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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5604 OF 2018

1. Francis s/o. Anton Bramhane,
Age 51 years, Occ. Service,
R/o. Samata Nagar, Loni (Kh.)
Tq. Rahata, Dist. Ahmednagar
at present R/o. Police Colony,
Wakad, Pune 57.

.. Petitioner.

Versus

1. The State of Maharashtra
Through its Secretary,
Social Justice Department,
Mantralaya, Mumbai – 32.
2. The Commissioner of Police,
Pune, Police Commissioner Office,
Pune.
3. The S.C. V.J.N.T., O.B.C. and S.B.C.
Caste Certificate Scrutiny Committee No.1,
Nashik Division, Nashik,
Through its Member Secretary.

.. Respondents.

Mr. A.N. Nagargoje, Advocate for the petitioner.
Mrs. R.P. Gaur, AGP for respondent State.

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 9TH OCTOBER, 2024.
PRONOUNCED ON : 24TH OCTOBER, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J.]

1. The petitioner impugns the order dated 31.5.2016 passed by S.C. V.J.N.T. , OBC, and SBC, Caste Certificate Scrutiny Committee, No.1, Nashik Division, Nashik – respondent No.3., thereby invalidating the caste claim of the petitioner to be belonging to “Hindu Mahar” Scheduled Caste.

2. Mr. A.N. Nagargoje, learned advocate for the petitioner submits that the petitioner belongs to “Mahar” caste. He has been appointed as Police Constable at office of Police Commissioner, Pune. The petitioner has put in unblemished service of 31 years. In the year 2013, the petitioner was in the zone of consideration for promotional post from SC category. Hence, office of respondent No.2 i.e. Commissioner of Police, Pune, forwarded his caste claim to the respondent No.3 Committee for verification alongwith relevant documents consisting of pre-constitutional documents, depicting the caste of his blood relatives. The school and revenue record also justifies the petitioner’s claim. The committee was pleased to refer petitioner’s claim to the Vigilance Cell. The report of vigilance cell is received on 13.10.2014, wherein, the documentary evidence submitted alongwith claim is not doubted. However, the report consists of certain remarks to suggest that petitioner’s father professed Christianity. His last rites were performed as per the Christian faith. According to Mr. Nagargoje, there is no evidence regarding conversion of the petitioner’s father to Christian religion. There is nothing to show Baptism or performance of ceremonies or rituals of Christian religion. Merely on the basis of photograph of Jesus Christ or certain symbols of Christianity noted at the petitioner’s house, the Committee has drawn inference that petitioner’s family converted to

Christianity, consequently, discarded petitioner's claim under the impugned order.

3. Mr. Nagargoje, would further submit that petitioner has performed marriage as per Hindu rites with a girl from Mahar community. Persons belong to Mahar caste accepted him to be of their community. Occasional visits to the Church, attendance of some programs pertaining to Christianity or performance of last rites as per Christianity itself would not be indicative of conversion of family of petitioner to Christian religion. He would, therefore, urge to quash and set aside the impugned order, which according to him, is based on erroneous considerations.

4. In support of his contentions, he placed reliance on the judgment of the Supreme Court in the following cases :-

- [i] *K.P. Manu vs. Chairman, Scrutiny Committee for verification of community certificate reported in AIR 2015 SC 1402,*
- [ii] *S. Anbalagan vs. B. Devarajan and others (1984) 2 SCC 112,*
- [iii] *C.M. Arumugam vs. S. Rajgopal and others (1976) 1 SCC 863,*
- [iv] *Chaturbhuj Vithaldas Jasani vs. Moreshwar Parshram and others reported in AIR 1954 SC 236 &*
- [v] *Judgments of this Court in W.P. No. 1403 of 2016 Vijay Yosaf/Hire Dive vs. State of Maharashtra and others. &*
- [vi] *Smt. Kamanibai w/o. Chandrabhan Bhosale vs. The State of Maharashtra and others in W.P. No. 11615 of 2014.*

5. Per contra, Ms. R.P. Gour, learned AGP justifies the order of the Scrutiny Committee. She would submit that the petitioner could not

prove genealogy as indicated in affidavit. By inviting attention of this Court to the Vigilance Cell report, she would points out that petitioner's mother admitted that grandfather of the petitioner Piraji Taty Bramhane died 40 years back and his funeral was done in the graveyard by burring method. Even father of the petitioner on his death has been burried in graveyard and his tomb is constructed. She would further invite attention of this Court to the remarks of home inquiry, wherein, the vigilance officer observed that there were photographs of Jesus Christ in the house and in the backyard of the house there were tombs of family members. She would further submit that there is no material to prove that the grandfather of the petitioner was Piraji @ Pathan as claimed in the genealogy. Therefore, the revenue evidences relating to so called blood relatives i.e cousin grandfather cannot be considered. She would further submit that in absence of evidence of petitioners conversion to Hinduism, he can not claim benefit of Mahar Scheduled Caste. According to her, the Committee has recorded elaborate reasons, in support of the conclusions drawn, while rejecting the caste claim of the petitioner.

6. Having considered the submissions advanced, after going through the original record of the Scrutiny Committee, it can be observed that the petitioner relied upon his own affidavit containing genealogy depicting his grandfather Piraji @ Pathan had two brothers, namely, Mogal and Ranoji. The petitioner relied upon the revenue and school records of the pre-constitutional period which consists of birth record of Shanti dated 6th July, 1932 begotten to Pathan Tatyaba Bramhane. The death record of cousin grandfather of the petitioner i.e. Mughal Taty @ Bhairu Mahar dated 27.10.1937. The birth record of Madhav born to

Pathan Tatyaba Mahar on 15.3.1939. The birth record of Bhaskar born to Pathan Taty Bramhane dated 22.8.1941; the birth record of Dagdu Pathan Bramhane i.e. uncle of petitioner dated 8.4.1948; the birth record of Shravan Ranoji Bramhane, cousin uncle of the petitioner dated 20.8.1946, the birth record of Didi born to Rajo Taty Bramhane dated 2.7.1934. The petitioner has also relied upon certain revenue evidences in relation to land Survey No. 190 and 167 situated at Loni Khurd, Taluka Shrirampur, Dist. Ahmednagar.

7. The vigilance report nowhere discard the aforesaid evidences or there is nothing adverse as regards to the aforesaid documents produced by the petitioner. All the aforesaid entries depict that they belong to Mahar Scheduled Caste. However learned AGP strenuously contends that there is nothing to indicate that person namely Piraji i.e. grandfather of the petitioner was also known as Pathan. Therefore, she urges to discard the entries in the record.

8. We find that during the vigilance inquiry, no efforts were taken to crosscheck genealogy. It was not difficult for the Vigilance Officer to bring material to indicate that person, named Pathan Tatyaba Mahar is different than Paraji Tatyaba Mahar. The Committee while considering this aspect observed in one line that the petitioner's father signed the documents as Anton s/o. Paraji Bramhane and petitioner has not produced any record to indicate that his grandfather was also known as Pathan Bramhane or there is no documentary evidence to show that petitioner's father was referred as Anton s/o. Pathan Bramhane. In our view Committee could have called explanation on this aspect from the petitioner. Particularly, in absence of any adverse remark in the Vigilance

Report, the Committee could have asked vigilance officer to cause in depth inquiry to clarify said aspect. We find that approach of the Committee was erroneous and hyper technical. At the same time we find that except own affidavit, petitioner could have placed affidavits of blood relative to substantiate genealogy. The petitioner could have easily established genealogy through affidavits of blood relatives. We do not find any reason for withholding best possible evidence by petitioner. In absence of sufficient evidence as to correctness of genealogy, petitioner cannot establish his claim based of documentary evidence of relatives indicated therein.

9. The Committee has also relied upon glimpses of Christianity observed by the Vigilance Officer at the house of petitioner. The Committee has heavily relied upon the fact that the petitioner's father and grandfather were buried in the graveyard as per the Christian rituals which depict their conversion to Christianity or embracing Christianity.

10. It is to be noted here that the petitioner has placed on record his own school record, which shows that at the time of petitioner's admission in the school on 12.6.1978 his caste is recorded as Hindu Mahar. Petitioner's school record consistently shows him to be belonging to Hindu Mahar community. There is nothing on record to show that petitioner's father, or grandfather had actually converted to Christianity. Although Vigilance Officer made communication to Churches at original place of residence of the petitioner's father, nothing could be gathered to show Baptism or conversion of the petitioner's forefather to Christianity. On the other hand, petitioner has placed on record a Certificate from the Church that there is nothing to indicate that the petitioner or his blood

relatives have registered themselves with the Church or any Baptisma is performed by any one of them. The certificate issued by Dilip Jadhav, Chief Priest from Nishkalanka Mata Church, Pravara Nagar, Taluka Rahata, Dist. Ahmednagar dated 25.3.2024 is placed. On record.

11. The Division Bench of this Court in the case of *Priti D/o. Ashok Chakranaray Vs. State of Maharashtra reported in (2023) 4 All M.H. 6*, observed that merely because portrait of Lord Jesus Chris was found in the house of the petitioner, it does not mean that the petitioner has ceased to be belonging to Hindu Mahar Community.

12. The Supreme Court of India in the matter of **K.P. Manu vs. Chriaman, Scrutiny Committee, AIR 2015 SC 1402**, observed in para.34 as under :-

“In our considered opinion, three things that need to be established by a person who claims to be a beneficiary of the caste certificate are

(i) there must be absolutely clear cut proof that he belongs to the caste that has been recognized by the Constitution (Scheduled Castes) Order, 1950;

(ii) there has been re-conversion to the original religion to which the parents and earlier generations had belonged; and

(iii) there has to be evidence establishing the acceptance by the community.

Each aspect according to us is very significant, and if one is not substantiated, the recognition would not be possible.

13. In the present case, we observed that there is sufficient

material to believe that forefathers of the petitioner as indicated in genealogy belongs to Hindu Mahar Caste, which is recognized as Scheduled Caste. Further, in absence of evidence of conversion of the petitioner's father or grandfather to Christianity, it is not necessary to establish re-conversion. The petitioner states that he married to a woman of Mahar community as per the Hindu rites, that shows that he has been accepted by the community. However petitioner can get benefit of aforesaid observations only if he succeeds to establish correctness of genealogy through impeccable evidence.

14. In yet another judgment in the matter of ***Mohammad Sadique vs. Darbara Singh Guru reported in (2016) 11 SCC 617***, wherein, the Apex Court observed as under :-

“A person can change his religion and faith but not the caste to which he belongs, as caste has linkage to the birth. It is proved on record that the appellant was issued caste certificate as he was found to be a member of “Doom” community by the competent authority after he declared that he has embraced Sikhism and he was accepted by Sikh community. It is not disputed that “Doom” in Punjab is a Scheduled Caste under the Constitution (Scheduled Castes) Order, 1950.”

15. In the instant case, we do not find any evidence in respect of conversion of petitioner's forefathers to Christianity. In absence of such evidence, it would be difficult to countenance conclusion drawn by the Committee that the petitioner belongs to Christian religion. However in light of our observations made in paragraph 8 and 14, we deem it fit to

quash and set aside the impugned order of committee and relegate matter back for fresh decision after collecting necessary material through vigilance inquiry as to correctness of genealogy relied by petitioner. The petitioner shall also be at liberty to bring supportive evidence to substantiate relationship with persons named in genealogy. After aforesaid exercise, if committee comes to positive conclusion as to correctness of genealogy, the committee shall proceed to consider evidences pertaining to caste of blood relatives of petitioner and pass further order in accordance with law, keeping in mind observations recorded in this order on the point of conversion of petitioners forefather to christian religion. Since petitioner is litigating for establishing his caste status for last 11 years, we deem it proper to direct committee to decide petitioners caste claim at earliest and in any case within four months from today.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-