

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7777 OF 2014

Ravikumar @ Ravindra
S/o Girdharilal Gulati
age: 42 years, occu: business
R/o Ward No.1, Shrirampur
Tq.Shrirampur, District: Ahemadnagar

Petitioner

Versus

- 1 The State of Maharashtra,
through: The Principal Secretary,
For Social Justice & Special
Assistance Department,
Mantralaya, Mumbai 32
- 2 The Collector, Ahmednagar
District Ahmednagar
- 3 The Municipal Council,
Shrirampur, Tq. Shrirampur,
District Ahmednagar
through Its Chief Officer
- 4 The Sub-Divisional Officer,
Shrirampur, Tq. Shrirampur,
District Ahmednagar
- 5 The Divisional Caste Scrutiny Committee
Nashik Division, Nashik
through Its Member Secretary
- 6 Rajendra Jagannath Pawar
age; 43 years, occu: Service
R/o Sanjay Nagar Housing Society
Shrirampur, Tq.Shrirampur,
District: Ahmednagar

Respondents

Mr.V.D. Sapkal advocate for the petitioner
Mr.S.S. Dande, Assistant Government Pleader for Respondents No.1, 2,
4 & 5
Mr. R.R. Tambe advocate for respondent No.3
Mr. M.S.Deshmukh advocate for respondent No.6

CORAM : **R.M. BORDE, & K.L. WADANE, JJ**

Reserved on : 12.4.2016

Pronounced on : 11.08.2016

JUDGMENT

(Per: R.M. Borde, J)

1 The petitioner is objecting to the decision rendered by the Divisional Caste Scrutiny Committee, Nasik division, Nasik, directing invalidation of the caste certificate issued to the petitioner as belonging to Khatri caste, which is included in other backward classes (OBC) category in the State of Maharashtra in view of the Government Resolution dated 25.6.2008.

2 The petitioner contested the election for the post of councilor of Municipal Council, Shrirampur, Dist Ahmednagar and was elected from ward No.3-A, as against a reserved seat prescribed for OBC category. The certificate issued to the petitioner was referred to the scrutiny committee for verification. The scrutiny committee issued order directing invalidation of the caste certificate on 22.8.2011. The respondent No.6, who is the defeated candidate, objected to the order of validation of the caste certificate issued to the petitioner, by presenting Writ Petition bearing No.888 of 2012, which came to be allowed by the

Division Bench of this Court by order dated 26.9.2012 and the matter was remitted back to the scrutiny committee for reconsideration. After remand of the matter back to the scrutiny committee, the committee, after extending opportunity of hearing to the petitioner as well as respondent No.6, took decision in the matter and issued an order directing invalidation of the caste certificate of the petitioner. The said order was again challenged by the petitioner by presenting Writ Petition No.3908 of 2013. The Writ Petition presented by the petitioner was allowed and the matter was again remitted back to the scrutiny committee with certain directions by order dated 4.10.2013. The scrutiny committee again reconsidered the claim of the petitioner and issued an order directing invalidation of the caste certificate issued to the petitioner, which order is subject matter of challenge in the instant petition.

3 The petitioner claims that, his forefathers were ordinary residents of West Punjab region which is now a part of Pakistan. After partition in the year 1947, the family has moved to India and by passage of time, they have settled in Ahemadnagar district. It is contended that, the Assistant Registrar, Refugee Camp, Ambala district had issued a certificate to the grand father of the petitioner which records the caste of the grand father as

Khatri. Although the said certificate discloses description of caste with a prefix as Arora, it is the contention of the petitioner that, in view of the observations made by this Court in Writ Petition No.3908 of 2013, the certificate needs to be considered in proper perspective. It is further contended that, the uncles of the petitioner by name Kedarnath and Rajkumar took education in Uttarakhand and in the school record of his uncles their caste is recorded as Khatri. The petitioner contends that, reference to Punjabi in the school record of the relations of the petitioner is indicative of the language and there is no caste as Punjabi Khatri. The claim of the petitioner cannot be turned down holding that they are Punjabi Khatri since they have migrated from Punjab province after partition.

4 The petitioner contends further that, although the vigilance cell recorded that, the petitioner professes Sikh religion, it does not matter, since the Sikh is a religion and there are sub-castes and Khatri is part of the Sikh religion. It is contended that, there is substantial evidence to support the claim that Aroras who profess Sikh religion also belong to Khatri caste. Contradictory entry in the school leaving certificate of the paternal aunt of the petitioner as Arora Khatri, cannot be construed as an evidence adverse to the petitioner. The petitioner submits that, the scrutiny

committee had not properly assessed the evidence and overlooking the observations made by this Court in writ Petition No.39098 of 2013 has decided the matter.

5 We have perused the order passed by the scrutiny committee. It is observed by the scrutiny committee that, the old entry relating to the caste of the grandfather of the petitioner recorded in the refugee certificate is Arora Khatri, whereas, the entries recorded in the record of paternal aunts of the petitioner by name Veenarani Giridharilal Gulhati and Neenakumari Giridharilal Gulhati show the caste as Shikh Arora, whereas the entry in the school record of the uncle of the petitioner in respect of caste is as Hindu Arora. The scrutiny committee has recorded that the caste Khatri in Maharashtra is a caste related with the caste Patkar which is recorded at Sr.No.126 in the list of OBCs. It is contended that, the State Backward Class Commission directed correction of entry which was earlier recorded at Sr.No.126 in the list of OBCs as Patkar along with sub-castes. The Backward Class Commission has recommended that, the original caste recorded at Sr.No.126 as Patkar shall also include the allied castes and sub-caste Somwanshi Sahastrajun Khastriya, Patvekari, Patvegar, Pattegar, Patavi, Patkar. It was recommended to include Khastriya and Khatri as sub-castes of the main caste Patkar. After

consideration of the report of the Backward Class Commission, the caste Khatri has been included as subcaste or allied caste of Patkar. The caste Patkar is originally in Maharashtra and the persons belonging to the aforesaid caste are traditionally weavers. A Pujnabi claiming to be Khatri cannot have affinity with Patkar which is a caste included in OBC category in Maharashtra. It was further noticed in the vigilance report by the scrutiny committee that, the surnames of the relations of the petitioner are found as Duggal, Gulhati, Longani, Chug, Alagh, Gover, Dang, Talwar, Khanna, Arora etc. and they belong to the caste Punjabi, Shikh Panjabi, Shikh Aroad, Shikh Khastriya. The vigilance cell has recorded that one Rajesh Hariram Alagh is relative of the petitioner and his caste is recorded as Khatri. It shall be noted at this stage that, Rajesh Hariram Alagh is the husband of the real sister of the petitioner by name Hema. Rajesh Alagh was also elected as councilor. He also claimed the validation certificate which was denied to him by the scrutiny committee. Rajesh Alagh tendered writ petition No.7968/2014 to this Court. The writ petition presented by Rajesh Alagh has been dismissed by the division bench of this Court (of which one of us, R.M. Borde is a member) on 1.12.2015. The order passed by the Division Bench in writ petition No.7968/14 was subject matter of challenge in the

SLP (Civil) No.35903/15 and the said SLP came to be dismissed by the Supreme Court by order dated 25.4.2016. While dismissing the SLP, the Supreme Court has observed, " *We do not find any merit in this petition. The SLP is accordingly dismissed.* " In writ petition No.7968/2014 the Division Bench of this Court has taken a view that, Shikh Khastriya and Shikh Punjabi cannot be construed as synonymous with caste Khastriya, which is recorded at Sr.No.126 of the list of OBCs in the State of Maharashtra. While referring to the report of D.K. Gosavi, Commissioner, Backward Class Commission, the Division Bench has observed in para No.9 of the Judgment as below:-

" 9 *The scrutiny committee has considered the report of D.K. Gosavi, Commissioner, Backward Class Commission, Maharashtra State, who recorded his finding in respect of inclusion of caste Patkar at Sr.No. 126 of OBC & other subcaste including Somwanshi Sahastrarjun Khastriya etc. The castes Khastriya and Khatri are included as subcastes of Patkar and cannot be considered synonymous with Punjabi Khatri or Punjabi Khastriya. The vigilance cell has recorded in its report, which has been accepted by the scrutiny committee, that the petitioner has failed to establish his affinity to the Khastriya caste. It is also not a matter of dispute*

that the grand father of the petitioner has migrated from State of Punjab and as such there is a mention of Punjabi in the caste column of the petitioner. However, it has not been explained as to how the entry 'Sheekh Khastriya' is recorded in the school record of the father of the petitioner and the inconsistent entries in respect of caste of father's sister in the school record. "

6 In view of the Judgment in the matter of *State of Maharashtra V/s Milind and others (2001 Vol1 SCC 4)* it cannot be accepted that Shikh Khastriya and Shikh Punjabi are synonymous with Kshatriya or Khatri castes as recorded at Sr.No. 126 in the OBC list. It is directed by the Supreme Court in the matter of *State of Maharashtra V/s Milind* that no enquiry is permissible and no evidence can be led for establishing that, a particular caste or a tribe or tribal community is included in Presidential Order, if they are not expressly included in the Order. It is further ordered that the Courts cannot and should not expand jurisdiction to deal with question as to whether a particular caste, subcaste or tribe or part of tribe or sub-tribe is included in one of the castes mentioned in the Presidential Orders issued under articles 341 and 342 of the Constitution of India. It is thus

impermissible for us to accept the contention of the petitioner that, the castes Punjabi Khastirya or Punjabi Khatri or Sheekh Kshatriya are synonymous with the caste Khastriya which is recorded at Sr.No.126 along with Patkar in the State of Maharashtra. In paragraph No.36 of the Judgment in case of *State of Maharashtra V/s Milind and others*, the Supreme 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 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 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 Bench of this Court in Bhaiya Ram Munda V. Anirudh Patar and Dina V. Narain Singh 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. " "*

7 In view of above, the contention raised by the petitioner that, the caste Punjabi Khatri or the petitioner who claims to be Khatri, originally from Punjab, has to be considered as having affinity with the caste Khatri which is a subcaste of caste Patkar included at Sr.No.126 in OBC list in Maharashtra, cannot be accepted. Reliance is placed by the petitioner on the Judgment in the matter of *State of Maharashtra and others Versus Kumari Tanuja* (reported in AIR 1999 SUPREME COURT 791), wherein it has been recorded that, when Sindh was part of Bombay Presidency, admittedly the Bawas of that region were also treated as belonging to Nomadic tribe in the entire Presidency of the then Bombay, even when Sindh got separated from Bombay

Presidency, the subsequent Resolutions of the Bombay Government continued to show Bairagi and Gosavi communities with their synonyms as Nomadic tribes, without there being any regional restrictions. This is obviously because by then many members of the Bawas community from Sindh region had migrated to various parts of Bombay Presidency. The Bawa community from Sindh is therefore, entitled to the benefits reserved for Nomadic Tribe vide Govt. resolution dated 21.11.1961.

8 In view of the Judgment has has been referred above in the matter of *State of Maharashtra V/s Milind*, the contentions raised by the petitioner relying on the Judgment in the matter of *Kumari Tanuja* is not acceptable. It is not a matter of dispute that the petitioner herein is a brother in law of Rajesh Alagh (the sister of the petitioner by name Hema has married with Rajesh Alagh) whose caste validation claim as belonging to Khatri OBC has been turned down by the scrutiny committee, which order has been confirmed by this Court in Writ Petition No.7968/2014 and the order passed by this Court in the aforesaid writ petition has attained finality by rejection of SLP No.39503/2015 presented by Rajesh Alagh.

9 For the reasons recorded above, the instant petition does not deserve favourable consideration. The petition is devoid of substance and hence stands rejected.

10 Pending Civil Applications do not survive and stand disposed of.

11 There shall be no order as to costs.

(K.L. WADANE, J)

(R.M.BORDE, J)

vbd