

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3436 OF 2015

Wilfred s/o Rajendra Shelke,
Age : 20 years, Occu. Education,
R/o Shreenath Society. No. A-2,
Tapkir Nagar, Thergaon, Pune,
Tq. Pune, District Pune

PETITIONER

VERSUS

1. Divisional Caste Certificate
Scrutiny Committee No. 1,
Nashik Division, Nashik,
through its Member Secretary
2. The Principal,
Rajarshi Shahu College
of Engineering,
S. No. 80, Pune-Mumbai Bypass
Highway, Tathawade, Pune – 33
3. The Sub Divisional Officer,
Sangamner

RESPONDENTS

Mr. Hemant U. Dhage, Advocate for the Petitioner
Mr. A.S. Shinde, A.G.P. for respondent Nos. 1 and 3
None for respondent No. 2, though served

CORAM : R.M. BORDE AND
SANGITRAO S. PATIL, JJ.

DATE : 8th December, 2016

ORAL JUDGMENT (PER : R.M. BORDE, J.):

Heard.

2. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing and disposal at the admission stage.

3. The petitioner is objecting to the decision, dated 10th March, 2015, rendered by respondent No. 1 – Scrutiny Committee, thereby invalidating the petitioner's caste certificate certifying that he belongs to Mahar Scheduled Caste.

4. The school record of the petitioner, his father, uncle, grandfather and other near relatives, indicates their caste as Mahar. There is no contra evidence placed on record to demonstrate that the petitioner belongs to any other caste than the caste claimed by him. The only ground for rejection of the petitioner's claim is that the Vigilance Officer, in his report, has recorded that the father of the petitioner, his uncle, cousin grandfather and grandfather were the members of the Church. Merely recording that the ancestors of the petitioner were the members of the Church, would not lead to an irresistible conclusion that they have converted themselves to Christianity or

that they have snapped ties with Hindu religion. There is no evidence showing the petitioner's conversion to Christianity. Since there is no evidence of conversion of the petitioner to Christianity, there arises no question of his re-conversion and re-induction into Hindu religion.

5. It is argued on behalf of the petitioner that the members of Mahar caste accept him as the member of the said caste and his relatives, who belong to Mahar caste, have not snapped ties with him. On the contrary, the petitioner is accepted as member of Mahar caste. In the absence of positive evidence in respect of conversion of the petitioner to Christianity, it cannot be inferred that the petitioner has adopted Christian religion and snapped ties with Hindu religion.

6. It is contended that the conversion, if any is only nominal and for all practical purposes, the family belongs to Hindu religion. It is further pointed out that the disadvantages which are peculiar to Scheduled Caste, which is sadly a feature of Hindu religion, continue and the family faces such disadvantages and difficulties faced by the lower castes from amongst

Hindus.

7. In this context, reliance can be placed on a judgment in the matter of **C.M. Arumugam v. S. Rajgopal and others** reported in (1976) 1 SCC 863. In paragraph no. 12 of the judgment, the Supreme Court has observed thus :

" It seems that the correct test for determining this question is the one pointed out by this Court in Chatturbhuj Vithaldas Jasani v. Moreshwar Prasahram. Bose, J., speaking on behalf of the Court in this case pointed out that when a question arises whether conversion operates as a breakaway from the caste , what we have to determine are the social and political consequences of such conversion and that, we feel, must be decided in a common sense practical way rather than on theoretical and theocratic grounds. The learned Judge then proceeded to add :

Looked at from the secular point of view, there are three factors which have to be considered : (1) the reactions of the old body, (2) the intentions of the individual himself, and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or excommunicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical

purposes and when we have to consider the legal and political rights of the old body, the views of the new faith hardly matter.

What is, therefore, material to consider is how the caste looks at the question of conversion. Does it outcaste or excommunicate the convert or does it still treat him as continuing within its fold despite his conversion: If the convert desires and intends to continue as a member of the caste and the caste also continues to treat him as a member, notwithstanding pointed out by this Court, "the views of the new faith hardly matter." This was the principle on which it was decided by the Court in Chhatturbhuj Vithaldas Jasni's case (supra) that Gangaram Thaware, whose nomination as a scheduled caste candidate was rejected by the Returning Officer, continued to be a Mahar, which was specified as a scheduled caste, despite his conversion to the Mahanubhav faith."

8. As laid down by the Supreme Court in the matter of **K.P. Manu, Chairman Scrutiny Committee for Verification of Community Certificate**, reported in **AIR 2015 Supreme Court 1402**, three things need to be established by a person who claims to be a beneficiary of a caste certificate, namely (i) There must be absolutely clear-cut proof that he belongs to the caste

that has been recognised by the Constitution (Scheduled Caste) Order 1950; (ii) There has been reconversion to original religion to which the parents and earlier generations had belonged; and (iii) there has to be a evidence establishing acceptance by the community.

9. While considering somewhat similar facts/situation like one in the present matter, the Supreme Court, in the case of **M. Chandra Vs. M. Thangamuthu**, reported in (2010) 9 SCC 712, observed that in order to claim benefits of reservation under the Constitution (Scheduled Caste) Order, 1950, a person must establish that the caste to which he belongs is notified in the Presidential Order and he is not professing a religion different from the Hindu, the Sikh or the Buddhist.

10. If findings of the Committee are carefully perused, the finding of facts recorded by the Committee that the petitioner is Christian by religion is without any basis and the said finding is perverse, unjust, inasmuch as, there is no documentary evidence on record which would suggest that the petitioner professes Christianity by way of conversion. The Committee has not kept in view the law laid down by the Supreme Court in

the aforementioned authoritative pronouncement and proceeded to invalidate the claim of the petitioner only on the basis of Vigilance Cell's report.

11. In the instant matter, since there is no evidence in respect of conversion, there arises no question of reconversion to the original religion. There is sufficient evidence placed on record to demonstrate that petitioner belongs to Mahar caste and that the people of the community accept petitioner as a member of Mahar caste.

12. The Scrutiny Committee has overlooked the basic principles while declining to grant validation certificate in favour of petitioner. The order passed by the Scrutiny Committee invalidating the caste certificate issued to petitioner is erroneous and deserves to be quashed and set aside and the same is accordingly quashed and set aside. The respondent Committee is directed to issue caste validation certificate in favour of petitioner certifying that he belongs to Mahar Scheduled Caste, in the prescribed proforma, as expeditiously as possible, preferably within a period of four weeks from today.

13. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

[SANGITRAO S. PATIL]
JUDGE

[R.M. BORDE]
JUDGE

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