
(2017) 11 BOM CK 0056
In the Bombay High Court
Case No : 4062 of 2009

Shri Harshad Narayan Thakar

APPELLANT

Vs

The State of Maharashtra & Ors

RESPONDENT

Date of Decision : 23-11-2017

Acts Referred:

Citation : (2017) 11 BOM CK 0056

Hon'ble Judges : Anoop V. Mohta, Manish Pitale

Bench : DIVISION BENCH

Advocate : Ramchandra Kanu Mendadkar, Tanaji Jadhav, S.B. Kalel

Final Decision : Allowed

Judgement

1. On 25.2.2008 the Scrutiny Committee passed an order rejecting claim of the Petitioner holding that his caste certificate was invalid. Aggrieved by the same, Petitioner filed Writ Petition No. 5833 of 2008 before this Court. On 15.10.2008, a Division Bench of this Court considered the contentions of the Petitioner, particularly the emphasis placed by the Petitioner on the fact that caste validity certificate had been granted in favour of his sister by the Committee earlier on 4.3.2005. It was also noted by this Court that the caste validity certificate had been granted to the Petitioner's sister on merits and that this was a strong proof, supporting claim of the Petitioner. It was also observed by this Court that an anomalous situation would be created where two siblings would be held to be belonging to different tribes or castes. In this situation, by order dated 15.10.2008, a Division Bench of this Court set aside order of the Scrutiny Committee and remanded the matter back for consideration.

2. Upon remand, it was expected that the Scrutiny Committee would take into account the observations of Division Bench of this Court while deciding the claim of the Petitioner. The Petitioner not only placed the validity certificate dated 4.3.2005 granted in favour of his sister, but he also placed other documents in support of his case, including document dated 2.1.1915 pertaining to his grand-

father, which mentions his caste as Thakar. Yet the Scrutiny Committee passed its order dated 31.12.2008 holding that claim of the Petitioner as belonging to Scheduled Tribe - Thakar, was invalid and consequently it cancelled and confiscated the caste certificate dated 8.1.2001 issued in favour of the Petitioner. While dealing with the validity certificate dated 4.3.2005 issued in favour of the sister of the Petitioner, the Scrutiny Committee observed that each case was to be decided on its own merits. The said order dated 31.12.2008 passed by the Scrutiny Committee is the subject matter of challenge in this writ petition.

3. The Petitioner herein is aggrieved by order of Respondent No. 2 - The Committee for Scrutiny and verification (for short "the Scrutiny Committee") dated 31.12.2008 whereby even after remand by this Court, the Scrutiny Committee has again held that the caste certificate of the Petitioner as belonging to the Scheduled Tribe is invalid. The Petitioner claims that the validity certificate already granted in favour of his sister, which has attained finality, has not been taken into account in proper perspective by the Scrutiny Committee while passing the impugned order dated 31.12.2008.

4. It is case of the Petitioner that he belongs to the Scheduled Tribe - Thakar in respect of which the Sub-Divisional Officer, Madha division, Kurduwadi, district Solapur had issued a caste certificate in his favour on 8.1.2001, on the basis of which he had appeared and he was selected in the office of Respondent No. 4 on the post of constable. But the Petitioner could not be appointed in pursuance of the said selection process in the absence of the validity certificate from the Respondent - Scrutiny Committee.

5. The Petitioner had submitted his caste certificate before the Respondent Scrutiny Committee, and on 5.2.2008 the Scrutiny Committee informed the Petitioner that some further documents were required, in pursuance of which the Petitioner appeared before the Scrutiny Committee on 17.2.2008 and submitted his written explanation.

6. Mr. R. K. Mendadkar, learned counsel appearing on behalf of the Petitioner submitted that the Scrutiny Committee was not justified in passing the impugned order, invalidating the caste certificate of the Petitioner, when sister of the Petitioner had been granted caste validity certificate by order dated 4.3.2005 passed by the Scrutiny Committee itself. It was contended that the Scrutiny Committee ought not to have taken a different view in the case of the Petitioner because the relationship between the Petitioner and his sister was not disputed. It was further contended that under the garb of deciding each case on its own merits, the Scrutiny Committee could not have taken a different view in the case of the Petitioner. He further relied upon judgment of this Court in the case of Ashwini Vilas Chavan, Petitioner Vs. State of Maharashtra & Ors., Respondents, 2017 (3) Mh.L.J. 953 which emphasises on the necessity of upholding caste / tribe claims of close blood relations on the paternal side.

7. On the other hand, Mr. S. B. Kalel, learned AGP appearing on behalf of the

Respondents submitted that the impugned order passed by the Scrutiny Committee was justified and that the Petitioner failed to prove his caste / tribe claim.

8. We have heard the learned counsel appearing for the respective parties and perused the record. We find that the relationship between the Petitioner and his sister is of significance in the present matter because sister of the Petitioner has been already granted a caste validity certificate dated 4.3.2005 by the Scrutiny committee itself, categorically upholding her claim of belonging to Scheduled Tribe - Thakar. The genealogy of the Petitioner, which was on record before the Scrutiny Committee, is as follows: "TREE CHART OMITTED"

9. The above stated genealogy of the family is not disputed by the Respondents. It is also not the case of the Respondents that the caste validity certificate issued in favour of sister (Manisha) of the Petitioner on 4.3.2005 was obtained on the basis of fraud / fabrication. The caste / tribe claim of siblings and close blood relations on the paternal side has to be uniform, as it appears in the present case. In fact, it is only logical that uniformity is to be maintained insofar as the decisions regarding caste / tribe claims of persons belonging to the same family are concerned. A person inherits caste / tribe from the paternal side and if genealogy of the family is not in dispute and the record shows that caste validity certificates have been issued to close blood relations on the paternal side, which have attained finality, there is no reason why claims made on the basis of such validity certificates cannot be granted. It would be a travesty if the claim of each and every blood relation is put to scrutiny and verification by the Scrutiny Committee repeatedly despite caste validity certificates of close blood relations available on record. It would be in the interest of the verification process if such caste validity certificates of close blood relations are relied upon and caste validity is granted, otherwise it would be sheer waste of precious judicial time to keep on verifying claims of close blood relations one after the other.

10. This Court on earlier occasions has held that when caste validity certificate is granted on proper scrutiny to close blood relations, it ought to be relied upon while verifying the caste / tribe claim of other blood relations of paternal side. A Division Bench of this Court has taken note of series of judgment and orders of this Court while emphasising on uniformity in upholding caste / tribe claim of near blood relations in the case of Ashwini Vilas Chavan, Petitioner Vs. State of Maharashtra & Ors., Respondents, 2017 (3) Mh.L.J. 953 , to which one of us (Anoop V. Mohta, J.) was a member and it has been held as follows: "Conclusion "11. Strikingly, the legal and the constitutional rights, benefits, the concessions and the relaxation are well recognized. The genuine cases are required to be concluded so also the un-genuine cases. The caste claim cases cannot be decided stubbornly by clinging to the routine and stereo type reasons. Once the committee validate the caste certificate / claim, it binds not only the claiming person but to the future generations of the whole family. All the concerned are bound by the law of binding precedents including the committee. The facts based

caste claims need to be decided keeping in mind the provisions of law and the Judgments on the connected issues. The copies of the judgments / orders are required to be placed on record of the committee by the concerned parties. The committee to pass 2 the final order promptly so that future and further consequential action arising out of it be complied with at the earliest. The committee in no case deny the caste claim by disregarding the law and the judgments. The scope and power of the committee is very limited while deciding such issues when there is no case of fraud or misrepresentation made out from the record. The judgments so referred above have concluded that the paternal side relatives" caste validity certificate, unless quashed and set aside, must be relied upon. The State and / or the concerned authority is required to issue such circulars as observed in Sanjay Bajirao More and Anr. Vs. State of Maharashtra and Ors., 2015 (6) Mh. L.J. 822 to avoid delay and physical and mental harassment to the concerned persons who are seeking such caste certificates. This would also avoid unnecessary litigation / conflicts with the State and the related authorities when it comes to deciding the rights flowing from the State reservation policy."

Thus, it is clear that when caste validity certificates have been granted to close blood relations on the paternal side, the claims of other close relations ought to be upheld. It is only in cases where the earlier caste validity certificates of close blood relations are shown to have been obtained by fraud / fabrication, a detailed scrutiny and verification of the claims is required to be undertaken. The other situation in which further inquiry and verification would be necessary is - where the genealogy is disputed and it is found that there is any falsity or error in the genealogy brought on record. In the absence of any such objection raised, the caste validity certificates of close blood relations on the paternal side are required to be accepted for granting validity to subsequent claims.

11. In the instant case, even on the earlier occasion, in order dated 15.10.2008 passed in Writ Petition No. 5833 of 2008, while remanding the matter to the Scrutiny Committee, this Court had emphasised on the necessity to take into consideration the caste validity certificate granted in favour of the Petitioner's sister, and it was clearly stated that an anomalous situation, where siblings have different castes, cannot be contemplated. But the Respondent Scrutiny Committee, even after remand of the matter, has failed to take into consideration the said document in the proper perspective. The Scrutiny Committee has not found any material which would suggest that the caste validity certificate dated 4.3.2005 issued by the same Scrutiny Committee had been obtained on the basis of fraud or fabrication. The Scrutiny Committee has also not found any material which would demonstrate any false assertion or error in the genealogy on record. Therefore, the impugned order dated 31.12.2008 invalidating the caste certificate of the Petitioner is rendered erroneous and wholly unsustainable.

12. Accordingly, the writ petition is allowed in the following terms: (a) The impugned order dated 31.12.2008 passed by Respondent No. 2- Scrutiny

Committee is quashed and set aside.

(b) The Scrutiny Committee shall issue caste validity certificate in favour of the Petitioner within four weeks on production of an authenticated copy of this order.

(c) Rule is made absolute in the aforesaid terms with no order as to costs.