
(2002) 12 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No. 3992 of 2002

Shashikant Baviskar

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Representation of the People Act, 1950 — Section 15, 17, 18, 19

Citation : (2004) 106 BOMLR 68 : (2012) 1 MhLj 787

Hon'ble Judges : N.H. Patil, J;B.H. Marlapalle, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The petitioner, who is an ordinary resident of Asiad Society in Tilaknagar area of Nasik city, contested the last election held for the Municipal Corporation, Nasik from Ward No, 24 and against a seat reserved for Scheduled Tribe on the basis of a Caste Certificate dated 16.2.1982 issued by the Executive Magistrate, Jalgaon. He was declared elected in the said election and the said election was not challenged by filing an election petition. However, one Shri Nitin Arjun Pawar, who was one of the defeated candidates, submitted a written complaint to the Commissioner. Municipal Corporation, Nasik and on the basis of the said complaint, petitioner's tribe claim came to be referred for verification by the respondent No. 2 Committee, which is also located at Nasik. The said Committee, by its decision dated 30.9.2002, recorded a finding that the petitioner does not belong to "Mahadev Koli" - Scheduled Tribe and as such his claim to that effect was invalidated. In addition, the Caste Certificate issued to the petitioner on 16.2.1982 was found to have been not issued by the Tahsildar and Executive Magistrate, Jalgaon, on the basis of the confirmation letter issued by the said authority on 6.5.2002 and the said Certificate was declared to be spurious and fake. Resultantly, the Caste Certificate was directed to be confiscated. The said decision of the respondent No. 2 Committee has been assailed in this petition.

2. Though the basis of the petitioner's tribe claim is the Caste Certificate purportedly issued by the Executive Magistrate, Jalgaon on 16.2.1982, there is no dispute that the petitioner is presently a resident of Nasik City and he was enrolled as a voter in Ward No. 24 of the said City. Section 15 of the Representation of People Act, 1950 states that for every Constituency, there shall be an electoral roll which shall be prepared in accordance with the provisions of the said Act under the superintendence, direction and control of the Election Commission. Section 17 states that no person shall be entitled to be registered in the electoral roll for more than one Constituency and Section 18 further lays down that no person shall be entitled to be registered in the electoral roll for any Constituency more than once. Section 19 of the said Act states that subject to the earlier provisions of Part III therein, every person, who is ordinarily resident in a Constituency, shall be entitled to be registered in the electoral roll for that Constituency. The mere fact that the petitioner contested the election of the Municipal Corporation and was declared elected on 11.2.2002 goes to show that he is enrolled as a voter in Ward No. 24 of Nasik City and he cannot be a registered voter in the territorial limits of Jalgaon district. The decision impugned has been rendered by the respondent No. 2 Committee located at Nasik and the said decision pertains to the social status of the petitioner. The petitioner is aggrieved by the said decision Invalidating his claim that he belongs to the Scheduled Tribe. Taking all these circumstances together, in ordinary course, this petition ought to have been moved before the Principal Bench of this Court of Mumbai and the opinion recorded by the Additional Registrar on the point of territorial jurisdiction does not impress us. However, while admitting the petition and granting interim relief, this Court, by order dated 3.10.2002, has not left the issue regarding territorial jurisdiction open and, therefore, we are required to proceed to deal with the petition on merits and we proceed accordingly.

3. Before the Scrutiny Committee, the petitioner submitted the following documents :

(1) Xerox copy of the domicile certificate of candidate issued by the Sub-Divisional Magistrate, Nasik City, Nasik on 1.1.2002.

(2) A copy of an affidavit of candidate dated 8.3.2002.

(3) Xerox copy of the Caste Certificate of the candidate submitted by the candidate.

(4) Xerox copy of the School Leaving Certificate of candidate issued by the Head Master, Shriram Vidyalaya, Panchavati, Nasik on 26.12.96 wherein caste is mentioned as "Hindu Koli" (SIC) This document pertains to period 1972.

(5) Xerox copy of the dakhala of candidate issued by the Talathi Asoda on 7.3.92.

(6) Xerox copy of the dakhala of candidate issued by the Sarpanch, Grain Panchayat, Asoda, Tq. Dist. Jalgaon on 7.3.2002.

(7) Xerox copy of the Caste Certificate of Shri Suklal Gotu Koli issued by

Executive Magistrate.

(8) Xerox copy of the Caste Certificate of Shri Baviskar Ravikant Suklal issued by the Executive Magistrate, Nasik on 5.7.1995.

(9) Xerox copy of the School Leaving Certificate of Shri Baviskar Ravikant Suklal issued by the Head Master, Shriram Vidyalaya Jr. College, Panchavati, Nasik on 26.6.95 wherein caste is mentioned as Hindu Koli. This document pertains to period 1971.

(10) Xerox copy of affidavit sworn by Hemant Koli on 4.3.2002.

(11) Xerox copy of the School Leaving Certificate of Shri Hemant Koli issued by the Head Master, Madhya Railway Madhyamik Vidyalaya Manmad on 23.6.1992.

(12) Xerox copy of the Caste Certificate of Shri Hemant Ramkrishna Koli issued by the Executive Magistrate, Nandgaon on 31.7.90.

(13) Xerox copy of an affidavit sworn by Shri Shantilal Amrut Saindane on 4.3.02.

(14) Xerox copy of the Caste Certificate of Shri Shantilal Amrit Saindane issued by Sub-Divisional Magistrate, Pachora on 19.10.96.

(15) Xerox copy of the order of Hon''ble High Court Bench at Aurangabad in favour of Shri Shantilal Amrut Saindane (Hon''ble High Court directed to issue the Caste Certificate to the petitioner and the Committee may decide caste claim).

(16) Xerox copy of the affidavit sworn by Shri Ankush Ramdas Koli on 4.3.02.

(17) Xerox copy of the Caste Certificate of Kum. Koli Chhaya Ramdas issued by the Executive Magistrate, Jalgaon on 14.8.02.

(18) Xerox copy of the Caste Certificate of Shri Koli Deelip Ramdas issued by the Executive Magistrate, Jalgaon on 29.7.88.

(19) Xerox copy of the Caste Certificate of Shri Koli Mukesh Ramdas issued by Executive Magistrate, Jalgaon on 29.7.88.

(20] Xerox copy of the Caste Certificate of Shri Koli Ankush Ramdas issued by the Executive Magistrate, Jalgaon.

(21) Xerox copy of the Caste Certificate of Shri Koli Kiran Baban issued by the Dy. Collector (E.G.S.) Jalgaon on 11.11.98.

(22) Xerox copy of the Caste Certificate of Shri Dilipkumar Baviskar issued by the Executive Magistrate, Nasik.

(23) Xerox copy of the School Leaving Certificate of Shri Dilipkumar B. Baviskar issued by the Head Master, N.P. Prathmik Vidya Mandir No. 3, Jalgaon on 28.3.1985.

4. As against these documents, the complainant Shri Nitin Arjun Pawar relied

upon the following documents in support of his complaint that the petitioner does not belong to "Mahadev Koli" caste.

- (1) Xerox copy of birth and death extract of candidate's father Shri Suklal Gotu Baviskar wherein caste is mentioned as "Hindu".
- (2) Xerox copy of the School Leaving Certificate of Shri Shashikant Suklal Baviskar issued by the Head Master, Z.P. Prathmik Vidya Mandir, Madsangvi, Tq. Dist. Nasik on 15.1.2000.
- (3) Xerox copy of the School Leaving Certificate of Shri Suklal Gotu Koli issued by the Head Master, Z.P. Kendra Shala Asode wherein caste is mentioned as Hindu Koli. This document pertains to period 1944.
- (4) Xerox copy of the Caste Certificate of Shri Eknath Lotu Baviskar issued by the Executive Magistrate, Chopda on 25.11.77.
- (5) Xerox copy of the School Leaving Certificate of the Koli Hiranman Eknath issued by the Head Master, R.N. Lathi Vidyalaya Bhokar wherein caste is mentioned as Tokare Koli. This document pertains to period 1991.
- (6) Xerox copy of land record 7/12 in respect of Eknath Lotu Koli issued by Tahsildar, Chopda.
- (7) Xerox copy of Genealogical Table in respect of Shri Baviskar and others submitted by the complainant.
- (8) Xerox copy of birth extract in respect of Panaki s/o Lotu Maharu wherein caste is mentioned as "Koli". This document pertains to period 1948.

5. The Committee examined the documents submitted by both the parties and the claim was also referred to the Vigilance Cell for conducting school and home inquiry. The Inquiry Officer furnished his report dated 16.5.2002 alongwith his remarks and documents in support thereof. Some of these documents were School Leaving Certificate extracts of General Register of Shri Shashikant S. Baviskar and Ravikant S. Baviskar (petitioner and his brother). The inquiry report was made available to the petitioner and he was called upon to appear for hearing on 28.5.2002, The petitioner did not remain present and instead, he asked for a copy of the Tahsildar's letter dated 6.5.2002, vide which it was informed to the Scrutiny Committee that the Caste Certificate dated 16.2.1982, on the basis of which the petitioner had contested the subject election, was not issued by the said office at any time. By letter dated 29.5.2002, the petitioner was called upon to furnish his explanation within fifteen days on the vigilance inquiry report and accordingly he submitted his written explanation. It is pertinent to note that the petitioner approached this Court on 20.8.2002 and refused to appear before the Committee for personal hearing on the ground of pendency of this petition and contended that the jurisdiction of the Committee to verify his caste claim was pending for consideration in the instant petition and unless it is decided by this Court, the Committee could not proceed further. He

also challenged the authority of the respondent No. 3 in referring his tribe claim for verification in the absence of challenge to his election byway of an election petition under the provisions of the Bombay Provincial Municipal Corporations Act, 1949. The substantial relief originally prayed for in this petition was :

(A) To declare that the provisions of Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Classes Category (Regulation of Issuance and Verification of) Caste Certificates Act, 2000 (hereinafter referred to as "Caste Verification Act", for short) as ultra vires the Constitution and strike down the same.

(B) To quash the proceedings of verification undertaken by the respondent No. 3.

The petitioner claims to have amended this petition with the leave of this Court and added paras 8A and 8B to the petition memo and prayer Clause AA for substantial relief praying for quashing and setting aside the decision dated 30.9.2002 rendered by the respondent No. 2. However, at no point of time, this Court has passed an order granting leave to amend this petition and this factual position has not been disputed by the learned Advocate for the petitioner. In the interest of justice, we have proceeded to decide the petition on the basis that it was amended and the decision of the Scrutiny Committee rendered on 30.9.2002 has been assailed.

6. The Committee noted that the documents at Sr. Nos. 1, 2, 5 and 6 are the domicile certificates issued by the Talathi, Sarpanch regarding the petitioner's domicile. Similarly, the documents at Sr. Nos. 3, 7 and 8 were the Caste Certificates of the petitioner, his brother and father and the documents at Sr. Nos. 12, 14 and 17 to 23 are the Caste Certificates of his relations, who are not closely related paternal blood relations of the petitioner and these documents are always subject to the scrutiny by the Committee. It was for these reasons that these documents did not call for any consideration or weightage by the Scrutiny Committee. The Committee relied upon 3 main documents i.e. documents at Sr. Nos. 4 and 9, as submitted by the petitioner and document at Sr. No. (C), as submitted by the complainant. The first two documents are the School Leaving Certificates in respect of the petitioner and his brother. From the document at Sr. No. 4, it is evident that the petitioner was enrolled in Shriram Vidyalaya and Junior College, Panchavati, Nasik on 17.6.1972 and from the document at Sr. No. 9, it is evident that petitioner's brother Ravikant was admitted in the said school on 14.6.1971. Both these documents recorded that the petitioner and his brother belong to the "Hindu Koli" caste. The next document at Sr. No. 3 submitted by the complainant was the School Leaving Certificate of petitioner's father Shri Suklal Gotu Koli wherein his caste has been recorded as "Hindu Koli". This document pertains to the year 1944 and of course prior to the Constitution (Scheduled Tribes) Order, 1950. In addition, the Vigilance Officer had obtained the School Leaving Certificate extracts in respect of the petitioner and his real brother and these pertain to the years 1966 and 1968. The petitioner's and his

brother's caste, in this Register, was recorded as "Hindu Koli". The Committee has accepted these 4 documents and found that the petitioner's claim that he belongs to "Mahadev Koli" caste could not be proved.

7. Before the Scrutiny Committee or during the course of vigilance inquiry, the petitioner did not challenge the documents pertaining to his school record as well as his brothers and fathers. These certificates go to show that he belongs to "Hindu Koli" caste which is not listed in the Scheduled Tribe's category in the Constitution (Scheduled Tribes) Order, 1950, as amended from time to time. Though the Tahsildar, Jalgaon, vide his letter dated 6.5.2002 informed the Scrutiny Committee that the petitioner was not issued the subject Caste Certificate by the said office at any time, the Committee has proceeded to decide the petitioner's social status claim on merits as well and this is in keeping with the view taken by the Apex Court in the case of Vasant Pandurang Narvade v. Subhash and Ors., Civil Appeal No. 4409 of 2001, decided on 20.7.2001.

8. The Outward Register, as maintained in the office of Tahsildar, Jalgaon, at the relevant time, has been placed before us and we have noticed that the same has been interpolated on more than one occasions. On first half portion of page No. 8, the last entry was at Sr. No. 119. However, subsequently the entry at Sr. No. 119-A has been added in different ink. Similarly entries at Sr. Nos. 123-A, 124-A, 125-A have been interpolated on the said page and though the last entry was at Sr. No. 128, we find that on page No. 9, further entries again start from Sr. No. 126 onwards and entry at Sr. No. 126-A has again been interpolated. It is obvious that some employees working in the Tahsil office at Jalgaon have indulged in incorporating fraudulent entries regarding Caste Certificates issued and there is certainly a case for the Collector, Jalgaon, to direct an investigation and take suitable action under the Caste Verification Act, 2000, against the employees found guilty.

9. Our powers, while deciding a petition under Articles 226 and 227 of the Constitution, assailing the decision of the Scrutiny Committee, are well defined by the Constitution Bench of the Apex Court in the case of State of Maharashtra v. Milind and Ors. AIR 2001 SC 393: AIR 2000 S.C.W. 4303:2001 (1) All M.L.R. 573 : 2001 (1) Born. C.R. 620 : 2001 (1) Mah, L.J. 1 : 2001 (1) Mah. L.R. 552 : 2001 (1) SCC 21 It has been held that while exercising the power of Judicial review against an order of inferior Tribunal, being supervisory and not appellate, the High Court, would be justified in interfering with the conclusion of the Tribunal only when it records a finding that the Tribunal's conclusion is based upon exclusion of some admissible evidence and consideration of some inadmissible evidence or the Tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at on the materials on record.

10. In the instant case, the Committee has relied upon the four documents which have more probative value and one of them pertains to the year 1948. Having given our anxious considerations to the arguments advanced before us and the contentions raised in the petition memo by the petitioner, we have noted that the

Committee's findings are supported by the evidence which ought to have been given due weightage and the Committee discarded the documents which were of recent origin and were not verified by the Competent Authority. The decision of the Committee, therefore, does not suffer from any error apparent on the face of record and, therefore, it does not call for any interference at our hands.

11. Coming to the arguments regarding the Constitutional validity of Section 10 of the Caste Verification Act, it has been contended by the petitioner that two different Division Benches of this Court have taken contrary views on the same issue, inasmuch as in *Dattatraya Ramrao Thorat v. State of Maharashtra and Ors.*, Writ Petition No. 5345 of 2001 the validity of the Caste Verification Act has been upheld, whereas in Writ Petition No. 1373/2002 and other connected petitions, another Division Bench noted that different views were possible than the views expressed in Writ Petition No. 5345/2001 and directed the Registry to place the petition before the Hon'ble the Chief Justice for reference to a Larger Bench under Rule 7 of Part I of the Bombay High Court Appellate Side Rules, 1960. The learned Counsel for the petitioner, therefore, urged before us to keep this petition pending till the Reference is decided.

12. At the first instance, we must note that our decision in Writ Petition No. 5345/2001 came to be challenged before the Apex Court, in Special Leave to Appeal (Civil) No. 9729/2002 and a three - Judges Bench was pleased to dismiss the same on 15.11.2002. A similar prayer was made in Writ Petition No. 5048/2002 before us and we have declined to consider the same. From the information available with the Registry of this Bench, the Hon'ble the Chief Justice of this Court has not yet passed any order for Reference as desired in Writ Petition No. 1373/2001 and, therefore, there is no reference pending before a Larger Bench, as at present. If reference be had to the provisions of Rule 7, Part 1 of the Bombay High Court Appellate Side Rules, the Division Bench has the power to report to the Chief Justice regarding its disagreement and it is the Chief Justice who is required to pass an order thereon, as he shall think fit, which means the Hon'ble the Chief Justice may or may not feel it expedient to make a reference to a Larger Bench. However, as at present, we are bound by our view recorded in Writ Petition No. 5345/2001 as the Special Leave to Appeal against the same has been dismissed by the Apex Court.

13. The Government of Maharashtra issued order on 29.6.2002 invoking its powers u/s 19 of the Caste Verification Act and appointed the respondent No. 2 as Committee for Verification of Tribe claims under the said Act. By Government Resolution dated 19.4.1999, the State Government has directed to refer the tribe claim of all those persons, who are elected to the local self Government bodies against the seats reserved for Scheduled Tribes/Castes, for verification, within fifteen days and the verification proceedings were expected to be completed within 45 days. Pursuant to the orders passed by the Apex Court in the case of *Kum. Madhuri Patil*, the State Government reconstituted the respondent No. 2 Committee and the said Committee has territorial jurisdiction for the five districts

under the Nasik Revenue Division. The contention that the Committee proceeded to adjudicate the petitioner's tribe claim without authority is, therefore, far-fetched and the action of the respondent No. 3 in referring the petitioner's tribe claim for verification by the respondent No. 2 Committee does not suffer from any infirmities in law.

14. For the reasons stated in our Judgment in Writ Petition No. 5345/ 2001, we hold that the challenge to the vires of Section 10 of the Caste Verification Act is unsustainable and the verification proceedings, culminated in the impugned decision by the respondent No. 2, cannot be faulted with on any count.

15. In the result, the petition fails and the same is hereby dismissed. Interim order of status quo passed on 3.10.2002 hereby stands vacated.

16. Rule discharged but without any order as to costs.