

Rambhau Diwakar Parkhedkar Vs State of Maharashtra and Others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Sept. 2, 2002

Acts Referred: Constitution of India, 1950 Article 341, 342

Citation: (2003) 1 ALLMR 1042 : (2003) 4 BomCR 264

Hon'ble Judges: S.A. Bobde, J

Bench: Single Bench

Advocate: C.G. Madkholkar and N.R. Pathrabe, for the Appellant; P.B. Patil and A.G.P. for respondent Nos. 1 to 3, for the Respondent

Judgement

S.A. Bobde, J.

Rule returnable forthwith. Heard by consent.

2. This petition is directed against the order dated 5-5-2000, by which, the petitioner's caste claim that he belongs to "Halba", Scheduled Tribe,

has been negated on the ground that in the extracts of school admission register, issued by the Head Master, the caste in respect of petitioner's

grandfather, uncle and other relatives is clearly recorded as "Koshti".

3. The main challenge by the petitioner is that the Police Vigilance Cell of the Committee neither collected any information regarding the social

cultural traits, customs etc. in respect of the petitioner, nor did it make an enquiry as to anthropological and ethnical traits, deities, religious

customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. According to the petitioner, the petitioner belongs to "Halba

who have taken to weaving. In the present case, it is clear that the petitioner's caste claim that he belongs to "Halba" has been negated on the

ground that the caste in respect of the petitioner's grandfather, uncle and other relative is recorded as "Koshti" in the school admission register of

the Nagarparishad Primary School, Shindhi Railway. Prima facie, there seems nothing wrong in these observations of the respondent-Committee

and its finding that the petitioner belongs to "Koshti", which is O.B.C. and not "Halba" Scheduled Tribe.

4. There is however, serious dispute raised by the learned Counsel appearing on behalf of the petitioner, as to the import of the word "Koshti"

appearing in the extracts.

5. Apart from the learned Counsel for the petitioner and respondent-Committee, this Court requested Mr. Madkholkar, learned Counsel to

address the Court as to main contentions raised by the petitioner, as amicus curiae.

6. Mr. Madkholkar, learned Counsel submitted that mere existence of the words "Koshti" in the same caste certificate would not ipso facto

negative the claim of "Halba". He submitted that even in the classical work on the subject, i.e. "Castes and Tribes of Central Provinces" by Russel

and Hiralal, there is an observation that "The Halbas appear to be an off shoot of the primitive Halba Tribe, who have taken to weaving". He

further submitted that there are several authorities on the subject, which point out to the fact that occupation of weaving does not ipso facto

negative character of Scheduled Tribe, i.e. "Halba". According to the petitioner, even in the census of India of the year 1901, Vol. VIII, Berar Part

I, there is mention, which reads thus: ".....The Halbas who are weaver.....". It is well known that weavers in Central Provinces are known as

"Koshti". Koshti community consists of weaver. Thus, it is obvious that there is some degree of overlapping in that there are Halbas, who have

taken to weaving and there are weavers, who are not Halbas. It is obvious that determination of caste in such situation, can only be effective, if the

following observations of the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and

others, , are complied with rigorously. In para No. 5 of the said judgment, while laying down the guidelines, regarding the manner in which the

Police Vigilance Cell of the respondent Committee, should function, the Supreme Court has observed as follows:

5.He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of

the social status of the candidate and then submit a report to the directorate together with all particulars as envisaged, in the proforma, in particular,

of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death

ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

7. The intention of the above guidelines is clearly in order to ensure the enquiry into anthropological and ethnological traits, rituals, customs, mode

of marriage, etc. of the tribes or community with reference to a particular candidate. In other words, the intention is that the Police Vigilance Cell

should conduct an enquiry into the aforesaid aspects of a particular candidate and submit a report therefore to the Committee, so that the

Committee has all the necessary inputs to enable it to match the anthropological and ethnological traits, rituals, customs etc. followed by the

candidate's family, so that they are matched with the known anthropological and ethnological traits of a particular tribe to which the candidate

claims to belong. I see no reason as to why this particular enquiry should not be conducted with full rigor.

8. In the present case, the petitioner's caste claim has been negated as aforesaid. It is contended that the Police Vigilance Cell report does not

indicate any enquiry about socio-cultural traits, customs, etc.

9. In reply to the grounds raised by the petitioner, the Committee has filed its affidavit in reply, stating that the Police Vigilance Cell of the

Committee has conducted a thorough enquiry and collected certain information from the school and found school entries of the grandfather etc.

wherein the caste "Koshti" is mentioned. This is part of the order itself. Though the Committee claims to have stated that the petitioner did not give

any details regarding his cultural traits or rituals etc. Mr. Patil, learned Counsel appearing on behalf of the respondent-Committee, fairly states that

the record does not show that the enquiry having been made from the petitioner regarding the facts enumerated in para No. 5. Guidelines No. 5 in

Madhuri Patil's case (supra) suggests peculiar anthropological and ethnological traits, rituals, customs, mode of marriage, death ceremonies,

method of burial of dead bodies etc.

10. Mr. Patil, learned Counsel, further states that the petitioner did not fill up the necessary details in the proforma provided to him before the

Committee. According to the learned Counsel, the procedure adopted by the respondent-Committee, is that, the candidate is required to fill up a

proforma, in which, certain particulars, as regards, traditional God and Goddess of caste; details of deities of the family; traditional festivals and

celebrations etc. The learned Counsel submitted that the petitioner did not fill up certain columns in the questionnaires and kept them blank.

11. Mr. Patil, further submitted that after filling up the said proforma by the petitioner, the Police Vigilance Cell was sent to the place of the

petitioner, where the petitioner resides, in order to have informations furnished by him, verified. The learned Counsel submits that since the

petitioner did not fill up certain columns, as aforesaid and kept them blank, the Police Vigilance Cell of the Committee did not feel it necessary to

verify those aspects. It is not possible to uphold this contention. There is every possibility that a candidate does not furnish the entire information.

That would not relieve the Police Vigilance Cell of the Committee from the task of finding out those aspects, which are absolutely necessary to

ensure fair and proper authentication of the caste claim. The Committee failed to do so, I am satisfied that the procedure in making the enquiry, has

not been followed since the anthropological and ethnological traits, deity, rituals, customs, etc. as spelt out in para No. 5 of the said judgment of

Madhuri Patil's case (supra), which aspects were crucial in determining the petitioner's caste claim. That must be made and report in that regard

must be submitted to the Committee by the Police Vigilance Cell, before the respondent-Committee gives its verdict regarding the caste claim of

the petitioner. It is conceivable that the Police Vigilance Cell does not get answer to the questions, which it asks either from the candidate or the

parents or such other persons contemplated by said guidelines. In such a case, it is obvious that the Police Vigilance Cell must report that the

candidate or the person, whose caste claim is to be decided, did not disclose the relevant information. In my view, this is necessary in put to enable

the Committee to arrive at a proper conclusion regarding the caste claim of the candidate, particularly, in view of the importance, each caste

certificates have assumed.

12. It is however, made clear that after receiving all the relevant inputs, the authority of the Committee would apply its own knowledge of the

anthropological and ethnological traits etc. to the inputs and find out whether the petitioner belongs to a particular caste or tribe as claimed by him.

The Committee is ultimately fact finding authority and its finding of fact would not liable to be interfered with, except as indicated by the Apex

Court in para No. 14 of its judgment in Madhuri Patil's case (supra).

13. Mr. Patil, learned Counsel further relied on the paragraph No. 28 of the judgment of the learned Single Judge of this Court (Mohite, J.),

delivered in Chhaya Namdeorao Binekar Vs. State of Maharashtra and Others, which reads as under:

28. To further elaborate the point, it will not be open to any person to contend that the ultimate order of the Caste Scrutiny Committee is vitiated

merely because the investigation has not been carried out strictly in accordance with the relevant wording given in direction No. 5 as reproduced

hereinabove. If there is any Lacuna in the vigilance cell report or in the documents enclosed therewith, it is always open to the concerned person to

bring this to the notice of the Scrutiny Committee in the enquiry contemplated under the direction No. 6. The aforesaid wordings of the Supreme

Court pertaining to the manner in which the investigation is required to be carried out cannot be read as if they are a part of a statute.

14. I am of view that the aforesaid observations cannot be considered as an authority for the proposition that the Police Vigilance Cell can ignore

its duty of making an enquiry into the peculiar anthropological and ethnological traits, deities, rituals, etc. as observed by the Apex Court. I

understand that the aforesaid observations of Brother Mohite, J., merely allow the investigating authority ""free play in the joints"" and allows latitude

on the question as to how to conduct the investigation. It however does not allow latitude as to what is required to be investigated. In the category

of what is required to be investigated would fall as to the anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death

ceremonies, method of burial of the persons/family and existence of documents evidencing the caste of the concerned person. Indeed, in para 5 of

the judgment of the Supreme Court, the Apex Court dealt with ""how an investigation should be conducted as well as ""what"" should be investigated.

The latitude allowed in the judgment of Brother Mohite, J., is only in respect of the former and not the latter. The judgment in Ku. Chaya

Namdeorao Binekar v. State of Maharashtra and others, rendered by Brother Mohite, J., in Writ Petition No. 1683/2000 is, therefore, of no help

when an enquiry conducted by Police Vigilance Cell is devoid of essential and basic investigation necessary for procuring necessary material for

verifying a persons"s caste.

15. In the circumstances of the case, I am of view that the impugned order of the Committee deserves to be set aside and it is accordingly set aside

and the matter is remanded to the respondent-Committee for fresh decision in accordance with law, by following the procedure, prescribed by the

Apex Court in Guideline No. 5 in Mahduri Patil"s case. In particular, the respondent Committee shall direct its Police Vigilance Cell to make an

enquiry regarding those aspects, referred to in Guidelines No. 5, as aforesaid and ensure that the report of the Police Vigilance Cell covers those

aspects, viz. anthropological and ethnological traits etc. The Committee shall evaluate the caste claim thereafter. Besides, having regard to the

observations of Russel and Hiralal, in the book referred to above, the Committee shall consider the tenability of the petitioner"s claim that he is

"Halba", even though the same school certificates of petitioners relatives show that they belong to "Koshti". This observation is made particularly,

since there seems great authority for the proposition that the occupation of weaving, i.e. "Koshti" does not automatically negate the claim that a

person is "Halba". After considering the anthropological and ethnological traits etc. and the report to that effect, the Committee would be certainly

free to arrive at its own decision as to the validity of the petitioner"s caste claim.

16. In the result, the impugned order of the respondent-Committee is set aside and the matter is remanded to the Committee with the aforesaid

directions.

17. This Court expresses its gratitude to Mr. Madkholkar, learned Counsel, who acted as amicus curiae and assisted the Court.

Copy of this order, duly authenticated by the Court Sheristedar, be given to the parties to act upon.