

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No.342 OF 2014

(Puja Vasant Gujar .vs. State of Maharashtra, through its Secretary and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.Ujwal Deshpande, Adv. for the petitioner.
Mr.T.R.Kankale, A.G.P. for respondent nos. 1 to 4.

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 27th FEBRUARY, 2015.

Heard.

The caste claim of the petitioner as belonging to 'Bhope' Nomadic tribe has been invalidated on 18.10.2012. This Court has protected education of the petitioner while passing the interim order on 31.1.2014.

Mr.Ujwal Deshpande, learned Counsel for the petitioner submits that no witness/relative of the petitioner accepted during home inquiry that they are belonging to 'Mahanubhav' sect. He further submits that - insofar as entry at serial no.94 in the list of other backward class in the State of Maharashtra is concerned, the said entry is in relation to 'Mahanubhav Bhopi' or 'Manbhav Bhopi'. It does not consider the caste by name 'Bhopi'. The said caste is recognized as Nomadic tribe against entry at serial no.4 in the list of Nomadic tribes for the State of Maharashtra. The learned Counsel has taken us through report of home inquiry. He has also invited our attention to the provisions of Rule 17 (11) of

the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

The learned A.G.P. is relying upon the impugned order. He submits that there is clearcut finding that the petitioner belongs to 'Mahanubhav sect'. He also relies upon the statements recorded during home inquiry.

We have perused the statements recorded during the home inquiry. There is no admission by any member that they are members of 'Bhope' tribe which practices 'Mahanubhav sect'.

Similarly, after receipt of Vigilance Cell report on 9.3.2012, a show cause notice has been served upon the petitioner. In that show cause notice, the Scrutiny Committee could find only two lacunae. The first one is - non-submission of old document i.e. prior to 1961 and second one is - in the original Kotwal book at Akola, against the name of great grandfather Govindrao - caste 'Manbhav' has been mentioned. This show cause notice does not point out any admission by any relative that members of the family of petitioner belong to 'Bhope' tribe and follow 'Mahanubhav sect'.

As per the provisions of Rule 17(11) of the Rules (mentioned supra), if the Scrutiny Committee is not satisfied with the report of the Vigilance Cell, it has to issue notice in Form No.20 and in it, it has to indicate the reasons for not accepting the Vigilance Cell report. If there was any such admission, the same needed to be pointed out in show cause

notice. Obviously, the same not been done in the present matter.

Similar controversy has been looked into by this Court by deciding Writ Petition No.3680 of 2014, Yash s/o. Shyamsunder Kothikar .vs. State, through Secretary, Ministry of Social Welfare, Mantralaya, Mumbai and Ors. on 11.2.2015. Said caste claim may also throw some light on this controversy. In this situation, we find that the impugned order is unsustainable. Hence, it is quashed and set aside.

We place the matter back before respondent no.2/Committee for taking decision after giving the petitioner necessary copy of Vigilance Cell report. It is open to the petitioner to file fresh reply on that report. Such reply be filed within three week from today. After receipt of such reply, the Scrutiny Committee shall take necessary decision afresh within next three months.

Petitioner to appear before the respondent no.2/Committee on 31.3.2015 and to abide by its orders in the matter. Period of three months shall commence on 31.3.2015.

Interim orders granted by this Court shall continue till the Scrutiny Committee decides the matter and shall be subject to it. The petition is, thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE