Sachitanand And Others Vs State Of Maharashtra And Others

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Dec. 9, 2022

Acts Referred: Constitution Of India, 1950 â€" Article 226

Hon'ble Judges: Vibha Kankanwadi, J; R.M. Joshi, J

Bench: Division Bench

Advocate: S.B. Talekar, S.B. Thorat, T.M. Venjane, Vikrant Valse, Om Totawad, M.A. Deshpande, A.M. Gaikwad, S.B. Pulkundwar

Final Decision: Allowed

Judgement

Vibha Kankanwadi, J

1. Rule. Rule returnable forthwith. With the consent of the parties, Petition is taken up for final disposal at the admission stage.

2. The petitioners are challenging the order passed by respondent No.2 on 15th December 2021 in respect of the tribe claim of the petitioners. By the

said impugned order, the tribe claim made by the petitioners has been invalidated.

3. The petitioners are the relatives of each other. Petitioner No.1 is appointed as engineer by respondent No.3. Petitioner No.2 is appointed as Talathi

by respondent No.4. Petitioner No.3 is appointed as Gramsevak by respondent No.5 and petitioner No.5 has been appointed as MRI Technician by

respondent No.6. Their appointments are under the Scheduled Tribe category. They belong to Scheduled Tribe, Ã¢â‚¬Å“MannerwarluÃ¢â‚¬. The tribe claim

of the petitioners was sent for validation to the scrutiny committee. The petitioners had produced various documents to support their claim. The

research officer had conducted the inquiry and the vigilance report has been submitted. After the report was received, notice thereof was given to the

petitioners. Accordingly, they had raised objections. Hearing had taken place, however, respondent No.2 scrutiny committee rejected the tribe claim of

the petitioners. Hence the present Writ Petition.

4. It has been vehemently submitted on behalf of the petitioners that the order of invalidation of tribe claim passed by respondent No.2 is patently

without application of mind. Respondent No.2 failed to take into consideration the documents which were produced by the petitioners and wrongly

held that the affinity test has not been proved by the petitioners. It appears that the approach of the committee is negative. The committee has failed

to consider the caste validation certificates issued to father of petitioner Nos.1, 4 and 5, and brother and sister of petitioner No.2. When the caste

validity certificate has been issued to a blood relative, then definitely that is binding. Rather, when it is proved through genealogy that person now

claiming validity is related to the person to whom validity certificate has been given, then the person now claiming validity is not required to go through

the said test. The vigilance report itself was not required. The decision in Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny

Committee No.1 and others, 2010(6) Mh.L.J. 401, was not at all considered. The vigilance report at the time granting validation to those relatives of

the petitioners ought to have been considered by respondent No.2.

5. It has been further vehemently submitted on behalf of the petitioners that tribe Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ was forming part of the Constitution (Scheduled

Tribes) Order, 1950 from the erstwhile State of Hyderabad. Copy of the Gazette of India dated 6th September 1950 has been produced. Learned

Advocate for the petitioners submitted that tribe Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ was not forming part of the said list from erstwhile Bombay State. Thereafter

also, there was no change when the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 came into force with effect from 25th

September 1956. However, the said tribe came to be included by way of amendment of 18th September 1976 by the Scheduled Castes and Scheduled

Tribes Orders (Amendment) Act, 1976. As per the said amendment, the said tribe came to be included for the first time in the State of Maharashtra in

Part IX of the said Gazette in the First Schedule as entry No.27. Therefore, when the caste / tribe came to be recognized in the State of Maharashtra

as part of the Scheduled Castes and Scheduled Tribes Act for the first time after September 1976, then more importance ought to have been given by

respondent No.2 to those documents which were carrying the entry of the caste / tribe as Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ prior to 1976. Nobody had

contemplated prior to 1976 that reservation would be given to those persons who are from Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ tribe. Along with the claim, certain

documents have been produced of the relatives as well as father of three of the petitioners to show that they were Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ by tribe.

Respondent No.2 committee has unnecessarily taken note of other documents. Even if we consider those documents which were considered by the

committee, though in some of documents the spelling differs and it is mentioned as Manerwarlu Ã¢â‚¬Å“ ( )Ã¢â‚¬Å“ and at some places as

Munerwarlu Ã¢â‚¬Å“( )Ã¢â‚¬Å“, the committee has not considered other documents wherein the tribe has been mentioned as

Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ and wrongly held that the petitioners have failed in proving the affinity test and that they do not appear from the area where the

persons from Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ tribe reside. In Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others, (2012) 1 SCC 113

and Priya Pravin Parate vs. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and others, 2013(1) Mh.L.J. 180, it has been held that,

affinity test cannot be regarded as a litmus test and cannot be the sole criteria for rejecting the tribe claim. Further, in Apoorva d/o Vinay Nichale vs.

Divisiona Caste Certificate Scrutiny Committee No.1 (supra), in Kum. Snehal D/o Sambhaji Admulwad vs. the State of Maharashtra (Writ Petition

No.12021 of 2018, decided on 23rd June 2022) and in Abhishek Mahendra Umbarje vs. the State of Maharashtra and others (Writ Petition No.5517 of

2022, decided on 23rd September 2022), this Court has held that the validity certificate issued in favour of blood relative is binding on another

committee unless it is obtained by fraud. In Anil S/o Shivram Bandawar vs. District Caste Certificate Verification Committee, Gadchiroli and another,

2021(5) Mh.L.J. 345, Vishnu Rajaram Thakar vs. State of Maharashtra and another (Writ Petition No.647 of 2022, decided on 9th March 2022),

Sanjay Haribhjau Munnur vs. the State of Maharashtra (Writ Petition No.3223 of 2002, decided on 13th September 2017) and in Balaji S/o Gunaji

Chitale vs. the State of Maharashtra and another (Writ Petition No.2552 of 2019, decided on 8th September 2022), it is held that the scrutiny

committee does not have the power of review. Learned Advocate for the petitioners then pointed out that show cause notices have been issued to

those persons to whom earlier the validity certificates have been issued, as to why their validity should not be cancelled. It is submitted that when

entire procedure was followed and the certificates have been issued, now it cannot be negatived under the guise of review powers. Herein this case

the committee has not come to the conclusion that any record has been manipulated by the petitioners. As the impugned decision has been illegally

arrived at, it deserves to be set aside and the validity certificates need to be issued in favour of the petitioners.

6. Learned AGP appearing for the respondents submitted that initial burden is on the petitioners to prove that they belong to Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ tribe.

The petitioners should not have suppressed any document. Herein this case the school record of some of the petitioners would show that their caste

has been stated as Ã¢â‚¬Å“MannairwarluÃ¢â‚¬. Further, the vigilance report does not show that the relatives of the petitioners had migrated from the original

place of residence of the tribes. Some of the school registers were not available in the school itself. If the entries in the school were wrong or showing

some different caste / tribe, then it ought to have been got corrected as provision to that effect exists in School Code. Later on, there cannot be

changes in the said record. The Full Bench of this Court in Janabai Himmatrao Thakur vs. State of Maharashtra and others, 2019(6) Mh.L.J. 769, held

that, an application for alteration in the entries in the General Register is permissible, with the previous permission of the appropriate authority at any

time when the pupil is attending the school. No application for alteration in the figure of date of birth is permissible after the student has left secondary

school, except correction in the nature of Ã¢â‚¬Ëœobvious mistakesÃ¢â‚¬â„¢ as indicated in Clause 26.3 i.e. of a nature where the date of a particular month

which does not exist in the calendar and likewise. Learned AGP also relied on the decision of this Court in Yogita Subhash Thakur vs. the State of

Maharashtra (Writ Petition No.7988 of 2015 decided on 1st August 2017), wherein it is held that, when grand fatherÃ¢â‚¬â„¢s school admission register of

petitioner carried entry of the caste as Ã¢â‚¬Å“ThakurÃ¢â‚¬ and her fatherÃ¢â‚¬â„¢s record shown the entry in school as Ã¢â‚¬Å“Hindu MarathaÃ¢â‚¬, then such

changes cannot be accepted and the writ jurisdiction under Section 226 of the Constitution of India cannot be exercised. Learned AGP further submits

that in the present case even 7 X 12 extracts of the land of the father of petitioner Nos.1, 4 and 5 does not show any entry about the caste of the

family. The decision taken by the committee is perfectly correct and it does not require any kind of interference. If the said order is now set aside then

it would affect the notices which have been already issued to those relatives on whose validity certificates the petitioners are relying.

7. There is much substance in the say of the learned Advocate for the petitioners. It is to be noted that tribe by name Ã¢â‚¬Å“MannerwarluÃ¢â‚¬ was initially

recognized to be a Scheduled Tribe when the Gazette of India dated 6th September 1950 came into existence. However, later on it appears that in

1956 it got dropped. It appears that earlier inclusion of the said tribe was from Hyderabad State and then the said tribe came to be recognized as

Scheduled Tribe only in the year 1976. Definitely as regards the documents prior to 1976 are concerned, nobody could have had any dream that the

said tribe would be recognized as Scheduled Tribe in future. The record shows that before respondent No.2 committee there were four documents

which were of the years prior 1976. Those documents are at serial Nos. 20, 23, 30 and 95. One of the said documents i.e. document at serial No.20

relates to Premrao Kisanrao Sirsewad, who is father of petitioner Nos.1, 4 and 5, and the document is dated 25th September 1967 in respect of his

admission in the school. Thereafter there is another document at serial No.23 dated 25th July 1970, which relates to paternal aunt of petitioner Nos.1,

4 and 5, Mayabai Kisanrao Sirsewad, about admission in the school. One Shobha Dattarao Sirsewad is stated to be cousin paternal aunt and her

admission document is dated 16th June 1975. The caste certificate of Kisanrao Ganpati Sirsewad, who is grand father of petitioner Nos.1, 4 and 5, is

dated 5th May 1965. All these documents have been brushed aside by the committee on the ground that intentionally the caste has been written in

those documents as Ã¢â‚¬Å“MannerwarluÃ¢â‚¬. The committee has not gone into the aspect that the said tribe came to be recognized for the first time only

in the year 1976.

8. Another fact which has to be stated that at the time of verification of caste certificate of father of petitioner Nos.1, 4 and 5, vigilance was

conducted and the copy of the report has been produced. In the said vigilance everything was considered and further it is stated that one more relative

of said applicant, i.e. father of present petitioner Nos. 1, 4 and 5, was given validity certificate on 30th October 1982. The said relative is cousin

brother (maternal brother) - Subhash Vitthalrao Chahalwar. Even at that time, said Premrao Kisanrao Sirsewad had produced Ã¢â‚¬Å“Namuna No.3 Ã¢â‚¬

Pahni Patrak AhwalÃ¢â‚¬ in the name of his father Kisanrao Ganpati Sirsewad and it was of the year 1951, in which his caste was mentioned as

Ã¢â‚¬Å“MannerwarluÃ¢â‚¬â€¹. Before the scrutiny committee, the genealogy was produced by the present petitioners and it was also stated that another relative

by name Balanand Bapurao Sirsewad, who appears to be the brother of petitioner No.3, had received the validity certificate. Said Balanand Bapurao

Sirsewad had then claimed that validity certificate has been issued to his relative, Rameshwar Sayanna Palepwad and it was issued by the same

committee, i.e. respondent No.2. Affidavits of Rameshwar Sayanna Palepwad and another relative Vyankati Maroti Made were attached, who were

given validity certificates by respondent No.2 committee itself.

9. Thus, it is to be noted that respondent No.2 has not conducted the inquiry in proper way. Other relatives, Satyanarayan Bapurao Sirsewad (brother

of petitioner No.3) and Sharmila Bapurao Sirsewad (sister of petitioner No.3) were also given validity certificates. The affidavit of petitioner No.5 Ã¢â‚¬

Arti D/o Premrao Sirsewad before the committee has given more clear picture, as to who were the other relatives to whom validity certificates have

been issued. When validity certificates have been issued to all these relatives of the petitioners by the same committee, unless there was some cogent

and conclusive evidence about fraud, the same committee could not have undertaken a review of its own decision. The impugned decision now

rendered, is totally against the rules and regulations and the decision in Apoorva d/o Vinay Nichale vs. Divisiona Caste Certificate Scrutiny Committee

No.1 (supra). When the validity certificates of the relatives were produced / disclosed, then there was absolutely no necessity for any affinity test.

10. The decision in Yogita Subhash Thakur vs. the State of Maharashtra (supra) will not be helpful to the respondents as the facts were different. In

the said case there was only one document which was oldest which petitioner therein was relying, so those observations have been made by the co-

ordinate Bench of this Court. Question of area restriction was also not the point involved. There was no necessity for the present petitioners to get any

school record corrected. All the inquiry was done at the behest of respondent No.2 itself. The impugned decision is rather in the form that respondent

No.2 was sitting in appeal over its own file and present committee is raising doubts over the earlier constituted committee, which is not permissible at

all.

11. In view of the fact that the order passed by respondent No.2 on 15th December 2021 is totally illegal, it needs to be set aside by allowing the Writ

Petition. Hence following order:-

ORDER

(I) Writ Petition stands allowed.

(II) The order passed by respondent No.2 Ã¢â‚¬" Scrutiny Committee on 15th December 2021 invalidating the tribe claim of the petitioners stands

quashed and set aside.

(III) Respondent No.2 Ã¢â‚¬" Scrutiny Committee is directed to forthwith issue certificates of validity in favour of the petitioners, certifying that they

belong to Ã¢â‚¬Å“MannerwarluÃ¢â‚¬â€‹, Scheduled Tribe.

(IV) Rule is made absolute in above terms.