
(2009) 09 SC CK 0054

In the Supreme Court Of India

Case No : Civil Appeal No. 6253 of 2009 (Arising out of S.L.P. (Civil) No. 1774 of 2007)

Sayanna

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 ALLMR 957 : (2010) 3 AWC 2545 Supp : (2010) 3 BomCR 684 : (2009) 12 JT 405 : (2009) 12 SCALE 530 : (2009) 10 SCC 268 : (2009) 2 SCC(L&S) 776 : (2009) 7 SLR 1 : (2009) 10 UJ 4646

Hon'ble Judges : R. V. Raveendran, J;J. M. Panchal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

J.M. Panchal, J.—Leave granted.

2. The instant appeal is directed against judgment dated December 5, 2006, rendered by the Division Bench of High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 6583 of 2005 by which the decision dated August 19, 2005 of the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad Division, ('the Scrutiny Committee' for short) to cancel and confiscate the caste certificated dated May 17, 1972, issued to the appellant by Tehsildar, Biloli, Distt. Nanded, indicating that he belongs to Mannervarlu Scheduled Tribe, is affirmed.

3. The facts emerging from the record of the case are as under:

The appellant was born on January 1, 1951. A copy of page No. 9 of the register of admission of students of Zilla Parishad High School, Kundalwadi, Taluka Biloli, Distt. Nanded, produced by the appellant, shows that he was admitted to primary school, Zilla Parishad Kundalwadi, Taluka Biloli on September 14, 1962 and his caste was shown to be "Mannerawarlu". He had applied to the Tehsildar, Biloli to issue certificate indicating that he belongs to sub-caste Mannerawarlu.

On the basis of the certificate issued by the President of Kundalwadi Municipality, the Tehsildar issued certificate dated May 17, 1972 mentioning that the appellant belongs to Mannerwarlu sub-caste.

4. Mr. Anup, son of the appellant, had completed his primary and secondary education from Milind Primary School, Kundalwadi and in school records, his caste was recorded as Mannerwarlu. The son of the appellant had also applied to Tehsildar to issue certificate to him mentioning that he belongs to "Mannerwarlu" caste. The Tehsildar, Biloli had issued certificate dated October 5, 1989 mentioning that Anup was belonging to Mannerwarlu caste. Pursuant to an advertisement issued by the Maharashtra Public Service Commission, Anup had applied for one of the posts notified and claimed benefit as a candidate belonging to Scheduled Tribes, by producing above mentioned certificate. The said certificate was forwarded to the Vigilance Cell, Office of the Deputy Director, Scheduled Tribes Scrutiny Committee, Aurugabad for verification. The officer of the said committee had recorded statements of the appellant and his father and after making due enquiry, reported on May 17, 2001 to the Deputy Director, Scheduled Tribes Scrutiny Committee, that Anup, son of the appellant, belongs to Mannerwarlu caste. After considering the documents and associated facts, the Committee for Scrutiny and verification of Tribe Claims, Aurangabad had issued certificate of validity dated October 10, 2001 stating that Anup belongs to the Mannerwarlu Scheduled Tribe by birth.

5. In the year 2002, the appellant wanted to contest the election for the post of the President of Kundalwadi Municipal Council which was reserved for candidate belonging to the Scheduled Tribes upto the year 2002. The appellant contested the said election and got elected as President of the said Municipal Council on January 1, 2002. On January 30, 2003, the Scheduled Tribes Certificate Scrutiny Committee asked the Collector, Distt. Nanded to forward the caste claims of the elected candidates of Kundalwadi Municipal Council for verification. Accordingly the appellant was called upon by the Chief Officer of the Municipal Council to submit the caste certificate with necessary evidence, for verification. On March 28, 2003, the appellant submitted documents in support of his claim that he belongs to Mannerwarlu Scheduled Tribe. The Police Inspector, Vigilance Cell, Scheduled Tribes Verification Committee, Aurangabad, conducted enquiry. He submitted a report dated December 1, 2003 stating that in the column of caste mentioned in the school records, the word "lu" was subsequently added. In view of the above mentioned report, the Scrutiny Committee sought explanation from the appellant which was given asserting inter alia that the said document was in the custody of the school authorities and there was no possibility of interpolation having been made in the said certificate by him.

6. The Scrutiny Committee by order dated August 19, 2005 cancelled and confiscated certificate dated May 17, 1972, issued to the appellant indicating that he belongs to "Mannerwarlu" Scheduled Tribe. Feeling aggrieved, the appellant invoked extraordinary jurisdiction of High Court of Judicature at Bombay, Bench

at Aurangabad under Article 226 of the Constitution by filing writ petition No. 6583 of 2005. The Division Bench of the High Court has dismissed the petition, giving rise to the instant appeal.

7. This Court has heard the learned Counsel for the parties and considered the documents forming part of the appeal.

8. As is evident from the record of the case, the certificate dated May 17, 1972 issued to the appellant mentioning that he belongs to Mannerwarlu Scheduled Tribe, was forwarded to the Scrutiny Committee for verification. The Scheduled Tribes Verification Committee, Aurangabad had asked the Police Inspector, Vigilance Cell, Scheduled Tribes Verification Committee, Aurangabad to conduct enquiry as to whether the claim of the appellant that he belongs to Mannerwarlu Scheduled Tribe, was correct.

9. The report dated December 1, 2003, forwarded by the Police Inspector, Vigilance Cell, nowhere mentions that the certificate dated May 17, 1972, produced by the appellant to establish that he belongs to Mannerwarlu Scheduled Tribe is forged one. The contents of the certificate dated May 17, 1972 show that the said certificate was issued on the basis of the certificate issued by the President of Kundalwadi Municipality. The report dated December 1, 2003 of Police Inspector does not indicate whether the Police Inspector had recorded the statement of the President of the Municipality to find out whether the certificate issued by the President was genuine or not. What is relevant to notice is that in the report dated December 1, 2003 the Police Inspector has merely stated as a matter of fact that the word "lu" was subsequently added while recording the caste of the appellant as Mannerwarlu in the school register. The Police Inspector has not stated that the word "lu" was interpolated by the appellant. There is every possibility that the word "lu" was not mentioned at the time of recording of the caste of the appellant and on being pointed out the correct spelling of caste, the word "lu" was added. Addition of word "lu" subsequently would not lead to an irresistible conclusion that the said word was added by the appellant or at his behest. It is difficult for this Court to understand as to on which basis the Scrutiny Committee came to the conclusion that the word "lu" was interpolated in the register of the school more particularly when it was not so opined by the Police Inspector who had conducted the enquiry. Whether interpolation by addition has taken place can be stated by a handwriting expert or by comparison of admitted letters of a person with this disputed one. It is an admitted position that the Scrutiny Committee had never attempted to get an expert's opinion nor itself had compared the disputed letters with admitted one of the appellant. Under the circumstances, the finding recorded by the Scrutiny Committee that the word "lu" was interpolated will have to be regarded as not based on any credible evidence. The Police Inspector had never taken care to find out whether the word "lu" was subsequently added by the school authorities or by the appellant. It was necessary for the said officer to undertake such an exercise in view of the specific defence of the appellant that the school record was lying with

the school authorities and he had no opportunity whatsoever to tamper with the same.

10. In support of his claim that he belongs to Mannerwarlu Scheduled Tribes, the appellant had produced before the Scrutiny Committee four Xerox copies of the Caste Certificate issued by Talathi of the Village and (C) Certificate dated November 25, 2002 issued by C.E.O., Nagar Parishad. The perusal of the record shows that these documents were arbitrarily and lightly brushed aside by the Scrutiny Committee by observing that the documents were issued in a casual manner and that too on the personal knowledge without verifying the facts. It is an admitted position that none of the officers, who had issued the certificate concerned, was either summoned or examined by the Scrutiny Committee. The affidavit filed by Dr. L.N. Datte, nephew of the appellant, and the caste certificate issued to the son of the appellant would indicate that near relatives of the appellant have been always treated by the authorities as belonging to Mannerwarlu Scheduled Tribe. The claim of the appellant that he belongs to Mannerwarlu Scheduled Tribe could not have been negated on the ground that he had no basic knowledge of traits, characteristics, customs and culture, etc. of Mannerwarlu Scheduled Tribe or that he failed to prove his affinity and ethnic linkage to Mannerwarlu Scheduled Tribe. On the facts and in the circumstances of the case this Court is of the opinion that the decision of the Scrutiny Committee to cancel and confiscate the caste certificate issued to the appellant is based on irrelevant considerations and suffers from the vice of non-consideration of relevant factors. Therefore, the said decision as well as the decision of the High Court, confirming the said decision, are liable to be set aside.

11. For the reasons stated in the judgment the appeal succeeds. The decision dated August 19, 2005, taken by the Scheduled Tribes Certificate Scrutiny Committee, Aurangabad Division, Aurangabad, to cancel and confiscate the caste certificate dated May 17, 1972, issued to the appellant by the Tehsildar, Biloli, Distt. Nanded, stating that the appellant belongs to Mannerwarlu Scheduled Tribe, as confirmed by the Division Bench of the High Court of Judicature at Bombay, Aurangabad Bench in Writ Petition No. 6583 of 2005, decided on December 5, 2006, is set aside. The appeal accordingly stands allowed.

12. As the appeal is allowed, I.A. No. 3 of 2008 to recall order dated July 9, 2008, refusing to grant time to the appellant to file rejoinder affidavit and to allow the appellant to file the rejoinder does not survive and it is accordingly disposed of.

13. There shall be no order as to costs.