



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

WRIT PETITION NO. 6693/2023

(NITIN MAHADEORAO CHOUDHARY **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri B.W. Patil, counsel for the petitioner.

Dr. Birendra Saraf, Advocate General with Shri A.M. Deshpande, In-Charge
Government Pleader for the respondents.

CORAM : A. S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATE : OCTOBER 11, 2023.

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This writ petition filed under Article 226 of the Constitution of India by the petitioner who claims to be the National Convener of O.B.C. Mukti Morcha raises a challenge to the Government Resolution dated 07.09.2023 issued by the General Administration Department of the State of Maharashtra. By the said Government Resolution, the Department of General Administration has been pleased to constitute a five member Committee that is required to indicate and recommend the manner in which documentary material is to be examined while issuing caste certificates to the persons from Maratha-Kunbi or Kunbi-Maratha community.

2. Shri B.W. Patil, learned counsel for the petitioner submits that by Government Resolution dated 01.06.2004 the list of Other Backward Class categories came to be modified and against Serial Number 83 that had the entry Kunbi (sub-caste – Lewa Kunbi, Lewa Patil and Lewa Patidar) was modified by including Maratha-Kunbi and Kunbi-Maratha therein. Having thus modified Entry No.83 it was submitted that there was no reason whatsoever for the General Administration Department to further step in and constitute a Committee to examine the manner in which documentary material should be examined and considered while issuing caste certificates

to the members of Maratha-Kunbi and Kunbi-Maratha community. Reference was made to the provisions of Article 342(A)(3) of the Constitution of India to submit that the State Government having undertaken the exercise of including Maratha-Kunbi and Kunbi-Maratha community in Entry No.83 it had no further obligation to undertake the exercise of determining the modality to be followed while issuing caste certificates to such persons. Referring to the provisions of Section 8 of the Maharashtra Scheduled Castes and 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, 2001, it was submitted that the burden to prove one's caste was on the concerned applicant and that burden could not be taken up by the State Government as is sought to be done by issuing the impugned Government Resolution. Referring to the judgment of the Division Bench in *Prasad Pralhad Ingle Versus State of Maharashtra & Another* [**Writ Petition No. 5705 of 2009**] decided at the Aurangabad Bench on 13.11.2009, it was submitted that after considering the documents submitted by the petitioner therein with the caste entry as Maratha, it was observed that if such cases were accepted and the claim of belonging to Kunbi – Other Backward Class category was upheld then this would result in social absurdity. He also referred to similar observations made in the case of *Suhas Anantrao Dashrathe & Others Versus State of Maharashtra & Another* [**2002(2) BCR 211**]. It was thus submitted that the General Administration Department had no authority in law to constitute such Committee as was done under the impugned Government Resolution. It was also urged that if the Committee was permitted to undertake this exercise and its report was published, the same would have various consequences that could affect the rights of members from the Other Backward Class category community. It was thus submitted that the Government Resolution dated 07.09.2023 was liable to be set aside.

3. Dr. Birendra Saraf, learned Advocate General appearing for the respondents opposed the writ petition. He submitted that the challenge as raised to the Government Resolution dated 07.09.2023 was premature since the only exercise that was contemplated to be undertaken under the impugned Government Resolution was to indicate the manner in which documentary material should be looked into and examined while issuing caste certificates to the persons from Maratha-Kunbi and Kunbi-Maratha community. The General Administration Department was merely seeking a report in the said matter and there was no question of any exercise of collecting evidence being undertaken by the State Government. Referring to the said Government Resolution it was submitted that the object behind issuing the same was to bring in consistency in the matter of issuance of caste certificates. The power to undertake such exercise inheres with the Department and there was no need of any statutory provision for undertaking such exercise. The Committee was required merely to make its recommendations in the matter which would then be considered by the Department. Hence at this stage in absence of any illegality on the part of the respondents, there was no locus whatsoever for the petitioner to challenge the said Government Resolution.

4. Having heard the learned counsel for the parties and having perused the material on record, we do not find any legal basis whatsoever to hold that the Government Resolution dated 07.09.2023 is either unconstitutional or unreasonable as urged by the petitioner. It is seen that in the list of Other Backward Class category Entry No.83 identifies Kunbi with sub-caste of Lewa Kunbi, Lewa Patil and Lewa Patidar. That entry has been modified on 01.06.2004 to include Maratha-Kunbi and Kunbi-Maratha community at Entry No.83. With the issuance of this Government Resolution Entry No.83 stands duly modified recognizing Maratha-Kunbi and Kunbi-Maratha community to be a part of Entry No.83. This Government Resolution is not under challenge. The Government Resolution dated 07.09.2023 refers to the

reasons that have led to the constitution of the five member Committee. It has been stated therein that in the Marathwada region, various difficulties were being faced while issuing caste certificates to the persons from Maratha-Kunbi and Kunbi-Maratha community. With a view to streamline such process and bring a consistency therein a study was undertaken. On the basis of such study and the recommendation made by a Committee headed by the Additional Chief Secretary (Revenue) on 29.05.2023 the General Administration Department proceeded to constitute a five member Committee in this regard. This was with a view to formulate the manner in which caste certificates to the members from the Maratha-Kunbi and Kunbi-Maratha community should be issued keeping in mind the administrative as well as constitutional requirements. As per the decision taken, if in the old documents including the revenue records from the Nizam period, old school records and other records a reference to 'Kunbi' was found, then after examining all relevant documents in detail a caste certificate in that regard could be issued. With a view to decide the modalities in the aforesaid context the said five member Committee was constituted. It was required to indicate the procedure to be followed while issuing caste certificates to eligible persons claiming to belong to Maratha-Kunbi and Kunbi-Maratha community.

5. It can thus be seen that on the basis of an earlier study conducted and the material available with the General Administration Department the decision to constitute a five Member Committee has been taken. The object behind constituting the said Committee being merely to streamline the manner in which relevant documents are to be examined prior to issuance of a caste certificate, we do not find that such exercise is beyond the authority and jurisdiction of the General Administration Department. The Executive has the necessary power to determine the manner in which relevant material prior to the issuance of a caste certificate has to be considered. The apprehension expressed by the learned counsel for the petitioner that the

State Government was undertaking an exercise of collecting evidence for the members of the said community is unfounded in view of the plain meaning as well as the intent behind issuing the Government Resolution dated 07.09.2023. To reiterate, the Committee has been tasked to suggest the mode and manner of examining old records relating to Kunbi community while issuing caste certificates to the claimants from Maratha-Kunbi and Kunbi-Maratha community.

6. For aforesaid reasons, we do not find that there is any case made out to intervene in writ jurisdiction. The writ petition is thus dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

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