certificate has been issued to him as per the Apex Court's decision in C.A. No. 5270 of 2004. So, this validity has attained finality. A validity certificate which has attained finality, is a conclusive proof of the social status of that person and when that person is in blood relationship with the claimant i.e. present petitioner, the social status of such claimant gets the same identity as a person having a valid caste/tribe certificate in his name. For these reasons, we are of the view that now this petition can be allowed by issuing suitable directions to the Scrutiny Committee.

6. Writ Petition is allowed. The impugned order is hereby quashed and set aside. Respondent no. 2-Scrutiny Committee is directed to issue validity certificate to the petitioner as he belonging to "Mana" Scheduled Tribe within a period of four weeks from the date of receipt of this order.

7. Rule is made absolute in the above terms. No costs.