

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1050 OF 2016

Shubham Gururaj Hiremath } Petitioner

versus

State of Maharashtra and Ors. } Respondents

Mr. R. K. Mendadkar, *with Ms. Helen Koli-Mahadik for the Petitioner.*

Ms. Sushma Bhende – AGP, *for Respondent Nos. 1 to 4 and 6.*

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- FEBRUARY 3, 2016

P.C. :-

1. By this Petition under Article 226 of the Constitution of India, the Petitioner challenges the order passed by the Divisional Caste Certificate Scrutiny Committee No. 2, Kolhapur.

2. By this order passed on 6th November 2015 (Annexure 'A' to the Petition) the claim of the Petitioner as belonging to the Beda Jangam Scheduled Caste has been rejected.

3. The contention of Mr. Mendadkar appearing for the Petitioner is that the impugned order, apart from being vitiated by non application of mind, is clearly perverse.

4. He would submit that before the Committee, specific material was produced, including a claim made by the first cousin of the Petitioner from the paternal side, namely, Prasad Basavraj Hiremath. The said Prasad Hiremath received a caste certificate certifying him as belonging to Beda Jangam Scheduled Caste, the very claim that the Petitioner makes in the present round of litigation. As far as Prasad Hiremath is concerned, aggrieved by the refusal to issue a caste certificate and the order in that behalf passed by the competent official, he approached the Caste Certificate Scrutiny Committee, which, in that case, also could have exercised appellate powers. It is undisputed, according to Mr. Mendadkar, that as per the scheme of the legislation, the Caste Certificate Scrutiny Committee performs dual functions. It is empowered to deal with Appeals against refusal to issue caste certificates. Equally, when the caste certificate is issued and that is to be scrutinised and validated, it functions as a Scrutiny Committee. In Prasad Hiremath's case, as an appellate authority, it set aside the order passed by the competent authority and thereafter issued a caste certificate in favour of the said Prasad Hiremath.

5. Inviting our attention to the order of the Scrutiny Committee, Mr. Mendadkar would submit that the Committee was

apprised of the order in Prasad's case. That Prasad is indeed a family member. The caste was the same and the claim was identical in every respect. Save and except performing the task of issuance of a caste certificate in that case, and in the present case, scrutinising and validating it, there is no difference. He would submit that there is a speaking order passed in the case of Prasad Hiremath. That order could have been relied upon as a valid piece of evidence to support the claim of the Petitioner. Such a piece of evidence could not have been discarded once the Committee was satisfied that Prasad Hiremath was indeed the Petitioner's first cousin, that the family tree is undisputed, that the said Prasad had approached the Committee and that in the case of the said Prasad the Committee did pass order on 21st January 2010, and the copy produced of that order is a certified true copy. In these circumstances, Mr. Mendadkar submits that the order passed by the Committee be set aside.

6. On an earlier occasion, we had called upon Mr. Mendadkar to produce a copy of the Full Bench judgment in the case of *Shilpa Vishnu Thakur vs. State of Maharashtra*.¹ That was on the basis that the Committee, while passing the order in the case of Prasad, was indeed acting as a Scrutiny Committee and therefore,

¹ 2009 (3) Mah.L.J. 995

whether it had followed the procedural requirements as stipulated in the Rules of obtaining a vigilance report and placing a copy of the same for perusal of the candidate and thereafter inviting the candidate's views in the event of any adverse recommendation in the Committee's report. However, once Mr.Mendadkar has outlined the difference between the powers exercised by the Committee in the case of Prasad, we do not think that the Full Bench judgment needs to be referred in further detail.

7. Ms. Bhende, learned AGP, has taken instructions from the officers present in Court. No affidavit in reply has been filed controverting any factual assertions. We do not find that they could at all be controverted, simply because the Petitioner's first cousin Prasad went through a process and for the reason narrated in para 4 of the Petition. Thereafter, in para 4 itself, it is stated that in the case of Prasad, the Appeal was allowed by this very Committee and Annexure 'C' is certified true copy of the order passed in Prasad's case. Thereafter, Prasad's caste certificate and the order in respect thereof were both produced before the Committee while scrutinising the Petitioner's claim. In the impugned order, in the narration of facts, there is indeed a reference to this order and the document, the genealogy and the

family tree. However, this has been discarded as not a valid piece of evidence. The reasoning to this effect is to be found at pages 34 and 35 of the paper book. In column 8 of page 34, it is stated that a caste certificate is distinct from a caste validity certificate. Prasad's is not a case of caste validity certificate but a caste certificate. In column 9, it is stated that when the Caste Certificate Scrutiny Committee sat to decide Prasad's Appeal, they did not have the benefit of a Vigilance Cell Report. That is a requirement which is now mandatory as far as the scrutiny of the caste claim or the caste certificate is concerned. The present is a case of caste scrutiny and not therefore, on par with the exercise undertaken by the very Committee in the case of Prasad.

8. We have not been shown any legal principle enabling the Committee to discard a piece of evidence which is otherwise reliable, cogent and satisfactory on this ground. The underlying difference in the present case between the Committee's order being passed as an appellate authority and that as a scrutinising and validating authority will not carry the case of the Respondents any further. Our perusal of the order passed in the case of Prasad would enable us to hold that in the case of Prasad, the Committee did not accept the Appeal straightaway. The Committee had before it a number of documents which were

produced as proof by Prasad. Those are listed at para 3 of the Committee's order passed on 21st January 2010 in the case of Prasad. The Committee then accepted them as legal evidence. It framed the necessary points for determination. It thereafter recorded the statements of Prasad and scrutinised each and every document produced by Prasad for its evidentiary value. After that, it came to the conclusion that it is required in the facts of Prasad's case as well to obtain recommendations from the Vigilance Cell. Therefore, in addition to doubting Prasad's claim initially, the matter was referred to the Vigilance Cell. Since the documents produced also indicated an entry as Lingayat, the Committee thought it fit to obtain such a report and found that that is indeed a community but not the surname in all cases. After the Committee had before it the recommendation of the Vigilance Cell and it had perused it carefully and minutely, it passed the order allowing the Appeal of Prasad.

9. We are of the opinion, therefore, that the Committee, in the case of the present Petitioner, could not have discarded this document as easily as it has done and on the specious plea that there was no Vigilance Cell inquiry. Once there was indeed such an inquiry, then, in the given facts and circumstances, we do not see any reason to discard that piece of evidence in the form of an

order in favour of the first cousin of the Petitioner. Ordinarily, therefore, a presumption with regard to the Scrutiny Committee's order in the case of blood relative would operate in the present case as well. We need not multiply our order with reference to several reported decisions. The above reasons are sufficient to set aside the Committee's order. That being perverse, vitiated by a total non application of mind and error apparent on the face of the record, we quash and set aside the same. The Writ Petition is accordingly allowed.

10. We direct the Committee to now assemble and within a period of four weeks from today and pass a fresh order on the claim of the Petitioner, bearing in mind our above observations. It shall discard totally the views in the earlier order, which we have set aside.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)