

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

WRIT PETITION No. 3103/2014.

Salim Shah Kalandar Shah

VERSUS

Divisional Caste Scrutiny Committee No.2., Akola.

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

Court's or Judge's orders.

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

DATE : FEBRUARY 11, 2015.

Heard Shri H.R. Gadhia, learned Counsel
for the petitioner and Mrs. K.S. Joshi, learned A.G.P.
for respondent.

Claim of petitioner as belonging to
'Chhaparbandh' Vimukta Jati (A) has been invalidated
on 18.03.2014.

This Court has on 02.07.2014 while issuing
notice, protected his employment.

The arguments of respective counsel are heard. Perusal of the impugned order reveals that caste claim of petitioner was referred for verification on 08.04.2010, and Vigilance report was received by the Committee on 15.09.2011. Petitioner was then served with a notice, and he appeared on 18.10.2011 and submitted his explanation and some documents. He also sought adjournment. He was absent thereafter on 14.02.2012 and 27.03.2012. The matter was taken up on 17.04.2012, and on that day petitioner accepted report of vigilance cell. He sought adjudication in terms of Government resolution dated 23.03.2011.

It appears that he was also heard on 14.03.2013. On 31.03.2013, the Member of Committee retired and, hence, matter was taken up on 03.09.2014. On that day, brother of petitioner submitted his authority and stated that he did not wish to file any more documents and sought orders on the basis of records.

Impugned order shows that the Committee has looked into the government order dated

01.11.2001, as also Circular dated 23.03.2011. It has also found that Chhaparbandh in Maharashtra practice Hindu religion. Accordingly their rites and customs are mentioned. Petitioner is found not satisfying the same, and therefore, caste claim has been invalidated.

Our attention has been drawn to a communication dated 22.07.1996, sent by the Assistant Secretary of State of Maharashtra to Director, Social Welfare. It is on the subject of grant of OBC certificate to Muslims. It is mentioned that there is no possibility of finding any record of caste as such in case of persons practicing Muslim religion. The fact that Chhaparbandhs occur in Muslim religion also is recorded in the impugned order itself. In this situation, by mentioning that Chhaparbandh in Maharashtra practice Hindu religion, and thereafter by referring to customs or rites followed by said people, the claim of petitioner could not have been invalidated.

Perusal of Rule 17 (10) 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 Certificates Rules, 2012 (hereinafter referred to as “**the 2012 Rules**”) shows that the Scrutiny Committee, if it is not satisfied with the vigilance report has to issue a notice in the prescribed proforma. That proforma is shown as 'Form No.25' in the book containing the said 2012 Rules, published by Current Publications (2015 Edition). The proforma requires the Committee to record its finding on vigilance report.

Thus, person getting the notice is aware of the findings of the Scrutiny Committee and gets an opportunity to reply the same. In present matter, the show cause notice is prior to coming into force of the 2012 Rules. It is issued on 19.09.2011. It only mentions that vigilance report is received by the Committee and petitioner has been called upon to submit his explanation, if any, on it. Copy of the vigilance report has been served upon the petitioner with the show cause notice. The developments in

office of the Scrutiny Committee after the said show cause notice are already mentioned by us supra. The Scrutiny Committee could not pass any order till 18.03.2014. In the meanwhile, 2012 Rules came into force. Member of the Committee who earlier heard the matter, had retired on superannuation on 31.03.2013 and fresh hearing was also conducted after giving coming into force of the New Rules.

According to the petitioner as report of vigilance cell was in his favour, he accepted it to be correct on 17.04.2012, and submitted more documents to substantiate his claim.

We do not wish to go into more details of the controversy at this stage. The documents were submitted on 18.10.2011 and have been rejected by the Committee without obtaining report of the vigilance authorities on that documents, with observations that names of persons mentioned therein do not figure in the family tree.

In this situation, we quash and set aside the order dated 18.03.2014. The matter is restored

back to the file of the respondent no.1 Scrutiny Committee for taking fresh decision in accordance with law. The Committee shall serve upon petitioner a show cause notice in form No.25 by 06.04.2015. Petitioner shall appear before the Committee on that date to receive that notice and thereafter verification proceeding shall continue in accordance with law and the same shall be completed within a period of six months.

Interim orders passed by this Court shall continue till then and shall be subject to it.

Other arguments of petitioner are kept open and can be looked into if occasion therefor arises in future.

Writ Petition is, partly allowed and disposed of. No costs.

JUDGE

JUDGE

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