

(2001) 08 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 690 of 2000

Shivkumar Karlekar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 243
Evidence Act, 1872 — Section 3, 61

Citation : (2002) 3 BomCR 745

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : V.G. Sakolkar, for the Appellant; N.B. Khandare, A.G.P., for Respondents No. 1 and 3, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—The petitioner challenges the order dated 2nd November, 1999 passed by the Scrutiny Committee rejecting the caste claim of the petitioner. Few facts, relevant for the decision, are that, the petitioner was admitted to the Engineering course in Shyamlal College of Engineering, Udgir-respondent No. 4 herein, in the year 1998-99. He was admitted to the said course under a reserved category pursuant to the claim of the petitioner that he belongs to Lingder caste. The claim was sought to be supported by the caste certificate dated 30th April, 1994 issued by the Taluka Executive Magistrate at Billoli. The caste claim of the petitioner having not been verified at the time of the admission to the college and the issue regarding of the caste claim was kept pending for a considerable time, as such, the petitioner had filed Writ Petition No. 4889 of 1998 and this Court by an order dated 24th November, 1998, had directed the respondent No. 2 to decide the caste claim of the petitioner within a specific period. Accordingly, the respondent No. 2 decided the caste claim by order dated 2-11-1999 i.e. the impugned order rejecting the caste claim of the petitioner. Hence, the present petition.

2. The impugned order is sought to be challenged firstly on the ground that the committee which scrutinised and decided the caste of the petitioner was not duly constituted in terms of the directions of the Apex Court in the matter of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , and subsequent directions of the Apex Court in the same matter reported in Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, inasmuch as the committee did not comprise of the Additional Commissioner (Revenue) as Chairman of the said committee nor it contained the Research Officer & Welfare Officer as Member Secretary of the committee and, therefore, the entire proceedings are to be held as bad in law. Perusal of the impugned order discloses that the committee which was constituted to scrutinise and decide the caste claim of the petitioner comprised of 3 members namely the Divisional Social Welfare Officer Aurangabad Division, Aurangabad, the District Social Welfare Officer, Aurangabad and the District Social Welfare Officer, Osmanabad. There is no doubt that the Apex Court in Madhuri Patil's case decided on 2nd September, 1994 reported in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, had directed all the State Governments to constitute scrutiny committee of three officers, namely, (i) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (ii) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (iii) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. However, by further order dated 28th April, 1997 reported in Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, , considering certain difficulties faced by the State Government in implementing the said directions, the Apex Court had modified the said directions as under :

"As regards prayer (b) read with direction No. (iv) of the order of this Court, we too appreciate the inconvenience caused due to vast area of the State. Therefore, instead of one committee of three officers, there will be three Scheduled Tribe/Caste Scrutiny Committees comprising of five members with quorum of three members, as suggested in para 4 of the directions, to take a decision. At Pune, Nasik and Nagpur, six Caste Scrutiny Committees for SCs, Denotified Tribes, Nomadic Tribes, Other Backward Classes and the Special Backward Category in existence at Mumbai, Pune, Nasik, Aurangabad, Amravati and Nagpur would continue to scrutinise the certificates issued by the respective officers and take a decision in that behalf. In this regard, it is also suggested by Shri Dholakia, learned Senior Counsel for the applicant, that in case any certificate has been wrongfully refused by the certificate issuing authority, the aforesaid committees also would go into the question and decide in that behalf, whether refusal was wrongful and in case it finds that the refusal was wrongful, they are at liberty to direct the authority to grant the certificate."

While modifying the said direction, in the manner stated above, by order dated 28th April, 1997 the Apex Court in paragraphs 4 and 5 of the said order has also

observed thus :

"4. With regard to prayer (c) also, we feel that the Caste Scrutiny Committees for Social Welfare, Cultural Affairs and Sports Department should comprise of Additional Commissioner (Revenue)---Chairman of the Revenue division concerned; Divisional Social Welfare Officer - Member and Research Officer as a Welfare Officer-Member Secretary to function in that behalf.

5. With regard to prayer (d), along with the Vigilance Cell, one Research Officer/ Tribal Development or Social Welfare Officer would be associated in finding the social status of eligibility of the officers."

3. Referring to the observations in para 4 of the order dated 28th April, 1997 of the Apex Court in Madhuri Patil's case it was sought to be contended on behalf of the petitioner that, the committee should have the Additional Commissioner (Revenue) as Chairman and one Research Officer as Welfare Officer - Member Secretary of the Committee. It is to be noted that the relief in the nature of requirement of Additional Commissioner (Revenue) as Chairman and Research Officer as Welfare Officer - Member Secretary to the committee was granted under order dated 28th April, 1997 in relation to the prayer (c) in the application for recalling of the order filed by the applicants in the said proceedings. Apparently, the said relief was totally distinct and separate from the relief prayed in prayer Clause (b) in relation to which specific directions were given by the Apex Court in para 3 of the said order dated 28th April, 1997 as quoted herein above. As per the direction in para 3 of the said order, considering the inconvenience caused to the State Government in the matter of constitution of different committees with the Additional or Additional of Joint Secretary or any other higher in rank of the Director of the concerned department as Chairman of such committees, the committees already functioning at six places namely Mumbai, Pune, Nasik, Aurangabad, Amravati and Nagpur were excluded from the requirement of the strict compliance of Clause 4 of the order dated 2-9-1994 in Madhuri Patil's case. But for the direction issued by the Apex Court under order dated 28th April, 1997, the committees which were functioning at the above six places, could not have continued to verify and decide the caste claims in view of the specific directions issued by the Apex Court in Clause 4 of para 12 of the order dated 2nd September, 1994. On proper reading of the orders dated 2-9-1994 and 28-4-1997 in Madhuri Patil's case, it is apparent that though the State Government is required to have Additional or Joint Secretary or any officer of the rank higher to that of rank of the Director of the concerned department to be the Chairman of such committees, such requirement was not made applicable in relation to the committees which were in the above referred six cities and considering the same, it cannot be said that the directions issued under paragraphs 4 and 5 of the order dated 28th April, 1997 would also be applicable to the committees functioning in the said six cities. Reading of the said order in any other manner would virtually amount to rendering the direction in para 3 of the order dated 28th April, 1997 to be redundant. The judgment and order of the

Apex Court cannot be read in such a manner as to render any direction therein to be redundant. Being so, the challenge to the constitution of the scrutiny committee on the ground that it does not comply with the direction of the Apex Court in Madhuri Patil's case dated 28th April, 1997 is to be rejected being devoid of substance.

4. The second ground of challenge is that the scrutiny committee could not have given any importance to the report of the District Social Welfare Officer Nanded as against the Vigilance Officer's report dated 13th August, 1999 and the caste claim of the petitioner could not have been rejected on the basis of the report submitted by the District Social Welfare Officer of Nanded on 12th October, 1999. Undoubtedly, the impugned order refers to both these reports. It is equally true that the impugned order refers to the report of the District Social Welfare Officer Nanded on the very relevant aspect of the matter. In this connection it was also sought to be contended that the considering the direction of the Apex Court in Madhuri Patil's case particularly under Clause 4 of para 12 thereof, no value could have been attached by the scrutiny committee to the report of the District Social Welfare Officer.

5. The Vigilance Officer by his report dated 13th August, 1999 had reported that the school record pertaining to the younger brother of the petitioner disclosed the entry in relation to his caste as that of "Lingder" and further that no erasures were noticed in those records. As against this, the report dated 12-10-1999 submitted by the District Social Welfare Officer of Nanded disclosed that in the school record pertaining to the said younger brother of the petitioner, there appeared certain overwriting along with the change in ink and difference in hand writing and on enquiry with the Head Master, it was revealed that those entries were not done during the tenure of the said Head Master with whom the enquiry was made. Undisputedly, both these reports were made available to the petitioner to enable him to give his explanation in respect of those reports. With reference to those two reports the petitioner in his reply dated 26-10-1999 had denied the observations by the District Social Welfare Officer regarding the over writing, change in hand writing and the ink. But, at the same time it was also stated that minute observation of the record would disclose that in the column dealing with the caste there was a straight line drawn therein and therefore there was no case for alleging any erasures being made in the record pertaining to the caste. The scrutiny committee after considering both the reports and the reply given by the petitioner has observed that the school record of the said younger brother of the petitioner disclosed overwriting, change in ink and hand writing and, therefore, explanation of petitioner being not satisfactory. Being so, on facts it is apparent that the scrutiny committee on analysis of the materials on record has arrived at a finding which cannot be said to be either perverse or arbitrary nor it can be said that no prudent person can arrive at any such finding based on assessment of the materials on record. Merely because some other conclusion can also be drawn on re-assessment of such material, that itself cannot be a justification for interference by this Court in writ jurisdiction when the finding

arrived at by the authorities below on assessment of evidence cannot be said to be totally perverse or not born out from the record.

6. The Apex Court in Madhuri Patil's case in its order dated 2-9-1994 under Clause 5 of para 12 had ordered that :

"Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The Vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc."

Referring to this Clause 5 of para 12 of the said decision of the Apex Court it was sought to be contended that, the scrutiny committee could not have entertained the report of the District Social Welfare Officer Nanded while scrutinising the caste claim and should have restricted analysis of the material on record to the Vigilance Officer's report apart from the evidence produced by the petitioner. In this regard it is to be noted that, Clause 6 of para 12 of the order dated 2-9-1994 in Madhuri Patil's case directs that :

"The Director concerned, on receipt of the report from the Vigilance Officer if he found the claim for social status to be "not genuine" or "doubtful" or serious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the Vigilance Officer to the candidate by a registered post with acknowledgment due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be punished in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through

Counsel, the committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof."

Clause 7 of the said para 12 further directs that :

"In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter even the same procedure as is envisaged in para 6 be followed."

7. Apparently, therefore, Clauses 6 and 7 of paragraph 12 of the said judgment of the Apex Court disclose that if the vigilance officer's report appears to be genuine and true, the committee is not required to proceed further with the enquiry and scrutinise and accept the caste claim of the applicant. However, when the committee finds the report to be not so genuine or true or requires further investigation into the matter, the committee is not forbidden to give further direction to the applicant to produce necessary evidence in support of his claim. At the same time the committee is also entitled to entertain any other evidence produced by any other person. This is crystal clear from Clause 6 of para 12 of the said decision wherein an obligation is cast upon the committee to issue a public notice by beat of drums or by any other convenient mode thereby the members of the community are made aware of the caste claim by the claimant and enquiry in respect thereof and opportunity is given to adduce evidence in support of objection, if any, for the confirmation of the caste claim of the claimant.

8. Being so, nothing would prevent the public officer from coming forward to assist the scrutiny committee in deciding such matter by disclosing the facts known to such an authority including the disclosure regarding the incorrect information submitted to the scrutiny committee by the Vigilance Officer. Undisputedly, in the case in hand, the Vigilance Officer had reported by his report dated 13-8-1999 that there was no erasures as such found in the school record of the younger brother of the petitioner when the same was found to be incorrect statement pursuant to the disclosure made in that regard by the District Social Welfare Officer Nanded by his report dated 12-10-1999. Being so, the contention that the scrutiny committee could not have taken note of such report is absolutely devoid of substance and hence to be rejected.

9. It is then sought to be contended that the scrutiny committee did not take into consideration the other evidence produced on record by the petitioner and in that regard attention was drawn to the caste certificates stated to have been issued in favour of cousin brother of the petitioner as well as the affidavits of one Laxman Ganpati Singnor and two agreements, one in favour of the grand mother of the petitioner and the other in favour of the grand father of the petitioner. Perusal of the impugned order of the scrutiny committee discloses that the committee has refused to give any credence to the said agreements, the same being not

registered documents apart from the fact that the same do not bear the dates of transactions. As regards the other evidence the same has been rejected by mere observation that they do not support the caste claim of the petitioner.

10. As regards the documents pertaining to the agreements in favour of the grand mother and grand father of the petitioner, the copies of which are filed at pages 23 and 24 of the petition, do not disclose that the said documents were executed on any stamp paper. Undisputedly they were not registered documents. On the face of the said documents, the same do not disclose the dates of transactions. Undisputedly, no affidavit of any person having any connection with the facts alleged in the said documents was filed before the committee to establish the fact that the said documents were really executed between the parties at the relevant time and were in relation to the transactions alleged in the said documents. In other words, there was absolutely no evidence placed before the committee to prove the fact that the documents in question were actually executed by the parties named in the documents at the relevant time and the transaction thereunder was genuine. The genuineness of the transaction is relevant only for the purpose of disclosure of the fact of execution of the documents by the executants of the documents for the bona fide purpose. In the absence of such bona fide purpose being established, it cannot be said that the documents were genuine and could be relied upon for any purpose. At this stage an attempt was made to produce xerox copies of the said documents to show that the same were executed on stamp paper. Indeed, the documents in Urdu language appears to have been executed on stamp papers, one of the year 1930 and the other of the year 1965. Even then, the same cannot be of any help to the petitioner to establish his caste claim. It was sought to be contended that the documents on the face of it refers to the name of the grand mother and the grand father of the petitioner and they are described as belonging to Lingder caste. Undoubtedly, the translation of the said documents disclose the name of Lalubai and Shankarrao as being the beneficiaries under the said agreements. However, undisputedly there is no material on record to show that Lalubai and Shankarrao were the grand mother and grand father of the claimant as sought to be claimed by the petitioner. In the absence of any such evidence, no assistance can be derived by the petitioner from the said documents to establish his caste claim. Being so, no fault can be found with the scrutiny committee for not giving any credence to such documents while deciding the caste claim.

11. As regards the affidavit of Laxman Ganpati Singnor, it was sought to be contended that he is relative of the petitioner and his caste claim was already scrutinised and therefore it was a very relevant document and the committee erred in ignoring the same. A copy of the said affidavit is made available on page 28 of the petition. The affidavit on the face of it discloses the deponent to be claiming to be the relative of the petitioner in the sense that the father of the petitioner is the nephews of the son-in-law of the cousin brother of the deponent. The affidavit does not disclose the name of the so called cousin brother or the son in law. Undisputedly, the affidavit was not supported by any documentary

evidence for establishing the relationship between the deponent and the petitioner as well as pertaining to the contention that the caste claim of the deponent was verified. No doubt, there is a statement in the affidavit that he belongs to Lingder caste and his caste claim was verified by the Director of Social Welfare Department, Maharashtra State at Pune in the year 1995. Undisputedly no certificate regarding such verification was produced either before the scrutiny committee along with the said affidavit or before this Court. Apparently, therefore, a mere statement of a person that his caste claim is verified cannot lead to conclusion that the said statement in that regard is true. It was necessary for the petitioner to produce the certificate in support of such claim. Having not produced such certificate no fault can be found with the committee in not giving any credence to the affidavit of Laxman Singnor.

12. As regards the caste certificates of the brother and cousin brother of the petitioner, no fault can be found with the scrutiny committee for giving no value to such certificates as undisputedly they are not the scrutinised or verified certificates. In the absence of scrutiny having already been done, as regards such certificates, the same cannot be of any help to the petitioner in establishing his caste claim.

13. In the result, there is no case made out for interference in the impugned order. The petition fails and is dismissed. Rule is discharged with no order as to costs.