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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.398 OF 2013

Harish Krishna Bhandirge ...Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

Mr.R.K.Mendadkar for the Petitioner
Mr.Milind More, Addl. G.P for the respondent Nos.1
and 2
Mr.P.K.Dhakephalkar, Senior Counsel i/b Mr.S.Khan
a/w Mr.Jagdish Aradwad (Reddy) for the respondent
No.3

CORAM : A.S.OKA, & REVATI MOHITE DERE,JJ.
DATE ON WHICH JUDGMENT IS RESERVED: JULY 24, 2015
DATE OF PRONOUNCEMENT OF JUDGMENT : AUGUST 28,2015

JUDGMENT: (PER A.S.OKA,J.)

1 By order dated 29th August 2013, the Apex Court directed this Court to decide this petition within a period of six weeks. The said order of the Apex Court was brought to the notice of this Bench for the first time on 26th June 2015. The Writ petition was taken up for final hearing on 10th July 2015. Hearing was partly concluded on that day. On 17th July 2015, time was sought by the fourth respondent to file a sur-rejoinder to the rejoinder filed by the petitioner on 12th April 2013. The Advocate for the fourth respondent assured this Court that the said respondent will for apply before the Apex Court for grant of extension of time for disposal of the case. In view of this assurance that an adjournment was granted to the fourth respondent till 24th July

2015. On that day, submissions were concluded after taking the sur-rejoinder of the fourth respondent on record.

2 The petitioner and the fourth respondent contested the General Ward Election of the Mumbai Municipal Corporation held on 16th February 2012. They contested the election for a seat reserved for Other Backward Classes (for short 'OBC'). The fourth respondent was granted caste certificate dated 3rd October 2011 by the Deputy Collector, Mumbai Suburban District stating that he belongs to caste Mansuri which is notified as OBC in the State of Maharashtra. On 30th January 2012, the Caste Scrutiny Committee validated the caste certificate of the fourth respondent. In the election, the fourth respondent secured highest votes and was declared as elected. The petitioner secured second highest votes. Writ petition No.2533 of 2012 was filed by the petitioner in this Court challenging the caste validity certificate earlier granted to the fourth respondent. By order dated 4th October 2010, this Court proceeded to set aside the order of the Caste Scrutiny Committee on the ground that no reasons were assigned. This Court directed a fresh adjudication by passing an order of remand. After the order of remand, a fresh order was passed by the Caste Scrutiny Committee on 29th December 2012 upholding the validity of the caste claim of the fourth respondent that he belongs to caste Mansuri, (notified as OBC). The Caste Certificate dated 3rd October 2011 issued to the fourth respondent by the

Sub Divisional Officer, Mumbai was validated under the said order. It is this order which is the subject matter of challenge in the present Writ Petition.

3 We must note here that the caste Mansuri was included in the list of OBC by the State Government by a Government Resolution dated 9th August 1995. The challenge is mainly on the ground that the fourth respondent's father obtained a caste certificate in the State of Uttar Pradesh which shows that he belongs to caste Dhunia which is notified as Other Backward Class in the State of Uttar Pradesh. It is pointed out that the said caste certificate was granted to the fourth respondent's father by Tahsildar, Mankapur, District Gonda in Uttar Pradesh. In Maharashtra, caste Dhunia is not notified as OBC. The question raised by the petitioner is that when on 16th September 2011 the fourth respondent's father was granted a caste certificate by a Competent Authority in Uttar Pradesh that he belongs to caste Dhunia, whether the fourth respondent could have subsequently claimed that he belongs to caste Mansuri. The contention is that the caste of the fourth respondent cannot be different from the caste of his father.

4 The learned counsel for the petitioner invited our attention to the application made by the petitioner to the Sub Divisional Officer of Mumbai Suburban District which is annexed as Exhibit AR-1 to the rejoinder of the petitioner. He pointed out

that in the said application, the fourth respondent has shown his caste as Dhunia at more than one place. He pointed out that in fact in the said application, the fourth respondent claimed that he belongs to caste Dhunia. In the affidavit in support filed along with the said application, the fourth respondent specifically stated that he himself and his family members belong to Muslim Dhunia which is recognised as OBC by the Government of Uttar Pradesh. The learned counsel for the petitioner pointed out that in the said affidavit, the fourth respondent relied upon the caste certificate of his father issued by the Tahsil Office in Uttar Pradesh which shows the caste of the fourth respondent's father as Dhunia. The learned counsel invited our attention to the relevant entries in the relevant notification issued by the State Government by which the castes included in the category of OBC were notified. He pointed out that the said notification shows that the caste Dhunia has nothing to do with the caste Mansuri. He pointed out that in fact, the caste Dhunia does not find place in the list of OBC in the State of Maharashtra. Inviting our attention to the contents of the notification, he pointed out that in the entry in which caste Mansuri is included, there are two other castes included. He pointed out that at Entry No.177, castes Pinjara, Pinjari and Mansuri have been incorporated in the Government Resolution but in the list of OBC, caste Dhunia has not been included by the State of Maharashtra. Inviting our attention to the various affidavits on record filed

by the fourth respondent, he urged that the case sought to be made out by the fourth respondent is that the caste Dhunia and Mansuri are the same. He pointed out that in fact the fourth respondent has repeatedly stated in his affidavits that he belongs to caste Mansuri/Dhunias. He relied upon the decision in the case of State of Maharashtra vs. Milind Katware¹ and urged that in view of the law laid down by the Apex Court it is not permissible to interpret a particular entry in the notification and show that one particular caste which is not notified is synonymous to the caste specifically notified in the notification. He urged that the case of the fourth respondent is based on fraud which deserved to be thrown out.

5 The learned senior counsel for the fourth respondent pointed out that it is the specific case of the fourth respondent that his father wrongly obtained the caste certificate from the Competent Authority in the Uttar Pradesh which records his caste as Dhunia. He urged that the said certificate has been returned and surrendered by the fourth respondent's father. Inviting our attention to the various documents placed on record, he urged that there is voluminous evidence on record to prove the caste claim of the fourth respondent. He pointed out that the school leaving certificate of the fourth respondent shows his caste as Mansuri/Dhunias. Even the school leaving certificate of his uncle shows the caste as Mansuri/Dhunias. He pointed out that in

¹ (2001) 1 SCC 4

the Nikahnama of the sister of the fourth respondent, the surname of the fourth respondent's father and sister is shown as Mansuri. He pointed out the certificate issued by the All India Muslim Organization recording the caste of the fourth respondent as Mansuri. He pointed out the statements of the various witnesses recorded by the Vigilance Cell. He pointed out that in some documents, the caste of the fourth respondent's father has been entered as Mansuri as well. He pointed out that the traditional business of Mansuri community is cotton carding, preparation of mattresses etc. He pointed out the statements of the witnesses recorded by the Vigilance Cell which show that the business of the family of the fourth respondent was of cotton carding. He urged that the Mansuris are also known as Dhunias. He submitted that on the basis of the voluminous documentary evidence, the Caste Scrutiny Committee recorded a finding of fact with which no interference is called for.

6 We have given careful consideration to the submissions. It will be necessary to make a reference to the documents produced on record by the petitioner along with his rejoinder. The first important document is the application in prescribed form submitted by the fourth respondent to the Competent Authority for grant of a caste certificate. In the said application, on the first page, he has described his caste as OBC and sub-caste as Muslim-Dhunias. On the second page, against

column No.4 of Clause (a) of item No.3, he has disclosed his caste as Muslim-Dhunia. Entry No.5 on the third page shows that the fourth respondent produced the caste certificate issued to his father on 16th September 2011 by the Mankapur Tahsil office in Uttar Pradesh. Thus, in the application made by the fourth respondent for grant of caste certificate, he claimed that his caste was Dhunia and in fact, he relied upon the caste certificate issued to his father by the Competent Authority in Uttar Pradesh which certified that the caste of his father was Dhunia. An affidavit was filed by the fourth respondent along with the said application for grant of caste certificate. In the said affidavit dated 30th September 2011, the fourth respondent has stated thus:

"I say that I myself and my family members belong to MUSLIM DHUNIA caste which is recognized as OTHER BACKWARD CLASS by the Govt. of Uttar Pradesh, in support of which I possess my own leaving certificate, caste certificate of my father KASIM ALI issued by Tahsildar, Mankapur, U.P., ration card etc."

(emphasis added)

7 Thus, in the application made by the fourth respondent for grant of the caste certificate, he has claimed that his caste is Dhunia though in the caste certificate dated 3rd October 2011 issued to him on the basis of the said application, his caste is shown as Mansuri. In the caste certificate dated

3rd October 2011, on the basis of which the impugned caste validity certificate was granted to the fourth respondent, it is specifically observed that the aforesaid affidavit dated 30th September 2011 of the fourth respondent has been verified. However, in the caste certificate dated 3rd October 2011, it is certified that the caste of the fourth respondent is Mansuri. In the rejoinder dated 12th April 2013 to which aforesaid documents are annexed, in paragraphs 10 and 11, the petitioner relied upon the said application for grant of caste certificate made by the fourth respondent. We must note that the said documents were relied upon by the learned counsel for the petitioner when he completed his submissions on 10th July 2015. In the sur-rejoinder belatedly filed one week thereafter on 24th July 2015, the fourth respondent has not at all denied the correctness of the contents of the said application as well as the affidavit on the basis of which the caste certificate was granted to the fourth respondent. In the application made by the fourth respondent for grant of caste certificate, he has given declaration that if it is found that the information furnished by him is false, he is liable to be prosecuted. In the affidavit in support, there is a categorical statement made on oath by the fourth respondent that he and his family members belong to caste Muslim Dhunia which is recognized as OBC by the Government of Uttar Pradesh and that the fourth respondent specifically relied upon the caste certificate issued to his father. As in his application in prescribed form and in the affidavit

in support, the fourth respondent claims that he belongs to Muslim Dhunia caste, we fail to understand that as to how the Sub-Divisional Officer issued a caste certificate stating that he belongs to caste Mansuri which is notified as OBC at serial No.177 of the notification dated 9th August 1995. It is sought to be contended that even in the Vigilance Cell report, it is pointed out that the caste certificate dated 16th September 2011 obtained by the fourth respondent's father was surrendered on 29th November 2012. We must note here that by earlier order dated 30th January 2012, the Caste Scrutiny Committee validated the caste claim of the fourth respondent that he belongs to caste Mansuri. In the said order, it is observed that the fourth respondent produced a list of OBC in the Uttar Pradesh in which at Serial No.45, both the Dhunia and Mansuri castes are mentioned. Thus, in the adjudication made by the Caste Scrutiny Committee, the fourth respondent had relied upon the caste certificate granted to his father on 16th September 2011. It is pertinent to note that the said order dated 30th January 2012 was set aside by this Court by order dated 4th October 2012 in Writ Petition No.2533 of 2012. Only after the order dated 4th October 2012 was passed by this Court remanding the matter to the Caste Scrutiny Committee that on 29th November 2012 the fourth respondent's father surrendered his caste certificate. Thus, only after the fourth respondent found that the caste certificate of his father will be inconvenient to him that the said certificate was surrendered. The

fourth respondent did not examine his father as a witness before the Caste Scrutiny Committee to enable his father to explain under what circumstances he belatedly surrendered his caste certificate. What is important is while applying for the caste certificate, the fourth respondent relied upon the said caste certificate of his father and made a statement on oath that he and his family belongs to caste Dhunia. Even in the earlier adjudication made by the Scrutiny Committee before the remand, the fourth respondent relied upon his father's caste certificate which shows that his caste was Dhunia.

8 It will be also interesting to note the statements made on oath made by the fourth respondent in his reply to the earlier Writ petition No.2533 of 2012 filed by the petitioner for challenging the order of the Caste Scrutiny Committee dated 30th January 2012. In paragraph 6, the fourth respondent stated that he belongs to Mansuri caste/ Dhunia caste. In paragraph 14 of the said affidavit, the fourth respondent stated that the castes Dhunia and Mansuri are shown as synonymous in the Government of India list as well as in the list of the Government of Uttar Pradesh. In paragraph 17, it was contended that the community Mansuri in the State of Maharashtra is known as Mansuri or Dhunia in the State of Uttar Pradesh. Thus, in the said affidavit the fourth respondent repeatedly claimed that the caste Dhunia and the caste Mansuri are synonymous.

9 As far as the interpretation of the entries in the list of notified backward classes is concerned, it will be necessary to make a reference to the decision of the Apex Court in the case of State of Maharashtra vs. Milind Katware. In paragraph 36, the Apex Court has observed thus:

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

(1) It is not at all permissible to hold any inquiry 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 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 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 v. Anirudh Patar* [(1970) 2 SCC 825] and *Dina v. Narayan Singh* [Civil Appeal No. 1622 of 1967, order dated 21-5-1968 (SC)] 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."

(emphasis added)

10 It will be necessary to consider another decision of the Apex Court in the case of *Bharti B. Dhongade Vs. State of Maharashtra and others*². In paragraph 1, the Apex Court has noted the issue before it which reads thus:

"The principal question which arose for consideration in this appeal is whether "Namdeo Shimpi" caste is a sub-caste within the meaning of Entry 153 (Shimpi) in the government notification notifying list of Other Backward Classes (OBCs) relating to the State of Maharashtra, even though it is not specifically mentioned as such? This appeal is filed against the final judgment and order dated 21-10-2010 passed by the High Court of Judicature of Bombay in *Bharati Balkrishna Dhongade v. State of Maharashtra* [WP (C) No. 5772 of 2009, order dated 21-10-2010 (Bom)]

² 2012 1 SCC 566

whereby the Division Bench of the High Court dismissed the writ petition filed by the appellant herein."

(emphasis added)

In paragraph 22, the Apex Court has held thus:

"22. We have already explained that the extract of the Government Resolution dated 3-6-1996 relied on by Mr Rao, learned Senior Counsel for the appellant dealing with caste "Kunbi" (OBC), has no relevance to the facts of the present case. We are also satisfied that the said Committee has considered the distinction between the list of OBCs in the State of Karnataka and in the State of Maharashtra and has taken note of the fact that though the Karnataka State has thought it fit to include "Namdeo Shimpi" under the category of "Shimpi" (OBC), the Government of Maharashtra has not done so. This has also been rightly highlighted in the impugned order by the Division Bench of the High Court. **When it is not so expressly or specifically included in the government resolution/order along with the main caste, in such case, even if it is synonymous to the one mentioned in the order, it is not permissible to avail such benefit of reservation."**

(emphasis added)

Ultimately I paragraph 23, the Apex Court held that

"23. It is well known that a caste may fall under the category of OBCs in one State, but the said caste may not be classified as OBC in other State. At any rate, we are of the view that no specific evidence was led by the appellant to discharge the burden of proof on her under Section 8 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 (23 of 2001). Inasmuch as the burden of proof under Section 8 of the said Act being on the person who claims to belong to that caste, tribe, or class, in view of the factual conclusion by the Committee based on relevant acceptable material and the decision of the Division Bench, we are unable to accept the claim of the appellant. On the other hand, we are satisfied that the Committee and the Division Bench of the High Court have considered the entire material in the light of the decisions of this Court and came to a finding of fact that the appellant does not belong to caste "Shimpi" (OBC) and belongs to "Namdeo Shimpi" caste which is not OBC in the State of Maharashtra."

11 Thus, the Apex Court recognized that a caste may fall in the category of OBC in one state but the said caste may not be classified as OBC in another State. When a caste is not specifically

included in the list notified in one State, it is not permissible to claim benefit of reservation even if the caste is synonymous to the caste specifically notified. In the case before the Apex Court, the caste Namdeo Shimpi was included in the list of OBC in the State of Karnataka. The Apex Court held that the appellant belongs to caste Namdeo Shimpi which is not notified as OBC in the State of Maharashtra and, therefore, the Appellant cannot claim the benefit of reservation in the State of Maharashtra. The Apex Court relied upon its Judgment in the case of State of Maharashtra vs. Milind Katware wherein it is categorically held that it is not 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, 1950.

12 According to the case of the fourth respondent, in the relevant notification in the State of Uttar Pradesh, at entry No.45, both the castes Dhunia and Mansuri are included. In the State of Maharashtra, caste Dhunia does not find place in the list of OBC and at serial No.177, castes Mansuri, Pinjari, Pinjara appear. The attempt made by the fourth respondent to contend that "Dhunias" in Uttar Pradesh are known as "Mansuri" in Maharashtra must fail. The contention that castes Dhunia and Mansuri are synonymous also deserves to be rejected.

13 Now turning to the documents on record of the Caste Scrutiny Committee, the Committee has specifically observed that in the Kisan Note Book (a

copy of which is at page 266) the caste of the fourth respondent's father is shown as Dhunia. The Caste Scrutiny Committee observed that in the Nikahnama of the fourth respondent's sister, the surname of the fourth respondent's father is shown as Mansuri. The Caste Scrutiny Committee in the impugned order mainly relied upon only one document which is the entry in school leaving certificate of the fourth respondent's uncle of the year 1980 of the caste Mansuri. By ignoring the caste certificate of the fourth respondent's father issued by the Competent Authority in Uttar Pradesh that he belongs to caste Dhunia, the Caste Scrutiny Committee relied upon the caste entry of the fourth respondent's uncle in 1980. In the Kisan Note Book of 1966 and in the caste certificate issued by the Competent Authority in Uttar Pradesh to the fourth respondent's father, his caste is shown as Dhunia. The said entries are ignored only on the basis of the entry of the fourth respondent's uncle and the surname of the fourth respondent's father appearing as Mansuri in the invitation card of the fourth respondent's sister's marriage. The Caste Scrutiny Committee has completely ignored that relying upon the caste certificate dated 16th September 2011 of his father which shows his caste as Dhunia, the fourth respondent applied for grant of caste certificate. On the basis of such application, a certificate was issued that the fourth respondent belongs to Mansuri caste. It is pertinent to note that in the Uttar Pradesh both the castes Dhunia and Mansuri have been included in the list of backward

class. The Competent Authority in Uttar Pradesh has chosen to give a certificate to the fourth respondent's father that he belongs to caste Dhunia and not of Mansuri. Moreover, in 1966, in the Kisan Note Book entry of fourth respondent's father shows his caste as Dhunia.

14 The School leaving certificate of fourth respondent's another uncle Shaikh Mohammed Ishaq Kasim Ali is on record which shows that his caste is described as Muslim Shaikh/Mansuri Dhunia. In fact, the school leaving certificate annexed to the reply filed by the fourth respondent to this Petition of his another uncle Shri Shaikh Ali Lal Mohammed describes his caste as Muslim-Shaikh Mansuri Dhunia. In our view, when the fourth respondent's father claimed that his caste was Dhunia and the fourth respondent himself by filing an affidavit along with application for grant of caste certificate stated that he and his family belongs to caste Dhunia, there was no justification for the Scrutiny Committee to validate the caste certificate which discloses that the fourth respondent is Mansuri by caste. The Caste Scrutiny Committee has completely ignored that while making application for grant of caste certificate, the fourth respondent himself claimed that he belongs to caste Dhunia and not Mansuri. As noted earlier, in Uttar Pradesh, both castes are declared as OBC. In Maharashtra, Dhunia is not notified as OBC, but Mansuri is notified as OBC.

15 The learned senior counsel appearing for the fourth respondent tried to rely upon the decision of this Court in Writ Petition No.1658 of 2006 dated 10th August 2007. However, the said decision is of no help to the fourth respondent.

16 Looking to the case from any angle, the fourth respondent could not have claimed that he belongs to caste Mansuri when on his own showing, he applied for a caste certificate by stating that he belongs to caste Dhunia. Moreover, his father was granted a caste certificate stating that he is Dhunia.

17 Therefore, the impugned order dated 29th December 2012 will have to be quashed and set aside.

18 Accordingly, we pass the following order:

- (I) Rule is made absolute in terms of prayer clause (a). The caste certificate dated 3rd October 2011 bearing No. GG-6072/2011 issued by the Deputy Collector, Sanjay Gandhi Yojana, Bombay Suburban District is quashed and set aside on the ground that the same is invalid;
- (II) There will be no order as to costs.

(REVATI MOHITE DERE, J.)

(A.S.OKA, J.)