

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7968 OF 2014

Shri Rajesh S/o Hariram Alagh
age: 43 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
- 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 Shri Khan Shaheroj M. Abbas
age; 34 years, occu: business,
R/o Behind Shirsat Hospital,
Shrirampur, Tq.Shrirampur,
District: Ahmednagar

Respondents

Mr.Anandsing Bayas advocate for the petitioner
Mr.A.R. Borulkar, 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, & A.I.S. CHEEMA, JJ**

Date : 1.12.2015.

JUDGMENT

(Per: R.M. Borde, J)

1 The petitioner is objecting to the order passed by the Caste Scrutiny Committee, directing invalidation of the caste certificate issued in his favour, by order dated nil August, 2014.

2 The petitioner claims to belong to Khastriya caste, which is included in the Other Backward Classes Category at Sr.No.126 in the Other Backward Classes list. The petitioner contested election to the Municipal Council Shrirampur, as against a seat reserved for OBC category and is a returned candidate.

3 Respondent No.6, who is a defeated candidate had approached this Court by presenting Writ Petition No.8995/2012, objecting to the validity certificate issued in favour of the petitioner. The writ petition came to be allowed and the order passed by the Scrutiny Committee on 27.7.2011, directing issuance of validity certificate to the present petitioner, has been set aside and the matter came to be remitted back to the Scrutiny Committee for fresh consideration.

4 The petitioner appeared before the Scrutiny Committee, after the remand of the matter and submitted documentary evidence in support of his claim. After considering the submissions of the petitioner as well as the objections raised by the respondent No.6, the scrutiny committee decided the claim by order dated nil August, 2014 and directed invalidation of the caste certificate issued to the petitioner.

5 The petitioner, in order to substantiate his claim, placed reliance on number of documents, including his own school record and the school record of his father, his aunt (sister of the father) and other near relations. The scrutiny committee noticed that there are contradictory entries in respect of caste in the documentary record produced by the petitioner. It was also noticed that the vigilance cell report discloses that, the petitioner and his relatives have migrated from State of Punjab and they do not have affinity with the caste Somwanshi Sahastrarjun Kshatriya, who are residents in the State of Maharashtra from ancient times. Committee has also noticed that the caste mentioned at Sr.No.126 in the list of OBCs is 'Patkar', whereas other castes such as Somwanshi Sahastrarjun Kshatriya, Patvekari, Patvegar, Pattgar, Patavi Kshatriya Patkar are included as sub-castes. The petitioner does not have affinity either to

Patkar or Patgar or any of its sub-castes.

6 On perusal of the documents, it transpires that, in the transfer certificate issued to the petitioner by Karamshi Jethabai Somaiya High School, Shrirampur, the date of his admission is recorded as 12.6.1979 and his caste is recorded as Punjabi. In the school record of the father of the petitioner issued by Saint Xavier High School, Ahmednagar, the date of admission of father of the petitioner is shown as 25.10.1959, whereas his caste is recorded as Sheekh Kshatriya. So far as the aunt of the petitioner (father's sister) is concerned, in her school record of the year 1968, her caste is recorded as Khatri. In case of relations of the petitioners, the entries in respect of their caste are recorded either as Hindu Kshatriya, Punjabi, Hindu Punjabi, or Rajput Khastriya etc.

7 It is not a matter of dispute that, the grand father of the petitioner has migrated from undivided State of Punjab after partition. The Police vigilance cell recorded the statement of the petitioner, wherein, it was disclosed by him that the surnames of the relations of petitioner are Gulathi, Alagh, Duggal, Lonagi, Grover, Dang, Talvar, Khanna, Arora etc and on scrutiny of the general school record, it was noticed that the persons belonging to aforesaid surnames belong to castes Khatri, Punjabi, Sheekh,

Sheekh Arora, Sheekh Khastriya, Hindu Punjabi.

8 The petitioner contends that, the caste recorded in his school record as Punjabi refers to language and not the caste, whereas the entry in the school record of his father as Shikh Khastirya is synonymous with Khastriya of Maharashtra. It is contended by the petitioner that entries in the school record in respect of his father and himself cannot be construed to mean contra evidence and in fact it is synonymous with the caste Khastriya in the State of Maharashtra and as such, the decision of the scrutiny committee deserves to be quashed.

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.

10 The petitioner has placed reliance on the validation certificate issued in favour of his brother. However, since it is noticed that the said validation certificate is issued on the basis of validity certificate issued in favour of the petitioner, no reliance can be placed on the aforesaid validation certificate.

11 The contention of the petitioner that Sheekh Khastriya and Sheekh Punjabi shall be considered as synonymous with Khastriya or Khatri recorded at Sr.No.126 in the OBC list in the State of Maharashtra, is unacceptable. The petitioner placed reliance on the Judgment in the matter of *State of Maharashtra V/s Kumari Tanuja* reported in 1991 SC 791. However, in view of the Judgment in case of *State of Maharashtra V/s Milind* as referred to below, the contention of the petitioner based on the aforesaid Judgment is not acceptable.

12 In the Constitution Bench decision in case of *State of Maharashtra Versus Milind and others* reported in 2001 Vol.I SCC 4, the Supreme Court has directed 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 observed 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. It is thus impermissible for us to accept the contention of the petitioner that the castes Punjabi Khastriya or Punjabi Khatri or Sheekh Khastriya are synonymous with the caste Khastirya, which is recorded at Sr.No.226 along with Patkar in the State of Maharashtra.

13 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. " "*

14 We are of the opinion that the scrutiny committee has not committed any error in refusing to rely upon the inconsistent and contradictory evidence appearing on record which dis-entitles the petitioner to claim validation certificate.

15 For the reasons recorded above, no interference is called for in the petition. The writ petition is devoid of substance and hence stands rejected.

(A.I.S. CHEEMA, J)

(R.M.BORDE, J)