

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

4 WRIT PETITION NO. 5475 OF 2011

SUNANYA ASHOK DEORE
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

with

WRIT PETITION NO. 5476 OF 2011

PRAJAKTA ASHOK DEORE
VERSUS
THE STATE OF MAHARASHTRA AND ORS

with

WRIT PETITION NO. 5477 OF 2011

SWAPNILKUMAR ASHOK DEORE
VERSUS
THE STATE OF MAHARASHTRA AND ORS

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Advocate for Petitioner/s : Mr. A.S. Golegaonkar a/w. M.S. Golegaonkar.
AGP for Respondents/State : Mr. A.R. Kale

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**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 24.07.2017

P.C. :-

1. These three petitions challenge a common order passed by the Scrutiny Committee on 31.12.2010. The three petitioners belong to the same family. They had for the purposes of taking education and

being admitted against a reserved seat applied to the Scrutiny Committee through their educational institutions for issuance of a caste validity certificate, that has been denied to them, hence these petitions.

2. With the assistance of Mr. Golegaonkar and Mr. Kale, we have perused the impugned order of the Scrutiny Committee. The Scrutiny Committee had before it as many as 88 documents and which were produced by the petitioner to substantiate and prove her claim.

3. The committee may have examined these documents for their evidentiary value but while appraising and appreciating the same, according to Mr. Golegaonkar, the committee has completely misdirected itself in law. Mr. Golegaonkar submits that apart from the certificate of validity which was issued to a close relative from the paternal side, the petitioner also relied on certain pre-constitutional documents. The petitioner relied upon a copy of an extract of birth and death register, wherein, male child Shravan was shown to have been born to one Fakira Thakur, there the caste is recorded as Thakur on 12.08.1936. Then, the petitioner relied upon the pre-constitutional documents which are at serial nos. 76, 78, 81 and 82. These are true copies of the school leaving certificate in respect of Ramesh Fakira Thakur (petitioner's paternal uncle) dated 10.06.1953, where the caste is recorded as Thakur.

Mr. Golegaonkar, fairly states that all may not be pre-constitutional documents but they are definitely old documents. Then, there is a school leaving certificate in respect of Bhagwan Fakira Thakur another paternal uncle, where the caste is recorded as Thakur on 09.03.1941. Then, there is a paternal aunt Dwarka Fakira Deore, she was admitted in a school and the school record (admission register) shows that her caste is recorded as Thakur, this is dated 08.06.1947, similar is the position with regard to her school leaving certificate. It is stated by Mr. Golegaonkar, fairly that one Dattu Fakira Thakur is the paternal uncle of the petitioner. In this case the date of school admission is stated as 01.04.1942. In his school admission register, the column against caste records his caste as Bhat and this has overwhelmingly weighed with the committee.

4. Then, Mr. Golegaonkar brings to our notice an order passed by this Court in writ petition no. 4593 of 2004, decided on 22.08.2005, a certified true copy of this order is produced and at serial no. 31 in the list of documents. It is stated that, this is in relation to a close relative from the paternal side that is Manohar Bhagwan Deore. He is a cousin of the petitioner. Manohar Bhagwan Deore (Thakur) was issued a certificate of validity pursuant to an order passed by this Court, that piece of evidence

is discarded and brushed aside on the spacious observation in view of the recent legal position set out in the discussion on issue nos. 4 and 5 of the impugned order. Hence, the petitioner cannot derive any benefit of this order.

5. We have already dealt with and in great details as to how the committee has proceeded by applying incorrect and erroneous legal tests. Firstly, in evaluating and appreciating the pre-constitutional documents, the committee has assigned the reason and in general and vague terms that, though, these documents record the name of the tribe to which the applicant/petitioner allegedly belongs but that entry in the caste certificate is not conclusive and decisive. That does not state the specific nomenclature, whether it is a Scheduled Caste or Scheduled Tribe. We have already held in so far as such observation is concerned the nomenclature Scheduled Caste or Scheduled Tribe came to be used and employed only after the constitution was brought into force, otherwise the tribe / caste was known by their description in the anthropological data and available as a public record. Therefore, it is based on such data, research and study that the President of India after consultation with the Governor issued a notification specifying the tribes and castes in the States and Union Territories and they were to be then

termed as Scheduled Castes and Scheduled Tribes, Article 366 (24 and 25) of the Constitution of India.

6. In the instant case, the petitioner did not rely upon these documents and they came to be discarded in preference to one of the document in which the committee found that the person, namely, paternal uncle was stated to be a "Bhat". This entry was obtained by the vigilance cell officer from the concerned school record, this is relied upon because it is stated that in the ordinary and normal course, the school maintains these records and the entries are inserted after the information is taken from the parents and others. This must be given more weightage than other documents. Pertinently, the committee conveniently omits from consideration other documents and which were equally pre-constitutional, that was a school leaving certificate in case of Govind Fakira Thakur, petitioner's paternal uncle, wherein, the caste was recorded as Thakur and dated 19.03.1949. In relation to the paternal aunt Dwarka, the caste was recorded as Thakur on 08.06.1947. Then, in the case of one Shravan Fakira Dagdu Thakur the caste is recorded as Thakur on 12.08.1936. Dattu Fakira Thakur, in whose case the school admission register records the caste as Bhat, what has been omitted from consideration according to Mr. Golegaonkar is that there is another

document and in relation to this very gentleman, wherein, the entry in the birth and death register in the caste column is Thakur which is dated 12.08.1936. Shravan son of Fakira Dagdu Thakur and Dagdu Fakira Thakur are one and the same. An affidavit was filed by the petitioner's father dated 12.05.2007 in which this clarification was given. Therefore, in relation to Dattu a document of later year of 1940 is accepted for its contents are held to be genuine but a prior document of 12.08.1936 has been discarded.

7. After perusal of the entire petition and the annexures, we find much substance in the contention of Mr. Golegaonkar. The learned A.G.P. has not been able to clarify as to how the appraisal of the pre-constitutional documents is sustainable in law. For the reasons that we have assigned in the writ petition no.4575/2012, this approach of the committee is equally unsustainable. Equally untenable is the approach of the committee in brushing aside the order passed by this Court in the case of the uncle of the petitioner from the paternal side. The petitioner was relying heavily on the order passed in the case of the petitioner in writ petition no. 4593/2004 decided on 22.08.2005, that petitioner was the present petitioner's cousin, however, the order is discarded by the committee by assigning a reason that the legal position as emerging

from the subsequent orders of this Court has undergone a change. We do not know which order and referred by the committee, while discussing the issue nos. 4 and 5 alters the legal position. The legal position is as it is. The legal position at best is that once there is a committee and set up under a statute and post Madhuri Patil, then, its powers as derived by the statute enable it to pass an order on scrutiny and verification of the claim. Therefore, no weightage can be given to any orders and passed prior to Madhuri Patil and prior to the constitution of this committee. However, the Scrutiny Committee in the case of the petitioner in writ petition no. 4593 of 2004 was the one under the Maharashtra Act No. 23 of 2001. That writ petition was decided on 22.08.2005, when the Maharashtra Act No. 23 of 2001 was very much in force.

8. In such circumstances, the certificate of validity issued to Manohar Bhagwan Deore could not have been discarded. The reasoning from pages 149 to 152 has been carefully perused by us. Beyond relying on certain general observations and the judgment of this Court rendered in number of writ petitions, there is no elucidation much less a conclusion recorded that the facts and circumstances of the present case are identical to the later judgments, namely, post Manohar's case.

9. As a result of the above discussion, we find that the

committee's orders impugned in the writ petitions are ex-facie illegal and erroneous. They are perverse as well. They, therefore, cannot be sustained. Each of the writ petitions succeed. The impugned orders are set aside. Each of the petitioners shall be entitled to a certificate of validity and the committee shall proceed to issue then within a period of four weeks from today. Civil application pending, if any, also stands disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]

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