



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

WRIT PETITION NO. 8325 of 2023

Nishad Maya Tembhurne

vs.

The District Caste Scrutiny Committee, through its Chairman, Bhandara.

Mr. Abdul Subhan, Advocate for petitioner

Mr. S.S.Hulke, Assistant Government Pleader for respondent nos. 1 to 4.

CORAM :- NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 11th FEBRUARY, 2025

P. C.

The petitioner is claiming to be belonging to 'Mahar' Scheduled Caste and the caste claim of the petitioner was referred for verification so as to grant validity certificate.

2. Vide impugned order dated 22.06.2022 the caste claim of the petitioner was rejected leading to the filing of the present petition.

3. The counsel appearing for the petitioner would invite attention to the very fact that the petitioner's mother has suffered marital discord. It is pointed out from the record that the petitioner's father has left his mother during her pregnancy and the whereabouts of his father is not known. It is in categorical terms admitted that the father of the petitioner was Muslim by religion. In such an eventuality, drawing support from the judgment of the Apex Court in the matter of *Rameshbhai Dabhai Naika vs. State of Gujarat and others reported in [2012 (2) SCR 104]* particularly paragraph 43, it is urged that the petitioner can always adopt the caste of his mother which he has tried to establish based on the documents.

4. In the aforesaid backdrop, it is urged that once the petitioner has discharged the burden under Section 8 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jati), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Act, 2000 (for short, the Act of 2000) by demonstrating that due to his mother's failed marriage, who is belonging to the 'Mahar' Scheduled Caste based on the documentary evidence, the petitioner is entitled for grant of validity.

5. As against above, Mr. Ghodeswar, learned Assistant Government Pleader appearing for the respondents would urge that the burden under Section 8 of the Act of 2000 is on the petitioner to prove that he belongs to a particular category. According to him, there is a presumption that the child has the caste of his father and in such an eventuality a strong burden is on the petitioner to prove that though his father was a Muslim, still he can adopt the caste of his mother. In such eventuality, Mr. Ghodeswar would urge that the petition is liable to be dismissed as the petitioner has failed to discharge the burden.

6. We have considered the rival claims.

7. The petitioner has produced the documents of his mother wherein the caste is consistently recorded as 'Mahar'. Said caste is identified as Scheduled Caste in the Constitution (Scheduled Caste) Order, 1950 is not a fact in dispute.

8. The Vigilance Cell has conducted an enquiry in the matter and collected certain evidence which is reflected in the impugned order depicting that the mother of the petitioner had an affair or live-in-relation with a boy/man from the Muslim community. The said fact since is admitted by the mother of the petitioner same has prevailed before the Committee to pass the impugned order as there is a presumption that the child gets the caste of his father.

9. However, the Committee, in our opinion, has failed to consider the ratio laid down by the Apex Court in Rameshbhai (supra). Even if there is a presumption that the child has the caste of his father, such presumption is rebuttable particularly having regard to the facts of each case. In the case in hand, once the petitioner has claimed that his father is not known, in the sense about his whereabouts, and his mother having fairly admitted that the petitioner was born to a father who was of Muslim religion, it is always open for the petitioner to establish his caste based on the documents of his mother particularly when the mother has a failed marriage.

In such an eventuality, the law laid down by the Apex Court in the matter of Rameshbhai (supra) shall prevail. Paragraph 43 of the said judgment reads thus:

“43. 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. 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.”

10. It appears that the respondent Committee without adhering to the law laid down by the Apex Court in the matter of Rameshbhai (supra) has proceeded to pass the impugned order without considering the fact whether the petitioner has discharged the burden under Section 8 of the Act of 2000 and whether he has established that his mother belonged to 'Mahar' Scheduled Caste category.

11. In that view of the matter the order impugned is hereby quashed and set aside. The entire matter is restored to file of the respondent-Committee before it the petitioner shall appear on **27.02.2025**.

The Committee after following due process shall evaluate the claim of the petitioner for issuance of validity based on the certificates/documents of his mother particularly the caste entries reflected therein having regard to the decision of the Apex Court in the matter of Rameshbhai (supra).

12. Let the reasoned decision be communicated, after hearing the petitioner, within a period of six months from the date of appearance of the petitioner before it.

13. The writ petition stands allowed in above terms. No costs.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

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