

(1985) 02 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 2424 of 1983

Vijay Daulatani

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-02-1985

Acts Referred:

Constitution of India, 1950 — Article 29(2)

Citation : (1985) 2 BomCR 488

Hon'ble Judges : M.L. Pendse, J;G.A. Paunikar, J

Bench : Division Bench

Advocate : R.H. Akhani, for the Appellant; P.G. Palshikar and J.P. Pendse for respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

G.A. Paunikar, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the invalidation reports (Annexures-3, 4 and 6) of the Director, Social Welfare, Pune sent to him through the Dean, Medical College, Nagpur and Principal, College of Engineering, Karhad invalidating his caste and the confirmation of the order of the Director, Social Welfare by the Commissioner, Nagpur Division, Nagpur, in appeal preferred by him against the said order of the Director, Social Welfare, Pune vide said communications.

2. The petitioner is a student. He has been admitted for the studies in the College of Engineering at Karhad. His father Shrichand migrated to India on or about 1-1-1949 along with his family. He first came and settled at Seoni in Madhya Pradesh in the Refugee Camp as per Refugee Card on record and after the stay for about 6 to 8 months at Seoni, he along with his family, shifted to Nagpur and was carrying on business since then. His family consists of himself, his wife Krishna, his brother Keshavadas and his mother, Choithabai. They contended that they belonged to Bawa Caste. Keshavdas was married at Nagpur and he has 6 children. The petitioner was also born at Nagpur and all the

children of the family are taking education at Nagpur. Sobha, daughter of Keshavdas was admitted to the Medical College, Nagpur for higher studies in reserved quota of Nomadic Tribes to which she belongs. One Vijaykumar Tikamdas Madnani belonging to Bawa Bairagi caste which is held as synonym with Bairagi was also admitted to Medical College in reserved quota of Nomadic Tribes. A number of students of this caste have undergone education and got concessions available to the Nomadic Tribes. The petitioner after completing his lower education, applied for admission to the Medical College, Nagpur in the reserved category of Nomadic Tribes and submitted his caste certificate bearing No. 36/MLC 81/80-81 dated 21-6-1980. This caste certificate mentioned his caste as Bawa, sub-caste Bairagi, recognised as a Nomadic Tribe as per Government of Maharashtra Resolution No. CBC 1470-10169 J. Bombay 32. The petitioner received a communication bearing No. COL/37/C/D-4/22382, 412/82 dated 8-10-1982 stating that the caste mentioned by him in his application for admission to the Medical College, Nagpur has been declared "invalid" by the Director of Social Welfare, Pune for the reasons mentioned in the caste verification report sent to the Dean, Medical College, Nagpur which is annexed to the petition as Annexure-3 and the communication is annexed to the petitioner as Annexure-4. The petitioner also received a communication from the Principal, College of Engineering, Karhad bearing No. CEK/TS.ADM/82-83/9419 dated 8-11-1982 to the effect that the Committee appointed by the Government for scrutiny of the applications of the backward classes has found his caste claim "invalid", and this communication is annexed to the petition as Annexure-6. The petitioner was admitted in the College of Engineering at Karhad in reserved quota of Nomadic Tribes. The petitioner, therefore, filed two appeals against the two communications to the Commissioner, Nagpur, Division, Nagpur. Both these appeals were consolidated as the subject matter was the same and common order was passed by the Commissioner, Nagpur Division. Nagpur on 31-8-1983 dismissible these appeals and confirming the order of the Director, Social Welfare, Pune. The petitioner, has, therefore, filed this petition challenging the said communications, as also the order passed by the Commissioner, Nagpur Division, Nagpur in appeals.

3. The learned Counsel for the petitioner, Shri Akhani urged that both the impugned orders are passed by the respective authorities without application of mind and they are arbitrary and unjust. He submitted that there is absolutely no reason or justification for doubting and invalidating the caste claim of the petitioner as the petitioner belongs to Bawa caste which is synonymous with Bairagi. He submitted that the petitioner cannot be deprived of concessions and benefits available to him under the above mentioned Government Resolution of the Government of Maharashtra. The learned Counsel for the respondents, Shri Palshikar however submitted that the petitioner failed to establish by cogent and convincing evidence that he belongs to Bawa caste and hence tried to justify the impugned orders of the respective authorities and submitted that the petitioner is disentitled to claim concessions and benefits under the said Resolution of the

Government of Maharashtra. However, after going through the relevant Government Resolution the learned Counsel for the respondents fairly, conceded that the Government of Maharashtra has recognised and also notified Bawa caste as synonymous with Bairagi.

4. For the purpose of appreciating the contentions aforesaid it has to be noted that the caste claims are verified by the Director of Social Welfare, Maharashtra State, Pune. It is obligatory on the Director of Social Welfare to make full enquiry before preparing verification report. In the instant case of the petitioner, the caste verification report submitted by the Director of Social welfare to the Dean, Medical College, Nagpur and filed with this petitioner as Annexure 3 recites as under :

"Invalid for the following reasons :

1. The student is Sindhi Bawa and does not belong to Bawa community which has been notified as Nomadic Tribe in Maharashtra.
2. The caste certificate has been issued by the Ex-Mag. On the basis of affidavit and S.L.C. and without applying proper check, as given in G.R.S.W.C.A.S.& T. depts. No. CBC-1077/50876/D-V dt. 21-3-79 of Govt. of Maharashtra.

It is thus obvious from the aforesaid report that the Director of Social Welfare, Pune through investigation has arrived at a finding of fact that the petitioner does belong to Bawa caste. But the Director of Social Welfare has mentioned him as Bawa sindi obviously as his parent, had migrated from Sindhi to Maharashtra. However, despite migration, the caste of a person is never changed. It continues to remain the same. Consequently, it is meaningless to suggest that the petitioner does not belong to Bawa community in Maharashtra only because his family migrated from Sindhi to Maharashtra. If, the State of Maharashtra recognises his caste as Nomadic Tribe, it is inconceivable how on account of mere migration, caste claim of the petitioner could be invalidated. The Executive Magistrate who is empowered to issue caste certificate is also duty bound to make proper enquiry and investigation into the caste claim of the petitioner before issuing caste certificate and the Executive Magistrate has, after full enquiry and investigation, issued him the caste certificate on 21-6-1980 showing his caste as Bawa sub-caste Bairagi and hence this certificate cannot be ignored on the ground that it is a formal certificate issued without applying proper check, especially when we find corroboration of the fact from the verification report of the Director of Social Welfare, Pune. The Director of Social Welfare having accepted the caste of the petitioner, could not arrive at the conclusion that the petitioner does not belong to Bawa community in Maharashtra though he belonged to the Bawa caste in Sindhi. By accepting the caste of the petitioner as Bawa the only irresistible conclusion which could be arrived at is that the petitioner belongs to Bawa caste which is recognised as Nomadic Tribe in the State of Maharashtra and hence there was no reason whatsoever for the Director of Social Welfare to invalidate the caste of the petitioner. Shri Palshikar, learned

Council for the respondent fairly conceded that on the reasoning of the Director, Social Welfare, his order be sustainer. He, thereof, placed reliance on the reasoning by the Commissioner, Nagpur Division. Nagpur in his appellate order confirming the order of the Director of Social Welfare Pune invalidating the caste claimed by the petitioner.

5. Before going to the appellate order, it is significant to note that the appeals were filed by the petitioner and the finding of fact recorded by the Director of Social Welfare, Pune that the petitioner is Bawa by caste though his parents originally resided at Sindhi in Pakistan and then migrated to Maharashtra was not challenged before the Commissioner. What was challenged was that the caste of the person despite migrating remains same and cannot be changed and hence the petitioner though initially of Bawa caste from Sindh and migrated to Maharashtra, continues to remain of Bawa caste which is a Nomadic Tribe recognised by the State of Maharashtra, and the petitioner therefore, could not be deprived of the benefits and concessions available to him invalidating his caste only on the basis of migration. In fact, the finding of the Director of Social Welfare, Pune accepting the caste of the petitioner as Bawa is not open for challenge or for interference in the appeals filed by the petitioner. However, the appellate order of the Commissioner, Nagpur Division, reveals that the said finding is interfered with. The appellate has confirmed the order of the Director of Social Welfare on different grounds detailed as under :

1. It is doubtful whether the appellant or his father belongs to Sindh Bawa Community at all because (i) The transfer certificate from Bonjour English Nursery and K.G. School, Nagpur issued by Miss M.Q. Bonjour in the absence of the record is doubtful. (ii) The transfer certificate issued by St. Francis De-Sales Higher Secondary School, Nagpur, the transfer certificate from Bishop Cotton School, Nagpur and the affidavit of the father of the petitioner mention the caste of the petitioner as Bawa sub-caste Bairagi. (iii) In the refugee Identity Card which contains different columns, against column of caste or community to which the person belongs is written only as Hindu and (iv) the affidavit of the father of the petitioner Shrichand filed before the Executive Magistrate for getting caste certificate is, therefore, unreliable.

2. In the State Government Resolution dated 21-11-1961 Bawa synonymous with Bairagi and is not as though Bairagi is a sub-caste of Bawa.

3. The caste Bawa is not included in the list of Vimukta Jati and Nomadic Tribes in the Sindh Prant of Pakistan though in the Census report of 1901 showing caste and tribes, race and nationally, in Hyderabad district of old Sindhi State caste Bairagi is mentioned as serial No. 3 of Table 13 pertaining to Shikarpur district but the caste Bawa is not mentioned. Hence in the absences of the caste Bawa there can be no existence of sub-caste Bairagi.

4. Even if it is proved that the petitioner belongs to Bawa caste in Sindh, the petitioner cannot claim to belong to the same caste in Maharashtra though Bawa

synonym Bairagi in the State of Maharashtra.

6. Though in our view, in view of the investigation report of the Director of Social Welfare, Pune, it has to be held that the petitioner belongs to Bawa caste and this finding is not open for challenge in appeal before the Commissioner, Nagpur Division, Nagpur, we find that the reasonings given by the learned Commissioner, Nagpur Division, Nagpur for casting doubt as to the caste of the petitioner are wholly unjustified. There appears to be no difficulty for us in ignoring the transfer certificate from Bonjour English Nursery and K.G. School, Nagpur as the same seems to be issued in the absence of record. However, there is no reason whatsoever to ignore other transfer certificates issued by St. Francis De-Sales Higher Secondary School, Nagpur and Bishop Cotton School, Nagpur on the basis of the record available with the schools. These certificates supported by school records do reveal the caste of the petitioner shown as Bawa, sub-caste Bairagi. It is no doubt true that in the Refugee Identity Card, against column of caste or community to which the person belongs only Hindu is written. It cannot, however, be lost sight of the fact that the said form is filled in by the concerned Officer of the Government. It cannot, also be ignored as a fact that Hindu is a religion and not a caste. If the officer concerned has not correctly filled in the form and has not written the specific caste in the Refugee Identity Card, no fault can be attributed to the petitioner or his parent and no inference can be arrived at that the petitioner did not belong to any caste but is only a Hindu. The petitioner's father Shrichand has sworn an affidavit and deposed that his caste is Bawa sub-caste Bairagi, when he applied for caste certificate to the Executive Magistrate in the year 1980. He has also given oral evidence before the Commissioner and in his deposition he asserted his caste as the same. It is significant to note that the petitioner was got admitted in the Bishop Cotton School in January 1970 and at the time of admission a declaration was given by the father of the petitioner showing caste of the petitioner as Bawa, sub-caste Bairagi. At any rate on this date there was no motive for the petitioner or his father for entering false caste as then the family could not have been aware that it was entitled to any benefit of the caste. The daughter of the petitioner's uncle Keshavdas named Ku. Shoba was also issued a caste certificate showing her caste as Bawa her caste as Bawa sub-caste Bairagi by the Executive Magistrate on 5-7-1977 and she got the admission in the Medical College in the quota reserved for Nomadic Tribes and she also completed her education. A complaint was lodged doubting her caste by one Vijay Ramsing Rathod who had also applied for admission in the Medical College, Nagpur and he had also challenged the correctness of the caste certificate issued to her by the Executive Magistrate. Detailed enquiry was made by the Enquiring Officer and by the Enquiry Report in the matter of Caste Certificate dated 25-7-1978 File No. Q/Steno/SDO/NGP/WS/Complaint/Caste/78, the Enquiry Officer after full enquiry on the basis of oral and documentary evidence was satisfied that Ku. Shoba daughter of Keshavadas belonged to Bawa-Bairagi caste which is recognised as Nomadic Tribes in the State of Maharashtra and it was held that the caste certificate issued by the

Executive Magistrate was correct and legal. This enquiry report is annexed to the petition as Annexure 8. If the members of the petitioner's family belong to Bawa-Bairagi caste it is inconceivable to believe that other member of the same family belong to other caste and such an inference will result certainly in absurdity. It is unfortunate that despite convincing and reliable evidence on record the caste of the petitioner is invalidity and the petitioner, Student of a tender age is forced to go through the same ordeal which other members of his family had earlier gone into. In our view, it is nothing but a mere harassment and sheer injustice to the petitioner. We have no hesitation to hold on the basis of the aforesaid available evidence on record that the petitioner does belong to Bawa-Bairagi caste and the certificate issued by the Executive Magistrate is perfectly correct and legal.

7. The Government of Maharashtra has itself held Bawa castes as synonymous with Bairagi Caste and recognised the same as Nomadic Tribe. The petitioner being belonging to Bawa caste is entitled to the benefits and concessions under the said Government Resolution and hence on mere technicalities the benefits of the Government Resolution cannot be refused and denied in the genuine and deserving cases by finding fault with the caste certificate on flimsy and irrelevant considerations. If the caste certificate are invalidity on unreasonable grounds, the very object of the policy of the State shall be defeated.

8. The learned Counsel for the respondents Shri Palshikar lastly tried to justify the order of the Commissioner on the ground that the petitioner though belonged to Bawa caste, this caste was not recognised as Nomadic Tribe in Sindhi (Pakistan). Consequently, Bawa from Sindh cannot be recognised as Bawa in Maharashtra. The argument is obviously fallacious. In Pakistan Bawa may not been recognised as Nomadic Tribe. The caste remains unchanged despite migration. If the State of Maharashtra has recognised bawa caste as Nomadic Tribe, it is difficult to see how the petitioner cannot be recognised as Nomadic Tribe by the State of Maharashtra. There is absolutely no reason or justification for not recognising the petitioner as a member of the Nomadic Tribe. The reasoning of the learned Commissioner, Nagpur Division, Nagpur to the effect that "even if it is proved that the appellant belongs to Bawa caste in Sindhi-the appellant cannot claim to belong to a tribe recognised as a Nomadic Tribe in Maharashtra", therefore, cannot be sustained as the same is illogical and untenable.

9. In our judgment, the petitioner has sufficiently established by convincing evidence beyond any reasonable or probable doubt that he belongs to Bawa caste which is synonymous with Bairagi and hence the impugned communications as also the order of the Commissioner, Nagpur Division, Nagpur in appeal are all illegal, and untenable and cannot be sustained on any grounds whatsoever. They deserve to be quashed and set aside.

10. In the result, the petitioner is allowed. Rule is made absolute in terms of prayer Clauses (1) and (2) of the petition. However, there shall be no orders as to costs.