

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1493 OF 2012

TEJASSING RAJENDRAPRASAD PARDESHI)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Mr.R.K.Mendadkar, Advocate for the Petitioner.

Ms.Sushma Bhende, AGP for Respondent Nos.1 to 4.

**CORAM : S.C.DHARMADHIKARI &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 29th JUNE 2016.

P.C. :

1 In this petition filed under Article 226 of the Constitution of India, the petitioner challenges an order passed by the Caste Scrutiny Committee dated 31st October 2011 and 23rd November 2011.

2 The petitioner had filed this petition on 9th February 2012 alleging that he is a citizen of India. He had taken admission to the Engineering Degree course at the respondent no.5 College against a reserved seat. The petitioner claimed that he belongs to Rajput Bhamta Caste / De-notified Tribe. A Caste Validity certificate issued by the Sub-Divisional Officer, Alibaug Sub-Division, District – Raigad, certifying him as a Rajput Bhamta Vimukta Jati was relied upon and based on the same, the admission was secured. After the admission was secured, the institute forwarded this Caste certificate for scrutiny and verification by the committee. The petitioner pointed out that since there was also a Diploma course of Engineering which he desires to enroll himself in, that the validity certificate be issued expeditiously. The petitioner at the hearing before the committee relied on four certificates of validity granted to his two uncles from the paternal side and two first cousins. These two uncles are the real brothers of the petitioner's father Rajendra Prasad. Thus argument was that Rajendra Prasad had a brother and the brother's son namely the first cousin of petitioner was granted

such a caste validity certificate. The committee discarding all this material decided to invalidate the caste claimed. That is how, the petitioner is before us invoking our writ jurisdiction.

3 The only contention raised by Shri Mendadkar before us is that once the close relatives and from the paternal side having obtained caste validity certificates which have gone unchallenged and there is no finding that they are vitiated by any fraud or misrepresentation, then the committee could not have brushed them aside. For brushing them aside, the committee ought to have assigned cogent and satisfactory reasons. The committee has in the impugned order in paragraph 2 found that the father Rajendra Prasad had attended some school but in the school records his caste is entered as "Pardeshi Rajput." That is how the petitioner cannot claim to be a Rajput Bhamta Vimukta Jati. It is, in these circumstances, that the committee discards the other evidence including the caste validity certificate. Mr.Mendadkar, therefore, assails this conclusion by submitting that there is no application of mind to the caste validity

certificates and some entry in the school record cannot be said to be conclusive or a proof of fraud perpetrated by the petitioner and his family. Ms.Bhende, appearing on behalf of respondents, on the other hand, supported the impugned order by contending that these are pure findings of fact and they should not be interfered in writ jurisdiction.

4 We have perused the writ petition and the annexures thereto, including the impugned order. We have perused the earlier orders of this court. The Division Bench earlier inter alia, referred to the documents relied on by the Scrutiny Committee. The basis of the finding in the impugned order is the information by the Vigilance Cell that no record whatsoever was available regarding the validity certificates issued to the close relatives of the petitioner. That is how, the State sought time and to take instructions from the Appropriate Authority and the Social Justice and Special Assistance Department, as to whether the department is inclined to challenge the validity certificates issued to the close relatives as having been issued without authority of law.

5 This order was passed on 27th March 2012. That reads as under :

"Considering the finding recorded by Scrutiny Committee on the basis of information of the Vigilance Cell which appears at page 45 of the Paper-book to the effect that the Vigilance Cell found that no record whatsoever was available on the basis of which the Validity Certificates were issued to the close relations of the petitioner at page nos.36 to 39. In the context of this finding, Mr.Sonawane learned A.G.P. appearing for the State, prays for time to take instructions from the appropriate authority of Social Justice and Special Assistance Department, as to whether the department is inclined to challenge that said Validity Certificates as having been issued without authority of law. Accordingly, hearing of this petition is deferred till 17th April 2012.

As regards interim relief, Mr.Sonawane submits that even if the petitioner is permitted to continue his engineering course, that ought to be subject to the outcome of this petition and more particularly, keeping in

mind the mandate of Section 10(3) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance of Verification of) Caste Certificate Act, 2001. Accordingly, we direct respondents not to precipitate any action against the petitioner on the basis of impugned decision on condition that the petitioner will pursue the engineering course without claiming any equity at a later stage and that will be subject to the outcome of this petition. The final results of the petitioner shall not be declared without prior permission of this Court."

Pursuant to this order and directions, affidavits have been filed by the State, in reply.

6 Our attention has been invited by Shri Mendadkar to the last such affidavit duly affirmed by the Secretary in the concerned department. At page 97 of their paper book, in paragraph 1 of this affidavit, the deponent states thus :

"I say that in the aforesaid Writ Petition, the Divisional Caste Scrutiny Committee, Nashik Division, Nashik, has filed Affidavit-in-reply stating therein that the original records in respect of certificate of validity issued to Amitsingh Chandansing Pardeshi as belonging to Rajput Bhamta (Vimukta Jati), which is on page - 36 of the petition, is not traceable after due diligence. I adopt and confirm the contents of the Affidavit filed by the Chairman, Divisional caste Scrutiny Committee, Nashik Division, Nashik stating that the original records in respect of certificate of validity issued to Amitsing Chandansing Pardeshi as belonging to Rajput Bhamta (Vimukta Jati), which is on page - 36 of the petition, is not traced. I, therefore, say that the Social Justice and Special Assistance Department do not desire to challenge the certificate of validity dated 13/09/2004 issued to Amitsing Chandansing Pardeshi as belonging to Rajput Bhamta (Vimukta Jati), which is on page - 36 of the Petition."

7 We find that the Division Bench of this court on detailed scrutiny of the records opined that the certificates of validity issued to close relatives, ordinarily would bind the State and the committee. So also the committee being given ample opportunity to produce material to the contrary, but it having failed to do so, then, the committee's order impugned in the petition cannot be sustained. The committee has completely brushed aside these certificates of validity though they were produced for perusal and scrutiny by the committee. It was open for the committee to go behind these certificates and probe whether they are genuine and whether the claim made therein is supported by contemporaneous, reliable and satisfactory record. The committee did not render any finding or conclusion of fraud, deception or misrepresentation by the petitioner and his predecessors-in-title or members of his family. The committee has not referred to any material save and except some stray observation in the Vigilance report. It has also not referred to any independent material except the entry in the school records of the petitioner's father Rajendra Prasad. That entry is of 1963. The

certificates of validity to the family members and immediate close relatives on paternal side have been issued much thereafter and by a Competent Committee. In these circumstances, the finding, and which is perfunctory and unsatisfactory, cannot be sustained.

8 We allow the writ petition by quashing and setting aside the order of scrutiny committee impugned in this writ petition. All consequential benefits and reliefs after such quashing and setting aside shall follow, namely that the committee shall forthwith issue a certificate of validity in favour of the petitioner. The committee and all concerned shall act upon an authenticated copy of this order.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)