

(2013) 12 GUJ CK 0151
In the Gujarat High Court

Case No : Special Civil Application No. 30797 of 2007

Siddarth Parashram Sardar		APPELLANT
	Vs	
State of Gujarat and Others		RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0151

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Saurin A. Mehta, for Mr. Devang Nanavati, for the Appellant; V.S. Pathak, AGP for the Respondent No. 1 and Mr. Prashant G. Desai, Advocate for the Respondent No. 6, for the Respondent

Judgement

S.R. Brahmbhatt, J.—The petitioner by way of this petition has approached this Court invoking Articles 226 and 227 of the Constitution of India with following prayers.

(A) This Hon''ble Court may be pleased to issue a writ of certiorari or any other appropriate writ or direction quashing and setting aside the impugned order dated 1/12/2007 passed by the President, Scrutiny & State Level Committee, the Additional Secretary, Social Welfare Justification and Authority Division, of Director, Scheduled Castes Welfare, Respondent No. 2. Herein at Annexure "M" to the petition.

(B) Pending hearing and final disposal of the petition, this Hon''ble Court may be pleased to stay the operation, implementation and execution of the impugned order dated 1/12/2007 at Annexure "M" to the petition and be further pleased to direct Respondent Collector, Surat and the Municipal Corporation, Surat, not to implement the impugned order.

(C) Ad interim relief in terms of para (B) above may kindly be granted.

(D) Grant such other and further relief as this Hon''ble Court deems just and

proper in the interest of justice.

Thus, essentially what is under challenge in this petition is the order dated 1st December, 2007 passed by the respondent cancelling the Caste Certificate issued to the petitioner on 30th September, 1993 to the effect that the petitioner being member of "Mahar" community, he is Scheduled Caste and therefore, entitled to the benefits available under the Constitution on that basis.

The fact in brief leading to filing this petition as could be culled-out from the memo of the petition deserve to be set-out as under.

2. The petitioner was elected as Corporator in Ward No. 28, Udhana, Udyog Nagar in Surat Municipal Corporation. The elections were held on 11th December, 2005. The seat on which the petitioner contested the election was earmarked for Schedule Caste candidate and as petitioner held schedule caste certificate contested the election and secured the seat as a Corporator for representing the citizens of Ward No. 28. The petitioner's father had migrated to the territory of the State of Gujarat, way back in the year 1956 or there around and petitioner was born in 1967. The petitioner was born in village called Tamasvadi situated in Maharashtra, which was erstwhile known as Bombay State comprising territory of Maharashtra as well as, territory part of present Gujarat. The petitioner's elder brother has secured employment in Gujarat Police and he was serving as Constable and retired as such. The petitioner was prosecuting his studies in the State of Maharashtra till 7th standard and thereafter he migrated to Gujarat and joined his parents and studied upto 8th standard. Thereafter, was eking out his living by running grocery shop. The petitioner belonging to Mahar community, which was declared to be Scheduled Caste community as per the order of the President in the year 1950 and the said community is also acknowledged as Scheduled Caste community so far as the State of Gujarat is concerned, as on account of bifurcation of State of Mumbai, the requisite orders issued in the year 1976. The petitioner was issued Certificate in the year 1993 as stated hereinabove in respect of acknowledging his caste status based whereupon he contested election on the reservation category seat and got seat. The rival candidate, who got defeated, who lost election against the petitioner moved authorities and put the machinery into motion contending that the Caste Certificate held by the petitioner was not correct and he was not entitled to be treated as Scheduled Caste candidate. The competent committee issued notice to the petitioner. The complaint was made on 27th May, 2005 and show cause notice based thereupon issued on 18th March, 2007. The petitioner replied the show cause notice inter alia contending that his father had migrated to the State of Gujarat and was residing in Gujarat. His brother was working with Police Department and produced the requisite documents. However, two documents viz. lease deed indicating that the father of the petitioner was staying at Surat and the certificate issued by Trustee in support thereof were not produced to the authorities. But, other documents, which are relevant, were produced. The authorities after perusing those documents came to the conclusion that the

petitioner himself had not migrated. As per the relevant requirement of Government Resolution dated 30th March, 1998, he could not have validly held certificate of Scheduled Caste and based upon the reasoning, the certificate was revoked vide order dated 1st December, 2007, which is subject matter of challenge in this petition filed under Articles 226 and 227 of the Constitution of India.

3. Learned advocate for the petitioner invited this Court's attention to the Certificate issued to the petitioner in the year 1993 and submitted that the said certificate was issued by the Competent Authority based upon the documents mentioned thereunder viz. the domicile certificate and the requisite inquiry to be conducted by the Competent Officer-Mamlatdar. This certificate, thus was issued validly and therefore, there was no question of challenging the same on specious plea that the petitioner had not been answering the requirement mentioned in the G.R. of 30th March, 1998. The Caste Certificate of the petitioner indicates that the certificate is issued in the year 1993 and the certificate is required to be issued as it cannot be disputed that the petitioner belonging to Mahar community, which have been recognized as Scheduled Caste in Gujarat and Maharashtra as could be seen from the facts narrated hereinabove.

4. Learned advocate for the petitioner invited this Court's attention to the document at page No. 15, which is affidavit of one of the Trustees, where the petitioner's father was engaged for doing the work of sweeping etc. This affidavit was not part of the documents produced before the authorities concerned. The petitioner's counsel thereafter, invited this Court's attention to the document called rent agreement, which is said to have been executed on 23rd August, 1956. This document was also not produced before the authorities. Therefore, there was a contention raised in the affidavit-in-reply that the documents were not forming part of the order delivered by the committee. The counsel for the petitioner based upon 1962 document, contended that the original copy produced at page No. 18-A, leaves no manner of doubt qua its contents, as the document is self explanatory, which would clearly establish that the petitioner's father was resident of Surat atleast on or about 1956 and thus, he could be said to be a domicile of the part of the State of Gujarat, which was to come into existence on 1st May, 1960. The petitioner's father was thus, resident of Surat and the documents produced on record have not been controverted or shown to be incorrect in any manner by the respondents in the reply. The respondents have rested their case by merely saying that these documents were not produced at the relevant time.

5. Learned advocate for the petitioner thereafter contended that the brother of the petitioner, who had secured employment with Police Department and was working as Constable and who retired as First Grade Head Constable, was domicile of the State and the document in support thereof could be seen at page No. 72. This document and the State Government's Provident Fund document qua his brother formed part of the representation, which had been considered by

the authorities for deciding the case qua caste so far as the present petition is concerned.

6. Learned advocate for the petitioner invited this Court's attention to the page No. 25 and submitted that in view of the order the caste "Mahar" is figuring at serial number 17 and thus, from any angle the petitioner could not have been denied the status of the Scheduled Caste as sought to be said by the original complainant and relying thereupon the authority erroneously and illegally revoked the Certificate vide order dated 1st December, 2007 which is impugned in this petition.

7. Learned advocate for the petitioner invited this Court's attention to the Division Bench decision of this Court in case of Ravindra M. Warde Vs. State of Gujarat in Special Civil Application No. 7835 of 1993 decided on 8th December, 1997, which give rise to the resolution dated 30th March, 1998 there also the facts are almost identical as could be seen from the observation made on page Nos. 41, 42 and 43. The present petitioner's case could not have been distinguished by the respondents or else it will work as an absurd premise on which the petitioner is sought to be deprived of the benefit of Scheduled Caste status.

8. Learned advocate for the petitioner invited this Court's attention to the affidavit-in-reply filed by one Shri Damor, and submitted that there is a clear admission on the part of the State that the petitioner's brother was working in Police and he was thus domicile of the State prior to 1960. The brother and father of the petitioner have been in State of Gujarat since 1952 as could be seen from the documentary evidence. So far as the brother is concerned, his existence in Gujarat is in the year 1952. The certificate is produced at page No. 72 and the father's existence in Gujarat was atleast from the year 1956, as could be seen from the rent agreement, which documents have not been controverted or said to be in any manner incorrect by the respondents.

9. Learned AGP appearing for the State invited this Court's attention to the affidavit-in-reply filed by one Shri Damor and contended that as the present petitioner did not meet with the criterion prescribed in Government Resolution dated 30th March, 1998 his Caste Certificate was rightly revoked. Learned AGP invited this Court's attention to the Government Resolution dated 30th March, 1998 and read it very closely to emphasis the conditions prescribed thereunder, which indicate that the candidate has to fulfill and answer those conditions for being eligible to receive Scheduled Caste Certificate as envisaged thereunder. Learned AGP further contended that as the petitioner admittedly prosecuted his studies in the State of Maharashtra and migrated to the State of Gujarat only after he completed his study upto 7th standard, as could be seen from the School Leaving Certificate, he could not have been said to have been answering the criterion and conditions laid down in the Government Resolution dated 30th March, 1998 and therefore, the petition being hopelessly meritless, deserves to be dismissed.

10. Learned AGP invited this Court's attention to the averments made on page No. 84, the part of the affidavit-in-reply and contended that the facts of the present case are distinguishable from that of the case relied upon inasmuch as in the case before the Division Bench. The observations indicate that the petitioner and his forefather were residing in the State of Gujarat and they were domicile and hence, it was found to be appropriate for the Court to pass an order in favour of the petitioner thereon. Whereas in the instant case, the fact indisputably indicate that the petitioner came to the State of Gujarat only after passing his 7th standard examination in the State of Maharashtra and therefore, he was not entitled to the benefit of certificate as he was not fulfilling the criteria and conditions laid down in the Government Resolution dated 30th March, 1998. Therefore, the order passed by the authority, impugned in this petition is just and proper and the petition be dismissed.

11. The Court has considered the rival contentions and the documents annexed to the petition. The fact remains to be noted that the petitioner has produced on the record of this petition very important documents viz. (1) The rent agreement dated 23rd August, 1956, (2) Certificate issued by the Police Officer in respect of his brother dated (sic)/09/1991, indicating that the petitioner's brother was in service and retired as such from the State Police Services, (3) The original Certificate, which had been issued to the petitioner in the year 1993, which is based upon the report inquiry by the Competent Officer, (4) Government of India's order of 1976, wherein "Mahar" caste of Gujarat also was acknowledged to be Scheduled Caste.

If all these documents are read in its totality, then one thing emerges very clearly, which can never be disputed that the petitioner belongs to the community called "Mahar". Now, it is not disputed by anyone that "Mahar" community has been recognized as Scheduled Caste community in State of Maharashtra and also in State of Gujarat. The Government Resolution dated 30th March, 1998 pressed into service in my view, cannot have any effect so as to whittle down the purport and effect of the order of 18th September, 1976 produced at page No. 25. Thus, on the strength of this, one can safely conclude that the certificate given to petitioner in the year 1993 did not deserve to be revoked under any circumstances.

12. Having considered the aforesaid material, the Court come to the conclusion that the petitioner belonged to "Mahar" community and as such entitled for Certificate on the basis of 1976 order at page No. 25. Let us examine the rival contentions in light of the Government Resolution dated 30th March, 1998 also. The Government Resolution dated 30th March, 1998 if read in its totality would clearly indicate that the word "belonging" is to be understood in terms of the family and as such, when petitioner's family is said to have been residing in Gujarat since 1952 when a part of the Gujarat was part of the State of Mumbai, then the artificial distinction sought to be made in the case of the present petitioner singling him out on account of the strength of word "applicant" cannot

be permitted to be read as if the word denotes the applicant sense his family in the instance case, his father, brother, mother and other people. The word domicile and the word belonging are to be read in the context of the handicaps, those are suffered by the family on account of the status and therefore, in my view, the action of the respondent in revoking the Certificate being patently illegal and therefore, the order is required to be quashed and set aside.

13. It is also required to be noted at this stage that the State has not disputed the fact that the petitioner's father and elder brother infact migrated to the State of Gujarat or in the territory of the Surat, which was originally forming part of the State of Mumbai, but after 1960 it become part of State of Gujarat so as to fulfill the condition mentioned in Government Resolution dated 30th March, 1998. Thus, on all these grounds, this Court is convinced that the order impugned deserve to be quashed and set aside and is accordingly set aside. In the result whereof, the Certificate issued in favour of the petitioner in the year 1993 is said to have been revived and is enduring in favour of the petitioner for all purposes. Rule made absolute. No order as to costs.