

(2006) 04 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 5247 of 2005

Varsha Ramsing Dhanavat

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 10
Constitution of India, 1950 — Article 226
Special Backward Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000 — Section 9

Citation : (2006) 4 ALLMR 80 : (2006) 5 BomCR 473 : (2006) 4 MhLj 676

Hon'ble Judges : N.V. Dabholkar, J; M.G. Gaikwad, J

Bench : Division Bench

Advocate : B.R. Sagar Killarikar, for the Appellant; K.B. Choudhary, A.G.P. for Respondent Nos. 1 to 3 and D.R. Kale, for the Respondent

Final Decision : Allowed

Judgement

N.V. Dabholkar, J.—By this Writ Petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 21-7-2005 passed by the respondent No. 2 Divisional Caste Scrutiny Committee, Amaravati Division, Amaravati, thereby invaliding the tribe claim of the petitioner, who claims to be belonging to Vimukta Jati (Rajput Bhamata).

2. The petitioner was appointed as Shikshan Sevak vide an order dated 238-2004 issued by the respondent No. 4 on the post reserved for Vimukta Jatis. She had obtained the caste certificate dated 3-3-1994 issued by the Executive Magistrate, Buldhana that she belongs to. Rajput Bhamta - a Vimukta Jati. Because her caste claim was not verified at an early date, she had filed Writ Petition No. 7154 of 2004, whereupon this Court directed the respondent No. 2 to decide her caste claim within three months and in the meanwhile her services were protected. Initially, the petitioner had deposited her documents with the Scrutiny Committee at Aurangabad but since her caste certificate was issued by the Executive Magistrate, Buldhana, those were transferred to the Scrutiny

Committee at Amaravati for early verification as per the order of this Court.

The petitioner had presented in all seventeen documents which include caste validity certificates of two cousins of the petitioner along with their affidavits showing the genealogy. Vigilance enquiry was conducted by the Scrutiny Committee and after report was furnished to the petitioner by the Research Officer, the petitioner filed her say explaining the laconic entries in the school record to be on account of illiteracy of earlier generations. The petitioner had requested the committee to call for and examine her father and other relatives so that they could explain the adverse entries in the record. As the Scrutiny Committee did not summon them, the petitioner produced their affidavits i.e. affidavits of father and cousins, whose caste claims were validated. For the reasons discussed in the order, the Scrutiny Committee rejected the caste claim of the petitioner and hence this writ petition.

3. The respondents Nos. 4 and 5 - Chief Executive Officer and Zilla Parishad Aurangabad respectively are impleaded in the capacity of employer since the petitioner desired interim protection till disposal of this writ petition against any adverse action by them, including termination of the petitioner on the basis of invalidation of the caste claim. Secondly, so far as challenge of the petitioner to the decision of the scrutiny committee is concerned, they have no contesting interests. Neither any affidavit is filed on their behalf nor their advocate advanced any contentious submissions.

Shri Rajaram Bhuryaji, working as Research Officer of the Divisional Caste Scrutiny Committee, Amaravati Division, Amaravati has filed reply on behalf of other three respondents. It is submitted that since "Rajput Bhamta" was notified as a Vimukta Jati for the State of Maharashtra in the year 1961, it was obligatory on the part of the petitioner to produce the documentary evidence, may be pertaining to forefathers of the petitioner, of the period prior to 1961. The affidavits of the relatives, according to affiant, cannot prove the caste claim of the candidate and a conclusive documentary evidence pertaining to father, grandfather and great grandfather and entries showing them to be belonging to caste "Rajput Bhamta" effected prior to 1961 only can establish the caste claim of the petitioner. The committee has rejected the caste claim of the petitioner on the basis of extract of admission register issued by the Head Master, Central Marathi Pre-Primary School, Chandol Panchayat Samiti, Buldhana dated 24-3-2005. This entry in the Admission Register shows that birth date of the father of the petitioner is 15-2-1946 and date of admission in the school was 21-4-1953, wherein caste is recorded as "P.R." (probably Pardeshi Rajput), which is not included in the list of Vimukta Jatis. The Scrutiny Committee found this oldest document to be having greater probative value than other documents and hence the petitioner's claim was invalidated by the impugned order. The extract of Admission Register given by the same Head Master pertaining to Shri Punnilal Shi vial (petitioner's uncle) showed uncle's birth date to be 2-8-1951 and date of admission to be 28-7-1959. The examination of the Admission Register

showed that the caste was registered only as "Rajput" and the word "Bhamta" was subsequently added in a different ink. Since the entries pertaining to father and uncle of the petitioner showed that they do not belong to Vimukta Jati (Rajput Bhamta), the committee has rejected the caste claim of the petitioner, in the light of ratio laid down by the Supreme Court in Madhuri Patil's case to the effect that each case must be considered in the backdrop of its own facts and School leaving certificate of the petitioner and her School Register cannot be considered favourably in view of adverse record of father and uncle. The committee, thus, looks to the caste of the petitioner, who has obtained an employment on the post reserved for Vimukta Jati (Rajput Bhamta), to be the spurious claim on the basis of false social status certificate obtained by her. It is said that even the caste validity certificate in favour of Dr. Dongarsingh and Dr. Rajendrasingh, said to be cousins of the petitioner, cannot be considered favourably in view of school record pertaining to father and uncle of the petitioner. The theme of the argumentative affidavit filed on behalf of the Scrutiny Committee is that the caste of the father determines the caste of the child and since the school record of the father and uncle of the petitioner did not show the caste to be "Rajput Bhamta" all other evidence is incapable of outweighing those old entries and therefore, the Scrutiny Committee has rejected the caste claim of the petitioner.

4. Heard learned Counsel for the respective parties at length.

Rule.

By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.

5. Shri Killarikar, learned Counsel for the petitioner, during the course of his arguments laid an emphasis on the fact that two relatives of the petitioner from paternal side are issued validity certificates regarding their caste claim of belonging to be Vimukta Jati (Rajput Bhamta). Since their caste claims are validated after thorough scrutiny and they are second degree paternal cousins of the petitioner, that evidence was more than sufficient to rebut the adverse effect, if any, in the old school record of the father and uncle of the petitioner, which were the entries effected when there was no awareness of the benefits of reservations and consequently there was no seriousness about the accuracy of entries. He also pointed out that the application submitted by the petitioner to examine his father and affiants as witnesses was impliedly rejected by the committee since the committee never summoned them. He pointed out that by virtue of Section 9 of 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 (for the sake of brevity, hereinafter, referred to as "the Act of 2000") declares the competent authority (Scrutiny Committee) to be an authority having all the powers of the Civil Court and having all the powers as conferred by the CPC on the Civil Court while trying a suit for the purpose of

conducting the enquiry and Clause (c) of the said Section empowers the Scrutiny Committee to receive the evidence in the form of affidavits. By relying upon Order XVIII, Rule 10 of Civil Procedure Code, examination-in-chief of witness is required to be on affidavits and the petitioner had accordingly filed affidavits of the cousins, whose caste claims were validated by the Scrutiny Committee. Their affidavits could not have been rejected either on the point of correctness of genealogy or on the part of their relationship with the petitioner without the Scrutiny Committee subjecting them to cross-examination and demonstrating them to be un-reliable witnesses. According to Shri Killariker, therefore, the Scrutiny Committee could not have ignored the affidavits filed by paternal cousins, merely on the basis of earlier entry in the school record of the petitioner's father or uncle. In doing so, according to him, the Scrutiny Committee has appreciated the evidence in perverse manner and he, therefore, urged for setting aside the findings of the Scrutiny Committee and quashing of the impugned order.

For the purpose of appreciation of evidence pertaining to validity certificates of close relatives, he has placed reliance on the observations of other Division Bench of this Court in the un-reported matter of Balwant v. State of Maharashtra, Writ Petition No. 1372 of 1989, decided on 24th and 25th June, 2004.

6. While supporting the impugned order having been armed with argumentative affidavit, learned Assistant Government Pleader contended that the caste claim is rightly rejected by the Scrutiny Committee because there are no basic documents supporting the caste claim. According to him, the petitioner was not on a sound footing regarding traits and characteristics of the caste to which she claims to belong. According to him, the Scrutiny Committee has properly appreciated the evidence and correctly decided the matter and hence he urged that the impugned order may not be disturbed.

7. We have gone through the impugned order. It can be seen that the Scrutiny Committee has classified 17 documents into three groups for convenient consideration. The documents 1 to 8 were considered together and those are validity certificates of close relatives of the petitioner accompanied by their affidavits as well as affidavit of the petitioner. The second group is that of caste certificates issued either to the petitioner or to her sisters and these four documents are at Sr. Nos. 9 to 12. Third group is regarding school record of the petitioner and her sisters, which recorded their birth dates, dates of admission and also their caste to be "Rajput Bhamta". For independent reasons for three groups, the Scrutiny Committee has rejected all the documents and ultimately by referring to Admission Registers of Punnilal (real uncle of the petitioner) and her father, Scrutiny Committee has drawn further adverse inference and ultimately rejected the caste claim of the petitioner.

So far Punnilal is concerned, his birth date is 2-8-1951 and extract of the Admission Register showed that he was admitted in the school on 28-5-1959. His caste was recorded as "Bha. Ra." (short form of "Bhamta Rajput"). The Scrutiny

Committee on perusal of original Admission Register felt this to be a manipulated entry. It believed that the word "Bha" is subsequently added in different ink. The committee has described it as suffix instead of describing it as prefix (because in the entry as "Bha Ra" first letter "Bha" of the word "Bhamta" is before "Ra" first letter of word "Rajput"). The entry pertaining to petitioner's father Ramsingh in the admission register of his school showed his caste as "Pa Ra" (probably "Pardeshi Rajput") and since this caste is not recognised as Vimukta Jati, the Committee felt that this basic record was strongly adverse to the claim of the petitioner.

So far documents at Sr. Nos. 9 to 12 are concerned, the petitioner has obtained two certificates, one from Executive Magistrate, Buldhana and Anr. from Sarpanch of Gram Panchayat Chandol. Similarly, her sisters appear to have obtained certificates from Executive Magistrate, Buldhana. All these four certificates certify the caste of three sisters to be "Rajput Bhamta". We do not find anything objectionable in the observation of the Scrutiny Committee that these can be treated only as supportive documents. In fact, so far the petitioner is concerned, it must be said that those are the certificates which are under scrutiny and therefore, this evidence cannot add any weight in favour of the claim of the petitioner.

So far rejection of documents at Sr. Nos. 13 to 17 is concerned, those are extracts of Admission Registers pertaining to the petitioner in three schools and the entries pertaining to her sisters Sangita and Kalpana, one each. The entries about birth dates of three girls are 14-1-1977, 24-10-1972 and 9-9-1975. Three entries pertaining to the petitioner in different three schools are dated 29-6-1982, 14-1-1983 and 22-12-1997. Similarly, the entries pertaining to her sisters are dated 20-6-1981 and 3-7-1982. The committee has rejected this evidence by one sweeping reason as follows :

It is pointed out that date of birth and date of admission above indicated candidates is not prior to 1961.

We are surprised by such an observation. In case of a person born after 1961, the entries either in Birth Register or Admission Register of the school are bound to be after 1961 and that there are no entries prior to 1961 cannot be a good reason for rejecting those entries in toto. Those entries at least demonstrate that at the stage of admission to the school, the caste of all these three sisters including the petitioner, was recorded as "Rajput Bhamta". This rules out the probability of forging record to suit the purpose of obtaining benefits of reservation at the belated stage.

So far group of documents at Sr. Nos. 1 to 8 is concerned, the same contains the affidavits filed by the petitioner, of her cousins- Dr. Dongarsingh, Dr. Rajendrasingh, Shri Hukumsing and her uncle Punnilal. There is also a letter from the Member of the Divisional Caste Scrutiny Committee, Aurangabad dated 18-4-2004 addressed to the Director General, Health Department, Mumbai

indicating that the said committee has validated the caste claim of Dr. Govindsingh Fulsingh as "Rajput Bhamta" on 5-5-2004. Suffice it to describe that this group of documents is mainly containing affidavits of close relatives of the petitioner, supported by the certificates of validated caste claims of the affiants to be belonging to Vimukta Jati - Rajput Bhamta. The committee has dismissed these documents with reasons as follows :

...it is pointed out that the mere affidavits cannot prove the caste claim of any candidate. Further, it is pointed out that the traits and characteristics given by the abovenamed persons in their affidavits are not absolutely correct. Further, it is also pointed out that in order to prove the caste claim of any candidate, the basic and primary documentary evidence of his/her forefathers showing their caste as "Rajput Bhamta" is must. In want of documentary evidences of petitioner's forefathers, the caste of the petitioner cannot be substantiated merely on the basis of the traits and characteristics given by the so-called relatives in their affidavits.

8. It is pertinent to note that according to committee the traits and characteristics of the reserved caste as given by father and relatives of the petitioner were "not totally erroneous" but those were "not absolutely correct". This indicates that at least, to some extent, they were correctly narrating the traits and characteristics of the caste to which they claimed to belong. In rejecting the caste claim of the petitioner on the basis of incapacity of the relatives to narrate all the traits and characteristics of the caste, we feel, that the committee has adopted a wrong approach. After all, the Committee was considering the caste claim of the petitioner and if her earlier generation was correct to some extent about the traits and characteristics, their statements could not have been rejected merely because they were not cent percent accurate. With the passage of time, further generations while narrating the traits and characteristics, may not be cent percent accurate as recorded in the history or books on the subject. In fact, there may come a time when generations would know nothing about these traits and characteristics. We, therefore, feel that rejection, in toto of the statements of father and relatives because they were erroneous to some extent in narrating the traits and characteristics was not a correct approach of appreciation of evidence. The evidence of all these affiants including their validated caste claims is mainly rejected by the Scrutiny Committee by relying upon the observations of the Supreme Court in Madhuri Patil's case and an isolated sentence which is terminal part of paragraph No. 14 to the effect that "Each case must be considered under the backdrop of its own facts". We are of the considered view that by laying down that each case must be considered on its own facts, the Supreme Court has not directed to reject the evidence regarding validity certificates issued to the close relatives of the petitioner/claimant. The petitioner has to stand on her own legs by evidence does not necessarily mean that all evidence must be pertaining to herself and her ascendent only. It cannot be ignored that the caste claims upheld by issuance of validity certificates are subjected to close scrutiny and those relatives

have produced the evidence to the satisfaction of the Scrutiny Committee before they were entitled to such certificates. Such certificates must be treated as weighty piece of evidence and cannot be brushed aside. We are fortified in taking such a view in the light of observations of other Division Bench in the matter of Balwant v. State of Maharashtra, Writ Petition No. 1372 of 1989, decided on 24th and 25th June, 2004 (unreported), which is relied upon by the learned Counsel for the petitioner. In paragraph No. 12, this Court has observed :

Having regard to the various decisions referred to hereinabove and the law laid down therein we are of the view that an order passed in favour of a near blood relation by competent authority which has attained finality, cannot be brushed aside lightly. The same will have to be considered as a weighty piece of evidence. Such an adjudication prior in point of time which has attained finality would bind subsequent authorities while adjudicating the claims of near blood relations. Such an earlier adjudication could lose its evidentiary value if the same is shown to have been tainted with fraud or misrepresentation.

In fact, while discussing the earlier judgment on the point of appreciation of evidence, this Court, in the matter of Balwant (supra) has considered paragraph No. 14 of the judgment in Madhuri Patil's case and quoted the same in paragraph No. 9 of the said judgment. The ratio "Each case must be considered in the backdrop of its own facts" is the terminal sentence of the said para which is relied upon by the Scrutiny Committee in this matter as well as in many other matters. As we observed, it does not necessarily lay down that the validity certificates of close relatives, which decisions have reached finality by absence of challenge, are required to be brushed aside. As rightly observed by earlier Division Bench in the said paragraph, the Supreme Court was considering the scope of judicial review by the High Court of the orders passed by the Scrutiny Committee either validating or invalidating the caste claims. Even in that judgment, earlier Division Bench in paragraph No. 11 has observed :

We have read and re-read paragraph No. 14. In the submission of Shri Deshmukh, the last sentence of paragraph No. 14 is the basis for drawing the conclusion that each member of a family has to establish the caste/tribe claim independently and stand on his/her own legs..... What is to be seen is that the Apex Court in para No. 14 was considering as to what should be the approach of the High Court in dealing with the petitions challenging the orders passed by the Committees and in that regard the Apex Court observed that the Committee which is empowered to evaluate the evidence placed before it, when records a finding of fact, it ought to prevail unless found vitiated by judicial review of the High Court subject to limitation of interference with finding of fact.

So far as isolated sentence relied upon by the Scrutiny Committee, this Court observed :

We understand the Apex Court to say that each petition filed in the High Court calling in question an order passed by the Committee will have to be considered

in the backdrop of its own facts. What is observed by the Apex Court in para No. 14 to us does not even remotely justify drawal of a conclusion, so as to read ratio wherein it has been emphasized that each claimant has to stand on his/her legs and merely because one of the family member's caste claim has been verified, would not by itself be the foundation for validation of the candidate's claim.

While making such observations, the earlier Bench also drew support from the judgment of the Supreme Court in the matter of *Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others*, . We may say in one sentence that although the Supreme Court laid down that each case has to be dealt in the light of backdrop of facts of that case, the Supreme court has not laid down the total rejection of validity certificates in favour of close relatives while appreciating the caste claim of next generation or parallel generation as proper method of appreciation.

From the reasons recorded by the Scrutiny Committee for rejecting those documents of close relatives, which we have reproduced earlier, it is evident that the Scrutiny Committee has thrown these certificates of close relatives out of reckoning. The Committee could not have done so even after relying upon the observations of the Supreme Court in the case of *Madhuri Patil*. Without going to others, who are said to be close relatives, at least on perusal of the validity certificates of Dr. Dongarsingh and Dr. Govindsingh, it can be seen from paper book pages 38, 39, 41 and 42, that their validity certificates were issued on 18-1-1997 and 5-5-2004, i.e. after constitution of the Scrutiny Committee as per the directions of the Supreme Court in *Madhuri Patil's* case. The Scrutiny Committee could not have thrown away these certificates merely on the basis of the fact that the entry pertaining to father of the petitioner in School Admission Register, which was of the year 1953, did not show his caste as "Rajput Bhamta", that was the period much prior to recognition of caste "Rajput Bhamta" as *Vimukta Jati*. Unawareness of the benefits might be the cause for inaccuracy or incompleteness of the entry. As observed by us earlier, at the stage of entries into the schools of all three daughters, including the petitioner, their caste is registered as "Rajput Bhamta" and that was registered when no benefits of reservation were expected in immediate future. Those pieces of evidence, although otherwise only supporting pieces of evidence, taken together with validated caste certificates of two second degree cousins of the petitioner, namely, Dr. Dongarsingh and Dr. Govindsingh, the Scrutiny Committee could not have rejected the caste claim, on the sole basis that her father's School Admission Register in the year 1953 did not record his caste as "Rajput Bhamta". For the reasons discussed hereinabove, we must say that appreciation of evidence by the Scrutiny Committee is perverse, in its total rejection of taking into consideration the documents at Serial Nos. 1 to 8 and 13 to 17 and placing mere reliance upon the Admission Register of the father of the petitioner to reject her caste claim.

9. It is evident on record and also in the impugned order that the petitioner had desired to examine those persons as witnesses and the petitioner has filed their affidavits before the Scrutiny Committee. Taking into consideration Section 9 of the Act of 2000 as also Order XVII, Rule 4 of Civil Procedure Code, the Scrutiny Committee could not have repelled and rejected those documents (affidavits) without subjecting the affiants to test of cross-examination and arriving at a conclusion that they are unreliable witnesses on the basis of admissions obtained during such cross-examination. We find ourselves in agreement with such arguments on the part of Advocate Shri Killarikar.

10. Another Division Bench of this Court in an unreported judgment delivered in Writ Petition No. 4589 of 2003 has indicated tests as to when such validity certificates can be rejected after looking at them with suspicion. The observations in that decision are reproduced in paragraph No. 9 of the judgment in the case of Balwant (supra) and it read as follows :

...it will not be open to a subsequent committee to reject the finding recorded by an earlier committee for whatever reason unless material comes before the committee showing that fraud was played on that committee while deciding the issue of caste claim or that new material is discovered which would show that the caste certificate issued by the earlier committee was based either on suppression of material documents or that new documents throw new light on the matter and if these new documents are considered, they would have the effect of negating the caste claim of the person before it.

We do not find the Scrutiny Committee to have applied either of these tests before granting the validity certificates in favour of the paternal cousins of the petitioner and denying support of this to the caste claim of the petitioner.

11. For the reasons discussed above, the petition succeeds. The order dated 5-7-2005 passed by the Divisional Caste Scrutiny Committee, Amaravati Division, Amaravati invalidating the caste claim of the petitioner to be belonging to Vimukta Jati - Rajput Bhamta is quashed and set aside. It is declared that the petitioner belongs to Vimukta Jati - Rajput Bhamta. The Scrutiny Committee shall issue validity certificate to that effect in favour of the petitioner at an early date and in any case within the period of one month from the date of receipt of the writ of this Court.

Rule is made absolute accordingly.