

(2015) 01 BOM CK 0274

In the Bombay High Court

Case No : Writ Petition Nos. 326, 466 and 468 of 2015

Siddheshwar

APPELLANT

Vs

Divisional Caste Certificate Scrutiny Committee No. 2 Akola
and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : (2015) 5 MhLj 100

Hon'ble Judges : B.R. Gavai, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : N.B. Kalwaghe, for the Appellant; Bharti Danere, G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J—Rule. Rule made returnable forthwith. All the three writ petitions are heard finally by consent of the parties. These three cases are the classic example as to how callously the members of Scrutiny Committee are indulging in harassing the citizens.

2. The petitioner in Writ Petition No. 326 of 2015 claiming to be belonging to Rajput Bhamta, which is recognized as Vimukta Jati, had applied for grant of certificate belonging to Rajput Bhamta (Vimukta Jati). On 17-6-2003 the certificate came to be issued by the competent authority, i.e. Sub-Divisional Officer. On the basis of the claim of belonging to Rajput Bhamta (Vimukta Jati), the petitioner came to be appointed as a primary teacher in Government Ashram School. Since the petitioner was appointed from reserved category, the petitioner's claim came to be referred to the Scrutiny Committee for considering grant of validity certificate. The claim of the petitioner was referred by the Committee to the Vigilance Cell. Though prima facie the report of the Vigilance Cell was in favour of the petitioner, the Scrutiny Committee vide order dated 28-11-2011 rejected the petitioner's claim.

3. Being aggrieved thereby, the petitioner approached this Court by way of Writ Petition No. 6200 of 2011. This Court vide order dated 26-4-2012 remanded the matter to the Scrutiny Committee. The Scrutiny Committee again vide second order dated 18-10-2012 rejected the claim of the petitioner and directed the caste certificate of the petitioner to be forfeited.

4. Being aggrieved thereby, the petitioner approached this Court by way of Writ Petition No. 5597 of 2012. This Court vide order dated 28-1-2013 observed that the Scrutiny Committee had not considered the validity certificate granted in favour of close relatives of the petitioner and, therefore, again remanded the matter. Again vide impugned order, the Scrutiny Committee has invalidated the claim of the petitioner. Being aggrieved thereby, the present writ petition.

5. The perusal of the impugned order would reveal that, it is observed that insofar as the validity granted in favour of the relatives of the petitioner is concerned, the petitioner had failed to establish the close relationship with the persons in whose favour the validity was granted. The perusal of the report of the Vigilance Cell dated 28-6-2013 would reveal that the Vigilance Cell had conducted the home enquiry and also enquired into the relationship of the petitioner with the persons whose validity certificates were placed on record. The perusal of the Vigilance Cell report would further reveal that the Vigilance Cell had also examined the family tree and upon examination of the family tree, it was found that the petitioner had close relations with the persons in whose favour the validity has been granted. The Vigilance Cell, at internal pages 6 and 7, has considered the validity granted in favour of various relations of the petitioner and the documents in support of the relationship of the petitioner with the said persons. The Vigilance Cell has specifically come to a finding that the persons in column No. 1 were given validity certificates certifying them to be belonging to Rajput Bhamta (Vimukta Jati) and the perusal of the chart at Sr. No. 2 established that the petitioner had placed documents to establish his relationship with the persons in whom the validity was granted. Not only this, but the perusal of the statements of witnesses recorded by the Vigilance Cell also fortify that the petitioner belongs to Rajput Bhamta (Vimukta Jati). It could thus be clearly seen that the report of the Vigilance Cell clearly establish that the persons to whom the validity certificate were granted were having close blood relations with the petitioner. If the Scrutiny Committee was of the opinion that the report of the Vigilance Cell was not in accordance with law, then it was incumbent upon the Scrutiny Committee to record the finding that the report of the Vigilance Cell was not correct and ought to have given an opportunity to the petitioner, if it desired to differ with the finding of the Vigilance Cell. Having not done so, we are of the considered view that the Scrutiny Committee has failed to apply its mind properly and the Scrutiny Committee erred in holding that there were no material to establish the relationship of the petitioner with the persons in whose favour the validity certificate was granted. We have no hesitation to hold that the finding of the Scrutiny Committee is without any application of mind. We therefore, hold that the rejection of the claim of petitioner Siddheshwar

More is not sustainable.

6. Two more identical petitions with which we are dealing are more glaring. Insofar as petitioner Ashish Solanki in Writ Petition No. 466 of 2015 is concerned, the petitioner has been granted caste certificate by competent authority on 21-10-2008. Since he has taken admission for M.B.B.S. Course in respondent No. 2 College on the basis of the claim of belonging to Rajput Bhamta (Vimukta Jati), his claim came to be referred to the Scrutiny Committee. Since the petitioner's claim was not validated, he was required to approach this Court for obtaining certain orders regarding protection of his admission and for protection of his internship, etc. Though the petitioner had placed on record ten validity certificates granted in favour of the petitioner's relatives including his real sister namely Ashwini Prakash Solanki, the claim of the petitioner came to be invalidated on the ground that the value of the document pertaining to distant relative is more than the value of the documents pertaining to close relative. It appears that the members of the Scrutiny Committee are not aware of even the law as laid down by the Division Bench of this Court in the case of Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medical Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences, (2011) 2 BomCR 824 , wherein this Court in unequivocal terms has held that if a sibling is granted validity certificate, the another sibling should not be denied the validity certificate. It is a different matter if the Committee comes to a finding that the sibling in whose favour the validity is granted is obtained by fraud. However, such is not the case here. Apart from that even in the present case the report of the Vigilance Cell, which is in detail, would reveal that the Vigilance Cell has found the claim of the petitioner to be genuine. The Vigilance Cell has further found that various documents in respect of the petitioner's close relatives have shown the caste of the petitioner to be belonging to Rajput Bhamta (Vimukta Jati). We, therefore, find that the rejection of the claim in case of the petitioner is totally on untenable ground. Not only that, but we are also of the view that the decision of the Scrutiny Committee is in contempt of the judgment of this Court in the case of Apoorva vs. D.C.C.S. Committee cited supra.

7. In the third case, petitioner Prajakta, who also claimed to be belonging to Rajput Bhamta (Vimukta Jati), was appointed in Rural Hospital, Soundad, District Gondia against the post reserved for Vimukta Jati, as such her claim to be referred to the Scrutiny Committee for verifying her caste claim. Since the petitioner's claim was not decided within a reasonable time, she was required to approach this Court with a prayer to issue directions to the respondent-Scrutiny Committee. The respondent-Scrutiny Committee passed an order dated 21-10-2014 thereby invalidating the claim of the petitioner.

8. It is to be noted that in the present case, the petitioner's father Ramdas Dhondur Gaikwad has already been issued a validity certificate dated 5-10-2010.

Not only that the petitioner's real brother Avinash Ramdas Gaikwad has also been granted validity certificate. Though there are other relatives in whose favour the validity is granted, we do not find it necessary to refer to them. Insofar as the petitioner's brother Avinash is concerned, the respondent-Scrutiny Committee has not even taken into consideration the said validity certificate. However, insofar as the validity certificate in favour of petitioner's father is concerned, the same has been ignored on the ground that the validity certificate is in favour of a blood relative and, therefore, cannot be held to be valid. Again at the cost of repetition, we have to say that the view taken by the Scrutiny Committee is not only totally unsustainable, but is in contempt of the view taken by this Court in the case of Apoorva vs. D.C.C.S. Committee cited supra. It is the contention of the petitioner that the copy of the Vigilance Cell was not supplied to the petitioner. However, the learned counsel for the petitioner has placed on record a copy of the report of the Vigilance Cell. The copy of the report of the Vigilance Cell would reveal that the Vigilance Cell has specifically referred to the validity certificate granted in favour of the petitioner's father, the petitioner's real brother and the petitioner's real uncle. As usual the Scrutiny Committee has again ignored the said Vigilance Cell report. In that view of the matter, we find that the impugned order rejecting the validity certificate in favour of the petitioner is also not sustainable.

9. At this stage, Mrs. Bharti Dangre, the learned Government Pleader graciously states that the Scrutiny Committee is willing to reconsider the matter and pass appropriate orders in accordance with law.

10. We have ample experience of the Scrutiny Committee, time and again it is found that in spite of remand and in spite of direction by the Court to consider the validity certificate of the blood relatives, the Scrutiny Committee goes on repeating the same orders and goes on invalidating the claims of the petitioners by ignoring not only the validity certificate granted in favour of the close relatives, but also in ignorance of the law laid down by this Court in the case of Apoorva vs. D.C.C.S. Committee cited supra. In that view of the matter, we do not want another exercise to be done by the respondent Scrutiny Committee, so as to compel the petitioners to have another round of litigation before this Court. We have already discussed herein above as to how the claim of all the three petitioners is substantiated by the documents placed on record, the validity certificates given in favour of their close relatives and also in view of the reports of the Vigilance Cell. In that view of the matter, we find that the petitions deserve to be allowed.

11. The impugned orders passed by the respondent Scrutiny Committee invalidating the claim of the petitioners belonging to Rajput Bhamta (Vimukta Jati) are quashed and set aside. It is held that the petitioners belong to Rajput Bhamta (Vimukta Jati). The respondent Scrutiny Committee is directed to issue validity certificate in favour of the petitioners within a period of two weeks from today.

12. The respondents-State is directed to pay costs of Rs. 5,000/- each. The costs be paid to the petitioners within a period of two weeks from today.

13. Needless to state that the respondents-State would be at liberty to recover the costs from the person, who are found at fault and responsible for the same.

14. Rule is made absolute in the aforesaid terms with costs.

15. As we have seen that the approach of the Scrutiny Committee is to anyhow harass the applicants before it and go on denying the claim of the eligible candidates and also pass the orders in ignorance of the law laid down by this Court in the case of Apoorva vs. D.C.C.S. Committee cited supra, we deem it necessary to issue notice to Shri H.P. Tummad, Additional Collector and Chairman of the respondent Scrutiny Committee, Shri Bhimrao Khandate, the Member and Kum. Prajakta Ingle, the Research Officer as to why an action should not be taken against them for having committed contempt of the judgment and order passed by this Court in the case of Apoorva vs. D.C.C.S. Committee cited supra. The notice is made returnable on 13-2-2015.

16. Shri H.P. Tummad, Additional Collector and Chairman of the respondent Scrutiny Committee and Shri Bhimrao Khandate, Member accept the notice. The Registry to ensure that notice is served upon Prajakta Ingale, the Research Officer, prior to returnable date.