

(2010) 10 BOM CK 0095

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 3933 of 2007

Baban Avle

APPELLANT

Vs

The State of Maharashtra, Tribal
Development Department, The
Committee for Scrutiny and
Verification of Tribe Claims, The
Executive Magistrate and The
Collector and District Magistrate

RESPONDENT

Date of Decision: Oct. 1, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2010) 6 BomCR 37

Hon'ble Judges: Shrihari P. Davare, J; S.B. Deshmukh, J

Bench: Division Bench

Advocate: Ajay D. Pawar, for the Appellant; R.P. Phatake, A.G.P. for Respondent Nos. 1 to 4, for the Respondent

Final Decision: Allowed

Judgement

Shrihari P. Davare, J.

Rule. Rule made returnable forthwith. With the consent of learned respective Counsel for the parties, the petition is taken up for final hearing at the stage of admission.

2. By the present petition, filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 13.10.2006, passed by respondent No. 2 Committee, invalidating the Tribe claim of the petitioner belonging to Mannerwarlu Scheduled Tribe and prayed for quashment thereof.

3. The petitioner claims that he belongs to Mannerwarlu Scheduled Tribe and initially respondent No. 2 Committee invalidated his tribe claim as belonging to

Mannerwarlu Scheduled Tribe on 18.9.2002. The petitioner challenged the said order dated 18.9.2002 before this Court by filing Writ Petition No. 7674 of 2005. Accordingly, the said petition came to be allowed partly by this Court and this Court by order dated 16.12.2005, quashed and set aside the order dated 18.9.2002 passed by respondent No. 2 Committee, and remanded the matter back to respondent No. 2 Scrutiny Committee, with directions to make de novo inquiry and to take fresh decision in the matter on its own merits and in accordance with law, and liberty was granted to the petitioner to lead evidence before the said Committee. Thereafter, the petitioner appeared before respondent No. 2 Committee and submitted the documentary evidence before it comprising of about 12 documents, as stated in paragraph No. 3 of the present petition.

4. Accordingly, respondent No. 2 Committee gave fresh hearing to the petitioner and also considered the inquiry report of the Police Vigilance Officer and came to the conclusion that the petitioner has not produced sufficient documentary evidence in support of his claim and failed to prove his affinity and ethnic linkage towards Mannerwarlu Scheduled Tribe, and also not produced any valuable proof or record prior to 1950 and sufficient documentary evidence in support of his claim, and consequently, invalidated the petitioner's social status claim as Mannerwarlu by order dated 13.10.2006. Being aggrieved and dissatisfied by the said order dated 13.10.2006, the petitioner has filed the present petition and impugned the said order therein.

5. We have perused the file containing the original record in respect of the tribe claim, maintained by respondent No. 2 Committee, as well as we have perused the order dated 16.12.2005, passed in earlier Writ Petition No. 7674 of 2005 by this Court, as well as we have perused the impugned order dated 13.10.2006 and also considered the submissions advanced by learned respective Counsel for the parties anxiously.

6. At the out set, it is material to note that this Court, while passing the order dated 16.12.2005 in Writ Petition No. 7674 of 2005, thereby remanding the matter back to respondent No. 2 Committee with direction to conduct de novo inquiry affording opportunity to the petitioner herein, observed as follows:

The Vigilance Cell visited the school and checked the original record wherein the name of the petitioner is mentioned as Baban Ramesh Gaikwad and the caste was mentioned as "Baudha". The petitioner explained the discrepancy by filing an affidavit wherein he stated that his father was illiterate and their neighbour by name, Shivram Gaikwad who is Baudha by caste had taken the petitioner to enrol him in the school. The person enrolling the name of the petitioner in the school assumed that the petitioner is son of said Shivram Gaikwad and hence recorded the name as Bbaban Ramesh Gaikwad and mentioned the caste as Baudh. It is undisputed that the surname of the petitioner has been wrongly mentioned as Gaikwad and hence it does appear probable that the caste of Gaikwad might have

been mentioned in the school record. This case put forth by the petitioner about wrong entry of the surname and the caste has not at all been considered by the Committee. The petitioner had also placed on record a Gazette Notification of the Maharashtra Government Gazette dated 1.4.1993 which shows the change of the surname from Gaikwad to Avle. From the circumstances brought on record, it can at least be said that the explanation put forth by the petitioner in regard to wrong entry of surname and caste ought to have been considered by the Scrutiny Committee. We reiterate, that there has been absolutely no consideration of the said case by the Scrutiny Committee.

7. It is curious to note that in spite of making afore said observations by this Court in order dated 16.12.2005 passed in Writ Petition No. 7674 of 2005, respondent No. 2 Committee, while passing the impugned order dated 13.10.2006, has neither taken into consideration the afore said observations, nor considered the Maharashtra Government Gazette dated 1.4.1993, which is in the file of respondent No. 2 Committee at Page No. 29, nor considered the affidavit of Shivram Sonaji Gaikwad, dated 14.6.2005 (photo copy), which is in the file of respondent No. 2 Committee at Page No. 223. Moreover, although the photo copy of the Maharashtra Government Gazette dated 1.4.1993 has been referred at Sr. No. 4 in the impugned order dated 13.10.2006, in which the applicant has changed his surname from "Gaikwad" to "Avle", pertinently there is no comment/reasoning in respect of the said document in the said impugned order.

8. Hence, we are of the considered view that the impugned order dated 13.10.2006 has been passed by respondent No. 2 Committee mechanically and with sheer non-application of mind, and accordingly, same deserves to be quashed and set aside, and the matter is required to be remanded back to respondent No. 2 Committee, with directions to respondent No. 2 Committee to consider the afore stated documents and to give hearing to the petitioner and to pass a reasoned order afresh on its own merits in accordance with law and to communicate the same to the petitioner within the specified time and the petitioner is also required to be directed to remain present before respondent No. 2 Committee on a specific date for hearing purpose.

9. In the result, present petition is allowed in terms of prayer clause "C" thereof and the impugned order dated 13.10.2006 passed by respondent No. 2 Committee invalidating the tribe claim of the petitioner belonging to Mannerwarlu Scheduled Tribe stands quashed and set aside and the matter is remanded back to respondent No. 2 Committee with directions to consider the Maharashtra Government Gazette dated 1.4.1993, which is in the file of respondent No. 2 Committee at page No. 29 and also to consider the affidavit dated 14.6.2005 of Shivram Sonaji Gaikwad, which is at page No. 223 of the file of respondent No. 2 Committee and the petitioner is directed to remain present before respondent No. 2 Committee on 25.10.2010 at 11.00 a.m., and respondent No. 2 Committee is further directed to give hearing to

the petitioner and to pass a reasoned order on its own merits, in accordance with law and to communicate the same to the petitioner within the period of three months from 25.10.2010. However, if the petitioner does not remain present before respondent No. 2 Committee on the afore said date and does not cooperate to respondent No. 2 Committee in the hearing, respondent No. 2 Committee shall be at liberty to proceed further and to pass reasoned order on the basis of documents and papers before it, and also considering the aforestated documents, in accordance with law, and to communicate the same to the petitioner within the period as afore stated. No order as to costs.

10. Rule is made absolute in the afore said terms.