

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6788 OF 2018

Karansing Vilas Rajput .. Petitioner
Versus
The State of Maharashtra and ors .. Respondents

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Mr. Pradeep Dalvi for the petitioner.
Mr. S.B. Kalel, AGP for the State.
Mr.Kaustav Talukdar with Vikash Kumar i/b Lex Legal &
Partners for respondent no.3.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 27th JULY 2018

JUDGMENT (PER SMT.BHARATI H. DANGRE, J)

1 The petitioner, a student who has completed B.Tech, Computer Science and Engineering from Walchand College of Engineering, Vishram Baug, Sangli has invoked the writ jurisdiction of this Hon'ble Court seeking the following reliefs.

- (a) this Hon'ble Court be pleased to quash and set aside the order dated 16.2.2018 passed by the

District Caste Scrutiny Committee, Kolhapur
validate the Caste Claim of the petitioner as
Rajput Bhamta;

- (b) this Hon'ble Court be pleased to issue an appropriate writ, order or direction and direct the Respondent No.3 to declare the result of the Petitioner for the 4th Year B. Tech Computer Science and further please to issue Degree Certificate to the petitioner forthwith.
- (c) pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to direct the Respondent no.3 to declare the result of the Petitioner for the 4th Year (Sem.VII and VIII) B.Tech Computer Science.

2 The petitioner claims to be belonging to caste “Rajput Bhamta” and has obtained a certificate belonging to the said caste from the Sub-divisional Officer, Ichalkaranji Sub-division. The petitioner passed his 12th Standard in the year 2014 from a High School at Jaysingpur and he secured admission in B-Tech (Computer science) in Walchand College of Engineering, Sangli – respondent no.3. He came to be admitted against a seat for reserved category and claimed a

seat from *Vimukt Jati*, since he was armed with a certificate belonging to Rajput Bhamta which is recognized as *Vimukt Jati* under the Government Resolution dated 9th December 1977 issued by the Social Welfare Department.

The petitioner successfully completed his First Year where he secured CGPA of 7.29 out of 10. The claim of the petitioner was forwarded for verification to the District Caste Verification Committee, Respondent no.2, Kolhapur. In the academic session 2015-16, he was directed to pay the fees for open category and thereafter, he came to be admitted in the Second Year of Engineering and paid the requisite fees. He was not able to procure the validity certificate from the respondent no.2 Committee, but he appeared for his Third and Fourth Year examination of B-Tech in the year 2016-17 and 2017-18 respectively. It is to be noted that the petitioner was admitted in all these years as an open category candidate and finally, he appeared for the Final Year examination for fourth Year. However, his result came to be withheld on account of non-production of validity certificate.

3 It is the case of the petitioner that the respondent no.2 took up the claim of the petitioner for verification of being belonging to Rajput Bhamta, *Vimukt Jati*, and the claim was rejected by an order dated 16th February 2018. The caste claim of the petitioner came to be invalidated on the ground that the petitioner has failed to bring on record any document of his blood relative reflecting caste 'Rajput Bhamta' prior to the cut-off date of 21st November 1961 and has failed to bring on record any documents reflecting that the ancestors of the petitioner were resident of State of Maharashtra prior to 21st November 1961. The Committee also observed that though the documents of the grand-father of the petitioner reflects criminal antecedents, it does not prove his social status as Rajput Bhamta. It has been held by the Committee that in terms of Section 8 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "Act 23 of 2001), the burden is on the claimant to prove his caste status, but the petitioner has failed

to prove his sociological, anthropological, and ethnological kinship. Resultantly, the respondent no.2 rejected the claim of the petitioner as belonging to Rajput Bhamta and cancelled the certificate issued in his favour on 20th October 2012 by the Sub-divisional Officer, Ichalkaranji and it came to be confiscated.

Rejection of the caste claim by the respondent no.2 has constrained the petitioner to approach this Court by filing the present writ petition. The petitioner reveals that the Scrutiny Committee has directed the Vigilance Cell to hold an inquiry into the claim of the petitioner and the Vigilance Cell submitted its report. The report reflects that statements of two persons i.e. Tanaji Balku Kamble, aged 76 years and Shahaji Anandrao Jagdale, aged 67 years was recorded, who disclosed the caste status of the petitioner as 'Rajput Bhamta'. According to the petitioner, he was issued notice by respondent no.2 and was directed to place on record evidence showing the blood relation of the petitioner with other person whose caste status is 'Rajput Bhamta' and the petitioner responded to the said notice by stating that he had already placed on record the 7/12 extract of agricultural land cultivated by the ancestors of the

petitioner, which was demonstrative of the fact that they are domiciled in State of Maharashtra prior to 1961 and the only question that remained was whether the document reflects the caste of the petitioner to be 'Rajput Bhamta' as he had produced on record the documents to demonstrate so. It is the specific case of the petitioner that though ample evidence was placed on record by the petitioner, his claim came to be rejected by the respondent no.2 Committee and the report of the Vigilance cell, has been completely ignored. The petitioner would rely upon Rule 13(1)(d) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Tribes and Special Backward Category (Regulation of Issuance and Verification of) caste Certificate Rules, 2012 (for short "the Rules") framed in the year 2012 and in specific, Rule 13 which made it imperative on the part of the Vigilance Cell Officer to submit a report upon investigating the claim of Schedule Caste, De-notified Tribe, Nomadic Tribe etc and which would mandatorily refer to the permanent place of residence and conduct of a domestic inquiry. The petitioner submits that in terms of the said Rules,

the Vigilance Officer must collect information including sociological, anthropological and ethnological (anthropological moorings and ethnological kinship), genetical traits of Scheduled Caste, Scheduled Tribe and De-Notified Tribes, if any, by personally visiting the offices of the Competent Authority or that of Revenue or Schools. The petitioner submits that this position of law and the applicability of Rule 13(1)(d) being mandatory in nature has already been dealt by a judgment delivered by this Court on 21st February 2014 in Writ Petition No.10577 of 2013 and it is the case of the petitioner that the rejection of the claim of the petitioner in ignorance of the said judgment and the Rules, makes the impugned order unsustainable in law.

4 In support of the petition, we have heard Advocate Shri Pradeep Dalvi and Shir S.B. Kalel, AGP for the State. We have also heard Shri Kaustav Talukdar for respondent no.3. We have also perused the copy of writ petition along with its annexures, including the impugned order. Perusal of the impugned order would reveal that the petitioner's claim was

taken up for verification by the Respondent no.2 Committee as belonging to Rajput Bhamta (*Vimukta Jati*). The petitioner relied upon several documents in support of his claim. He placed reliance on a document of his father in form of a School Leaving Certificate issued by the Head Master, Navjeevan High School, Jaysingpur reflecting the date of birth of the father of the petitioner as 1st June 1973 and the date of entry in the school as '15th June 1987'. He has also placed reliance on a 7/12 extract issued by Tahsildar Shirol in relation to Survey No.125 of Mauje Dharangutti, Taluka Shirol which contains an entry recorded in the year 1959-60 in the column of tenancy in favour of Shri Harisingh Bandusingh Rajput who is the great grand-father of the petitioner. He also places reliance on the mutation entry no. 448 issued by the Tahsildar, Shirol in favour of the petitioner's father and his cousin grand-father. Further, reliance is also placed on a criminal case on the file of Judicial Magistrate First Class, Jaysingpur vide No.298 of 1962 which convicts the great grand-father of the petitioner. Armed with these documents, the petitioner approached the Committee seeking a verification.

The Committee forwarded the case of the petitioner to the Police Vigilance Cell. The home inquiry refers to the statement of one Tanaji Balku Kamble, aged 76 years and one Shahaji Anandrao Jagdale, aged 67 years, resident of village Chipri who had stated that the applicant and his family members who were known to the said persons belonged to Rajput Bhamta caste. Apart from these statements, the Vigilance Cell relied on an affidavit giving genealogical tree reflecting the relationship of the petitioner along with the other relatives. A show cause notice was issued to the petitioner on 18th May 2016 by making reference to the Police Vigilance Cell Report and asking him to produce documents prior to 21st November 1961 of the blood relatives reflecting the caste as Rajput Bhamta and in absence of production of such documents, the claim of the petitioner was liable to be rejected. The father of the petitioner responded to the show cause notice on 7th June 2016 and he referred to various Government Resolutions as well as circulars wherein he staked his claim that since the applicant was born after the cut-off date, he had

tendered before the Committee the documents belonging to his grand-father, reflecting therein that he was resident of State of Maharashtra since 1958 and the 7/12 extract reflected the said position.

The respondent no.2 Committee analyzed the said response submitted to the show cause notice and arrived at a conclusion that the documents relied upon by the petitioner were not conclusive proof that the petitioner belonged to Rajput Bhamta. As far as the reliance placed by the petitioner on a document of his great grand-father which was in form of 7/12 extract of the year 1959-60, it is mentioned by the Committee that the said document in which the name of the petitioner's grand-father is recorded and which is a revenue record of the year 1959-60, there is no reference of caste, though on the basis of the said document, the residence of the petitioner's family in Maharashtra prior to 21st November 1961 stands proved. However, in respect of the documents in form of mutation entries certified by the Tahsildar, Shirol on which the petitioner had placed reliance, it was observed that the said documents which are in form of revenue record do not mention

the caste, and therefore, cannot be taken into consideration. The reliance by the petitioner on the proceedings pending before the JMFC, Jaysingpur in criminal case, wherein a judgment was delivered on 2nd October 1963, which included the name of the great grand-father of the petitioner i.e. Harising Bandusing Rajput which finds place along with name of other members of the community, has been discarded on the ground that there is no mention of caste. With the aforesaid conclusion being derived, the Committee rejects the claim of the petitioner as belonging to Rajput Bhamta.

5 During the hearing of the writ petition on the last date of hearing, i.e. on 13th July 2018, learned counsel for the petitioner Shri Dalvi had requested for an opportunity to demonstrate residence of his forefathers prior to 21st November 1961 in the State of Maharashtra. We had recorded the submission of Shri Dalvi and had granted him an opportunity, pursuant to which the petitioner has filed an affidavit before this Court, duly affirmed on 23 July 2018. In the said affidavit, the petitioner has made the following statements :

- (2) *I say that before the Validation Committee, I have placed on record an important document of my great grand father by name Harising Bandusing Rajput against whom an offence was registered with Shirol Police Station, District Kolhapur vide C.R.No.43 of 1954 u/sec.66(c) and he was convicted by imposing fine of sum of rs.500/- and in default one month Simple Imprisonment and another C.R. was registered with the same Police Station vide its C.R.No. 33 of 1953 u/sec.66(c) and he was convicted by imposing fine of Rs.200/- and in default 2 months simple imprisonment. Annexed hereto and marked as Exhibit "I" is the copy of extract of General Conviction Register maintained by Shirol Police Station, District – Kolhapur.*
- (3) *I say that since my great grand-father was convicted therefore, it was my case that he was Rajput (Bhamta) and his criminal record shows that he was from the above-mentioned social status.*
- (4) *I say that though the said document was on record, before the Respondent no.2 the Committee failed to consider the said document in support of my social status.*
- (5) *I say that the community which belongs to were said to be on criminal records and due to their illiteracy their social status was not recorded in any other documents which was prior to 21st November 1961.*

The petitioner has then made a categorical statement that his social status is "Rajput Bhamta" and this

caste is originally from State of Rajasthan and after defeat of Maharana Pratap in the war, all persons belonging to the said community fled from Rajasthan and migrated to Gujarat and subsequently to Maharashtra. It is stated that since they indulge into criminal activities such as theft, looting, dacoity and procuring illicit liquor, therefore, they were referred to Rajput Bhamta.

6 We have taken the affidavit into consideration and also the extract of the order of conviction of Harising Bandusingh Rajput who is the great grand-father of the petitioner who is convicted in C.R.No.43/1954 and a fine of Rs.500/- has been imposed on him. The extract is obtained by the petitioner from the Inspector, Taluka Shirol, District Kolhapur.

7 Shri Dalvi would criticize the approach of the respondent no.2 Committee and would submit that the entries in relation to the grand-father and the great grand-father of the petitioner have not been taken into consideration by the Committee. He would submit that it is the duty of the Vigilance

Cell to conduct a thorough and proper inquiry in respect of socio cultural affinity and that is the purport of Rule 13 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Tribes and Special Backward Category (Regulation of Issuance and Verification of) caste Certificate Rules, 2012. He would invite our attention to Rule 12 as well as Rule 13 of the said Rules of 2012 which have been framed in exercise of powers conferred by sub-section (1) of Section 18 of the Act No.23 of 2001 and the powers enabling in that behalf by the Government of Maharashtra. Rule 12 provides for constitution of vigilance cell to assist the scrutiny committee in conducting the field inquiry as contemplated under Rule 17. Rule 13 provides the mechanism of reporting by the Vigilance Cell and it reads thus :

13. Report of Vigilance Cell and Issues to be dealt with – (1) Vigilance Cell Officer(s) shall submit report upon investigating into the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category Claim, referred to it-

- (a) by visiting permanent place of residence and conducting domestic inquiry; or*
 - (b) by recording statements or respected and responsible persons from concerned area, including representatives of Local Self Government, Police Patil, etc; or*
 - (c) by collecting information, as part of recording statement, as regards to name, age, educational qualification, existing place of residence and information regarding properties (existing and disposed) of family members of applicant or claimant;or*
 - (d) by collecting information including the sociological,anthropological and ethnological (anthropological moorings and ethnological kinship), genetical traits of the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, if any;or*
 - (e) by personally visiting Office of the Competent Authority or revenue or school or other concerned offices.*
- (2) Notwithstanding anything contained in any provision of these rules,-*
- (a) the Vigilance Cell shall not record concluding remark or opinion, since vigilance inquiry is meant for internal assistance to the Scrutiny Committee and adjudication of Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic tribes, Other Backward Classes or Special Backward Committee;*

(b) finding recorded and opinion expressed, if any, by the Vigilance Officer shall not be binding on Scrutiny Committee nor could be used as evidence, in support of Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category claim.

8 We are also mindful of clause (b) of sub-rule (2) of Rule 13 which makes it clear that the finding recorded and opinion expressed by the Vigilance Officer shall not be binding on scrutiny committee nor can be used as evidence, in support of the claim. However, the Scrutiny Committee is duty bound to seek assistance of the Vigilance Cell and the role of Vigilance Cell in determining a claim of a caste or tribe is of much significance since it is this Cell which actually carries out the inquiry by visiting the permanent place of residence and by conducting domestic inquiry. It would collect the said information by recording statements of respected and responsible persons in the area which would include the information relating to age, educational qualification, occupation, information regarding properties etc. and also the information relating to sociological, anthropological, and

ethnological, genetical traits peculiar to a caste or tribe. The whole purpose of such a vigilance inquiry is that the Committee should have assistance of the factual data collected through this vigilance cell based on the ground level working which would assist the Committee in determining the claim of a claimant. The said inquiry is necessary in order to ascertain the true traits and characteristics of a particular claimant and mere reliance on the documentary evidence cannot be taken as a conclusive proof to prove a claim put forth by a claimant. The role of the said vigilance cell and its importance has been significantly recognized by this court, in the judgment on which the petitioner has placed reliance and we have no quarrel about the legal position set out in the said judgment.

9 The petitioner has brought on record the document reflecting the conviction of the great grand-father of the petitioner Shri Harisingh Bandusingh Rajput in an offence registered with Shirol police station and who has been convicted for an offence under Section 66(C) of the IPC. The Committee had before it the decision of the JMFC, Jaysingpur

in Criminal Case No.298 of 1962 dated 2/10/1963, which included the name of the grand-father of the petitioner Harising Bapusing Rajput. The document which has been placed by the petitioner on record is an extract of the crime register from Shirol police station wherein an entry has been taken to the effect that Bapusingh Bandusingh Rajput, resident of Jaysingpur was convicted under Section 12 by the JMFC on 22nd September 1969 and has been sentenced till rising of the Court and was levied with a fine of Rs.20/- and to undergo Imprisonment for 11 days on failure to pay the said fine. The said documents produced by the petitioner at Exhibit-1 along with the affidavit filed before this Court on 23rd July 2018 clearly refers to the caste of the grand-father of the petitioner to be Rajput. The Vigilance Cell report supports the case of the petitioner, however, it is silent on the compliance in terms of Rule 13, specifically the information to be collected on the sociological, ethnological and anthropological and genetical traits of caste Rajput Bhamta. It would be necessary to do so since it is difficult to find entries as Rajput Bhamta in the old record since some Rajputs who were referred as a wandering

clan and indulging themselves into activities of theft, robbery etc, were referred to as “Rajput Bhamta and it was rather a misnomer. This aspect of the matter, however, has been completely lost sight of by the respondent no.2 committee and it would be necessary for the Vigilance Cell, in light of the power conferred on it under the Rules of 2012 to examine the claim of the petitioner by collecting the information as contemplated specifically under Rule 13(1)(d). The Caste Scrutiny Committee would then, after referring to the said report, reach a definite conclusion as to whether the petitioner belongs to caste Rajput Bhamta, as mere submission of the caste certificate is not conclusive evidence of caste and the claim will have to be proved by the petitioner. In such circumstances, we deem it appropriate to pass the following order.

ORDER

- (a) The impugned order dated 16th February 2018 passed by the Respondent No.2 Committee is quashed and set aside.
- (b) The matter is remanded to the Caste Scrutiny Committee for inquiry and it is expected that the

Committee would refer the matter to the Vigilance Cell who should conduct an inquiry in terms of the mandate of Rule 13(1)(d) of Rules of 2012 and submit a report to the Scrutiny Committee.

- (c) The petitioner shall appear before the Committee on 20th August 2018.
- (d) The Committee is directed to re-verify and scrutinize the claim of the petitioner after obtaining the said report of the Vigilance Cell and pass a fresh order within a period of six months from the date of receipt of this order.

Rule is made absolute in the aforesaid terms. No order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

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