

GAYATRILAXMI BAPURAO NAGPURE

v.

STATE OF MAHARASHTRA AND ORS.

MARCH 15, 1996

[M.M. PUNCHHI AND K. VENKATASWAMI, JJ.]

Constitution of India :

Articles 14 and 15(4)—Reservation—Scheduled Tribe—Caste Certificate—Appellant, a candidate for admission to Medical Course, applying to Scheduled Tribe Caste Certificate Scrutiny Committee for Caste Certificate—Documents issued by school authorities and other State authorities in support of claim furnished—Committee rejecting documents and refusing certificate—Held, Committee erred in rejecting the claim and failed to apply its mind to important documents—Greater care must be taken before granting or rejecting any claim for caste certificate.

The appellant, a candidate for admission to the Medical Course, claiming herself to be a member of 'Halba' community, applied to the scheduled Tribe Caste Certificate Scrutiny Community, respondent No. 2 for issue of the requisite caste certificate. In support of her claim she furnished various documents including School Leaving Certificate, domicile and nationality certificate issued to her father, caste certificates issued by the Sub-Divisional Magistrate and the Executive Magistrate and an order dated 1.9.1981 passed by the State Government in favour of her first cousin certifying that he belonged to 'Halba' community. The respondent-Committee rejected the documents and declined to grant the certificate. The writ petition filed by the appellant before the High Court was also dismissed. Aggrieved, the appellant filed the present appeal.

Allowing the appeal, this Court

HELD : 1.1. The respondent-Committee was not justified in rejecting the certificates furnished by the appellant in the absence of any attempt on the side of the Government to suspect the correctness/genuineness of the documents produced by the appellant. The Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document, namely, the order dated 1.9.1981 passed by the

Government certifying that the first cousin of the appellant belongs to 'Halba' community. [471-C; 472-G; 472-B]

1.2. Greater care must be taken before granting or rejecting any claim for caste certificate. By a wrongful denial of the caste certificate, the genuine candidate will be deprived of the privileges conferred upon him/her by the Constitution. [472-H; 473-A; 472-G]

1.3. Though in cases of claim for a caste certificate, the burden heavily lies on the applicant who seeks such a certificate, that does not mean that the authorities have no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. The authorities concerned must also play a role in assisting the Committee to arrive at a correct decision. In the instant case, except the documents produced by the appellant, nothing has been produced by the authorities concerned to arrive at a different conclusion. [473-B-C]

Kumari Madhuri Patil and Anr. v. Additional Commissioner Tribal Development & Ors., [1994] 6 SCC 241, *Director of Tribal Welfare, Government of A.P. v. Leveti Giri & Anr.*, [1995] 4 SCC 32, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4377 of 1996.

From the Judgment and Order dated 22.6.1995 of the Bombay High Court in W.P. No. 2773 of 1995.

V.A. Mohta and A.K. Sanghi for the Appellant.

V.N. Ganpule, S.M. Jadhav for D.M. Nargolkar for the State 1, 2 and 4.

Pallav Sishodia, D.N. Misra for J.B.D. & Co. for the Respondent Nos. 3 and 5.

The judgment of the Court was delivered by

K. VENKATASWAMI, J. Leave granted.

This appeal is directed against the Division Bench judgment of the Bombay High Court in W.P. No. 2773/95 dated 22.6.95.

At the time of arguments before us, learned counsel appearing for the appellant has confined his contention to the claim of the appellant that she belongs to "Halba" Scheduled Tribe.

Briefly stated the facts are that the appellant with a view to apply for admission to the Medical Course, approached the second respondent, the Scheduled Tribe Caste Certificate Scrutiny Committee (for Short "Committee") for the issue of a caste certificate to the effect that she belongs to "Halba" Scheduled Tribe to enable her to apply for admission to the Medical Course under that category. In support of her claim, apart from appearing before the Committee and furnishing certain information, the appellant has filed 17 documents consisting of certificates issued by Executive Magistrate and School Certificate issued to her and Caste Certificate issued to her father.

The second respondent Committee while considering the claim of the appellant and evaluating the probative value of the documents produced, did not appear to have dealt with one important document, namely, Certificate No. 9 in the Order of the second respondent which related to an Order passed by the Government on appeal by the first cousin of the appellant in the matter of issue of Caste Certificate to him. That Order of the Government dated 1.9.81 overruling the Order of a Committee, granted a Caste Certificate holding that the first cousin of the appellant, by name, Abinash Prabhakar Nagpure belonged to "Halba" Community, a Scheduled Tribe in the State of Maharashtra. Likewise, while brushing aside the Caste Certificate issued in favour of the appellant's father, the scrutiny Committee merely observed that it was issued in a casual manner without proper verification.

In the course of the argument before us, learned counsel for the appellant contended that in the light of the Instructions issued by the Government of Maharashtra's that if a close relative is already given a Caste Certificate, that must be given due weight, has not been followed by the Committee. He also submitted that the Certificate issued on 26.8.71 by the appropriate authority after verification was the basis for the issue of the caste Certificate to the father of the appellant, was not noticed by the Committee. However, the Certificate dated 26.8.71 was not produced before the Committee. From the Order passed by the Committee, we find that the failure of the appellant to produce her father's Primary School

Certificate was taken serious note of to reject the appellant's claim.

Before the High Court also, it is claimed, reliance was placed on the Caste Certificate issued to the first cousin and also the Death Certificate issued on the death of the appellant's grandmother but those were not discussed by the High Court.

Learned counsel appearing for the respondents supporting the Order of the second-respondent Committee submitted that in view of the judgments of this Court in *Kumari Madhuri Patil and Anr. v. Additional Commissioner, Tribal Development & Ors.*, [1994] 6 SCC 241, *Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri & Anr.* [1995] 4 SCC 32 the conclusion recorded by the second-respondent Committee does not call for any interference.

We have considered the rival submissions and perused the order of the second-respondent Committee and also that of High Court.

We have noticed earlier that before the second-respondent Committee, 17 documents were produced by the appellant to support the claim that she belonged to "Halba" Scheduled Tribe. The second-respondent Committee while appreciating the probative value of almost all the documents, did not refer to and consider an important document, namely, an order passed by the Government on appeal at the instance of Abinash Prabhakar Nagpure for identical relief. It is not disputed before us that Abinash Prabhakar Nagpure is the first cousin of the appellant. The Government by the said order dated 1.9.81 reversing the order of the Committee recognised the claim of Abinash Prabhakar Nagpure that he belonged to "Halba" Scheduled Tribe.

The documents placed before the Committee are the following :

1. Copy of the caste certificate issued by Principal, G.N. Khalsa College, Bombay dated 5.7.94.
2. Zerox copy of school leaving certificate issued by Principal AFAC. English School, Chembur, Bombay vide Reg. No. 3032.
3. Zerox copy of school leaving certificate issued by Head Master, St. Sabastian's High School, Chembur Bombay vide, Reg. No. 4768.

4. Zerox copy of school leaving certificate issued by Principal, St. Jude's High School, Kalyan vide Reg. No. 2185.
5. Zerox copy of caste certificate issued by Sub Divisional Magistrate, Nashik Dn. Nashik vide No.; EDN/POL II/STSC.Sr./129/92 dated 31.11.92.
6. Zerox copy of certificate issued by Chairman, Halba Samaj Seva Mandal, Naushik Dated. 14.6.94.
7. Zerox copy of caste certificate issued by Executive Magistrate, Nagpure vide No. 3583/MRC-87/92-93 date 13.4.93.
8. Zerox copy of certificate issued by Chief P & A Manager, Hindustan Petroleum Corporation Ltd. Bombay dated 2.3.94.
9. Zerox copy of order passed by Assistant Secretary to Government, Social Welfare and Sports Deptt. dated 1.9.81 in respect of Abinash Prabhakar Nagpure.
10. Zerox copy of caste certificate issued by Executive Magistrate. Kopargaon dated 28.2.81 in respect of Abinash Prabhakar Nagpure.
11. Zerox copy of certificate marriage in respect of Abinash Prabhakar Nagpure.
12. Zerox copy of order passed by Divisional Commissioner, Konkan & Bombay Division vide No. SO/POL/AP-PEAL/ST/15/82 in respect of Miss Versha Laxmikant Belekar.
13. Zerox copy of caste certificate issued by District Magistrate, Greater Bombay in respect of Versha Laxmikant Belekar.
14. Zerox copy of certificate of validity issued by Tribal Research & Training Institute, Pune dated 29.3.94 in respect of Virendra Laxmikant Relekar.
15. Zerox copy of caste certificate issued by Executive Magistrate, Nagpur in respect of Prabhakar Nagpure dated 2.9.82.

16. Zerox copy of death certificate in respect of Taramati Shantaram Nagpure issued by Gramvikas Adhikari Kopargaon.

17. Zerox copy of affidavit of Shri Abinash Prabhakar Nagpure.

The second-respondent Committee ignored SI. Nos. 1-4, 6, 8, 16 & 17 though they relate to school records of the appellant, her relatives wherein the appellant's caste is recorded as "Halba" by simply stating that "they were issued in a very casual manner without verifying the guidelines given by the Government from time to time to issue such certificates". Again while rejecting SI. Nos. 5, 7, 10, 13 & 14 the Committee has commented that "there is no room for the presumption that the certificate has been correctly issued". We are not able to appreciate this approach of the Committee in rejecting the certificates in the absence of any attempt on the side of the Government to suspect the correctness/genuineness of the documents produced by the appellant. We find from the copies of Certificates included in the paper book that the Domicile and Nationality certificate issued to the appellant's father (Annexure "C" at page 28 of paper book) was issued on the basis of particulars of proof given as under:

- (A) Answer given by the Applicant on the prescribed of the questionnaire.
- (B) Birth or School Leaving or a like Certificate issued by Shri Sainath Madhyamik Vidyalaya Shirdi.
- (C) Affidavits or Declaration of Birth Place & Caste.
- (D) (other proof) : Nil.

Likewise the caste certificate issued to the appellant was not issued in a casual manner but after verification of relevant records. Similarly, the caste certificate issued to the father of the appellant was not casual one but based on the following particulars :-

- (1) Age, Domicile, Nationality certificate.
- (2) Brother S.L.C.
- (3) Nephew S.L.C.
- (4) Son, *Bona fide* Certificate.

(5) Brothers Caste Certificate,

(6) Samaj Dakhala.

(7) Ration Card.

(8) Affidavit and Application.

Taking into consideration these certificates and also the order of the Government dated 1.9.81 certifying that Abinash Prabhakar Nagpure, first cousin of the appellant belongs to "Halba" community, we are of the view that the rejection of the appellant's claim especially when there is no other evidence placed contra to suspect the proof produced by the appellant and without appreciating the vital document placed before the Committee, is not correct.

It is true that this Court in *Kumari Madhuri Patil's* case (supra) has observed :-

"The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts."

The same view has been reiterated in *Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri & Anr.*, [1955] 4 SCC 32.

Applying the above test to the facts of the present case, we are satisfied that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document "Sl. No. 9" which led the Committee ultimately record a finding against the appellant. By a wrongful denial of the caste certificate, the genuine candidate, he/she will be deprived of the privileges conferred upon him/her by the Constitution. Therefore greater care must be taken before granting or

rejecting any claim for caste certificate.

The High Court without appreciating the probative value of the documents placed before it has dismissed the writ petition filed by the appellant by simply accepting the conclusions reached by the second-respondent Committee. Undoubtedly, in cases of this type, the burden heavily lies on the applicant who seeks such a certificate. That does not mean that the authorities have no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. We are of the view that the concerned authorities must also play a role in assisting the Committee to arrive at a correct decision. In this case, except the documents produced by the appellant, nothing has been produced by the concerned authorities to arrive at a different conclusion.

On the facts of this case, we are of the view that the second-respondent Committee was not right in rejecting the claim of the appellant and for the same reason the order of the High Court cannot be sustained. In the result, the appeal succeeds and is allowed accordingly. However, there will be no order as to costs.

Appeal allowed.