

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6709 OF 2018

Dilip Manglu Borse & Anr.

.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

-
- Mr. Girish Godbole i/by Ms. Shruti Tulpule for the Petitioners
 - Ms. P.N. Diwan, AGP for Respondent Nos. 1 and 2
 - Mr. Mahesh Deshmukh i/by Mr. Anoop Patil for Respondent No. 3
-

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : SEPTEMBER 30, 2019.

P.C.:

1. Heard learned counsel for the parties for final disposal of the petition.

2. The petition rests in narrow compass. Few facts, however, may have to be noted.

The petitioners have been objecting the validity of the Schedule Tribe caste certificate issued by the competent authority to respondent No. 3. Respondent No.3 had previously contested municipal election and for which purposes, caste validity certificate from the competent

authority was necessary. In the meantime, the petitioner successfully, contested the state assembly election and for which purpose, no caste validity certificate was needed. The petitioner herein had independently filed complaint before the authorities primarily contending that respondent No. 3 belongs to 'Bhat Thakur' caste which is not a Scheduled Tribe and therefore, the certificate issued in her favour by the competent authority should be recalled. Such complaint made by petitioner No. 1 dated 27.1.2015 is annexed as 'Annexure F' to the petition.

3. Before the Scheduled Tribe Caste Certificate Scrutiny Committee, respondent No. 3 sought to withdraw her application for caste validity certificate which was opposed by the petitioners and rejected by the Committee upon which respondent No.3 filed Writ Petition No. 6078 of 2016 which was disposed of allowing companion Civil Application No. 1407 of 2016 on 20.7.2016. The Court was of the opinion that respondent No.3 should not be prevented from withdrawing her application, however, the complaint of the petitioner as well as the scope for suo motu scrutiny by the

Committee in terms of Section 7 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimkuta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (regulation of Issuance and Verification of) Caste Certificate Act, 2000 (**“the Act”** for short) would not be curtailed.

4. In Writ Petition No. 9947 of 2016, this Court under order dated 24.10.2016 directed expeditious disposal of the said proceedings. Respondent No. 3 filed Writ Petition No. 6128 of 2017 which was decided on 10.1.2018 keeping her allegation of bias against one of the members assigned the High Court to transfer the proceedings to another Committee which would preserve the material already brought on record.

5. Pursuant to such orders passed by the High Court, the Committee passed the impugned order. The relevant portion of this order reads as under:-

“5. Going through the observations of the order passed by the Hon'ble High Court dated 10/01/2018 in Writ Petition No 6128 of 2017, it is seen that the Hon'ble Court have pleased to direct the

Scrutiny Committee, Pune, only to decide the complaint applications of the complainants and as stated earlier, has allowed to withdraw the original application of the opponent towards verification of her tribe claim.

Further the learned advocate for the opponent has also strongly pointed out that the opponent is not applicant before this Committee, though she has been elected on reserved post to the Maharashtra Legislative Assembly, she is not in a need of tribe validity certificate. In addition to above, he has submitted that her application for verification of tribe claim is also not pending before this Committee. Hence, the Committee cannot proceed further with the scheme of verification of her tribe claim. The Committee can only decide the complaint applications of the complainants as per the directions of the Hon'ble High Court.

Therefore, the Committee is of the considered view that as the application towards verification of tribe claim of the opponent is not pending before the Committee and hence not in existence, we are constrained to proceed further with the scheme of verification of tribe claim of the opponent.

6. While carefully going through the complaints made by the complainants, it is seen that they have basically alleged that the opponent does not belong to Thakur, Scheduled Tribe. Further they have contended that the opponent has married in the same caste and her husband's viz. Sanjay Chavan's tribe claim has been invalidated by the Scrutiny Committee, Nashik and the said decision has been finally upheld by the Hon'ble Apex Court.

During the Course of proceedings before this Committee, the complainants were given ample scope and opportunity to produce/adduce the concrete documentary evidence along with the detailed genealogy of the opponent, in support of their complaint. But

such type of concrete evidence and/or detailed genealogy has not been produced by the complainants before this Committee. Be it as it may, we are of the considered view that the objections raised by the complainants may be taken care of, when the opponent approaches the concerned Committee with her application for verification of her tribe claim.

7. Considering the directions of the Hon'ble High Court in W.P.No.6128/2017 dated 10/01/2018 and accordingly, the information, facts, submissions, averments etc. came before this Committee during the course of proceedings before it from both the sides, the following order is passed.

ORDER

For the reasons stated hereinabove, we, the members of the Committee unanimously and firmly, come to the conclusion that the complaints filed by the complainants against the Opponent cannot be dealt with in the absence of her application for verification of her tribe claim before the Committee. As and when the need arises for the opponent to approach the Committee for verification of her tribe claim along with her application and supportive documentary evidence, the allegations made by the complainants may be taken into consideration by the concerned Committee while deciding her tribe claim.

Needless to say that, whoever wants to avail the concessions and facilities meant for the Scheduled Tribes, have to get verified his / her tribe certificate from the concerned Committee."

Perusal of this order would demonstrate that the grievance of the petitioners raised in the complaint regarding the validity of the caste certificate issued to respondent No.

3, being remained undecided. At one stage, the Committee noted that respondent No. 3 had withdrawn her application for caste validity certificate but also noted that the complaint of the petitioner survives. The High Court had required the Committee to decide such complaint on merits. However, in the later portion of the order reproduced above, in paragraph 6, the Committee observed that **“Be as it may, we are of the considered view that the objections raised by the complainants may be taken care of, when the opponent approached the concerned Committee with her application for verification of tribe claim.”**

6. The Committee, thus, dismissed the complaint of the petitioners without decision on merits. If the Committee was of the opinion that the petitioners have not made out any case for interference or recall of the caste certificate issued by the competent authority, the Committee could have assigned proper reasons and came to such conclusion. The Committee fleetingly referred to the material brought on record by the petitioners, completely sidetracked the issue and linked the disposal of the petitioners' grievance raised in

the complaint to respondent No. 3 applying for verification of her claim as a person belonging to the Scheduled Tribe. Needles to state, respondent No. 3 does not need to and is therefore, unlikely to make any such application. Does that mean the petitioners' complaint would remain undecided? The answer is obvious and is in the negative. When this Court required the Committee to proceed further with the complaint of the petitioners and decide the same on merits, the Court never envisaged that such decision would be linked to respondent No. 3 applying for verification of her claim. In plain terms, the Committee completely misdirected itself while disposing of the complaint of the petitioners by the impugned order. The impugned order, is therefore, set aside. The proceedings are placed back before the Committee for fresh consideration and disposal in accordance with law. The Committee shall pass an order thereon on merits either allowing or rejecting the application of the petitioners. This shall be done within a period of six weeks from the date of receipt of this order.

7. Learned counsel for respondent No. 3 stated that the affidavit filed by the said respondent in the nature of examination in chief shall be made available to the learned counsel for the petitioners shortly.

8. All the legal contentions of the parties are kept open.

9. With the above direction, the petition is disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]