
(2014) 12 BOM CK 0151
In the Bombay High Court
Case No : Writ Petition No. 464 of 2014

Vishal Ashok Acharya

APPELLANT

Vs

Scrutiny Committee for Verification of Caste Certificate

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (2015) 3 ALLMR 217 : (2015) 6 BomCR 589

Hon'ble Judges : R.M. Borde, J;F.M. Reis, J

Bench : Division Bench

Advocate : S.G. Desai, Senior Advocate and Pavithran A.V, Advocate for the Appellant; A.N.S. Nadkarni, Advocate General and M. Salkar, Government Advocate, Advocate for the Respondent

Judgement

R.M. Borde, J.—Heard Shri S.G. Desai, learned Senior advocate for the petitioner, Shri A.N.S. Nadkarni, learned Advocate General for respondent no.1 and Shri C. Padgaonkar, learned Counsel for respondent No.2. Rule. Rule made returnable forthwith. Heard by consent.

2. The petitioner, who claims to belong to Vishwakarma/Chari/Mesta community, which is included in other backward caste category is praying for issuance of writ of certiorari directing for quashment of the order passed by the Scrutiny Committee on 10/06/2014.

2A. According to petitioner, his father joined services in Dayanand High School, Chora, Goa as a teacher in the year 1971. His father belonged to other backward category. His father had migrated from State of Karnataka. The petitioner was born in Goa on 16/07/1983 and has completed his education in the State of Goa. The petitioner on the basis of a caste certificate issued by the competent authority certifying that he belongs to other backward class category contested election to Gram Panchayat as against the seat earmarked for other backward class. The petitioner got 148 votes at the election and was declared elected. Respondent no.2 challenged the election of the petitioner by before the

Administrative Tribunal at Panaji and the Petition is stated to be pending. Respondent no.2 simultaneously forwarded a complaint to the Scrutiny Committee complaining that the petitioner in fact does not belong to other backward class category and has obtained caste certificate by applying fraudulent means. The complaint forwarded by respondent no.2 was considered along with the claim of the petitioner for validation of the caste certificate by the Scrutiny Committee. The Scrutiny Committee after securing the report from the Vigilance Cell proceeded to hold against the petitioner. The Scrutiny Committee found that the father of the petitioner, who originally belongs to Karnataka State has migrated to the State of Goa after 19/02/1968 and, as such, the petitioner is not entitled to claim his benefits available to other backward class category in view of the judgment of the Supreme Court in the matter of Mari Chandra and certain other judgments. The Scrutiny Committee also found that although the mother of the petitioner is a domicile of the State of Goa and belongs to other backward class category and that the petitioner is born and brought up in the State of Goa, he is not entitled to claim the benefits. The Scrutiny Committee is of the view that the child inherits the caste of his father and the petitioner cannot claim benefits of the caste of his mother, who admittedly belongs to other backward class category. The Scrutiny Committee, as such, proceeded to direct quashment of the certificate issued by the Deputy Collector, Panaji on 18/04/2012.

3. We have heard the arguments advanced by Shri S.G. Desai, learned Senior Counsel appearing for the petitioner, as well as the respective Counsel appearing for the respondents. We have also perused the order passed by the Scrutiny Committee on 10/02/2014.

4. It is not a matter of dispute that the father of the petitioner claims to belong to other backward class category and that he has migrated from the State of Karnataka for purpose of securing employment in the State of Goa in 1971. It is the contention of the petitioner that since he is born and brought up in the State of Goa and that the caste Vishwakarma/Chari/Mesta is declared as an other backward caste in the State of Goa on 29/12/2006, the petitioner is entitled to claim benefits available to OBC's in State. It is also further contention of the petitioner that his father who originally hails from Karnataka had entered into wedlock with his mother Vixaia Chari, who admittedly belongs to "other backward class category". The father of the petitioner passed away while the petitioner was of a tender age of 13 years. The petitioner's mother, after demise of her husband has taken care of the petitioner and raised him. The petitioner did not have any advantageous start in life and has suffered deprivation, indignities, humiliations and handicaps like any other member of the backward community, to which he and his mother belonged. The petitioner placing reliance on the judgment in the matter of Rameshbhai Dabhai Naika Vs. State of Gujarat and Others, claims that the Scrutiny Committee ought to have considered these aspects and ought to have validated the certificate issued to him.

5. The Counsel appearing for the respondent no.2 supported the order passed by the Scrutiny Committee and contended that the petitioner, in fact, does not belong to the "other backward class" category. He inherits the caste of his father, who belongs to Achari community and was a domicile of the State of Karnataka and has migrated to the State of Goa after 1968. Our attention is invited to the school record pertaining to Ashok Dattatraya Acharya, the father of the petitioner, issued Rayappa Hulekal Higher Primary School, Sirsi, Karnataka, on 16/09/2013, wherein the caste of the father of the petitioner is mentioned as "Acharya". The Arts and Science College at Sirsi has also certified that father of the petitioner Ashok Acharya belongs to backward "Achari" caste. The admission record of the father of the petitioner, of Arts and Science College, Sirsi also records entry in respect of his caste as "backward Achari". It is contended that the caste of the father of the petitioner is Achari or Acharya, which is not recognised as one amongst the "other backward category" in State of Goa and, as such, the petitioner cannot be permitted to claim that he belongs to OBC in State of Goa.

6. As has been observed above, the father of the petitioner admittedly was the resident of Karnataka and did his schooling and college education at Sirsi in Karnataka and had migrated to the State of Goa after 1968. In view of the circular issued by the State Government, a person who has migrated to the State of Goa after 19/08/2003 is not entitled to claim benefits available to "other backward class category". The learned Senior Counsel appearing for the petitioner contends that the circular issued by the Government of Goa cannot be made applicable and the date prescribed therein has no rational basis. The said circular is violative of the principle of equality since the prescription of a date of 19/02/1968 is arbitrary and does not have any nexus with the object to be achieved. At this stage, we do not propose to go into the validity of the circular issued by the Government of Goa and we leave the question raised before us open for consideration at an appropriate stage. It does appear that father of the petitioner belongs to Acharya or Achari caste, which is stated to have been included in "other backward class" category in State of Karnataka. The petitioner contends that Acharya/Achari is synonymous to Vishwakarmna/Chari/Mesta caste. The mother of the petitioner also belongs to the said caste. The petitioner having born to a mother belonging to "other backward class" category can claim the benefits available to the said category. Even assuming that the father of the petitioner, who belongs to "Acharya/Achari" caste, which has not been recognised as "other backward class" in the State of Goa, is entitled to claim benefits, since his father entered into wedlock with his mother, who belongs to Vishwakarma/Chari/Mesta community.

7. The contention of the petitioner that "Acharya/Achari" caste is included in "other backward class" category in State of Karnataka and, as such, the petitioner is entitled to claim benefits in the State of Goa and that the caste of his father is one and the same or synonymous to Vishwakarma/Chari/Mesta caste recognised as an "other backward class" in State of Goa is not worthy of

acceptance. In the matter of State of Maharashtra Vs. Milind and Others, , the questions posed for consideration were :

(a) Whether at all, it is permissible to hold enquiry and let in evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned entry in the Constitution (Scheduled Tribes) Order, 1950?

(b) Whether "Halba Koshti" caste is a sub-tribe within the meaning of Entry 19 (Halba/Halbi) of the said Scheduled Tribes Order relating to State of Maharashtra, even though it is not specifically mentioned as such?

8. The Hon'ble Supreme Court on consideration of the constitution bench judgment in the matter of B. Basavalingappa Vs. D. Munichinnappa, and in the matter of Bhaiyalal Vs. Harikishan Singh and Others, has answered the issue in the negative. The Supreme Court has also referred to judgment in the matter of Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, and Nityanand Sharma and another Vs. State of Bihar and others, . The constitution bench in the Milind's matter has recorded finding in paragraph 36 of the judgment which reads thus : (page 88)

"36 In the light of what is stated above, the following positions emerge:

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to the State Governments or Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda Vs. Anirudh Patar and Others, and Dina V. Narayan Singh, 38 E.L.R. 212, did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what

an entry in the Presidential Order was intended to be. As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter.

In this context the judgment delivered by the Division Bench of this Court at Aurangabad Bench in Writ Petition No.4536/2014 decided on 14/08/2014 to which one of us (R.M. Borde, J.) was a member can be relied upon.

9. It would thus be impermissible to contend that the caste "Acharya/Achari" recognised as "other backward class" in State of Karnataka shall be considered to be same or synonymous with the caste Vishwakarma/Chari/Mesta recognised as OBC in State of Goa.

10. The petitioner however, can very well take support of the judgment of the Supreme Court in the matter of Rameshbhai Dabhai Naika (supra) and contend that since the mother admittedly belongs to "other backward class" category and that he has been brought up by his mother and has suffered the deprivation, indignities, humiliations and handicaps like any other member of the backward community to which he and his mother belong, he shall be considered as a member of "other backward class" and the caste certificate issued in his favour shall be validated.

11. In Rameshbhai Dabhai Naika (supra), the petitioner, a child born out of an inter caste marriage between upper caste father and tribal mother has claimed the benefits available to "Naika" a scheduled tribe and requested for issuance of the certificate. The request of the petitioner was rejected by the Scrutiny Committee and the said order was confirmed by the High Court and, as such, the matter was taken up before the Supreme Court. The Supreme Court while dealing with the issue has observed in paragraph no.55 of the judgment as quoted below:

In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the scheduled caste/scheduled tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated a member of the community to which her mother belonged not only by that community but by people outside the community as well.

12. In the instant matter also the petitioner claims that by virtue of he being son of a father, who belongs to caste recognised as backward in the State of Karnataka and has migrated to the State of Goa and the caste of his father "Acharya/Achari" is not recognised as "OBC" in State of Goa and that his father

having got married with his mother, who admittedly belongs to "other backward" community has suffered deprivation, indignities, humiliations and handicaps like any other member of the backward community. The father of the petitioner died while he was of tender age of 13 years and he was brought up by his mother. These circumstances ought to have been considered by the Scrutiny Committee and the caste certificate issued in his favour ought to have been validated. This aspect of the matter has not been dealt with by the Scrutiny Committee in its proper perspective. We are of the view that the petitioner needs to be extended an opportunity to lead proper evidence before the Scrutiny Committee and put forth his contentions to support his claim in consonance with the judgment in the matter of Rameshbhai Dabhai Naika cited supra. The Scrutiny Committee in our view has erroneously brushed aside the contentions raised by the petitioner based upon the judgment in the matter of Rameshbhai Dabhai Naika (supra). The Scrutiny Committee, in our view, needs to reconsider the matter. The evidence placed on record by the petitioner needs to be appreciated in the light of observations made by us in this judgment. The petitioner also shall be extended an opportunity to lead further evidence, if deemed necessary. The respondent no.2, who has lodged an objection shall also be extended an opportunity of hearing by Scrutiny Committee. Judgment and order passed by the Scrutiny Committee on 10/06/2014 thus deserves to be quashed and set aside and the same is accordingly quashed and set aside. The matter stands remitted back to the Scrutiny Committee for disposal in accordance with law and in the light of observations made in this judgment. The Scrutiny Committee shall permit the petitioner to lead further evidence in the matter and tender further documents in support of his claim. The respondent no.2 shall also be extended an opportunity of hearing by Scrutiny Committee. The Scrutiny Committee shall after observing the procedure prescribed in that behalf shall decide the matter afresh as expeditiously as possible preferably within a period of 6 months from the date of the appearance of the petitioner before the Scrutiny Committee. The petitioner as well as respondent no.2 shall appear before the Scrutiny Committee on 5/01/2015 and, as such, no separate notice requiring their presence before the Scrutiny Committee shall be necessary. The parties shall have liberty to raise all contentions before Scrutiny Committee.

13. Rule is accordingly made absolute. There shall be no order as to costs.