

(1997) 10 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 3335 of 1994

Vandana

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 17-10-1997

Acts Referred:

Constitution of India, 1950 — Article 15(4), 226, 342

Citation : AIR 1998 Bom 226 : (1998) 3 ALLMR 621 : (1998) 4 BomCR 432 : (1998) 2 MhLj 12

Hon'ble Judges : M.B. Ghodeswar, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : Narayan Phadnis, for the Appellant; Smt. S.W. Deshpande, for the Respondent

Judgement

B.H. Marlapalle, J.—Heard the learned Counsel for the respective parties. Rule is made returnable forthwith with the consent of the learned Counsel.

2. The petitioner had appeared for the 12th Standard Examination held in March 1993, therefore, she applied well within time to respondent No. 3 for validation of her Caste/Tribe claim, contending that she belongs to Scheduled Tribe Halba and along with the said application, she had supplied in all 19 documents pertaining to herself, her parents and grand father as well as other near relations. In addition, she had also submitted a questionnaire duly filled-in in the prescribed form and an affidavit sworn by Vijay Natthuji Dekate, one of her near relations. Respondent No. 3, that is, the Scheduled Tribes Caste Certificate Scrutiny Committee, by its order dated 10-6-1993, rejected the claim of the petitioner and cancelled the Caste Certificate issued to her by the Executive Magistrate, Chimur, District Chandrapur. The Scrutiny Committee further held that the petitioner belongs to the Koshti Caste which is categorised under Other Backward Classes. The said order passed by respondent No. 3, came to be challenged in Appeal before respondent No. 2 who by his order dated 5-11-1993 confirmed the order passed by respondent No. 3 and rejected the appeal. The

petitioners has, therefore, approached this Court challenging the legality and validity of the orders passed by respondents Nos. 2 and 3 .

3. It has been contended by the learned Counsel appearing for the petitioner that in spite of the fact that the documents pertaining to the petitioner's father show that he belongs to the Halba Scheduled Tribe, the documents have not been accepted by respondent No. 3 and the Committee has erroneously denied her the status of Scheduled Tribe, though she had also submitted all the necessary proofs in support of her claim by filing the caste certificates of her close relations as well. In this regard, she relied upon the caste verification made by the Additional Tribal Commissioner in respect of Vijay Natthuji Dekate, who is a close relation of the petitioner and whose status is verified as belonging to Halba Scheduled Tribe. The petitioner has further contended that even the Appellate Authority respondent No. 2 has failed to apply his mind to the facts on record and committed gross error in confirming the order passed by respondent No. 3.

4. On perusal of the order passed by respondent No. 3, it is clear that the respondent ---Scrutiny Committee has considered all the 19 documents submitted by the petitioner as well as the informations submitted by the petitioner in the prescribed questionnaire regarding Social Cultural Trades, Customs and Professions etc. prevalent in the community. The Scrutiny Committee has observed that the documents at Sr. 11 and 12 were in respect of the petitioner's grand father Shri Ganpati Nilkanth Sonkusare and document No. 19 was in respect of the petitioner's mother. All these documents, which are of basic information and have more probative value of evidence, clearly stated that the grand father of the petitioner belongs to the Koshti caste as well as the mother of the petitioner belongs to the same caste which is listed under the Other Backward Classes. It is also observed by the Scrutiny Committee that the documents at Sr. No. 10 did not mention any caste of the petitioner's father. The Committee has noted that the documents at Sr. Nos. 6,7,8 and 9 in respect of the petitioner's father did state his caste as "Halba Koshti". The Committee did not accept these documents as they were not finally adjudicated and they did not have sufficient probative value as compared to the documents in respect of the petitioner's grand father. The Committee also did not consider the affidavit of and caste verification made in respect of Shri Dekate, solely on the ground that these documents were irrelevant as compared to the documents made available before the Scrutiny Committee in respect of the petitioner's grand father and mother. The Committee has considered at length the information furnished by the petitioner in the prescribed questionnaire and also the statements made by the petitioner during the personal hearing granted to her.

5. The learned Counsel for the petitioner in support of his contention has relied upon unreported judgments of this Court in Writ Petition No. 2545 of 1987, W.P. No. 166 of 1992, W.P. No. 165 of 1995, W.P. No. 2596 of 1991 and W.P. No. 524 of 1987. He has also relied upon two reported judgments of this Court, namely, Milind Katware alongwith intervenors Vs. State of Maharashtra alongwith

intervenors, and Kum. Tanuja Vs. State of Maharashtra, . We have perused all these judgments and we are afraid, they do not come to the rescue of the petitioner. All these judgments were prior to the law laid down by the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . It is now well established position in law that an applicant seeking caste verification has to stand on his/her own foot to support social status as scheduled tribe or scheduled caste person and prove his/her claim independently before the Caste Scrutiny Committee. In the case of Madhuri Patil's case 1995(2) BC.R. 690 the Apex Court has held that the entries in the School Certificate of the pre-independence period bear great probative value and school certificates or college certificates which are subject of enquiry do not bear any value and the status of such documents is required to be decided independently. In the case of Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, , the Supreme Court held that even if the father of the applicant was in service of the State Government and his service record and the Educational certificates established him to be a Scheduled Tribe, the claim made by the applicant was rightly rejected by the Caste Scrutiny Committee. It is, therefore, well established principle in law now that even though an applicant before the Scrutiny Committee rely upon the documents pertaining his/her father to show that the father was belonging to the Scheduled Tribe, such documents are not required to be accepted as it is and the petitioner applicant is required to establish that such documents have more probative value and that they have been issued by the Competent Authority or the claim of the father has been adjudicated to be a Scheduled Tribe by the Scrutiny Committee. In the instant case respondent No. 3 has relied upon the School Leaving Certificate of the petitioner's grand father, which belonged to the pre-independence period and these documents have more probative value than other documents on which the petitioner relied upon. Similarly, the Scrutiny Committee has considered the certificate in respect of the petitioner's mother which also stated that the mother belongs to the Koshti caste, as was also stated in the School Leaving Certificate of the petitioner's grand father (father's father). The Scrutiny Committee has also discussed at length the oral evidence brought before it during the personal hearing granted to the petitioner. Based on the said oral deposition, the Scrutiny Committee recorded a finding that the claim made by the petitioner that she belongs to Halba Scheduled Tribe was not established. We find no error apparent committed by the Scrutiny Committee and it is well-established that this Court while exercising its jurisdiction under Article 226 of the Constitution of India is not entitled to sit in appeal over the findings recorded by the Scrutiny Committee, unless such findings are grossly erroneous or perverse.

6. The reliance of the petitioner on the caste of Shri Vijay Natthuji Dekate is totally misplaced specially when Shri Dekate is not from the direct family of the petitioner's father inasmuch as Shri Dekate is the son of the petitioner's father's first cousin's sister. The appellate authority namely, respondent No. 2

has rightly concurred with the findings of respondent No. 3. The learned Counsel for the petitioner, in support of his contentions, has also relied upon the judgment of the Supreme Court in the case of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, . In that case the Caste Scrutiny Committee rejected the claim of the applicant therein without considering the documents submitted before it when there was no other evidence placed contra to suspect the proof produced by the appellant. However, in the instant case, out of 19 documents submitted by the petitioner before the Scrutiny Committee, three documents which bore maximum probative value for evidence have been accepted by the Scrutiny Committee in comparison with other documents which were mostly certificates issued by the authorities and these certificates were not verified. We are of the considered view that the approach adopted by the Scrutiny Committee was just and proper and the Scrutiny Committee has not acted erroneously.

7. We must record that after the Scheduled Castes and Scheduled Tribes (Amendment) Order, 1976, removing all restrictions as regards area specifications was brought into force, there has been a spurt of applications claiming the status of under privileged class like the Scheduled Castes and Scheduled Tribes. The parents" whose children are on the verge of seeking higher education, seem to be more and more eager to apply for such certificates claiming to be belonging to Scheduled Tribes or Scheduled Castes when they actually do not belong to. The Supreme Court in the case of Madhuri Patil (supra) and Laveti Giri (supra) rightly noticed the fraud upon the Constitution played by the Plainsman to wear the mask of false social status to corner the constitutional benefits of reservation for admission in to the professional courses under Article 15(4) of the Constitution of India. Even in the instant case, respondent No. 3 in the impugned order has observed that out of the total applications received for verification, about 40 per cent are untenable and more and more applicants are lured for seeking such falls claims. It is, therefore, necessary for the adjudicating authorities to examine every case with utmost scrutiny and microscopic investigation and ensure that the people not belonging to such under privileged social classes do not play a fraud on our Constitution. We note that in the instant case, the Scrutiny Committee has adopted a right approach and rejected the claim of the petitioner.

8. In the result, we reject the petition with no order as to costs. Rule is discharged.

9. Petition rejected.