

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7443 of 2016

Gulab S/o Yohan Pandit,
Age: 52 years, occu: service
R/o Mehekari, Tq. Nagar
Dist. Ahmednagar

Petitioner

Versus

1 The State of Maharashtra,
through the Principal Secretary,
Social Justice Department,
Mantralaya, Mumbai 32

2 SC,DTNT & OBC Caste Certificate
Verification Committee No.1,
Nashik division, Nashik

Respondents

Mr. S.T. Shelke advocate for the petitioner

Mr. S.S. Dande, Assistant Govt. Pleader for Respondents

CORAM : **R.M. BORDE &
V.K. JADHAV, JJ**

(Date : 4th October, 2016.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up
for final decision at admission stage.

3 The petitioner is objecting to the order passed by the

Scrutiny Committee, directing invalidation of the caste certificate issued to him, certifying that he belongs to Mahar caste, which is included in Scheduled Caste (SC) category.

4 The petitioner has been issued a caste certificate by the competent authority certifying that, he belongs to Mahar caste. On the basis of certificate issued by the competent authority, the petitioner has been appointed in Panchayat Samiti Parner, District: Ahmednagar, as against a seat reserved for SC category. The caste certificate issued to the petitioner was referred to respondent No.2 Scrutiny Committee for verification. However, the Scrutiny Committee, on consideration of the material placed on record, directed invalidation of the caste certificate.

5 The petitioner, in order to substantiate his claim, has placed on record school record of himself; wherein the entry in respect of his caste has been recorded as Mahar. In the school record of brother of the petitioner also, there is entry in respect of his caste as Mahar. The petitioner also placed reliance on the extract of register of Births and Deaths maintained by the village Panchayat Mehekari, wherein entry in respect of birth of daughter of Yohan Shravan i.e. father of the petitioner has been recorded, wherein, the caste has been recorded as '*Harijan*'. The revenue record of

grand father of the petitioner in respect of the landed property also refers the caste of his grand father as Mahar. There is contrary evidence in the form of a school extract of the petitioner issued by the Principal of Shri Sadguru High School, Mehekari, Tq. Nagari, District Ahmednagar, wherein, entry in respect of his caste has been recorded as Indian Christian.

6 The Scrutiny Committee, on consideration of the school record referred to above, has come to conclusion that, the petitioner appears to belong to Christian religion and as such directed invalidation of the caste certificate.

7 The vigilance cell report submitted to the scrutiny committee substantiates the claim of the petitioner of his belonging to Mahar caste. The petitioner contends that, the caste certificate issued to his son by name Pandit Parimal Gulab was referred for verification to the scrutiny committee and the Scrutiny Committee, on consideration of the material placed on record, has directed validation of the caste certificate and a certificate in that regard has been issued on 29.9.2011. Apart from this, two nephews i.e. sons of the brother by name Saheba, Rahul and Appasaheb have been issued validation certificates by the Scrutiny Committee in the year 2002-2003 respectively. Since

the son of the petitioner as well as his nephews who are blood relations, have been issued validation certificate by the scrutiny committee, claim raised by the petitioner for issuance of validation certificate ought not to have been rejected.

8 Reliance can be placed in this regard on the Judgment delivered in the matter of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Scrutiny Committee No.1 and others**, reported in 2010 (6) MhLJ 401. The Division Bench of this Court in the matter arising out of similar facts and circumstances, has observed that:

“... The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order.”

9 The Division Bench of this Court (consisting of B.R.Gavai & Smt. Mridula Bhatkar, JJ) in case of **Siddeshwar S/o Ramkisan**

@ Ramkrushna More Vs. Divisional Caste Certificate Scrutiny committee No.2 Akola, Division Amravati & another (reported in 2015 (5) Mh.L.J.100) in para No.11 of the Judgment observed thus:-

“ 11. We have ample experience of the Scrutiny Committee, time and again it is found that in spite of remand and in spite of direction by the Court to consider the validity certificate of the blood relatives, the Scrutiny Committee goes on repeating the same orders and goes on invalidating the claims of the petitioners by ignoring not only the validity certificate granted in favour of the close relatives, but also in ignorance of the law laid down by this Court in the case of Appora vs. D.C.C.S. Committee cited supra. In that view of the matter, we do not want another exercise to be done by the respondent Scrutiny Committee, so as to compel the petitioners to have another round of litigation before this Court. We have already discussed herein above as to how the claim of all the three petitioners is substantiated by the documents placed on record, the validity certificates given in favour of their close relatives and also in

view of the reports of the Vigilance Cell. In that view of the matter, we find that the petitions deserve to be allowed. ”

10 So far as the observations made by the scrutiny committee that, the petitioner appears to belong to Indian Christianity are concerned, those appear to be fundamentally erroneous. It is not a matter of dispute that, the forefathers of the petitioners adopted Hindu religion and there is no evidence of conversion of the petitioner into Christianity. In this regard, observations of the Supreme Court in the matter of **C.M. Arumugam v. S. Rajgopal & others** reported in (1976) 1 SCC 863 are referable. In paragraph No.12 of the Judgment, the Supreme Court has observed thus:-

“ 12. 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 outcast 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 outcast 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. "

11 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 – (1) There must be absolutely clearcut proof that he belongs to the caste that has been recognized by the Constitution (scheduled caste) Order 1950: (ii) There has been reconversion to original religion to which the parents and earlier generations had belong; and (iii) there has to be a evidence establishing acceptance by the community.

12 In the instant matter, there is no evidence to draw an inference that, there is conversion to Christianity, nor an inference can be drawn that, the petitioner has given up the original religion

i.e. Hindu faith. There is abundant evidence placed on record to substantiate the claim of the petitioner of his belonging to Mahar caste. There is also no material placed on record either in the form of record by vigilance cell or by any other mode to draw an inference that, the people from Mahar community did not accept petitioner as the member of Mahar caste or that the petitioner has relinquished Hindu religion or that he has severed relations with Mahar community. The Scrutiny Committee has overlooked the basic aspect of the matter while declining to issue validation certificate in favour of the petitioner. The order passed by the Scrutiny Committee is erroneous and deserves to be quashed and set aside and the same is accordingly quashed and set aside.

13 The respondent Scrutiny Committee is directed to issue validation certificate to the petitioner, certifying that he belongs to Mahar, scheduled caste, as expeditiously as possible and preferably within a period of six months from today.

14 Rule is accordingly made absolute.

15 There shall be no order as to costs.

(V.K. JADHAV, J)

(R.M.BORDE, J)