

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) 4837/2010

Rajkumar s/o Fulchand Jaiswal
aged about 39 years,
Occupation- Service,
r/o Frezarpura
Tah & Distt. Amravati.

..... PETITIONER

// VERSUS //

1. The Divisional Caste Verification Committee,
through its President/Secretary,
Amravati Division Amaravati
2. The Maharashtra Animal and Fishery
Science University, through its Secretary,
Seminary Hills, Nagpur.
3. The Veterinary and Animal Science
College, through its Additional
Registrar Udgir, Dist Latur.
4. The State of Maharashtra,
through its Secretary,
Department of Social
Welfare Mantralaya, Mumbai – 32.

.... RESPONDENT(S)

Mr. P.R. Puri, Advocate for the petitioner
Mrs. Kalyani R. Deshpande, AGP for respondents 1 and 4
Mr. L.S. Borkar h/f. Mr. A.Z. Jibhkate, Advocate for respondents 2 and 3

CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.

DATED : 06/02/2023

ORAL JUDGMENT : (PER:- Y.G. KHOBRAGADE, J.)

Heard Mr. P.R. Puri, learned Counsel for the petitioner, Mrs. Kalyani R. Deshpande, learned Assistant Government Pleader for respondents 1 and 4 and Mr. L.S. Borkar, learned Counsel for respondents 2 and 3.

2. The present petition under Articles 226 and 227 of the Constitution of India is directed against the order dated 27.08.2009 passed by respondent 1 – Divisional Caste Verification Committee, whereby caste claim of the petitioner being ‘Kalal’, Other Backward Class (OBC) has been rejected.

3. The petitioner claims that he is belonging to ‘Kalal’, Other Backward Class which is recognized at serial 254 vide Government Resolution dated 09.08.1995. It is the contention of the petitioner that in view of the Government Resolution dated 09.08.1995, he obtained the certificate of ‘Kalal’, Other Backward Class, on which basis he was appointed with respondent 3 on the post of driver vide order dated 16.06.2008 issued by respondent 2. The respondent 3 forwarded the caste claim of the petitioner to respondent 1 – Verification Committee for verification. Respondent 1 – Verification Committee sought report from the Vigilance Officer. Vigilance Officer after recording the statements of petitioner, his father and other relatives submitted his report recording that the forefathers of the petitioner are residents of Maharashtra State

since 1960/1965 and their caste is “Kalal”. However, respondent 1 – Verification Committee rejected the claim of the petitioner on the ground that the petitioner failed to produce any documentary proof of “permanent resident” prior to 1967.

4. The petitioner further contended that he had filed the Writ Petition 3850/2009 before this Court and this Court had protected his service, but the petitioner withdrew the said petition with liberty to file fresh petition for annexing documentary evidence. Hence, this petition.

5. The learned Counsel for the petitioner submitted that the forefathers of the petitioner are the residents of State of Maharashtra prior to 1967. The petitioner placed on record affidavit dated 27.09.2010 sworn by landlady of the grandfather of the petitioner containing therein that she knows well the petitioner’s parents and they were tenant at her premises from the year 1965 for three years. Hence, the petitioner claims that he has established that his forefathers are the resident of State of Maharashtra prior to 1967 and submitted that the petition is liable to be allowed.

6. Learned Assistant Government Pleader for respondents 1 and 4, Mrs. Kalyani R. Deshpande, supported the impugned order passed by respondent 1 - Verification Committee contending that though, the

Vigilance Cell report is in favour of the petitioner, but it is not based or supported by the documentary evidence. The learned Assistant Government Pleader further submitted that cut-off date of “permanent resident” for Other Backward Classes is 13.10.1967, however, the petitioner fails to produce any relevant document of his or his forefather prior to 1967, and prayed for dismissal of the petition.

7. We have gone through the impugned order dated 27.08.2009 passed by respondent 1 – Verification Committee. On carefully going through the impugned order, it reveals that respondent 1 – Verification Committee invalidated the claim of the petitioner on the ground of failure to produce relevant document prior to 1967. The petitioner filed Writ Petition 3850/2009 before this Court and withdrew the same with liberty to file fresh petition by producing supporting documentary evidence. The petitioner has placed on record affidavit sworn by landlady, Smt. Tulsabai Ramchandra Shambharkar, dated 27.09.2010 contending therein that son of Sakkulal, Sagedan Sakkulal Jaiswal (grandfather) was residing at her house prior to 1965 being a tenant and in 1965 uncle of Segedan – Bhikkilal also came to reside with them. The learned Counsel for the petitioner relied on the judgment in the case of ***Kumar Madhuri Patil Vs. Additional Commissioner [1994***

SCC (6) 241], wherein in paragraph 13 sub-paras 5 and 7, it has been held that:-

“5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

.....

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.”

8. The Hon’ble Supreme Court has held that where report submitted by Vigilance Officer is in favour of the candidate and found to

be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained. It is also held that the Vigilance Officer may also examine the person who has knowledge of the social status of the candidate.

9. In the case in hand, the petitioner produced the affidavit sworn by landlady, who knows and identifies the forefather of the petitioner to have been residing at her house as tenant prior to 1965. The report of Vigilance Officer also supported the claim of the petitioner and in view of the judgment of the Hon'ble Apex Court in the case of ***Kumar Madhuri Patil*** (supra) the petitioner is entitled for issuance Validity Certificate as 'Kalal', Other Backward Class.

10. In view of the aforesaid discussion, we pass the following order:-

(i) Order dated 27.08.2009 passed by respondent 1 - Divisional Caste Verification Committee, Amravati is quashed and set aside.

(ii) It is declared that the petitioner has proved that he belongs to 'Kalal', Other Backward Class. The respondent 1 - Verification Committee shall within a period of two months

from receipt of copy of this order issue validity certificates to the petitioner accordingly.

(iv) Till the petitioner receives validity certificate, he is free to refer to the copy of this order to indicate that he has been held entitled to receive validity certificate.

11. Rule is made absolute in the aforesaid terms with no order as to costs.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO J.)

**SANDIP
MAHADEV
GATE**

Personal Assistant to the
Hon'ble Judge
Digitally signed by
SANDIP MAHADEV GATE
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