

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10311 OF 2014

Sunil Shivshankar Soni ... Petitioner
Residing at - 2nd Phanswadi,
Sitaram Building, 3rd Floor, Room No. 61,
Mumbai – 400 002

V/s.

1) Divisional Caste Scrutiny Committee ... Respondents.
No. 3, BSD.
2) Reserve Bank of India,
HRMD, MRO, Shahid Bhagat Singh
Road, Post Box No. 901, Mumbai.

Mr. Nitin Gangal for Petitioner
Mr. Vikas Mali AGP for State

**CORAM : NARESH H. PATIL AND
V.L. ACHLIYA, JJ.**

DATED : 1st APIL 2015.

ORAL JUDGMENT: (Per : V. L. Achliya, J.)

Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final disposal at the stage of admission.

2) Petitioner has preferred this petition as against the order dated 01/1/2014 passed by Caste Scrutiny Committee No. 3, Suburb, Mumbai, whereby the Caste Scrutiny Committee has rejected the caste claim of the

petitioner and further directed to confiscate the caste certificate issued in favour of the petitioner. Being aggrieved by the said decision, petitioner has preferred this writ petition challenging the legality and correctness of the impugned order passed by Committee on various grounds as set out in the petition.

3) In brief, the facts leading to filing of petition are as follows.

Petitioner has approached with a case that he is totally blind person. He belongs to "Sonar caste" which is recognized as 'Other Backward Class' in the State of Maharashtra. Although, the family of petitioner originally hails from Jounpur, (Uttar Pradesh), but grandfather and paternal grandfather of the petitioner came to Mumbai sometime in the year 1960 in search of employment. In the year 1960, they started to work as goldsmith worker in the shop of Shri. Maya Shankar Garibdas who was carrying goldsmith business from Shop No. 19/10, Mahajan Galli, Zaveri Bazar. Later on, Shri. Shivshankar, father of petitioner also came to Mumbai and started residing with his paternal uncle i.e. Amarnath Soni. They were residing in hut no. H/EH 774/2/3 which is a census structure and in respect of which State Government has issued photo pass in the name of Purshottamdas, the grandfather of petitioner. Photo pass issued in the year 1976, clearly reflects that father and forefathers of petitioner

were residing in Mumbai much prior to 1966. In the year 2013, petitioner secured job with respondent no. 2 as a telephone operator from reserved category. The caste certificate of petitioner, showing his caste as Sonar issued by competent Authority was sent to Caste Scrutiny Committee, Mumbai for scrutiny and validation of caste claim of petitioner. During the course of the inquiry, the Committee called the report from Vigilance officer. After conducting in depth inquiry, which includes the scrutiny of the documents and home inquiry, the Vigilance officer has submitted a detailed report on 20/08/2014 by observing therein that the petitioner belongs to Sonar caste. However, Committee rejected the caste claim of petitioner on the ground that petitioner has failed to produce documentary evidence showing the residence of the petitioner and his forefather, in State of Maharashtra before 13/10/1967(i.e. the date on which caste Sonar has been included in State of Maharashtra in the list of O.B.C.). Being aggrieved by said decision, the petitioner has preferred this petition challenging the order passed by the Caste Scrutiny Committee.

4) Mr. Nitin Gangal, the learned counsel for the petitioner strenuously contended that petitioner has produced sufficient evidence to establish the claim of petitioner that he belongs to "Sonar caste" which is recognized as O.B.C.. Report of the Vigilance officer and Home inquiry supported the

claim of petitioner. Petitioner has produced number of documents to establish the fact that grandfather and father of the petitioner were residing in Mumbai much prior to 1967. No contra evidence produced before the Committee to show that petitioner belongs to caste other than Sonar, still Committee has rejected the caste claim of the petitioner. Learned counsel for the petitioner further submits that after rejection of claim, petitioner has tried to search the documents to establish the residence of petitioner's family in Mumbai prior to 1967. During search of such documents, petitioner has discovered some documents which helps him to prove his case that his forefathers were residing in Mumbai much prior to 1967. In this context the learned counsel has referred and relied on copy of photo pass bearing serial no. 355724 issued in respect of census structure bearing no. H/EH774/2/3 located in Ward H/E issued in the name of Pralhaddas Soni, the grandfather of petitioner wherein name of the father of the petitioner i.e. Shivshankar is mentioned as one of the family member residing in said census structure. The alleged photo pass was issued on 29/10/1976 by State Government, wherein it is recorded that the person in whose name the photo pass is issued was residing in Mumbai more than 10 years prior to issuance of photo pass.

5) Learned counsel for petitioner has further relied upon the ration

card issued in the name of Amarnath Soni, paternal uncle of the petitioner, in which the name of the father of the petitioner is shown as family member residing at Mumbai. Learned counsel for the petitioner urged that in view of the discovery of new evidence which could not be produced earlier before the Committee, the case be remanded back for fresh consideration.

6) On the other hand, learned AGP supported the order passed by the Committee. He submits that order passed by the Committee is perfectly legal, proper and based upon due appreciation of documentary evidence placed on record by the petitioner. He submits that petitioner has failed to establish that petitioner and his forefathers are resident of State of Maharashtra prior to 13/10/1967. He therefore, submits that order passed by the Committee is legal and calls for no interference in exercise of writ jurisdiction.

7) We have thoroughly considered the submissions advanced in the light of the documentary evidence, relied in support of caste claim of the petitioner. No contra evidence was produced before the Committee, so also report of Vigilance & Home inquiry is in favour of petitioner. In fact, Committee appears to have reached to conclusion that the petitioner has produced evidence which establishes that the petitioner belongs to "Sonar

caste”, which falls in the category of O.B.C. in the State of Maharashtra w.e.f. 13/10/1967. Neither any observations nor any findings recorded by the committee that the documentary evidence produced by the petitioner is unreliable or doubtful. It appears that the only reason which prompted the Committee to reject the caste claim of the petitioner is the failure on part the petitioner to prove residence in the State of Maharashtra on and before 13/10/1967.

8) Perusal of the record, reveals that petitioner belongs to Sonar caste which is included in the O.B.C. category in the State of Maharashtra w.e.f. 13/10/1967. School record of the petitioner supports the caste claim of the petitioner. In school record, his caste is recorded as 'Hindu Sonar'. The Genealogy of the family of the petitioner reveals that grandfather of the petitioner Pralhaddas had four sons and one daughter which include Shivshankar, the father of the petitioner and Amarnath uncle of petitioner. As per school leaving certificate produced on record, the petitioner was admitted in Bhausahab Hire Vidyalay, Tardeo, Mumbai on 13/06/2002 and left the school on 13/10/2005. He left the school after passing 10th standard examination. Prior to his admission in the said school, petitioner was student of Victoria Smarak blind school, Tardeo (Mumbai). In school record, the caste of the petitioner is shown as 'Hindu Sonar'. Birth place of

the petitioner is also shown to be Mumbai. He is shown to be born on 17/02/1989. College leaving certificate issued from D. G. Ruparel College, Mumbai also reflects that in the record of college the petitioner's caste was recorded as 'Hindu Sonar'. Petitioner has produced the license issued by Gold Control Authority of Government of India, in the name of Amarnath Pralhaddas Soni i.e. uncle of the petitioner in which his address is shown as of Mumbai. The said license appears to be issued sometime in the year 1972. Besides this, there are other old documents which supports the case of petitioner that his father, uncle and grandfather were residing in Mumbai much earlier to birth of the petitioner. Photo pass issued by State of Maharashtra in the name of Pralhaddas i.e. grandfather of the petitioner prima facie establishes the proof of residence of the petitioner in Mumbai much prior to 1976. Since the photo pass and some other documents relied by petitioner were not placed before Caste Scrutiny Committee, the Committee could not examine those documents and consider the same while deciding the caste claim of the petitioner.

9) In view of the discussion made in foregoing paras and serious consequences to follow on account of rejection of caste claim of petitioner, who is totally blind person, We are of the view that case deserves to be remanded for fresh consideration of the Committee so as to consider the

additional evidence secured by the petitioner and to decide the same after giving opportunity of hearing to the petitioner. Accordingly we pass the following order.

ORDER

- (i) Petition is partly allowed. Order dated 01/11/2014 passed by Divisional Caste Scrutiny Committee No. 3, Bombay Suburb, Mumbai Division is hereby quashed and set aside. Case is remanded back to the Committee for fresh decision.
- (ii) Petitioner is directed to appear before the Committee on 05/05/2015 and produce additional evidence in his possession which includes photo pass and other documents.
- (iii) Committee is directed to decide the case afresh after giving full opportunity of hearing to the petitioner as expeditiously as possible within a period of 3 months from the date of appearance of the petitioner before the Committee.
- (iv) Respondent No. 2 is directed not to take any coercive action against petitioner till conclusion inquiry and passing of fresh order by the Committee.
- (v) In case, Committee pass any order against petitioner and reject the claim of the petitioner, then respondent no. 2 will be at

liberty to take appropriate decision as deemed fit and proper in the light of such order passed by the Committee.

(vi) With this order and direction, writ petition stands disposed of with no order as to cost.

(vii) Rule is made absolute in above terms.

(VL. ACHLIYA, J.)

(NARESH H. PATIL, J.)