

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2756 OF 2011

SHARDABAI SANJAY PATIL @ SHARDABAI DADARAO
LMAHAJAN

VERSUS

THE STATE OF MAHRASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Patil Milind

AGP for Respondents : Mr. P. S. Patil

Advocate for Respondent No. 7 : Mr. M. S. Deshmukh

...

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

DATE: 28th FEBRUARY, 2019

PER COURT :

1. Mr. Patil, learned Advocate for the petitioner strenuously contends that the order passed by the Divisional Caste Scrutiny Committee denying to verify the caste claim of the petitioner is erroneous.

2. The petitioner belongs to 'Mali', Other Backward Class. The caste 'Mali' is recognised as OBC in the State of Maharashtra as well as in the State of Madhya Pradesh. The ancestors of the

petitioner from paternal side were permanent resident of village Waghod, Taluka - Raver which was in the State of Maharashtra. Even prior to reorganisation, the father of the petitioner has temporarily migrated to Shahapur, Taluka and District - Burhanpur. However, the permanent place of residence would not change. The learned counsel submits that as caste 'Mali' is recognised as OBC in the State of Madhya Pradesh and also in the State of Maharashtra, the petitioner is entitled for the reservation of OBC. The said benefit cannot be denied to the petitioner. Mali, OBC would be at the same disadvantage in the State of Maharashtra as it would be in the State of Madhya Pradesh. After marriage the petitioner is now resident of the State of Maharashtra. The learned counsel for the petitioner relies on the judgment of the Apex Court in case of **Kusum Vs. State of Maharashtra and others** reported in **2009 AIR (SC) 1081** and the judgment of the Division Bench of this Court in case of **Kannaya Devjibhai Borisa Vs.**

State of Maharashtra and others reported in **1990**

(1) Bom.C.R. 546.

3. Mr. Deshmukh, learned counsel for respondent no. 7 submits that no error has been committed by the committee. Father of the petitioner had migrated to the State of Madhya Pradesh prior to the notification dated 13.10.1967. The relevant date would be the date of issuance of notification. As the father of the petitioner had migrated to the State of Madhya Pradesh prior to the said notification, the petitioner would only be entitled for the benefit of reservation of OBC in the State of Madhya Pradesh and the petitioner cannot avail the benefit in the State of Maharashtra. The learned counsel relies on the judgment of the full bench of this court in case of **Kum. Shweta Santalal Lal Vs. The State of Maharashtra and others** reported in **2010 Vol. 112**

(3) BOM. L. R. 1029.

4. The learned Additional Government Pleader

submits that upon enquiry conducted by the committee it transpired that as on the date of notification the father of the petitioner was a permanent resident of State of Madhya Pradesh and as such the committee has rightly passed the impugned order.

5. The Full Bench of this Court relied upon the judgment of the Apex Court in case of **Action Committee on Issue of Caste Certificate to Scheuled Castes and Scheduled Tribes in the Stated of Maharashtra and another Vs. Union of India and another** reported in **(1994) 5 SCC 244** and has concluded the issue. In the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the Stated of Maharashtra and another Vs. Union of India and another* (*supra*) the Apex Court observed thus -

"6. Then in the case of Action Committee (supra), the question posed by the Constitution Bench was as under:-

"Where a person belonging to a caste or

tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and / or Scheduled Tribes in State B?"

In the course of the arguments, a contention was urged on behalf of the Respondent, before the Supreme Court that all the arguments which were being advanced had been advanced in the case of Marri Chandrashekhar Rao (supra) and answered. The Supreme Court in emphatic terms observed "In fact we are in complete agreement with the interpretation placed on the various provisions of the Constitution, in particular Articles 341 and 342 thereof, in the said judgment". In other words, the Court held that even in respect of a person who belongs to a tribe notified as a ST in the State and having the same nomenclature is also notified

as a tribe in the State of migration, yet such migrant would not be entitled to the benefits of reservation in the State of migration. Such persons would continue to get the benefit in the State of his origin. "

...

"13. Considering the observations in Kumbhare's case, we may only refer to the following observations in Action Committee (supra):-

"It must also be realised that before specifying the castes or tribes under either of the two Articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made 'in relation to that State' can be treated as specification in relation to any other State whose Governor the President has not consulted. True it is that this specification is not only in relation to a given State whose Governor has been consulted but is 'for the purposes of this Constitution' meaning thereby the various provisions of the

Constitution which deal with Scheduled Castes/Scheduled Tribes. The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these Articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to-a specially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to

become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. The Constitution Bench summed up as under:

In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic in mind, then the determination of the controversy in the instant case does not become difficult."

6. The Constitution Bench of the Apex Court has clearly observed that even in respect of a person who belongs to tribe notified as ST in the State and having the same nomenclature is also notified as a tribe in the State of migration, yet such

migrant would not be entitled to the benefits of reservation in the State of migration. Such person would continue to get the benefit in the State of his origin.

7. Even in the case of *Kusum Vs. State of Maharashtra and others (supra)* relied by the learned Advocate for the petitioner it is observed by the Apex Court that if the person had migrated prior to the year 1967 then she would be held to be a permanent resident of Maharashtra entitled to all benefits of Other Backward Class. The Apex Court observed that migration ought to be prior to the notification.

8. In the present case, migration to the State of Maharashtra is after the notification.

9. In the light of above, tribunal has not committed any error. Writ Petition stands disposed of. No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]