

(2023) 10 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No.3043 Of 2022

Shridhar

APPELLANT

Vs

Scheduled Tribe Caste Certificate Scrutiny Committee And
Others

RESPONDENT

Date of Decision : 31-10-2023

Acts Referred:

Maharashtra Scheduled Tribes (Regulation Of Issuance And Verification Of) Certificate Rules, 2003 — Rule 12, 12(2)

Citation : (2023) 10 BOM CK 0047

Hon'ble Judges : Prithviraj K.Chavan, J;Urmila Joshi-Phalke, J

Bench : Division Bench

Advocate : Ananta Ramteke, K.R.Deshpande

Final Decision : Allowed

Judgement

Urmila Joshi-Phalke, J

1. Heard learned counsel Shri Ananta Ramteke for the petitioner and learned Assistant Government Pleader Mrs.K.R.Deshpande for respondents.

2. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for parties.

3. The petitioner belonging to "Mana Scheduled Tribe" was recruited as Forest Labour on 8.3.1996. He had successfully completed term of five years as "Daily Wager" and, thereafter, after due process, was recruited on the post of Forest Guard. His caste claim was forwarded to respondent No.1 - the Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli (the Committee) on 20. 3.2009 through his employer along with all requisite documents. As per his contentions, pre-constitution documents show that his ancestor, i.e. great-grandfather Pandurang, was shown to be of tribe "Mana" and his grandfather Badu Pandurang also shown to be of tribe "Mana". The extract of school leaving certificate of the petitioner's cousin grandfather dated 1.4.1932 also shows his tribe as "Mana". On

the basis of these pre-independence documents, his cousin brother Ashish Murlidhar Narnaware and his elder brother Giridhar Tima Narnaware were issued Caste Validity Certificates. As per his contentions, he also placed reliance on the similar documents of pre-constitution which have probative value. However, the Committee had not considered the same and erroneously invalidated his caste claim. The order passed by the Committee is unjust, erroneous, and liable to be set aside.

4. The petition is strongly opposed by the State on the ground that without Vigilance Enquiry, the said validity certificates were issued to the brother and the cousin brother of the petitioner. After Vigilance Enquiry, the Committee found that there are adverse entries. Hence, the petition deserves to be dismissed.

5. Heard learned counsel Shri Ananta Ramteke for the petitioner and learned Assistant Government Pleader Mrs.K.R.Deshpande for respondents.

6. Learned counsel for the petitioner submitted that the Committee, while invalidating the caste claim of the petitioner, considered the Vigilance Report and ignored the documents which are of pre-independence era. The documents placed on record before the Committee are also relied by the Vigilance. There are several documents on record to show that the petitioner belongs to "Mana Scheduled Tribe". The ancestors of the petitioner namely great-grandfather Pandurang, grandfather Badu and cousin grandfather Mahadeo were recorded as "Mana". On the basis of the said report, and as per the order of the Honourable Apex Court, the Caste Validity Certificate were issued to the brother and the cousin brother of the petitioner. The observations of the Committee, that no Vigilance was conducted and the Caste Validity Certificate were issued, are erroneous. After adjudicating the caste claims of the brother and the cousin brother of the petitioner, the Honourable Apex Court directed the Committee to issue the Caste Validity Certificates. As such, the Committee ought to have considered the caste claim of the petitioner and granted the petitioner Caste Validity Certificate.

7. Per contra, learned Assistant Government Pleader for respondents submitted that there are adverse entries and earlier Caste Validity Certificates were issued without conducting Vigilance. She supported the order of the Committee and prayed for dismissal of the petition.

8. After hearing both the sides at length and perused the record maintained by the Committee, it apparently shows that extracts of register of tax issued in names of the petitioner's great-grandfather Pandurang and grandfather Badu Pandurang are of the year 1948-49 showing them as "Mana". And, cousin grandfather Mahadeo Badu, as per extract of school leaving certificate, is shown to be "Mana". The Vigilance Report also shows that the Vigilance Officer has also placed reliance on the same documents. The order passed by the Committee shows that during the Vigilance Enquiry the Vigilance Officer has collected the documents as P1 in the name of the petitioner's great-grandfather namely

Pandurang, who is shown to be "Mana". Grandfather Badu, whose tax receipts show him as "Mana" and cousin grandfather's (Mahadev) school leaving certificate also shows him as "Mana". Thus, there are consistent entries during the pre-constitution era which show that forefathers of the petitioner were recorded as "Mana". It is settled position that the said pre-constitutional documents are having a probative value.

9. Perusal of the order passed by the Committee shows that only reason assigned by the Committee in the order is that while granting the Caste Validity Certificates to the petitioner's brother and cousin brother, Vigilance Enquiry is not conducted. The adverse entries, on which the Committee placed reliance, are subsequent entries after independence. As observed earlier, the pre-independence entries are to be taken into consideration which are having a probative value. The Committee has not assigned any other reason while invalidating the caste claim of the petitioner.

10. The observations of the Committee that the earlier Caste Validity Certificates are not issued after Vigilance Enquiry are such as if it is an appellate authority of the earlier Committee. The Committee has ignored that the Caste Validity Certificates granted to the family members by the order of the Honourable Apex Court were after adjudicating the issue.

11. Once the Honourable Apex Court considered documents and granted Caste Validity Certificates, the Committee ought to have accepted the same and granted Caste Validity Certificate.

12. The observation of the Committee is against the settled principles.

13. The Honourable Apex Court in the case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. The State of Maharashtra and Ors, reported in 2023(2) Mh.L.J. 785 observed that if an applicant is able to produce authentic and genuine documents of the pre-constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. The documents of the pre-constitution period showing the caste of the applicant and their ancestors have got the highest probative value, is observed by the Honourable Apex Court in the case of Kumari Madhuri Patil and anr vs. Additional Commissioner, Tribal Development and ors, reported in AIR 1995 SC 94.

14. The Committee has assigned the reason that earlier no Vigilance is conducted before granting the Caste Validity Certificates.

15. Rule 12 of the of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 lays down procedure to be followed by the Committee.

Sub rule (2) of Rule 12 clearly provides that if the Committee is not satisfied with documentary evidence produced by applicant, the Committee shall forward applications to the Vigilance Cell for conducting school, home and other enquiry.

16. The Honourable Apex Court in the case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti cited supra observed that when sub rule (2) of Rule 12 contemplates that only if the Committee is not satisfied with documents produced by applicant that case should be referred to Vigilance Cell, it follows that the Committee is required to pass an order recording brief reasons why it is not satisfied with documents produced by applicant. Before referring case to the Vigilance Cell, application of mind to material produced by applicant is required and therefore, application of mind must be reflected in order sheets of the Committee.

17. In the light of the above observations, in the present case, nothing is on record to show that before referring the caste claim of the petitioner to the Vigilance Cell, the Committee recorded its dissatisfaction as to the documents produced and recorded any reasons for referring claim to the Vigilance Cell. On the contrary, the order reflects that the Vigilance Cell has also collected the similar documents which are of pre-independence era which consistently shows that forefathers of the petitioner were recorded as "Mana". The Committee has not assigned any reason why it has not considered the earlier Caste Validity certificates issued to the brother and cousin brother of the petitioner. In fact, it appears from the Caste Validity Certificate issued to the petitioner's real brother Giridhar Tima Narnaware that the Honourable Apex Court directed to issue Caste Validity Certificate by adjudicating his caste claim in CA No.5270/2004 which has attained finality. The petitioner's cousin brother Ashish Murlidhar Narnaware was also granted Caste Validity Certificate by order of the Honourable Apex Court after adjudicating the caste claim in CA No.5270/2004. As observed earlier, that the observations of the Committee not accepting the Caste Validity Certificates issued to the family members of the petitioner, are contrary to the law.

18. Thus, in the light of the above said judgment it is the discretion of the Committee whether the claim is to be forwarded to the Vigilance Cell for conducting an enquiry or not. This question also dealt by the Division Bench of this Court in the case of Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010 (6) Mh.L.J. 401. Para 7 of the said decision reproduced below :

"we thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the Committee may grant such certificate without calling for Vigilance Cell Report. However, if the Committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it."

It is further held by the Division Bench that in the circumstances we are of the view that the Committee which has expressed a doubt about the validity of the caste claim of the petitioner and has described it as a mistake in its order ought not to have arrived at a different conclusion. The matters pertaining to the

validity of caste have a great impact on the candidate as well as on the future generation in many matters varying from marriage to education and enjoyment. A merely different view on the same facts could not entitle the committee dealing with the subsequent caste claim to reject it.

19. Here, in the present case, admittedly, it is not the observation of the Committee that earlier Caste Validity Certificates were obtained by fraud or misrepresentation. As there is no observation that the earlier Caste Validity Certificates were obtained by fraud, the Committee cannot refuse to grant the Caste Validity Certificate to the petitioner. The Caste Validity Certificates granted to the real brother and cousin brother of the petitioner are after adjudication by the Honourable Apex Court.

20. In the light of the above discussion, we find that the findings of the Committee are erroneous and liable to be set aside. The entries which are of pre-independence era which sufficiently show that the ancestors of the petitioner were "Mana" and, therefore, we proceed to pass following order:

ORDER

(1) The writ petition is allowed.

(2) The order dated 6.9.2018 passed by the Committee invalidating the tribe claim of the petitioner is set aside.

(3) It is declared that the petitioner belongs to "Mana Scheduled Tribe" and the Committee to issue Caste Validity Certificate to the petitioner within a period of six weeks from the date of receipt of writ of this order.

Rule is made absolute in the aforesaid terms. No order as to costs.