

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5689 of 2021

Nikhil Meena Patel

... Petitioner

Versus

The Mamlatdar & Ors.

...Respondents

Mr. S.M. Sabrad a/w. Mr. Vikram N. Walawalkar, Mr. Amey C. Sawant
for the petitioner.

Mr. Hiten Venegaonkar a/w. Mr. Bharat Mirchandani for respondent nos.
1 and 2.

CORAM: G. S. KULKARNI
& R.N. LADDHA, JJ.
DATED: 20 April, 2023

ORAL JUDGMENT (Per G.S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. The question which falls for consideration is, whether the Designated Authority was correct in discarding the petitioner's entitlement to a caste certificate issued to him as belonging to the reserved category, that of his biological mother, and not being foisted with the caste of his father, who belonged to the forward community.
3. This petition filed under Article 226 of the Constitution of India challenges an order dated 26 February, 2021 passed by the Mamlatdar, Dadra and Nagar Haveli, Silvassa, whereby the Mamlatdar has declared that the

petitioner is not entitled to hold the caste certificate dated 16 October, 2014 issued to him as belonging to “Hindu Chamar” caste, recognized as a Scheduled Caste under the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 and accordingly cancelled the caste certificate issued to the petitioner, on the ground that he belongs to the general category.

4. The petitioner’s case is that on the petitioner and his mother being deserted by his father at the age of four years, he was brought up by his mother. The petitioner contends that accordingly his entire upbringing was not as a member of a family belonging to a forward community as at all material times, he lived as a member of the Hindu Chamar community. Even in the school record of the petitioner, it is recorded that the petitioner belongs to “Hindu Chamar” Caste, recognized as a Scheduled Caste. To support such contention, the petitioner relied on a certificate issued by Shree Rohit Samaj Mitra Mandal, Silvassa certifying that petitioner’s mother Smt. Meena Jagubhai Patel (daughter of Shri Jagubhai Narsinhbhai Rohit) belonged to the “Hindu Chamar” caste, which was recognized as a Scheduled Caste under the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962. It records that petitioner’s mother - Meena Jagubhai Patel had an inter-caste marriage with the petitioner’s biological father who did not belong to the reserved category, and from such marriage, Nikhil (petitioner) was born. It also certifies that Smt. Meena was deserted by her husband, after the birth of

the child and since then Smt. Meena along with her son was staying at her father-Jagubhai Narsinhbhai Rohit's house, hence the petitioner is born and brought up in the community as a Hindu Chamar, as also is following the customs and traditions of the said community. According to the petitioner, several documents were placed on record of the Mamlatdar, which according to him, clearly indicated that the petitioner ought to have been granted the benefit of caste certificate dated 16 October, 2014 which was validly issued to the petitioner.

5. It is the petitioner's case that Smt. Meena – petitioner's mother was remarried to one Mr. Prakash Bhavsar, petitioner's stepfather (since deceased), against whom the petitioner registered a complaint with the Silvassa Police Station, bearing FIR No. 115 of 2019 for misappropriation of his mother's money. The petitioner contends that as a counterblast a complaint was filed by Mr. Prakash Bhavsar, against the petitioner with the Superintendent of Police, in regard to the caste certificate issued to the petitioner, *inter alia* stating that the petitioner does not belong to the Scheduled Caste but belongs to the general category, as the petitioner's biological father belonged to the open category. The complaint was referred to the Mamlatdar for an enquiry.

6. In the above circumstances, a show cause notice was issued to the petitioner by Mamlatdar calling upon the petitioner to submit documents on

regard to the complaint. It is in these circumstances, the Mamlatdar considering these documents, passed the impugned order dated 26 February, 2021 cancelling the caste certificate issued to the petitioner. The impugned order is required to be noted, which reads thus:

“ORDER

Whereas, a Caste Certificate bearing No. RD/GNL/Caste Certificate/22229/2014 dated 16/10/2014 issued to Shri Nikhil Meena Patel.

And Whereas, a letter from Dy. Superintendent of Police, I/c Police Training School Sayli, Investigation Officer in connection with Silvassa Police Station FIR No. 115/2019 seeking Caste Certificate in respect of Shri Nikhil Meena Patel was received by this office.

And Whereas, a letter was received from Shri Prakash N. Bhavsar along with which he had submitted documents of Shri Nikhil Meena Patel wherein the name is mentioned as “Nikhil Sajjan” and name of father as Ravindra Sajjan, Religion as Hindu and Caste – i.e., General Category.

And whereas, a personal hearing was scheduled before the Mamlatdar, Silvassa vide letter no. RD/Police Verification/Caste Certi./2019/1000 dated 14/12/2020 where Shri Nikhil Meena Patel remained present and he has submitted documents like School Leaving Certificate wherein the name is mentioned as “Nikhil Meena Patel; Religion “Hindu” category “SC” and Caste as “Hindu-Rohit-Chamar” which is unlike reflected in the documents submitted by Shri Prakash N. Bhavsar. Further, from perusal of the documents on record, Shri Nikhil Meena Patel has changed his name after the year 2013.

And Whereas, Shri Nikhil Meena Patel was again called for hearing vide Letter No. RD/Police_Verification/Caste_Certi./2019/4171 dated 14/12/2020, but he was not present for the hearing.

Therefore, in view of the above, I am of the opinion that, Shri Nikhil Meena Patel belongs to General Category and thus is not entitled to hold Caste Certificate under SC category as mentioned in “THE CONSTITUTION (DADRA AND NAGAR HAVELI) SCHEDULED CASTES ORDER, 1962”. Thus, the Caste Certificate bearing No. RD/GNL/Caste-Certificate/22229/2014 dated 16/10/2014 issued to Shri Nikhil Meena Patel is hereby cancelled.

This issues with the approval of Hon’ble Collector, DNH vide diary no. 686127 dated 17/02/2021.

(T.S. Sharma)
Mamlatdar
Dadra and Nagar Haveli
Silvassa”

(emphasis supplied)

7. Mr. Sabrad, learned counsel for the petitioner has more than one grievance against the impugned order. His first submission is in regard to the serious procedural irregularity in the Mamlatdar proceeding to pass the impugned order, resulting into denial of justice to the petitioner. It is submitted that the Mamlatdar, without furnishing documents to the petitioner and without considering the materials on record, has passed the impugned order. This in as much as the petitioner's case before the Mamlatdar was to the effect that : the petitioner's father, who belonged to the Open category, had deserted the petitioner and his mother when the petitioner was only four years old; that the petitioner's mother belonged to 'Hindu Chamar caste', which was recognized as a scheduled caste as per the documents under the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962; and considering these facts, a caste certificate was issued to him, to this effect there were the materials before the Mamlatdar, which included documents, being the School Leaving Certificate issued in favour of petitioner's mother by the Education Department, Dadra & Nagar Haveli, Silvassa; Caste Certificate issued to her and the certificate of the Community Organization, which were not considered by the Mamlatdar and/or were grossly overlooked by the Mamlatdar.

8. Mr. Sabrad would next submit that the impugned order does not set out any reason, nay any acceptable reason, to discard the documents submitted by the petitioner before the Mamlatdar, even assuming that the petitioner

could not remain present at the personal hearing as scheduled. In such context, it is submitted that the purport of the documents submitted by the petitioner is neither discussed nor considered in the impugned order, as to why they were not relevant. It is next submitted that the report of Deputy Superintendent of Police on the purported investigation undertaken by him, in regard to the caste claim of the petitioner was also not furnished to the petitioner.

9. It is next submitted that in the peculiar facts of the case, the caste claim made by the petitioner belonging to the Hindu Chamar, Scheduled Caste, was an appropriate claim and as per the mandate of law, as laid down by the Supreme Court in the case of **Rameshbhai Dabhai Naika vs. State of Gujarat & Ors.**¹. It is hence submitted that the petitioner's claim that he belongs to his mother's caste/reserved category, although his father belonged to the open category, was required to be recognized and accepted by the Mamlatdar. It is submitted that there was clear material on record, that the petitioner never had the advantage being a person belonging to a non-reserved category as he had suffered deprivations and handicaps as a member of the community, belonging to the scheduled caste in question. It is, therefore, Mr. Sabrad's submission that on such premise, the impugned order is required to be set aside and the petitioner ought to be granted benefit of the caste certificate dated 16 October, 2014, issued in his favour.

1 (2012) 3 SCC 400

10. On the other hand, Mr. Venegaonkar, learned counsel for the respondent contesting the contentions as urged by Mr. Sabrad, would submit that the Mamlatdar in passing the interim order, has taken into consideration all the documents, and as to what was reflected in the documents submitted by Mr. Prakash Bhavsar (petitioner's stepfather) was accepted as the correct position, that the petitioner does not belong to Scheduled Caste. He submits that the petitioner did not appear before the Mamlatdar at the hearing fixed by him, hence, the petitioner cannot contend that any prejudice was caused.

11. On the above backdrop, we have heard learned counsel for the parties. We have also perused the record.

Discussion and Conclusion

12. At the outset, we may observe that the petitioner had placed on record of the Mamlatdar several documents which included the School Leaving Certificate not only of the petitioner but also of the petitioner's mother as also the certificate issued by Shree Rohit Samaj Mitra Mandal, which depicted that the petitioner belonged to the Hindu Chamar Scheduled Caste, recognized as a Scheduled Caste, under "The Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962.

13. It needs to be noted that, earlier considering all such documents/credentials, the petitioner was in fact issued a caste certificate dated 16 October, 2014. It also appears that the caste certificate since its issuance was held to be legal and valid by the Mamlatdar.

14. The petitioner's stepfather, however, complained to the Mamlatdar on the petitioner's caste certificate. Except for the personal grudge and animosity against the stepson, what could be the locus of the stepfather? Be that as it may, the complaint as made by the step-father of the petitioner was on the sole basis that the biological father of the petitioner belonged to the forward caste, and therefore the petitioner ought not be conferred an advantage of belonging to the scheduled caste. It may also be observed that the step-father had a dispute with the petitioner's mother. The stepfather's complaint against the petitioner's caste certificate was investigated by the Dy. Superintendent of Police. It appears that the copy of investigation report of the Deputy Superintendent was not furnished to the petitioner. Also the documents as submitted by the petitioner are not considered and discussed in the impugned order. There are no reasons set out in the impugned order as to why these documents need to be discarded. Further the documents as submitted by Mr. Prakash Bhavsar (petitioner's stepfather) assailing the petitioner's caste certificate are also not discussed.

15. A bare perusal of the impugned order would indicate that the Mamlatdar has proceeded on an absurd footing that the documents submitted by the petitioner does not indicate the same position as reflected by the documents submitted by Mr. Prakash Bhavsar, step-father of the petitioner, and it is for such reason merely taking into consideration the letter received from Dy. Superintendent of Police, Incharge Police Training School Sayli, Investigation Officer, it is held that the petitioner does not belong to Scheduled Caste, in respect of which he was issued Caste Certificate dated 16 October, 2014. Also the documents which were submitted by Mr. Prakash Bhavsar were not furnished to the petitioner. This is a case that even if the petitioner could not remain present, a hurried adjudication ought to have been avoided and the petitioner ought to have been granted an opportunity of being heard.

16. On the above conspectus, in our opinion, in taking away the constitutional rights being enjoyed by the petitioner since 16 October, 2014 under the caste certificate in question as issued to him, the petitioner has been deprived of these rights and entitlement, by the impugned order, which looked from any angle does not satisfy the test of a fair and appropriate quasi judicial adjudication. In the circumstances as discussed above, certainly an inherent defect, infirmity and illegality is required to be attributed to the impugned order.

17. In the peculiar context in hand, we find much substance in the submissions made by Mr. Sabrad relying on the decision of the Supreme Court in **Rameshbhai Dabhai Naika's case**(*supra*). As noted above, in the present case, there was an inter-caste marriage between the petitioner's biological mother, who by birth was a person belonging to the said reserved category and the petitioner's biological father was a person belonging to the forward community. In these circumstances, as to what would be the status of such children born out of such marriage when the entire upbringing of the petitioner was by his mother, who belongs to reserved category is the question. In **Rameshbhai Dabhai Naika's case** (*supra*), the Supreme Court examined a similar situation, which in our opinion, is certainly applicable to the facts of the present case, as in the present case also the petitioner's father who belonged to the forward category had deserted the petitioner's mother and the petitioner when he was four years old.

18. The Supreme Court in **Rameshbhai Dabhai Naika's case** (*supra*) has held that in an inter-caste marriage or a marriage between a tribal and a non-tribal, the determination of the caste of the offspring is essentially a question of fact, to be decided on the basis of the facts adduced in each case. It was held that the determination of caste of a person born out of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of the attending facts of the case. The Court observed that

such facts may give rise to a presumption that the child has the caste of the father, which may be stronger in the case, where in the inter-caste marriage or a marriage between a tribal and a non-tribal, the husband belongs to the forward caste. It was observed that however by no means, the presumption could be conclusive or irrebuttable, and it would be open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the Scheduled Caste/Scheduled Tribe. In the facts of the said case, the Court observed that by virtue of being the son of a forward caste father, he did not have any advantageous start in life, however, on the contrary he suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged and additionally he was always treated as a member of the community to which the mother belonged, not only by that community but by the people outside the community as well. In such circumstances, the Supreme Court held that if such defence is available, in that event, the mother's caste/ specific reserved category, would be entitled to be claimed by the son. This was held to be an exception as to what was considered to be position in law in *Valsamma Paul's case*, wherein it was held that in an inter-caste marriage or a marriage between a tribal and a non-tribal, the woman must in all cases take her caste from the husband as a rule of the constitutional law, was a proposition the correctness of such view

was observed to be not free from doubt. The relevant observations of the Supreme Court in that regard are required to be noted, which reads thus:

“47. In light of the discussion made above it is clear that the view expressed in Paragraph 31 of the Valsamma judgment that in an inter-caste marriage or a marriage between a tribal and a non-tribal the woman must in all cases take her caste from the husband, as a rule of Constitutional Law is a proposition, the correctness of which is not free from doubt. And in any case it is not the ratio of the Valsamma decision and does not make a binding precedent.

48. It is also clear to us that taking it to the next logical step and to hold that the off-spring of such a marriage would in all cases get his/her caste from the father is bound to give rise to serious problems. Take for instance the case of a tribal woman getting married to a forward caste man and who is widowed or is abandoned by the husband shortly after marriage. She goes back to her people and the community carrying with her an infant or may be a child still in the womb. The child is born in the community from where her mother came and to which she went back and is brought up as the member of that community suffering all the deprivations, humiliations, disabilities and handicaps as a member of the community. Can it still be said that the child would have the caste of his father and, therefore, not entitled to any benefits, privileges or protections sanctioned by the Constitution.

54. In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case.

55. In an inter- caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the scheduled caste/scheduled tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated a member of the community to which her mother belonged not only by that community but by people outside the community as well.”

(emphasis supplied)

19. Adverting to the above principles of law, in our opinion, in the facts of the present case, the Mamlatdar has failed to apply his mind to such facets of

the matter, that on the basis of the materials as placed by the petitioner for the consideration of Mamlatdar, the petitioner was entitled to assert that the caste certificate issued to him was required to be sustained. This more particularly , when the petitioner claimed that he was brought up by his mother, as a member of the reserved community to which she belonged, which according to him, did not have the advantage of the petitioner being brought up or the petitioner having lived as a member of the forward community. In our opinion, the petitioner and his mother having been abandoned by his biological father, who belonged to the forward community and when there were materials submitted by the petitioner to support such contentions, this was vital issue on which a decision was required to be taken by the Mamlatdar. However the Mamlatdar completely overlooked such essential attributes of the case, which were not only factually relevant but were determinative of the constitutional rights of the petitioner as recognized by the Supreme Court in **Rameshbhai Dabhai Naika**'s case (supra).

20. In view of the above discussion, the impugned order dated 26 February, 2021 passed by the Mamlatdar is quashed and set aside. We direct the Mamlatdar, Dadra and Nagar Haveli to hear the petitioner on law and facts, and after taking into consideration the materials/documents as may be available in the enquiry, pass an appropriate order in accordance with law, in regard to the caste claim as made by the petitioner that he belongs to "Hindu Chamar

caste” under the Caste Certificate dated 16 October, 2014 issued to him. At the first instance, the petitioner is directed to appear before the Mamlatdar on 15 May, 2023 at 11 a.m. The Mamlatdar shall accordingly shall fix appropriate date of hearing and make an endeavour to pass an order within a period of four weeks from the first date of hearing.

21. All contentions of the parties in the enquiry to be held by the Mamlatdar are expressly kept open.

22. Needless to observe that the Mamlatdar shall furnish to the parties all documents subject matter of his consideration.

23. Rule is made absolute in the aforesaid terms. No costs.

(R.N. LADDHA, J.)

(G. S. KULKARNI, J.)