
(2023) 07 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 824 Of 2015

Suvarna

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 18-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 266, 341, 342, 366
Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis),
Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation
Of Issuance And Verification Of) Caste Certificate Act, 2000 — Section 7

Citation : (2023) 07 BOM CK 0046

Hon'ble Judges : Mangesh S. Patil, J;Shailesh P.Brahme, J

Bench : Division Bench

Advocate : V.S. Bedre,M.A. Deshpande

Final Decision : Allowed

Judgement

Mangesh S. Patil, J

1. Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP waives service for the respondent - State. At the joint request, the matter is heard finally at the stage of admission.

3. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the judgment and order passed by the respondent no. 2 – Divisional Caste Scrutiny Committee constituted under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, in a proceeding under section 7, refuting her claim as belonging to Hindu Mahar scheduled caste.

4. The learned advocate Mr. Bedre for the petitioner submits that the petitioner belongs to Hindu Mahar community. Her native is from Rahuri taluka, district -

Ahmednagar. Though there was ample material collected by the vigilance cell and available with the scrutiny committee to be looked into the committee has proceeded with a prejudiced mind. It has clearly ignored the favourable entries which were ample in number but readily accepted some record which was not even enough to entertain a doubt about petitioner's family having been converted to Christianity. The church had clearly informed the vigilance cell that none of the family members was ever baptized and none was the member of the church in the vicinity of their village. Besides there was old school record pointing out that the petitioner's paternal ancestors have been Mahar. There was sufficient and cogent material before the scrutiny committee even before it had entertained some doubt about such religious conversion, to emphatically reach such a conclusion. The committee illegally referred to observations of this Court in writ petition no. 5105 of 2013 dated 10-09-2013 in the matter of Santosh Shirsat V. Maharashtra State and others where there was material to draw inference that the family had converted to Christianity. Such is not the case here except the fact that during the home visit the vigilance officer had seen the cross and a bust of Jesus Christ inside the house. There was no material before the scrutiny committee to reach the conclusion it has. The observations are clearly perverse, arbitrary and deprive the petitioner a social status and the benefits derivable therefrom.

5. Per contra, the learned AGP supported the inference drawn by the scrutiny committee. She submitted that availability of the evidence gathered during the vigilance cell was decisive. In the petitioner's house a cross was painted on the entrance. There was a bust of Jesus Christ. Burials have taken place like those are followed in Christian community. Even names of some of the family members are typical of that community. Though the petitioner's paternal aunt Jai and Maribai are stated to be belonging to Mahar community in their school record, the names do not tally. Her grandfather is Keru Kondiba Kharat whereas names of these two women of whom school record was collected are Jaibai Mohan Kharat and Maribai Mohan Kharat.

The learned AGP would further submit that even the revenue record is not correct and reliable though the photographs of petitioner's marriage prima facie show performance of Hindu rituals, those photographs were not produced before the scrutiny committee. The scrutiny committee, therefore, was right in discarding that evidence. The decision has been reached by plausible appreciation of the material and this Court cannot sit in appeal.

6. We have carefully considered and appreciated the rival submissions and perused the papers.

7. At the outset, it is necessary to note that though the petitioner is heavily relying upon the school record of two women Jaibai Mohan Kharat and Maribai Mohan Kharat and though the first name of her paternal aunts tally, her grandfather's name is Keru Kondiba Kharat whereas the school record of Jaibai Mohan Kharat and Maribai Mohan Kharat has been produced. That being the

case, according to us, the scrutiny committee has not committed any error in discarding this evidence.

8. However, admittedly the school record of the petitioner's father of 1974 refers to him as Hindu Mahar. There are no allegations about there being any manipulation in this school record. Even there is a revenue record in the form of revenue receipt of 30-05-1956 and 30-04-1929 and which were produced before the scrutiny committee wherein at least on the receipt dated 30-04-1929, grandfather of the petitioner Kondiba Kanhu Kharat has been expressly described as Mahar. Even the committee while discarding the documents produced by the petitioner has expressly referred to it at serial number 9 and even noticed that word 'Mahar' is appearing against Kondiba Kanhu Kharat but has discarded it on the ground that these receipts are not indicative of the land having been given as a Mahar Watan.

9. Such a reasoning is clearly perverse and arbitrary. The committee was not called upon to consider if the family was holding some Mahar Watan land. It was called upon to consider if this old record was sufficient to substantiate, as a circumstance such a claim when there is a specific reference in this revenue receipt of petitioner's grandfather as Mahar. When there is no doubt about it being a genuine document, the committee could not have discarded it when it prima facie shows that petitioner's grandfather was being treated as Mahar in the year 1929 and he could not have willingly accepted when there was untouchability in existence. This was in our considered view, a clinching material to substantiate petitioner's claim.

10. Again, even if a cross was seen to have been painted on the entrance of the house and there was a bust of Jesus Christ found inside the house during the enquiry, the committee has not discussed as to why the explanation offered by the petitioner that it was a house of her paternal uncle Rajendra and not the house of his father was to be discarded. The committee has discarded it saying that the information was furnished by the petitioner's grandfather Keru.

11. Even if for the sake of argument, it is accepted that it was a house of the petitioner's father, still, when it comes to conversion to a different religion, the committee ought to have borne in mind that a person gets caste by birth and remains forever unless there are circumstances indicative of the individual having embraced not only a new order but has been outcaste from the original order. It is in this respect when the committee was made known by the vigilance report that the enquiry with the Church in the vicinity of the petitioner's native had clearly informed that there was no baptism of any of the petitioner's family members and they were not members of that church, merely because of finding the cross painted on the entrance and availability of a bust of Jesus Christ inside the house, in our considered view, is not sufficient for the committee to reach a conclusion about petitioner's conversion to Christianity and renouncing of the caste. There was no concrete proof before the committee to reach such a drastic conclusion.

12. In this regard, it would be apposite to reproduce some of the observations of this Court in the matter of Bhanudas Hona Gajbhiya Vs. State of Maharashtra and others; 2017(5) Bom.C.R. 252. It was also a similar case regarding alleged conversion of a Hindu Mahar to Christianity.

"31.

The petitioner belongs to Mahar Scheduled Caste. As far as freedom of religion is concerned, that is not to be confused and equated with the caste and tribe. The caste or tribe cannot be changed and there is no way one can enter into another caste or tribe and exit from one caste or tribe into another. Thus, religion can be changed but not the caste.

38. We do not see, therefore, justification for the conclusion in the instant case that because the petitioner is allegedly a Christian he is not a Scheduled Caste, namely, Hindu Mahar. Such a conclusion could have been recorded only after the Committee had concrete proof before it that as the petitioner claimed to be Hindu Mahar, his religion has a definite bearing. That is therefore relevant for the enquiry. There is therefore, justification to hold that if the petitioner was not a Hindu, then, he cannot be a Hindu Mahar. For a moment, we accept that such findings or conclusion could be reached but when Article 366 was referred containing definitions, even there, the Constitution clarifies that unless the context otherwise requires, the expressions therein have the meaning assigned to them, and Clauses 24 and 25 of Article 366 contains the same definitions, of Scheduled Castes and Scheduled Tribes and referable to Articles 341 and 342. If the petitioner claims to be belonging to Hindu Mahar Scheduled Caste, he has suppressed from the Committee earlier, as alleged by the respondent no.4 that he embraced Christianity. Being a Christian, then, the whole foundation of his claim falls to the ground. Such a conclusion can be reached only when there is solid proof of the petitioner embracing Christianity.

45. All the more, because the petitioner relied on some documents which establish that the Church addressed the communication. At serial no. 26, the Salvation Army, Divisional Headquarter, Tq. Shevgaon, District - Ahmednagar stated in its communication / letter that the petitioner Bhanudas Hona Gajbhiv was not baptized. Thus, no baptism ceremony was held. Equally, Parish Priest, Holy Spirit Church, Shevgaon addressed a communication. It is stated that the petitioner is not a member of the Church. This document is at serial no. 27. Similarly, at serial no. 28, the Headmaster of the Zilla Parishad, Primary School, Erandgaon, Tq. Shevgaon, District-Ahmednagar stated that the school leaving certificate of Sonyabapu Hona Gajbhiv contains an entry in the caste column as Mahar. However, this document was produced by the petitioner after the Vigilance Cell report. Since the contents thereof were not verified, the Committee chose to discard it or omit from consideration. We do not find anything in law, particularly, the Maharashtra Act No. XXIII of 2001 or Rules framed thereunder which prevented the Committee from getting in touch with the Church or the Headmaster and obtaining from them, the clarification whether they stand by the

contents of their Certificates issued and attributed to them or otherwise. It is in these circumstances, that the Zilla Parishad school record of Sonyabapu, Kamal Honaji and Bhagwan was extremely relevant. Merely because in these documents, the entries in the caste column are Hindu Mahar, they could not have been discarded and omitted from consideration.

46. We agree with Shri Barlinge that the Committee's order is therefore perverse and vitiated by non-application of mind. Reliance is placed by Shri Barlinge on the two judgments, firstly of the Hon'ble Supreme Court in the case of The Principal, Guntur Medical College, Guntur and others Vs. Y. Mohan Rao, reported in AIR 1976 S.C. 1904. In this case, the Hon'ble Supreme Court held that a person whose parents belonged to a Scheduled Caste before their conversion to Christianity can, on conversion or reconversion to Hinduism, be regarded as a member of Scheduled Caste only if he is accepted as a member of that caste by other members of the caste. On such acceptance, he would be eligible for the benefits of reservation of seats of the Scheduled Castes in the matter of admission to a medical college. Therefore, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, on conversion to Hinduism automatically as a matter of course. There has to be material to show that if the other members of the caste accept him as a member and admit him within the fold. However, for that purpose, there has to be proof of a person being born as Christian and converting to Hinduism. It is only then the latter part arises for consideration and not otherwise."

In the process, observations of the Supreme Court in the matter of Chaturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and others; AIR 1954 S.C. 236 were also referred from paragraphs no. 48 and 49.

"(48) Conversion brings many complexities in its train, for it imports a complex composite composed of many ingredients. Religious, beliefs, spiritual experience and emotion and intellectual conviction mingle with more material considerations such as severance of family and social ties and the casting off or retention of old customs and observances.

The exact proportions of the mixture vary from person to person. At one extreme there is bigoted fanaticism bitterly hostile towards the old order and at the other an easy going laxness and tolerance which makes the conversion only nominal. There is no clear-cut dividing line and it is not a matter which can be viewed from only one angle.

(49) Looked at from the secular point of view, there are three factors which have to be considered: (1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or excommunicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical purposes and when we have

to consider the legal and political rights of the old body the views of the new faith hardly matter.

The new body is free to ostracise and outcaste the convert from its fold if he does not adhere to its tenets, but it can hardly claim the right to interfere in matters which concern the political rights of the old body when neither the old body nor the convert is seeking either legal or political favours from the new as opposed to purely spiritual advantage.

On the other hand, if the convert has shown by his conduct and dealings that his break from the old order is so complete and final that he no longer regards himself as a member of the old body and there is no reconversion and readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages which are special to the old order."

13. Bearing in mind these principles, there is absolutely dearth of any material before the committee which could have enabled us to undertake a scrutiny from the angle discussed hereinabove before discarding the petitioner's claim on the ground of availability of only few of the circumstances hinting at the alleged conversion to Christianity.

14. There is one more circumstance relied upon by the scrutiny committee to draw the inference which it has. On the basis of the report of the vigilance cell it has found that some of the petitioner's relations were buried as a ritual and since even the Christianity follows the same mode of last rites, the petitioners family must be Christian.

15. Pertinently, in a reply to the vigilance cell report, the petitioner had expressly admitted about such burials having taken place in her family but she had expressly mentioned that such was a ritual being followed even in her Mahar caste. The committee has no explanation to discard this stand of the petitioner. Besides, the vigilance cell does not mention that such burials had taken place in Christian burial grounds. If such was the material before the committee, the conclusion drawn by it referring to this circumstance is again a perverse and arbitrary finding.

16. It is important to note that this was not the state-of-affairs and material available before the committee in the matter of Santosh Shirsat (supra) wherein the ancestors of the claimants therein were found to have been buried in christian burial grounds and plaque were found at the site. There was evidence that the relatives had visited Church and even the marriage of the daughter was performed as per Christian customs. Such is not the case in the matter in hand.

17. The petitioner has been married apparently according to Hindu rites. Photographs were made available to the scrutiny committee. The revenue record at least referred to the petitioner's grandfather as Mahar way back in the year 1929 and except the cross having been painted at the entrance and finding of a

bust of Jesus Christ inside the house, there was absolute no material before the committee to discard the petitioner's claim. The observations and conclusions of the committee are clearly perverse, arbitrary and capricious.

18. Writ petition is allowed.

19. Impugned order is quashed and set aside.

20. The respondent no. 2 – Divisional Caste Scrutiny Committee shall issue caste validity certificate to the petitioner as Hindu Mahar within two weeks.

21. Rule is made absolute accordingly.