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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3134 OF 2009

1. Mukesh Pandurang Bastav,)
Aged 35 years)
2. Vilas Pandurang Bastav,)
Aged 37 years,)

Both residing at B/8, Sagar Pratap)
Cooperative Housing Society,)
Gavanpada, Mulund (E))
Mumbai 400 081 ... Petitioners

Vs.

1. State of Maharashtra)
through its Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai 400 032.)
2. Scheduled Tribe Certificate Scrutiny)
Committee, Konkan Division, Thane)
through its Member – Secretary,)
having its office at Vartak Nagar)
Ward Office in Vedant Complex,)
Vartak Nagar, Thane (West))
3. Senior Superintendent of Post Offices))
Mumbai City, East Division,)
Dadar, Mumbai – 14.)
4. Municipal Corporation of)
Brihanmumbai through its)

Head Security Officer having)
his office at Security Board,)
12, Store Yard, Room No. 104,)
1st Floor, Dr. E. Mozes Road,)
Worli, Mumbai – 18.)

5. Executive Magistrate,)
Shriwardhan, Taluka Shriwardhan,)
District – Raigad. ... Respondents

Mr. R. K. Mendadkar a/w Tanaji Jadhav & Priyanka Shaw, for the
Petitioners.

Ms. Jyoti Jadhav, AGP for Respondent Nos. 1 to 3 & 5.

Mr. P. M. Patil, for Respondent No. 4 – BMC.

CORAM : ANOOP V. MOHTA, &
MANISH PITALE, JJ.

RESERVED ON : NOVEMBER 17, 2017

PRONOUNCED ON : NOVEMBER 23, 2017

JUDGMENT [PER : MANISH PITALE, J.]

1. In our country Tribe / Caste is a recognised basis for identifying groups and communities in order to implement the policy of affirmative action including reservation. It cannot be disputed that close blood relations and persons related to each other on the paternal side belong to one and the same caste / tribe. It cannot be that father belongs to a particular caste / tribe and the sons and daughters belong

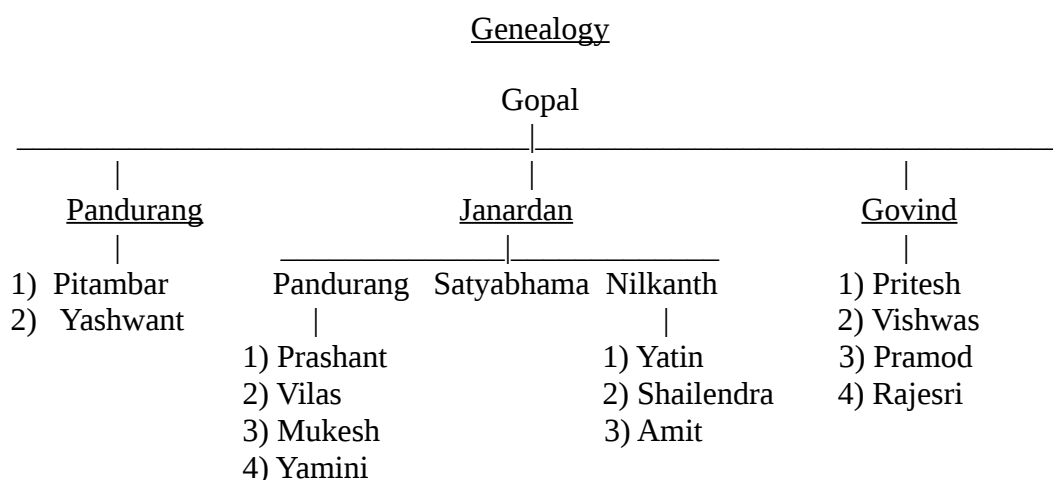
to another. Hence, uniformity of status in terms of belonging to a particular caste / tribe is necessary to be recognised, so as to ensure that members of the same family belonging to a caste / tribe to whom benefits of reservation and other affirmative action have been granted, are not deprived of such benefits.

2. In the instant petition, the grievance raised by the Petitioners, who are brothers, is - as to how can they be deprived of the status of belonging to the Scheduled Tribe - Mahadeo Koli, when the claims of their own sister, a cousin and uncle have been recognised as belonging to the said Scheduled Tribe and when findings in their case have already attained finality.

3. The facts, in brief, of the present case are that both the Petitioners have caste certificates dated 20.6.1994 issued in their favour by the Executive Magistrate stating that they belong to the Scheduled Tribe – Mahadeo Koli. On the strength of these certificates, Petitioner No. 1 – Mukesh was appointed as Postal Assistant on 6.10.1997 in the office of Respondent No. 3 and Petitioner No. 2 was appointed as a Security Guard in November, 2003, in the office of Respondent No. 4. Their caste certificates were

sent for scrutiny to Respondent No. 2 – Scheduled Tribe Certificate Scrutiny Committee (for short “Scrutiny Committee”), which initiated inquiry, including through Police Vigilance Cell to verify genuineness of the aforesaid certificates issued by the Executive Magistrate in favour of the Petitioners.

4. During the course of inquiry, following genealogy was brought on record, which has not been disputed:



5. The Petitioners filed on record before the Respondent No. 2 – Scrutiny Committee, an order of this Court dated 24.3.1994 passed in Writ Petition No. 1434 of 1994, wherein it was categorically held that Yamini Bastav, the sister of the Petitioners belonged to the Scheduled Tribe – Mahadeo Koli, and this Court had issued direction for issuance of validity certificate in her favour.

6. The Petitioners heavily relied upon the aforesaid order

passed in favour of their sister, and they contended that the tribe status of siblings could not be different and that therefore, their claim of belonging to Mahadeo Koli was required to be upheld.

7. Apart from this, the Petitioners had also placed on record numerous documents in support of their claim. Yet, by the impugned order dated 6.1.2009, the Respondent No. 2 – Scrutiny Committee held that the Petitioners failed to prove their claim of belonging to Scheduled Tribe – Mahadeo Koli. Respondent No. 2 – Scrutiny Committee brushed aside the aforesaid order of this Court dated 24.3.1994 passed in favour of the sister of the Petitioners, by stating that each case was required to be decided on its own merits. On this basis, the Scrutiny Committee held that caste certificates dated 20.6.1994 issued by the Executive Magistrate in favour of the Petitioners were invalid and consequently, it cancelled and confiscated the certificates. Aggrieved by the same, the Petitioners have filed this writ petition.

8. Mr. R. K. Mendadkar, learned counsel appearing on behalf of the Petitioners, has not only relied upon the order of this Court dated 24.3.1994 passed in favour of the sister of the Petitioners,

but he has further relied upon the caste validity certificates issued to the first cousin i.e. Yatin Bastav and uncle Pramod Bastav of the Petitioners, during pendency of this writ petition. The caste validity certificates confirming the fact that the said cousin and uncle of the Petitioners belong to the Scheduled Tribe – Mahadeo Koli, have been issued in pursuance of the judgment and order dated 4.10.2013 passed by this Court in two writ petitions, filed by them. The said judgment and order dated 4.10.2013 has disposed of the two writ petitions wherein it has been held and directed in the case of Yatin Bastav (Writ Petition No. 8033 of 2004) that the caste validity certificate be issued in his favour within four weeks of the said order, and in the case of uncle – Pramod Bastav (Writ Petition No. 2925 of 2013), the matter was remanded to the Scrutiny Committee for ascertaining the relationship between the said Pramod and Yamini (sister of the Petitioners) since her claim stood validated by the aforementioned order dated 24.3.1994 passed by this Court.

9. Upon remand, the Scrutiny Committee found that the said uncle of the Petitioners i.e. Pramod Bastav was indeed directly related to Yamini Bastav, and therefore, caste validity certificate was issued to

him. In pursuance of the said proceedings, the caste validity certificate dated 25.7.2014 was issued in favour of Pramod Bastav (uncle of the Petitioners), and the caste validity certificate dated 6.11.2013 was issued in favour of Yatin Bastav (first cousin of the Petitioners). It is these caste validity certificates that have also been relied upon by the learned counsel for the Petitioners in this writ petition to claim that the Respondent No. 2 was not justified in rejecting the claim of the Petitioners.

10. On the other hand, Ms. Jyoti Jadhav, the learned AGP appearing for Respondent Nos. 1 to 3 and 5 submitted that Respondent No. 2 Scrutiny Committee was justified in passing the impugned order. It had evaluated claim of the Petitioners on merits although she did not dispute the genealogy and the fact that Yamini Bastav is the real sister of the Petitioners and further that Yatin Bastav is the first cousin and Pramod Bastav is the uncle of the Petitioners.

11. We have heard the learned counsel appearing for the respective parties and perused the record, as also the common judgment and order passed in Writ Petition No. 2925 of 2013 (*Pramod Bastav Vs. State of Maharashtra*) and Writ Petition No. 8033 of 2004

(*Yatin Bastav Vs. State of Maharashtra & Ors.*), relied upon by the learned counsel appearing for the Petitioners. The main issue that arises for consideration in this petition is as to whether the Scrutiny Committee was justified in brushing aside the order of this Court dated 24.3.1994 passed in Writ Petition No. 1434 of 1994 (*Yamini Bastav Vs. The Tahsildar & Executive Magistrate, Shriwardhan*) while holding against the Petitioners; similarly, whether the fact that validity certificates granted to first cousin and the uncle of the Petitioners can be ignored while examining Petitioners' claim. It cannot be disputed that members of the same family belong to same caste / tribe. In fact, it is only logical that uniformity is to be maintained insofar as the decisions regarding caste / tribe claims of persons belonging to the same family are concerned. A person inherits caste / tribe from the paternal side and if genealogy of the family is not in dispute and the record shows that caste validity certificates have been issued to close blood relations on the paternal side, which have attained finality, there is no reason why claims made on the basis of such validity certificates cannot be granted. It would be a travesty if the claim of each and every blood relation is put to scrutiny and verification by the Scrutiny

Committee repeatedly despite caste validity certificates of close blood relations available on record. It would be in the interest of the verification process if such caste validity certificates of close blood relations are relied upon and caste validity is granted, otherwise it would be sheer waste of precious judicial time to keep on verifying claims of close blood relations one after the other.

12. This Court on earlier occasions has held that when caste validity certificate is granted on proper scrutiny to close blood relations, it ought to be relied upon while verifying the caste / tribe claim of other blood relations of paternal side. A Division Bench of this Court has taken note of series of judgment and orders of this Court while emphasising on uniformity in upholding caste / tribe claim of near blood relations in the case of *Ashwini Vilas Chavan, Petitioner Vs. State of Maharashtra & Ors., Respondents*¹, to which one of us (Anoop V. Mohta, J.) was a member and it has been held as follows:

“Conclusion

“11. Strikingly, the legal and the constitutional rights, benefits, the concessions and the relaxation are well recognized. The genuine cases are required to be concluded

¹ 2017 (3) Mh.L.J. 953

so also the un-genuine cases. The caste claim cases cannot be decided stubbornly by clinging to the routine and stereo type reasons. Once the committee validate the caste certificate / claim, it binds not only the claiming person but to the future generations of the whole family. All the concerned are bound by the law of binding precedents including the committee. The facts based caste claims need to be decided keeping in mind the provisions of law and the Judgments on the connected issues. The copies of the judgments / orders are required to be placed on record of the committee by the concerned parties. The committee to pass the final order promptly so that future and further consequential action arising out of it be complied with at the earliest. The committee in no case deny the caste claim by disregarding the law and the judgments. The scope and power of the committee is very limited while deciding such issues when there is no case of fraud or misrepresentation made out from the record. The judgments so referred above have concluded that the paternal side relatives' caste validity certificate, unless quashed and set aside, must be relied upon. The State and / or the concerned authority is required to issue such circulars as observed in *Sanjay Bajirao More and Anr. Vs. State of Maharashtra and Ors.*², to avoid delay and physical and mental harassment to the concerned persons who are seeking such caste certificates. This would also avoid unnecessary litigation / conflicts with the State and the related authorities when it comes to deciding the rights flowing from the State reservation policy.”

Thus, it is clear that when caste validity certificates have been granted to close blood relations on the paternal side, the claims of other close relations ought to be upheld. It is only in cases where the earlier caste validity certificates of close blood relations are shown to have been

2 2015 (6) Mh. L.J. 822

obtained by fraud / fabrication, a detailed scrutiny and verification of the claims is required to be undertaken. The other situation in which further inquiry and verification would be necessary is – where the genealogy is disputed and it is found that there is any falsity or error in the genealogy brought on record. In the absence of any such objection raised, the caste validity certificates of close blood relations on the paternal side are required to be accepted for granting validity to subsequent claims.

13. In the instant case, from the genealogy quoted above, it is clear that Yamini Bastav, Yatin Bastav and Pramod Bastav are all close blood relations on the paternal side of the Petitioners. Yamini Bastav is the real sister; Yatin Bastav is the first cousin; and Pramod Bastav is uncle of the Petitioners. The caste validity certificates have been issued to all three persons and they have attained finality. In the face of these facts, as no objection is raised by the Respondents on either the ground that the said caste validity certificates of the close relations have been obtained by fraud / fabrication or that the genealogy is erroneous / false, there is no reason why caste validity certificates should not be granted to the Petitioners herein. The Respondent No. 2

– Scrutiny Committee has committed an error in brushing aside the order of this Court dated 24.3.1994 passed in Writ Petition No. 1494 of 1994 (supra) in favour of the real sister of the Petitioners. The subsequent caste validity certificates issued by the Scrutiny Committee to the first cousin and uncle of the Petitioners, show that impugned order in the present case is unsustainable.

14. Accordingly, the writ petition is allowed in the following terms:

- (a) The impugned order dated 6.1.2009 passed by Respondent No. 2- Scrutiny Committee is quashed and set aside.
- (b) The Scrutiny Committee shall issue caste validity certificates in favour of the Petitioners within four weeks on production of an authenticated copy of this order.
- (c) Rule is made absolute in the aforesaid terms with no order as to costs.

Sd/-
[MANISH PITALE, J.]

Sd/-
[ANOOP V. MOHTA, J.]

Vinayak Halemth