

(2007) 07 BOM CK 0118
In the Bombay High Court
Case No : Writ Petition No. 3471 of 2007

Swami Kalavati

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4), 32, 341, 342
National Commission for Backward Classes Act, 1993 — Section 11, 11(1), 2

Citation : (2007) 6 ALLMR 789 : (2008) 1 MhLj 104

Hon'ble Judges : S.J. Vazifdar, J;P.R. Borkar, J

Bench : Division Bench

Advocate : V.D. Salunke, for the Appellant; N.B. Khandare, G.P. for Respondent
Nos. 1 and 2, for the Respondent

Judgement

S.J. Vazifdar, J.—Rule. Rule made returnable and heard forthwith.

Respondent No. 1 is impleaded through the Divisional Caste Certificates Scrutiny Committee, Aurangabad (hereinafter referred as the Scrutiny Committee). Respondent No. 2 is the Collector, Nanded.

2. The petitioner has impugned an order dated 5th June, 2007, passed by the Divisional Caste Certificate Scrutiny Committee, Aurangabad. The petitioner has also sought a Writ of Mandamus directing respondent No. 1 to validate the caste certificate issued in her favour stating her as belonging to the Jangam caste. The petitioner claims to belong to the Jangam caste which was recognised as a Other Backward Class by a Government Resolution of the State of Maharashtra dated 13-10-1967.

It is admitted that the petitioner's father was a resident of Andhra Pradesh prior to 13-10-1967; that the petitioner was born and completed her primary education, in Andhra Pradesh and that the petitioner got married and settled in Maharashtra after 1967.

3. The question that falls for consideration is whether the petitioner is entitled to

the benefits conferred by the State of Maharashtra on the members of her caste viz. Jangams, who belonged to the O.B.Cs. both in the State of Andhra Pradesh and in the State of Maharashtra when neither her father nor she were admittedly residents of the State of Maharashtra prior to 13-10-1967.

4. The petitioner obtained a caste certificate dated 23-5-2000 issued by the Sub Divisional Officer and Sub Divisional Magistrate, Nanded, Maharashtra. Respondent No. 2 conducted the Zilla Parishad and Panchayat Samiti Elections for the Nanded District for the years 2007-2012. The petitioner contested the election against a seat of the Eklahara-Mukhed Division Gat No. 60 reserved for O.B.Cs. The Returning Officer declared the petitioner as elected on 12-3-2007.

5. The intervenor, the defeated candidate, raised an objection regarding the petitioner's caste certificate before respondent No. 2. Respondent No. 2 therefore forwarded the petitioner's caste certificate to the Scrutiny Committee for verification. The Vigilance Cell submitted a report dated 20-5-2007 which supports the petitioner's claim as belonging to the Jangam caste.

6. The Scrutiny Committee by the impugned order dated 5th June, 2007 observed that on the basis of the evidence, prima facie, it appeared that she belonged to the Jangam caste. Despite the same, the Scrutiny Committee invalidated her caste certificate and forfeited the same on the ground that neither the petitioner nor her father were residents of the State of Maharashtra prior to 13-10-1967.

The Scrutiny Committee therefore held that all benefits availed of by the petitioner are liable to be recovered. Accordingly, the Divisional Commissioner, Aurangabad, respondent No. 2, was directed to cancel the candidature of the petitioner at the said elections. Finally, the Scrutiny Committee authorised the Tahsildar to register a complaint against the petitioner u/s 11 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000.

7. The question that falls for our consideration is answered in the negative, against the petitioner by three judgments of the Supreme Court and two Division Bench judgments of this Court.

In view thereof, it would not have been necessary for us to deal with the matter in any detail. However, Mr. Salunke relied upon a judgment of a learned Single Judge of the Patna High Court in the case of Dr. Rajesh Kumar Paswan Vs. State of Bihar and Others, which supports the petitioner's case. It is therefore necessary to refer to the judgments and consider their effect.

8. It would be useful to reiterate while dealing with the question that admittedly the petitioner and her father, prior to 13-10-1967, were residents of Andhra Pradesh. It is only after 13-10-1967 that the petitioner started residing in Maharashtra, after her marriage.

9. A] The issue that arose for the consideration before the Supreme Court in Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, ; is stated in paragraph 1 of the judgment which reads as under:

Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B? - is the neat question raised in this petition brought under Article 32 of the Constitution....

B] In paragraph 16, the Supreme Court held as under:

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given case is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution.

10. It is true as contended by Mr. Salunke, that in Action Committee v. Union of India, the Supreme Court dealt with a case under Articles 341 and 342 relating to Scheduled Castes and Scheduled Tribes whereas, the present case deals with persons whose castes are classified as O.B.Cs.

11. However, the same approach/test was applied by the Supreme Court even in matters relating to O.B.Cs. in M.C.D. Vs. Veena and Others, . The Supreme Court considered whether certificates of candidates belonging to Backward Classes in States other than Delhi could hold good for the purpose of recruitment to the posts of primary and nursery teachers in Municipal Corporation of Delhi in the National Capital Territory of Delhi. The Supreme Court also considered an ancillary question as to whether O.B.Cs. of the States other than Delhi can be

treated as O.B.Cs. in Delhi and can be extended the benefits related thereto in Delhi. Referring to the judgments of the Supreme Court in *Marri Chandra v. Dean, G.S. Medical College, Mumbai* and *Action Committee v. Union of India and Anr.*, the Supreme Court held as under:

6. Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.

(emphasis supplied)

The portion emphasised by us clearly establishes that the petitioner would not be entitled to the rights, privileges and benefits admissible to the members of her caste in both the States. Further, this rule clearly applies also to persons of castes belonging to an O.B.C. group. The Supreme Court applied the test pertaining to Scheduled Castes and Scheduled Tribes under Articles 341 and 342 of the Constitution also to persons belonging to an O.B.C. group.

12. This is in fact so held by a Division Bench of this Court in an unreported judgment of this Court in the case of *Mrs. Savitri Shivaji Kumbhar v. The State of Maharashtra and Ors.* in Writ Petition No. 7792 of 2005 dated 22-3-2006. The Scrutiny Committee in fact placed reliance upon this judgment in the impugned order. The facts are in all material aspects identical to the facts of the case before us.

13. In that case also, the petitioner who belonged to Hindu Kumbhar caste, recognized as an O.B.C. in the State of Maharashtra was a resident of Karnataka and migrated to Maharashtra after her marriage in the year 1986. She was elected to the post of President of Jaysingpur Municipal Council on a seat reserved for persons belonging to an O.B.C. category. After the elections her caste certificate was referred to the Scrutiny Committee. The Scrutiny Committee upheld her claim as belonging to the Kumbhar caste but held that she was not

entitled to claim the benefits and advantages available to persons belonging to the O.B.C. category in the State of Maharashtra, as she was not a resident of the State of Maharashtra on 13-10-1967. A Government Resolution dated 24-8-1995 issued by the State of Maharashtra was also impugned.

14. After analysing the said judgments of the Supreme Court in detail, the Division Bench held:

9. The Apex Court dealing with the matter relating to the rights of the migrants belonging to Scheduled Caste and Scheduled Tribe, bearing in mind the scope of Articles 341 and 342 of the Constitution of India and taking into consideration the decision of the Constitutional Bench in Marry Chandra Shekhar's case held that merely because a particular community is specified in one State either as Scheduled Caste or as Scheduled Tribe or the back-ward class, that would not necessarily mean that if there be another caste bearing the same nomenclature in another State, then the persons belonging to former would be entitled to the rights, privileges and benefits contemplated to a member of such caste of the latter State. In other words, the Apex Court bearing in mind the problems of social adjustment and need for maintaining proper balance without causing detriment or discontent to the members of disadvantaged and disabled communities in the country and taking into consideration the nature and extent of disadvantages and social hardships suffered by members of various communities in various places in the country, laid down certain guide lines for the benefit of the Government while formulating the policy of reservations either in the employment sector or otherwise for giving due effect to the mandate of Articles 15(4) and 16(4) of the Constitution, indeed the Government has been put on guard to ensure that while formulating any such rules, policy and giving effect thereto, the socially suffered communities of a particular locality should not be made to suffer further by allowing similarly suffered communities from different places to take disadvantage of the policy and rules framed to take disadvantage of the policy and rules framed for the benefit of particular community in the specified area. The message given by the decision in Action Committee caste is not restricted to the cases of Scheduled Caste and Scheduled Tribe. Proper reading of para 16 of the said decision in fact would reveal that the Apex Court has specifically referred therein even to "Backward Classes" while referring to Scheduled Caste and Scheduled Tribes. Being so, the care which the State Government has to take while giving protection to various communities including OBC in a particular area requires that such protection should not be allowed to be misused by the people of that community from different area, including or by resorting to the process of migration.

(emphasis supplied).

10. If one reads the Government Resolution dated 24th August, 1995, it is apparent that the State Government has taken due care to give effect to the ruling of the Apex Court in Action Committee case in relation to the persons belonging to OBC in the State of Maharashtra so that the advantages and

facilities made available to the members of OBC in Maharashtra are not misused by the members of same community from other States. Article 15(4) of the Constitution clearly provides that the State is empowered to make any special provisions for the advantage of the socially backward class of citizens as also for Scheduled Caste and Scheduled Tribes. Similarly Article 16(4) of the Constitution provides that the State is empowered to make any provision for the reservation to any backward class of the citizens which is not adequately represented in the services under the State. These provisions therefore, empower the State Government to make necessary provisions to provide appropriate facilities for social and educational advancement of the backward classes of citizens in the State, in addition to the members of Scheduled Caste and Scheduled tribes. Making of provision for the advancement of backward classes in the State and restricting such benefits for the citizens in the State is one thing and making specific provision prohibiting such benefits to the migrants is totally different thing. Merely because certain facilities or benefits are made available for the citizens of Maharashtra while defining who shall be called as citizens for availing such benefits that by itself would not empower any other citizen who does not fit in the expression so defined for the purpose of availing benefits under the Constitution to claim such benefits nor it would amount to encroach upon the subject reserved for the Central Government under Entry 81 of the Union List of the VII Schedule. Restricting such benefits to the members of OBC from Maharashtra would not amount to legislating or making provision of law in relation to the subject of interstate migration. Being so, we do not find any illegality or infirmity in the Government Decision dated 24th August, 1995 nor it encroaches in any manner the field reserved for the Parliament under entry relating to migrants. Being so, the challenge to the Government Decision dated 24th August, 1995, fails.

15. The question which falls for our consideration is also answered by a judgment of a Division Bench of this Court in the case of Chetna Tank Vs. Committee for Scrutiny of Caste Certificates of Persons and Others, .

In that case, the petitioner was born on 14-8-1968 in Bihar and was educated in Madhya Pradesh. She got married on 17-6-1990 and thereafter lived in Maharashtra. She belonged to a caste which is recognised as an O.B.C. in Madhya Pradesh as well as in Maharashtra. The Division Bench considered the resolution dated 13-10-1967 including Gujars in the list of recognised O.B.Cs. The petitioner was elected against a seat reserved for O.B.Cs. In that case too, the Scrutiny Committee invalidated the petitioner's caste claim on the ground that the petitioner was the original resident of the area outside Maharashtra prior to 1967 and had obtained her caste certificate on the basis of her marriage with a person from and residing in Maharashtra, who belonged to the same caste.

The Division Bench framed the following questions which fell for their consideration:

4. On behalf of the petitioner, following questions are raised:

A) Whether the petitioner who belongs to Gujar (Gurjar) caste recognized as Other Backward Class in the list of State of Madhya Pradesh is entitled to the benefits of "Gujar-Kadiya" caste a recognized Other Backward Class category in the list of Other Backward Class published by the State of Maharashtra?

B) Whether the Committee was right in rejecting the caste claim of the petitioner solely on the ground that the petitioner was not resident of the State of Maharashtra prior to 1999, particularly when there is no such prohibition contemplated either under the law or under any Government Circular or order.

The Division Bench referred to the said judgments of the Supreme Court in *Marri Chandra v. Dean, G.S. Medical College, Mumbai* and *Action Committee v. Union of India* and answering the questions against the petitioner, held as under:

6. ...

From the above two judgments, both of Constitution Bench of the Apex Court, the law can be summarised as under:

1) A person belonging to a caste or tribe which is notified for that State is entitled to the benefits wholly in that State and not the State where he/she migrates.

2) If a caste or tribe is notified as a caste or tribe in both the States, it does not necessarily mean that the migrant is entitled to the rights privileges and benefits admissible to a member of the Scheduled Caste or tribe of the migrant State.

10. Applying the ratio as culled out from the judgment of the Constitution Bench and the facts as set out herein, it would be clear that the petitioner is migrant to the State of Maharashtra. She was born in Bihar. The mere fact that she studied in Madhya Pradesh would be of no consequence. She at the highest will be entitled to benefits in the State of origin which is Bihar and would not be entitled to the benefits which the notified O.B.C. is entitled to in the State of Maharashtra. The mere fact of marriage to a person belonging to the same caste or any other reserved caste is of no consequence as marriage would not alter the legal position insofar as caste is concerned which is acquired by birth.

(emphasis supplied)

It will be noticed that in this judgment the Division Bench applied the ratio of the said judgments of the Supreme Court to persons belonging to O.B.Cs. as well.

16. In the circumstances, the aforesaid judgments clearly cover the case against the petitioner. Admittedly, the petitioner migrated to Maharashtra only after 13-10-1967 i.e. the date on which the Jangam caste was notified as being an O.B.C. Whether it would have made any difference to the petitioner's rights, had she migrated prior to 1967, we are not called upon to answer and we refrain from doing so.

17. Mr. Salunke relied upon the judgment of a learned Single Judge of the Patna

High Court in Dr. Rajesh Kumar Paswan Vs. State of Bihar and Others, . In this case, the petitioner's father belonged to the caste Pasi and was a resident of Uttar Pradesh. While in the employment of the South Eastern Railways, he was posted in Bihar, where he continued to reside till the date of the petition. The petitioner did his schooling and the M.B.B.S. course in Bihar. The Pasi community is a Scheduled Caste Community within the meaning of the Scheduled Caste and Scheduled Tribes Amendment Act, 1950 and is recognised both in Bihar and Uttar Pradesh as a Scheduled Caste. The petitioner applied for admission to the Post Graduate Medical Course in Bihar. The authorities rejected his claim for admission on the ground that he was a resident of Uttar Pradesh and could not be given the benefit that persons of the Pasi community were entitled to in Bihar.

18. The learned Judge only considered the judgment of the Supreme Court in Marri Chandra Shekhar's case and distinguished the same on the ground that in that case the caste that the petitioner belonged to viz. "Gouda", was not recognised in Maharashtra, which was the State to which the petitioner had migrated. The learned Judge held that on the other hand, in the case before him, the Pasi community was classified as a Scheduled Caste both in Uttar Pradesh and Bihar.

19. We are with respect, unable to agree with the judgment in Dr. Rajesh Kumar Paswan's case, both in principle and on precedent. The judgment is contrary to the ratio of the Supreme Court in Marri Chandra's case. Further, it has, in any event, been impliedly overruled by the judgments of the Supreme Court in Action Committee v. Union of India and M.C.D. v. Veena and Ors. Thirdly, the judgment is contrary to the view taken by the Division Bench judgments of this Court in Chetna w/o Rajendra Tank v. Committee for Scrutiny of Caste Certificates of Persons and Ors. and Mrs. Savitri Kumbhar v. The State of Maharashtra and Ors.

20. Mr. Salunke also relied upon a Government Resolution dated 24-8-1995. This GR cannot come to the aid of the petitioner. By this GR certain castes notified by the previous GR dated 13-10-1967 were deleted. Jangam caste was not deleted. This however cannot be construed to mean that Jangams were notified either for the first time or afresh only by this GR dated 24-8-1995. They were notified atleast latest on 13-10-1967. It is not clear whether they were notified even earlier. Nor is it necessary for us to investigate the same as, in any event, the petitioner migrated to Maharashtra only after 13-10-1967.

21. Mr. Salunke then relied upon the National Commission for Backward Classes Act, 1993, and, in particular, to Sections 2(a) and 2(c) and 11 thereof, which read as under:

2. Definitions.--In this Act, unless the context otherwise requires:

(a) backward classes" means such backward classes of citizens other than the Scheduled Castes and the Scheduled Tribes as may be specified by the Central Government in the lists;

(b) ...

(c) "lists" means lists prepared by the Government of India from time to time for purposes of making provision for the reservation of appointments or posts, in favour of backward classes of citizens which, in the opinion of that Government, are not adequately represented in the services under the Government of India and any local or other authority within the territory of India or under the control of the Government of India;

11. Periodic revision of lists by the Central Government.--(1) The Central Government, may, at any time, and shall, at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter, undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be Backward Classes or for including in such lists new Backward Classes.

(2) The Central Government shall, while undertaking any revision referred to in Sub-Section (1), consult the Commission.

Mr. Salunke stated that Jangam was specified as a Backward Class in the list prepared by the Central Government. He, therefore, submitted that Jangams were notified only after 1967 as belonging to O.B.Cs.

22. We are unable to agree. Firstly, in any event, as far as the State of Maharashtra is concerned, in respect of reservation made by the State Government, Jangams were notified at the latest on 13-10-1967. Even assuming that the NCBC Act applies, it would make no difference.

Secondly, the said Act does not apply in respect of reservations made by the State Governments and in respect of all rights, privileges and benefits conferred by the State Governments on members belonging to O.B.C.

23. This is also clear from the Statement of Objects and Reasons, the relevant portion whereof reads as under:

In its judgment dated 16th November, 1992 on matters arising out of Government's orders on reservation of appointments or posts under the Government of India in favour of backward classes of citizens under Article 16(4) of the Constitution, the Supreme Court, inter alia, directed the Government of India to constitute a permanent body within four months from the date of judgment i.e. by 15th March, 1993, for entertaining and examining and for recommending upon requests made to it for inclusion and complaints of over-inclusion and under-inclusion in the lists of backward classes of citizens....

(emphasis supplied)

The Act clearly applies to posts under the Government of India and not to any rights, privileges or benefits conferred by the State Governments.

In the circumstances, it must be held that the petitioner is not entitled to any

rights, benefits or privileges conferred by the State of Maharashtra in any respect.

24. It is pertinent to note however that the Government of Maharashtra had issued a G.R. dated 13-9-2005. We have been furnished a translation thereof. The G.R. refers to a circular dated 10-3-2005 and proposes to amend the same. We have however, not been furnished a copy of the said circular dated 10-3-2005. It is possible that as in the case of Scheduled Castes and Scheduled Tribes, the Government of Maharashtra has authorized its officers to issue a caste certificate even to migrants based on a caste certificate obtained from their State of origin. Such a procedure is referred to in the aforesaid judgments of the Supreme Court. As we do not have the complete facts in this regard, we refrain from making any conclusive observations. Suffice it to state that the petitioner would not be disentitled from seeking the benefits granted to persons belonging to her caste in her State of origin namely Andhra Pradesh merely on the basis of the impugned order, Of course even if such procedure is provided such a caste certificate would not and cannot confer on such persons any rights, benefits and privileges conferred on the members of their caste by the State of Maharashtra to which they have migrated.

Further, this is not a fit case for sanctioning prosecution or any other action against the petitioner. The petitioner has not concealed any facts. The petitioner has honestly disclosed the relevant facts. This was a question of law.

25. We therefore, set-aside the impugned order to the extent that it sanctions any action against the petitioner including u/s 11 of the said Act. The Petition is dismissed subject to the clarification that the petitioner shall not be disentitled from claiming any benefits from her State of origin merely on the basis of the impugned order. The petitioner shall not be entitled to any benefits, rights or privileges conferred by the State of Maharashtra on persons belonging to an O.B.C. category.

Rule is granted in the above terms.