

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

WRIT PETITION NO.12304 OF 2016

Jitendra s/o Rupsingh Rajput,
Age 32 years, Occu. Sarpanch,
R/o Akhatwadi, Taluka Pachora,
District Jalgaon

..Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Social Welfare Department,
Mantralaya, Mumbai 32
2. The District Collector,
District Jalgaon
3. The Tahsildar,
Taluka Pachora,
District Jalgaon
4. The Divisional Caste Certificate
Scrutiny Committee,
Nasik No.2, Head Office, Dhule
5. Sanjay s/o Tukaram Pardeshi,
Age 40 years, Occu. Agriculturist,
R/o Akhatwadi, Taluka Pachora,
District Jalgaon
6. Girdhar s/o Shivilal Gadhari,
Age 65 years, Occu. Nil,
R/o Akhatwadi, Taluka Pachora,
District Jalgaon
7. Muralidhar s/o Nimba Pardeshi,
Age 36 years, Occu.Private Service,
R/o Akhatwadi, Taluka Pachora,
District Jalgaon

..Respondents

Mr R.S. Deshmukh, Advocate for petitioner

Mr P.S. Patil, A.G.P. for respondents no.1 to 4

Mr Shailendra S. Kulkarni, Advocate for respondents no.5 and 6

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 10.04.2018**

**DATE OF PRONOUNCING
THE JUDGMENT : 27.04.2018**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule made returnable forthwith. With the consent of parties, heard finally at admission stage.

2. The petitioner assails the judgment of respondent no.4 Scrutiny Committee dated 9.11.2016, whereby his caste claim for 'Rajput Bhamta - V.J.' was invalidated.

3. Mr R.S. Deshmukh, learned Counsel for the petitioner has argued on following points:

(I) Respondent no.4 did not consider the caste 'Rajput Bhamta' of the petitioner's real uncle recorded in pre-independence period (1945). The document produced by the petitioner was branded as false in view of political intervention.

(II) No sufficient opportunity was granted to the petitioner to produce material documents. Two cousins of the petitioner were granted validity certificates, which could not be produced before the Committee as the matter was hurriedly closed after receipt of letter from the Minister.

(III) The Committee acted under pressure of the Minister for Animal Conservation, Dairy and Fisheries. Respondents no.5 to 7 who were

political rivals of the petitioner wrote letter to the Minister and at their behest, the Private Secretary of the Minister wrote letter to the Committee, which influenced the action of the Committee.

4. Due to invalidation of the claim of the petitioner though he was elected as a Member of Village Panchayat, he is disqualified at the instance of the claim made by defeated opponents - respondents no.5 to 7.

5. Per contra, learned A.G.P. Mr Patil and learned Advocate Mr Shailendra Kulkarni for respondents no.5 and 6 strongly supported the impugned judgment. They submitted that the petitioner's father and uncle are having record as 'Rajput', which is not a reserved caste. The record of Lalsingh is tampered. There is vigilance report to that effect. The Committee had given ample opportunity to the petitioner to file reply and contest the claim, but the petitioner deliberately prolonged the proceedings and did not lead evidence. The Committee has acted on the basis of material before it and has recorded findings which are just and reasonable. Hence, no interference is warranted.

6. Learned Advocates have relied on number of rulings, which will be discussed in due course.

7. The points for our consideration are as follows :

(I) Whether respondent no.4 has not followed proper process while invalidating the claim of the petitioner ?

...In the negative

(II) Whether any interference is necessary in the order of judgment of Scrutiny Committee? ...In the negative

(III) What order ? ...Writ Petition is dismissed.

8. The claim of the petitioner as member of Rajput Bhamta - V.J. Tribe is based on :

- (I) His own school record;
- (II) Birth record of his uncle Lalsingh of 1945;
- (III) Two validity certificates issued in favour of cousins of the petitioner produced for the first time in this Court;
- (III) The petitioner also relied on the letter received by Caste Scrutiny Committee from the Private Secretary of the Minister dated 18.10.2016.

9. The first contention of the petitioner is that he was not given sufficient opportunity. The Rojnama of the proceedings shows that proceeding was initiated on 18.7.2015. The vigilance report was received by the Committee on 29.6.2016. The Committee had issued notice dated 30.3.2016 to the petitioner directing him to appear along with his evidence before the Committee on 4.5.2016. It was reported that vigilance report was also received and copy of the same was also provided to the petitioner. The petitioner was served with show-cause notice dated 5.7.2016 informing him that the document about Lalsingh was a forged document and why his claim should not be rejected.

10. Thereafter, the petitioner and his Advocate were present on various dates and sought adjournments from time to time on 4.8.2016, 20.8.2016, 9.9.2016, 9.10.2016 and 9.11.2016. Thus, the petitioner was given time of four months, but still he did not file any reply to the vigilance report or show-cause notice dated 5.7.2016. This is clear case of attempt to protract the litigation. As per the Act, the petitioner was entitled for time of only 15 days for submission of reply. Still the Committee was kind enough to grant him time of four months. Thus, we find that there is no substance in the submission of the petitioner that sufficient opportunity was not given to him.

11. The petitioner also placed reliance on the pre-independence noting of caste of Lalsingh as 'Rajput Bhamta'. A copy of birth and death register maintained in 1945 shows that Lalsingh, paternal uncle of the petitioner was 'Rajput Bhamta'. However, the Scrutiny Committee has given valid reasons to disbelieve this evidence. Caste of the petitioner's father Rupsingh and uncle Pundlik are noted in the school record at the time of admission on 13.4.1951 and 1.5.1941 respectively as 'Rajput'. It is a contra evidence as 'Rajput' is a separate caste and not a reserved caste.

12. The Committee has rightly observed that Lalsingh's certificate cannot be believed as word, 'Bhamta' is recorded in different ink and handwriting. Besides, the said record is suspicious in view of discrepancies in the number of entries.

13. It is contended by the petitioner that he was not permitted to produce caste validity certificates issued in the name of his two cousins. He has produced copies thereof in this Court.

14. It was argued that when the paternal relatives have received validity certificates, the petitioner should have been granted validity certificate unless the fraud is disclosed in obtaining the validity certificate by the paternal relatives. In this regard, reliance is placed on following judgments -

- (i) **Jayram Vishram Gangawane Vs. State of Maharashtra and ors. (2017) 3 Mh.L.J. 502**
- (ii) **Mukesh Vs. State of Maharashtra, 2018 (2) Mh.L.J.180**
- (iii) **Abhilash Hasrath Savale Vs. State of Maharashtra, 2016 (4) Mh.L.J. 873**
- (iv) **Sanjay More Vs. State of Maharashtra 2015 (6) Mh.L.J.822**

15. Learned Counsel Mr R.S. Deshmukh has argued that Ninad and Prasad were given vigilance certificates and they are cousins of the petitioner and, therefore, the matter should be remanded.

16. The genealogical tree at page 131 disclose that the petitioner claims to be great-great-great grandson of one Buwabhai as follows :

Jitendra s/o Rupsinh s/o Chindha s/o Vazirsinh s/o Umedsih and s/o Buwabhai.

Ninad and Prasad are great-great-great grandson of Buwabhai as follows :

Ninand/Prasad sons of Arunsinh s/o Ransinh s/o Dagadusinh s/o Karansinh s/o Dajiba and s/o Buwabhai.

17. It is pertinent to note that this genealogical tree was filed after a long time gap of more than one year. No documentary evidence is produced to prove this genealogy. It is difficult to believe that any person can remember the relationship of seven generations unless their documentary record is maintained. It is, therefore, doubtful whether Ninad and Prasad are paternal relatives of the petitioner or not. Secondly, the validity certificates of Ninad and Prasad should have been produced before the Committee well in time so that there could have been vigilance to verify the genealogical tree as well as the validity certificates and the record of vigilance proceedings. This has not been done in spite of ample opportunity granted to the petitioner. It is well settled that burden is on the petitioner to prove that he belongs to particular caste or tribe.

18. No doubt, as held in these cases, the validity certificates granted in favour of paternal relatives has great evidentiary value while determining the validity of caste or tribe of the petitioner. It is equally true that in case of fraud or misappropriation, the validity certificate issued in favour of petitioner's paternal relatives can be ignored.

19. In the first place, the petitioner has not disclosed the proper genealogy tree when he submitted his claim petition. In the said

petition he merely disclosed the name of his father, name of his real uncle Pundlik and name of grandfather Chindha. Submission of proper genealogy tree is not an empty formality. The vigilance is conducted on the basis of material produced including the genealogical tree. The genealogical tree dated 14.7.2015 was filed on oath, but it is casual affidavit not disclosing the relations. Then, a fresh affidavit was filed on 14.9.2016 after the vigilance report was filed disclosing genealogical tree containing several heirs of seven to eight generations.

As held in **Madhuri Patil Vs. Addl. Commissioner & Ors., AIR 1995 SC 94**, even in case of validity certificates issued in favour of paternal relatives, the prescribed procedure has to be followed and social status is to be duly verified before granting the certificate. In **Pournima Pawar Vs. State of Maharashtra AIR 2013 SC 1508**, there was caste validity certificate issued in favour of paternal uncle of the petitioner, but there was contra evidence in respect of the petitioner. The Apex Court upheld the judgment of Scrutiny Committee invalidating the tribe claim. In **Anand Vs. Committee for Scrutiny & Verification of Tribe Claims (2012) 1 SCC 113**, it is laid down that grant or rejection of Scheduled Tribe certificate by Scrutiny Committee has to be as per procedure prescribed in the rules. In **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar (2009) 1 Mh.L.J. 1**, it is held that while granting validity certificate in favour of a member of family, vital evidence has been ignored, it would be open to the Committee to arrive at a different finding. It was observed that when the previous decisions of the High Court were

rendered without having benefit of decision of the Supreme Court, that too concerning the interpretation of the provisions of the Constitution, those would not be binding. In **State Of Maharashtra & Ors vs Ravi Prakash Babulalsing Parmar & anr., (2007) 1 SCC 80**, it is observed that when a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter.

20. Thus, though the caste validity certificates granted in favour of paternal relatives are very much relevant while considering the caste verification of the petitioner, those are not binding in following cases:

- (a) When the earlier certificate was obtained by fraud;
- (b) When the vital evidence was ignored while granting earlier certificate;
- (c) When the due procedure as contemplated under the Act was not followed (affinity test, home enquiry);
- (d) When there is contra evidence in old records

21. In the light of these facts, we do not find substance that the impugned order should be set aside and the claimant should be relegated before the Scrutiny Committee for fresh consideration. We find that the Scrutiny Committee has properly considered the evidence. The findings recorded by the Committee are not arbitrary. Those are reasonable. Hence, no interference is called for. Hence, the Writ Petition deserves to be dismissed.

22. The Writ Petition is accordingly dismissed. Rule is discharged.

No order as to costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

vvr