
(2011) 09 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition No. 6553 of 2008

Sumitrabai Waghmare

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 4 ALLMR 788

Hon'ble Judges : T.V. Nalawade, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : S.J. Salunke holding for . and Mr. V.D. Salunke, for the Appellant;
K.J. Ghute-Patil, A.G.P. for Resp. No. 1 and Mr. A.R. Salve, Advocate, for the
Respondent

Judgement

T.V. Nalawade, J.—Heard both sides. Rule. Rule made returnable forthwith and taken up for final hearing by the consent of parties.

2. The petition is filed under Article 226 of Constitution of India to challenge the decision given by the respondent No. 2 -Caste Scrutiny Committee, Aurangabad. The Committee has rejected the claim of the petitioner that she belongs to "Mahadev Koli" community, a Scheduled Tribe in Maharashtra.

3. The petitioner is elected as a member of Village Panchayat of village Shimpe Takli, Tahsil Majalgaon, District Beed from a seat reserved for Scheduled Tribe category in the year 2007. She had produced a caste certificate issued by Tahsildar Majalgaon, District Beed dated 23.1.1986 to show that she belongs to this community. The caste certificate was referred to the Committee for verification by the Sub Divisional Officer, Ambejogai, District Beed.

4. The petitioner produced documents like her affidavit containing the family tree in respect of her father and the family tree in respect of her father-in-law. She also produced caste certificates issued to some relatives from her father's side, the certificate of validity of caste of her daughter and some other certificates.

The Committee referred the matter to Vigilance Cell. The Vigilance Cell submitted the report to Committee on 2.2.2008. Personal hearing was given to the petitioner on 29.2.2008 and the decision came to be given on 20.5.2008.

5. It was mainly submitted by the petitioner that the Vigilance Cell Report was not supplied to the petitioner on 7.2.2008 and her thumb impression was obtained to show that the report was supplied on 29.2.2008, the date of personal hearing. It was submitted that the principles of natural justice were not followed as the petitioner is illiterate lady and copy of Vigilance Cell Report was not supplied in advance, she could not give any explanation in the personal hearing.

6. In the order made by the Committee, it is mentioned that say of the petitioner was called on the enquiry report submitted by the Vigilance Cell on 7.2.2008 and so this Court asked the advocate- of the Committee to show that copy of the report was really supplied to the petitioner on 7.2.2008. A zerox copy of outward register, dated 7.2.2008 came to be produced to show that the amount of Rs. 36/- was shown to be spent in sending a copy of report to the petitioner on 7.2.2008. The advocate of the Committee was asked to show some record like receipt of the post office in aforesaid regard as the original record shows that thumb impression of the petitioner was obtained on 29.2.2008 in token of receipt of copy of Vigilance Cell Report. There is office copy of notice sent on 6.2.2008 for calling the petitioner for personal hearing on 29.2.2008. This record has created a probability that copy of Vigilance Cell Report was not sent to the petitioner in advance and a copy was supplied to her on 29.2.2008 when she appeared for personal hearing. As per printed form of personal hearing the routine information was collected from the petitioner on 29.2.2008. The Committee has considered the circumstances like mentioning of caste "Koli" in the school record of son of petitioner. The Committee has observed that the caste validity certificate produced by the petitioner is of relative from maternal side and so not much weight can be given to it. The Committee has observed that the petitioner ought to have produced some record of pre-1950 period. Some observations are made with regard to information supplied by the petitioner as regards God, Goddess, custom, occupation, etc. and it is mentioned that the information is not consistent with the information which is associated with the real scheduled tribe community people.

7. It is true that in such a case the record in respect of relatives from father's side needs to be given more importance. The petitioner has given description of the locality where her parents were living and she has also given names of her real brothers and sister. The Vigilance Cell Report shows that it collected information with regard to the relatives of petitioner from husband's side. The place like Patil Galli, Majalgaon where her brothers are living, was not visited and instead of that enquiry was made to the persons from Kalyannagar Shimpe Takli, Majalgaon where her husband is living. The Vigilance Cell Report shows that it found that the relatives from the father's side had not taken admission in Zilla Parishad School of their locality. There is copy of caste certificate of one

Balasaheb Ashruba Koli, who is said to be a son of real brother of petitioner and his caste is given as "Mahadev Koli" by Tahsildar Majalgaon. This record is not properly considered by the Committee. In any case there is no convincing record on the file of the Committee to show that the copy of Vigilance Cell Report was supplied to the petitioner. In view of the provisions of Rule 10 and 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, it needs to be presumed that sufficient opportunity was not given to the petitioner to establish her claim. The advocate of the petitioner relied on the observations made by the Apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . The Apex Court has observed that the principles of natural justice need to be followed during the enquiry held by the Committee. In view of the aforesaid circumstances, this Court holds that the order made by the Caste Scrutiny Committee cannot sustain in law.

8. So the impugned order dated 14.8.2008 passed by the respondent No. 2 - Committee is quashed and set aside and the matter is remanded back for fresh enquiry.

9. In view of the fact that the petitioner has contested election to Village Panchayat from a reserved category, the enquiry needs to be expedited. So the Committee is to complete the enquiry within five months from today. In aforesaid terms, rule is made absolute.