

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1849 OF 2015

Harshada Rajendra Rajput

.... Petitioner

V/s.

State of Maharashtra,
Through the Secretary,
Social Justice Department,
Mantralaya, Mumbai & Ors.

.... Respondents

Mr. R.K. Mendadkar for the Petitioner.

Ms. Gauri S. Rao, A.G.P., for Respondent Nos.1, 2 and 5.

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

DATE : 29TH JULY, 2016.

P.C. :

1. By this Petition, under Article 226 of the Constitution of India, the Petitioner challenges the order dated 4th February 2015 passed by the second Respondent.

2. The Petitioner, a citizen of India, claims to be belonging to "Rajput Bhamta", which is recognized as 'Vimukta Jati' in the State of Maharashtra. The Petitioner was granted admission in the First Year of Engineering Degree Course during the Academic Year 2014-15 under reserved category in the fourth Respondent-Institute.

3. The Petitioner was granted conditional admission, in as much as, she was to produce a Caste Validity Certificate. She produced the Caste Certificate issued on 24th June 2010, but the rules of admission require production of a Caste Validity Certificate. That is why she requested the Committee to verify and scrutinize her claim. She submitted her documents, which, *inter alia*, included the Caste Validity Certificate granted to one Sunita Anantsing Rajput. The Petitioner claimed that she is her paternal aunt. The Petitioner also appeared before the Committee. It is the case of the Petitioner that, though a detailed enquiry is contemplated, the Committee has failed to apply its mind and to the fact that the Petitioner's father had produced the genealogy and family tree. He had also filed the affidavit. One of the documents is the Caste Validity Certificate issued in favour of the said Sunita.

4. In challenging the impugned order, Mr. Mendadkar, appearing for the Petitioner, would submit that the Committee has completely omitted from consideration this certificate, the genealogy and family tree. He would submit that this was a relevant document and it is apparent from the original record that the same was submitted. He would invite our attention to the extract from the Vigilance Cell Report, which is produced at page No.32 of the paper-book, which specifically refers to those documents and the family tree.

5. When such was the contention raised before us, we called upon learned A.G.P. to produce the original record. The record was perused in the presence of both sides. It is apparent from the record that the Petitioner's father had produced the genealogy / family tree and the affidavit was filed by him dated 30th July 2013 asserting that Sunita Amarsing Rajput is the real sister of the Petitioner's father Rajendra, that she has been granted the Caste Validity Certificate.

6. However, the affidavit-in-reply filed by Respondent Nos.1 and 2 asserts that, though the Petitioner's father had produced the Caste Validity Certificate, it is apparent from the record and a perusal of the said certificate that the family tree does not reveal any name "Anantsing". The name "Sunita Anantsing Rajput" differs from the name given in the family tree / genealogy and, therefore, such a contradictory assertion could not be accepted.

7. Mr. Mendadkar appearing on behalf of the Petitioner sought time to file a rejoinder / additional affidavit. He has filed such an affidavit and in paras 3, 4, 5 and 6, he has stated thus :-

"3. I say that before the Respondent No.2 Committee, my father Shri. Rajendra Rajput filed an affidavit on 30th July 2013 and furnished genealogical tree of our

family, which is on Page No.49 and 40 of proceedings of the Respondent No.2 Committee.

4. *I say that in the said affidavit, name of my paternal real aunt Sunita Amarsing Rajput is appearing. The said Sunita Amarsing Rajput is the real sister of my father. I say that she married on 11th December 2001 with Shri. Anandsing Shankarsing Zalte. Thereafter, she obtained caste certificate as belonging to Rajput Bhamta, which is recognized as 'Vimukta Jati' from the competent authority on 10.6.2002. The said caste certificate has been issued on the basis of caste certificate issued to her husband Shri. Anandsing Shankarsing who also belongs to same caste i.e. Rajput Bhamta. The said caste certificate further refer to the caste certificate issued to my father Shri. Rajendra Amarsing Rajput by the competent authority on 28.6.1984. It also refers to the affidavit filed by grand-father from paternal side Shri. Amarsing Ransing Rajput on 17.4.2002.*

5. *I say that the abovesaid caste certificate has been issued on 10-6-2002 stating that she belongs to Rajput Bhamta caste. The said caste certificate in unequivocal terms certifies as under :*

“This is to certify that Smt. Sunita wife of Anantsing Rajpt at village Ajanale, Tal. & Dist. Dhule in Maharashtra who belongs to Rajput Bhamta (10) caste which is recognized as Vimukta Jati.....”

6. *I say that consequent upon her marriage, change of her name from Sunita Amarsing Rajput to Sunita Anantsing Rajput has been duly notified in the Gazette dated 24.1.2002 in the same Gazette, even her husband also notified change of his name from Anandsing Shankarsing Zalte to Anantsing Shankarsing Rajput.”*

8. It is further stated that the Petitioner's real aunt from paternal side Sunita Amarsing Rajput was married to Anantsing Shankarsing Rajput of

the same caste. Anantsingh was also granted Caste Validity Certificate by the competent Scrutiny Committee.

9. Based on the above averments and statements in the additional affidavit, Mr. Mendadkar would submit that the relationship as the Petitioner's aunt does not undergo any change. Further, it is fallacious to urge that merely because Sunita has married and got transplanted into her husband's family, she would lose her caste / 'Vimukta Jati' status. In any event, she has married a person belonging to the same Tribe / 'Vimukta Jati'. Her husband is also a 'Rajput Bhamta'. The Petitioner's aunt having been issued a Caste Validity Certificate, but, in the same, her name is mentioned as "Sunita Anantsing Rajput", does not mean that the Petitioner cannot rely upon the said Caste Validity Certificate. It is, therefore, submitted by Mr. Mendadkar that such a document cannot be omitted from consideration.

10. The Judgment of the Hon'ble Supreme Court in the case of *Mrs. Valsamma Paul Vs. Cochin University and Ors.*, reported in AIR 1996 SC 1011, would have no application to the facts of this case. On the other hand, Ms. Rao, learned A.G.P. appearing on behalf of the State and the Committee, would submit that this is not a case where the Petitioner can

rely upon the Caste Validity Certificate issued to his aunt. Apart from the fact that the relationship will have to be established, additionally, it is submitted by her that the said aunt has been granted the Caste Validity Certificate after she has transplanted herself into another family. It is relying on her husband's Caste Validity Certificate, that she has been issued the Caste Validity Certificate by the Committee. Therefore, it is not the same family.

11. Mr. Mendadkar submits that there is no denial of her statements made in the additional affidavit and once the Petitioner's aunt was issued the Caste Validity Certificate on 23rd September 2009, then, the argument of Ms. Rao should not be accepted.

12. With the assistance of both sides, we have perused the Writ Petition and the annexures thereto, the affidavits placed on record as also the original record.

13. We are of the firm opinion that it is not the duty of this Court to scrutinize and verify the caste claim and on the basis of the assertions of the Petitioner and denials of the Respondents. It is apparent that the Caste Scrutiny Committee has failed to perform its duty in accordance

with law. Once the Vigilance Cell Report refers to the relationship of the Petitioner with Sunita, the genealogy / family tree was filed, supported by an affidavit of Petitioner's father, then, it was the duty of the Committee to have perused these documents and render a categorical finding. It is futile now to say that the Petitioner cannot rely upon the Caste Validity Certificate issued to Sunita, assuming that she is the Petitioner's paternal aunt. We do not find any reference to the Caste Validity Certificate issued to the said aunt or to the assertions based on the same. Once the Committee was obliged to consider this vital material while scrutinizing and verifying the caste claim of the Petitioner, then, it's non-consideration and total non-application of mind vitiates the impugned order.

14. On this short ground alone, we allow the Writ Petition. We quash and set aside the impugned order dated 4th February 2015 passed by the second Respondent. We restore the claim of the Petitioner to the file of the second Respondent-Committee for a scrutiny and verification afresh and in accordance with law.

15. Needless to state that, the Petitioner can file any additional documents to support her claim.

16. The second Respondent-Committee must consider as to whether, going by the family tree and the affidavit, the Petitioner has established that the said Sunita is her aunt. Secondly, that she has been issued a Caste Validity Certificate, copy of which is at Exhibit "C", page 25 of the paper-book, that such a certificate, though issued in the name of her husband, that can be relied upon, because the relationship continues and subsists. Lastly, the Committee must determine as to whether the Caste Validity Certificate issued to the Petitioner's aunt prior to her marriage can be relied upon or not; more so, when she has married to one Anantsing Rajput, who was also having Caste Validity certificate certifying him as belonging to "Rajput Bhamta" - Vimukta Jati.

17. We have not expressed any opinion on the rival contentions, but merely highlighted them in order to impress upon the second Respondent-Committee to decide the matter in accordance with law.

18. The Writ Petition is allowed in above terms.

19. The second Respondent-Committee must scrutinize the claim of the Petitioner without being influenced by any earlier findings and conclusions. It must decide it as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order.

20. At this stage, Mr. Mendadkar submits that the ad-interim order passed by this Court on 19th March 2015 be continued, so as to enable the Petitioner to prosecute her studies. This request is opposed by the other side. What we have noted is that the Petitioner's admission was protected. Now that she has succeeded and the impugned order is quashed and set aside, but a remand is directed, interest of justice would be served, if in the peculiar facts and circumstances, we continue the ad-interim protection / order till the second Respondent-Committee renders its decision. If that decision, as communicated to the Petitioner, is in any way adverse to her, let the fourth Respondent-Institute not cancel the admission for a further period of eight weeks, so as to enable the Petitioner to adopt appropriate remedy.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]