
(2006) 02 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No. 1971 of 2004

Yogesh Kakulte

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Citation : (2006) 4 ALLMR 322 : (2006) 3 MhLj 691

Hon'ble Judges : S.P. Kukday, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : S.R. Barlinge, for the Appellant; K.M. Suryawanshi, A.G.P. for Respondent No. 1 and M.S. Deshmukh, for the Respondent

Final Decision : Allowed

Judgement

S.P. Kukday, J.—Rule. Rule, is taken up for hearing forthwith, with the consent of respective Advocates.

2. In this petition, the petitioner challenges order dated 12-9-2002 passed by the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad (hereinafter referred to as "the Committee") invalidating his tribe claim.

3. The relevant facts in brief are that the petitioner belongs to "Mahadeo Koli" Scheduled Tribe. Caste certificate was issued in favour of his father by Sub-Divisional Officer. The petitioner was taking education. He required caste certificate. For this purpose, he approached the Sub-Divisional Officer. Although his father was holding the caste certificate, the SDO refused to issue caste certificate. The petitioner was, therefore, constrained to approach this Court by filing Writ Petition No. 4572/1997 seeking a direction to the Sub-Divisional Officer for issuing caste certificate in his favour. This Court allowed the petition with a direction to the SDO to issue the certificate and forward it to the Scrutiny Committee, for verification. After the certificate was referred to the Committee, the petitioner appeared before it and produced voluminous documentary evidence in support of his tribe claim. Home enquiry was then conducted by the

Vigilance Cell. Report of the Vigilance Cell was made available to the petitioner and opportunity was given to him to submit his clarification. The petitioner and his father were examined in respect of cultural affinity and ethnic linkage with "Mahadeo Koli", Scheduled Tribe. On consideration of the documents and the report of Vigilance Cell, the Committee found that all the documents produced by the petitioner were of recent origin. The Presidential Order including "Mahadeo Koli" as a Scheduled Tribe was issued in the year 1950. However, the petitioner could not produce any documents for the period prior to 1950. The Committee, further, found that the petitioner has failed to establish affinity and ethnic linkage with "Mahadeo Koli" Scheduled Tribe. In this view of the matter, the Committee rejected the tribe claim of the petitioner by an order dated 12-9-2002. This order of the Committee is impugned by the petitioner in the present petition.

4. It is the case of the petitioner that his parents and other blood relatives are illiterate and, as such, documentary evidence available to him is in the form of his birth certificate, school leaving certificate and caste certificates issued by various authorities. As his blood relatives are illiterate, the Committee ought not to have insisted on production of Pre-Presidential Order documents as they were not available. In a case where the old documents are not available the caste/tribe claim will have to be decided on the strength of home enquiry conducted by the Vigilance Cell and affinity test. In such cases, the Scrutiny Committee cannot reject the claim merely on the ground that the claimant is not in possession of the documents issued prior to the promulgation of Presidential Order, 1950, in order to substantiate his claim.

5. The question in respect of mode of deciding the tribe claim in such cases, has been considered by the Division Bench of this Court, in the matter of Prabhu Narayan Survase v. State of Maharashtra reported in 2004 (4) All MR 815. In Clause (f) of Para 11 of the Report, the Court observed thus:

(f) In the absence of documentary evidence, the duty of the Committee will be to permit the candidate to lead evidence of tribal traits and characteristics, by answering the questionnaire prepared in respect of his tribe and also allow any evidence on affidavit to be led on which the candidate can be questioned. That material including in cases where there are documents should be made available to the Vigilance Officer who will verify the same by following the procedure laid down in judgment of the Apex Court referred to earlier to find out the authenticity or genuineness of the claim.

6. Similar view is taken by this Court in Writ Petition No. 4560/2004 in the matter of Madhav Laxmanrao Gaddapod v. State of Maharashtra and Ors. decided by this Court on 5th August, 2004 and recent decision of this Bench in Writ Petition No. 2163/2004 in the matter of Vajjnath Zunjkar v. Scrutiny Committee and Anr. Principles applicable to such cases is now well-settled. In such cases affinity test assumes importance and the tribe claim has to be decided on preponderance of probabilities based on the material before the Committee.

7. Learned Counsel for the petitioner has referred to the decision of the Committee and pointed out that the Committee has rejected tribe claim of the petitioner mainly on the ground that, he could not produce documents prior to 1950. Only passing reference is made to the material in respect of affinity test and ethnic linkage with "Mahadeo Koli" (ST) thereby showing that these factors were not seriously taken into consideration. The basis of the conclusions reached by the Committee can be seen from the following observations found in the order:

On going through the statements recorded by the Vigilance Officer, the Committee observed that the applicant and his family have not even basic knowledge of traits, characteristics, customs and culture etc. of "Mahadeo Koli" Scheduled Tribe community.

The applicant and his father did not furnish any documentary evidence prior to 1950 to establish applicant's tribe claim. The vigilance officer and even the committee tried to get the record, but the applicant failed to do so.

8. From above observation of the Committee, it can be seen that the tribe claim of the petitioner is mainly rejected on the ground that the documents produced were of recent origin. It can also be seen that the reference to the affinity test is very casual and pedantic. The material placed before the Committee is not seriously considered.

9. Learned Counsel for respondent No. 2 Committee Shri M. S. Deshmukh, has submitted that the procedure laid down by Apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, was followed, inasmuch as the report of vigilance cell and the enquiry in respect of the affinity test, was taken into consideration by the Committee before arriving at the final decision. However, reasons given in the order do not reflect serious consideration of the Vigilance report. Therefore, the original record was called for and scrutinized. The petitioner and his father have duly filled in the questionnaire provided to them by the Committee. In order to ascertain whether they do have knowledge of traits and characteristics, customs and usages of "Mahadeo Koli" Scheduled Tribe, learned Counsel for respondent No. 2 has provided us the questionnaire with model answers. On comparing the answers given by the petitioner with the model answers, it can be seen that the petitioner has given almost all correct answers, in respect of traits and characteristics of "Mahadeo Koli", Scheduled Tribe. In this view of the matter, the contention of the learned Counsel for respondent No. 2 that this material was properly considered by the Committee before rejection of the tribe claim of the petitioner cannot be sustained. On the contrary, it is apparent that the Committee has adopted pedantic approach and was influenced by the fact that documents were of recent origin.

10. In the present case, it can be seen that the Committee has fell into grave error by rejecting the tribe claim of the petitioner merely on the ground that the documents produced by him were of recent origin and by not properly

appreciating the material in respect of the affinity test and ethnic linkage of the petitioner with the concerned Tribe. In cases where the decision of the Committee suffers from the vice of non-application of mind, the decision of the Committee has to be interfered with. In this behalf, reference can be made to the decision of Apex Court in the matter of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, . In similar fact-situation, after referring to the principles laid down in Ku. Madhuri Patil's case (supra), the Apex Court observed in para No. 17 as under:

17. Applying the above test to the facts of the present case, we are satisfied that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document "Sl. No. 9" which led the Committee to ultimately record a finding against the appellant. By a wrongful denial of the caste certificate, the genuine candidate, he/she will be deprived of the privileges conferred upon him/her by the Constitution. Therefore, greater care must be taken before granting or rejecting any claim for caste certificate.

11. In the present case also, it can be seen that the petitioner has produced documents substantiating his caste claim. Though the documents are of the recent origin, the petitioner has proved his affinity and ethnic linkage with Mahadeo Koli, Tribe, by correctly giving information regarding peculiar traits, characteristics, customs, usages etc. of his tribe. Therefore, in the peculiar circumstances of this case where all the near blood relatives of the petitioner are illiterate, the Committee ought to have given due weightage to the documents produced by him and after considering the probative value of the documents produced and the fact that petitioner has established his affinity to and ethnic linkage with "Mahadeo Koli" Scheduled Tribe, the Committee ought to have validated the tribe claim of the petitioner. Since the Committee has utterly failed to give due weightage to the material on record, decision of the Committee cannot be upheld.

12. In the result, the petition succeeds. The impugned order dated 12-9-2002 passed by the respondent No. 2-Committee is quashed and set aside. It is hereby declared that the petitioner belongs to "Koli Mahadeo" Scheduled Tribe. The Scrutiny Committee is directed to issue caste validity certificate within a period of three months from today.

13. Rule made absolute in above terms. However, in the facts and circumstances of the case, there shall be no order as to costs