

State of Maharashtra

Vs

Tanuja

Civil Appeal No. 2308 of 1989

(S. P. Bharucha, N. Santosh Hegde JJ)

02.02.1999

JUDGMENT

N. Santosh Hegde J.

1. The respondent in C.A. No. 2308/89 filed a writ petition in the High Court of Bombay, being W.P. No. 1317/88. In the said writ petition, the respondent herein challenged the order of the Caste Scrutiny Committee (for short 'the Committee') dated 27.10.1996 and the order of the Additional Commissioner, Konkan Division, Bombay, dated 12.11.1987 wherein the said authorities had held that the respondent was not entitled to claim the benefit of reservation for the Nomadic tribe in the State of Maharashtra. The respondent further challenged the vires of the Government Resolution dated 1.4.1984 on the ground that it was beyond the executive powers of the State.

2. The said writ petition was initially heard by a Division Bench of the Bombay High Court which referred the same to a larger Bench for disposal in view of some conflicting judgments on the questions involved. The petition thereafter came to be heard by a Full Bench of the Bombay High Court where it was contended on behalf of the respondent herein that she belonged to the Hindu Bawa Nomadic tribe which, according to her, was originally recognised as an Other Backward Class in Sindh, West Pakistan. It is stated that prior to the Partition of India, Sindh was a part of the then Bombay Presidency and as per the various Government orders of the then Bombay Presidency, Hindu Bawa community of Sindh was recognised as a Nomadic tribe in the entire Presidency. It is further contended that after Partition of the country, a number of members of Sindhi community migrated to India and settled down in various parts of India, including the then Presidency of Bombay. It is further contended that these migrants continued to practice their original traditions and that they socially and ethnically belonged to the same community as 'Gosavi' or 'Bawa' community notified by the Government of Maharashtra as a Nomadic tribe. Strong reliance was placed on an earlier case decided by a Division Bench of the Bombay High Court in the case of *Vijay Shrichand Daulatani v. State of Maharashtra and others, 1985(2) Bombay Case Reporter 488*. In the said case, the Division Bench had held irrespective of the fact that at a particular point of time, Sindh ceased to be a part of the Bombay Presidency, the Bawa community which migrated from Sindh had acquired the synonym of the community known as 'Gosavi' which was notified as a Nomadic tribe in the Presidency of Bombay and, thereafter, continued to be as such even in the successor State of Maharashtra.

3. On behalf of the State of Maharashtra, it was contended before the High Court that after the Report submitted by a Committee chaired by Mr. Starte in the year 1928, the benefit of various reservations in the State of Bombay was not given to the community of 'Bawas' who had migrated from the State of Sindh. It was also contended that whenever the State had intended to grant any

reservation benefits to such of those communities which had migrated from the State of Sindh, it was specifically stated so in the Government notifications. It was contended that since the Government notifications did not specifically state that either 'Bairagis' or 'Gosavis' of the State of Sindh were also treated as Nomadic tribe, it was not open to the petitioner who was a migrant belonging to Bawa community which is claimed to be a synonym of Bairagi community, to claim the benefit of reservation made available to Nomadic tribes. It was also generally contended that the Bawa community which migrated from Sindh, were not socially or ethnically connected with the Bairagis or Gosavis or their synonym community 'Bawas' who were the original residents of the State of Bombay. The Full Bench of the Bombay High Court which heard the said writ petition, framed the following questions for its consideration :

"(a) Whether 'Bawas' from Sindh can claim the benefit of entry Gosavi or its synonym as included in the list of Nomadic Tribe vide Government Resolution dated 21st November, 1961 as amended from time to time ?

(b) Whether the Government Resolution dated 1st April 1987 which directs that Sindhi community is not covered by the said entry, is illegal as by the said resolution Government has sought to set nought the decision of this Court in Vijay Daulatani's case ?

(c) What should be the nature of evidence to be adduced before the Scrutiny Committee for establishing the fact that a particular person belongs to Nomadic Tribe ?

(d) Whether it is necessary to establish mutual affinity amongst the tribal communities specified in the Schedule ?"

4. After considering the various contentions raised on behalf of the parties and the judgments cited before it, it partly allowed the writ petition. The High Court took the view that the members of the Bawa community who migrated from Sindh are deemed to have been included in the reservation list of Nomadic tribes declared as such by the State Government. The High Court further declared that the Government Resolution dated 1.4.1987 was beyond the executive power of the State. The court accordingly took the view that if all the Government Resolutions are read together with the historical background, it is clear that in Sindh which was once a part of the Bombay Presidency, the 'Bawa' community was included as a Nomadic tribe in various Government Resolutions issued from time to time. On factual aspect of the matter, the court took the view that the petitioner will have to establish mutual affinity amongst the tribal communities specified in the Schedule before appropriate authorities and, accordingly, remanded the matter to the Scrutiny Committee for reconsidering the case on merits. While dismissing the question framed as point (a) (supra), the High Court held that it is not disputed that initially Sindh was part of the Bombay Presidency and in Census Reports of India (Bombay Presidency) of 1911 in the column relating to caste or tribe "Bairegi" is included and it is clarified that the said community was found in Karachi, Hyderabad and Shikarpur. It is further held that in the column dealing with the "principal occupation" it is mentioned they are devotees and religious beggars. And in the column synonyms "Gosavi" is referred to. The High Court further noticed that in the Census report of 1921 of the Bombay Presidency, Bawa caste is included in the list of backward classes. In Appendix 'F' to the Census report of 1931 for Bombay Presidency, it is specifically stated that Bawa, Atit, Bairagi, Gosavi or Gussain and Sadhu castes covered the whole Presidency, and their traditional or habitual occupation was that of beggars or devotees. It noticed the argument of the State that the Government Resolution

dated 29.5.1933 had made it clear that the orders passed under the said Resolution do not apply to Sindh, but explained away this position by saying that it is obviously because Sindh had by then become separated from the Bombay Presidency by the Government of India Act, 1935. Therefore, separate Notifications were issued for the State of Bombay as well as State of Sindh. The High Court also noticed the fact that in the newly created State of Sindh, a Resolution dated 7.9.1942 was issued including the community 'Bawa' in the list of Other Backward Classes. The High Court further stated that in the list of Other Backward Communities, Bawa was included even by the then Government of Bombay vide Resolution dated 23.4.1942. Even after Partition of India when refugees from Sindh migrated and settled in various parts of the country including the State of Bombay, the Government of Bombay by Resolution dated 1.11.1950 included the community called 'Bawa' in other backward communities. Thereafter by a Government Resolution dated 21.11.1961 issued by the Government of Maharashtra, a list of Nomadic tribes was notified and as per Schedule II of this Resolution, which deals with Nomadic tribes in Maharashtra, the community 'Bawa' is included with its synonym 'Bairagi'. The High Court also noticed the fact that in the accompaniment to the Government Circular of Education & Social Welfare Department, dated 1.10.1962, the said Entry was continued.

5. According to the High Court, the Entry thereafter came to be amended from time to time and the Entry, as corrected vide Government Resolution dated 9.12.1977 read with corrigendum dated 10.4.1978 read as follows :

"Community

Synonyms

'Gosavi'

1. Bava, 2. Bairagi, 3. Bharati,

4. Girigosavi, 5. Bharati Gosavi,

6. Saraswati Parbat, 7. Sagar,

8. Ban or Van, 9. Teerth Ashram,

10. Aranya Gharbari, 11. Sanyasi,

12. Nathapanthi Gosavi."

6. In view of the above background and in view of the historical fact that Sindh was once a part of the Bombay Presidency, the High Court recorded a finding that Bawa caste also came to be included in the Resolutions issued by the then Government of Bombay.

7. With regard to the second question framed for consideration by the High Court, it came to the conclusion that the Government Resolution dated 1.4.1987 read as a whole, made it obvious that it came to be issued to set at naught or to get over the decision of that court in Daulatani's case (supra). Hence, it held that it was not open to the State, while purporting to clarify the position, to

enter upon judicial power and set aside a binding judgment of a court by issuing such executive fiat.

8. In this appeal, Mr. Mohta, learned senior counsel for the State of Maharashtra contended that the High Court erred in coming to the conclusion that the Bawas in Sindh can also claim the benefit of the Entry gosavi or its synonym as included in the list of NOMadic tribe vide Government Resolution dated 21.11.1961 or as amended, from time to time, because the State of Maharashtra never intended to include Bawa community from the erstwhile State of Sindh, to be a part of Nomadic tribe. According to the learned counsel, if it was the intention of the State to include this community also as Nomadic tribe then the various Resolutions of the State would have specifically mentioned "Bawa community from Sindh" in their Resolutions. In the absence of such specific statement, according to the learned counsel, it is only those members of the Bawa community who are originally from the State of Bombay or Maharashtra alone are entitled to the benefits reserved for Nomadic tribes. We are unable to agree with this argument of the State. As noticed by the High Court, the various Resolutions and Notifications issued by the Government of the then State of Bombay and also the present State of Maharashtra, from time to time, showed that Bawa community without reference to any region, was included as a synonyms of Bairagi/Gosavi which, in turn, was notified as a Nomadic tribe. This was the position even in the Resolution of the State dated 21.11.1961. It is to be noted that when Sindh was part of Bombay Presidency, admittedly the Bawas of that region were also treated as belonging to the Nomadic tribe in the entire Presidency of the then Bombay, even when Sindh got separated from Bombay Presidency, the subsequent Resolutions of the Bombay Government continued to show Bairagi and Gosavi communities with their synonyms as Nomadic tribes without there being any regional restrictions. This is obviously because by then many members of the Bawa community from Sindh region had migrated to various parts of Bombay Presidency. Therefore, we are of the considered opinion that the view taken by the Bombay High Court that the Bawa community from Sindh are entitled to the benefits reserved for Nomadic tribe vide Government Resolution dated 21.11.1961 does not require any interference from us.

9. It was next contended on behalf of the State that in view of the Resolution of the State of Maharashtra dated 1.4.1987, there is a clear declaration that those communities which had migrated from the State of Sindh are excluded from the list of Vimukta Jati and Nomadic tribes. The High Court considering a similar argument had specifically held that this Resolution, read as a whole, shows that it came to be issued to set at nought or to get over its earlier decision in Daulatani's case. The High Court further held that it is well settled that the State while purporting to clarify the position cannot enter upon judicial power and set aside a binding judgment of the court by issuing an executive fiat.

10. We are in respectful agreement with the above finding of the High Court. The question whether an executive or a legislature can overrule a judgment of a court of law and, if so, to what extent, has come for consideration before this Court in a number of cases. Reference can be made in this regard to the decisions of this Court in (1) *Municipal Corporation of the City of Ahmedabad etc. v. The New Shrock Spinning & Weaving Co. Ltd. etc. etc.*, 1970(2) SCC 280, (2) *Madan Mohan Pathak v. Union of India*, 1978(2) SCC 50, (3) *State of Haryana and others v. Karnal Cooperative Farmers' Society Ltd. and others*, 1993(2) SCC 363, and in Special Reference No. 1 of 1991 in the matter of Cauvery Water Disputes Tribunal, 1993 Supp.(1) SCC 96(II).

11. These decisions have specifically held that if the Executive or the Legislature wants to render a judicial decision ineffective, it can only do so by removing or altering or neutralising the legal basis of the judgment which is sought to be made ineffective and that neither the Legislature nor the

Executive has the power of simply declaring the earlier decisions of the courts as invalid or not binding. In the instant case, judgment in Vijay Daulatani's case was rendered after considering all the existing Government Resolutions and Circulars. It is by interpreting these Resolutions and Circulars, the Division Bench of the Bombay High Court came to the conclusion that the community 'Bawa' which migrated from the State of Sindh, was included in the list of Nomadic tribes. This finding was affirmed by this Court while dismissing the special leave petition filed by the State against the said judgment. A perusal of the Resolution dated 1.4.1987 shows that the said Resolution merely reiterates the various Resolutions passed earlier by the Government which were considered and rejected in Vijay Daulatani's case. The State has not considered any fresh material nor has it received any fresh report from competent bodies other than the one that was placed before the Division Bench in Vijay Daulatani's case to declare by way of clarification that the 'Bawa' community of Sindhi Samaj are not entitled to be included in the list of Vimukta Jati and Nomadic tribes. As stated by the Full Bench of the High Court, a perusal of the Resolution dated 1.4.1987 shows that, in effect, it was merely overruling the judgment of the High Court in Vijay Daulatani's case, which is not permissible in law. The State has not altered or neutralised the legal basis of the judgment of the High Court in Daulatani's case by producing relevant additional material or by applying its mind to the reasons given by the Bombay High Court in Daulatani's case. Therefore, we are of the opinion that the Full Bench of the Bombay High Court was right in coming to the conclusion that the Government Resolution dated 1.4.1987, read as a whole, shows that it came to be issued to set at naught or to get over the decision of the Bombay High Court in Vijay Daulatani's case.

12. It is next contended by Mr. Mohta that it is open to the State either to recognise or not to recognise a particular community as a Nomadic tribe. In support of this contention, reliance was placed upon a judgment of this Court in the case of *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and others, 1990(3) SCC 130*. There can be no quarrel with this proposition. The State has every right to recognise a particular community in a particular manner but the same should be done for good reasons and after application of mind to all the relevant factors. Such a decision of the State must be specific and cannot be left to be interfered from surrounding circumstances. Nor can such a decision be based on irrelevant materials. In the instant case, having included the community 'Gosavis' in the category of Nomadic tribe of which 'Bawas' claim to be a synonym, it cannot be left to the Executive to contend such reservation benefit is available only to the members of the 'Gosavi' or 'Bawa' community who are originally from the State of Maharashtra and not to Gosavis or Bawas who had migrated from Sindh. Such classification of excluding the Gosavis or Bawas who migrated from Sindh, from the benefit of reservation available to Nomadic tribe is wholly arbitrary and not based on any relevant consideration. The state in the instant case has not done any exercise which was open to it while passing the Resolution dated 1.4.1987 to assess the social and ethnical background of the members of the Bawa community who migrated from Sindh. It merely persisted on reiterating its stand taken by it in Daulatani's case which stand was negated by the High Court as well as by the Supreme Court. If the State, for cogent reasons and based on relevant materials, had come to the conclusion that Bawas from Sindh region had lost their disadvantages in the society after their migration from Sindh, the validity of such a Resolution might have been upheld by the High Court. The State having failed to make any such enquiry cannot assert its right to recognise or derecognise a community by merely passing a Resolution like the one dated 1.4.1987. Therefore, we are of the view that the contention of Mr. Mohta, based on the judgment of this Court in *Marri Chandra* (supra) cannot be accepted.

13. Lastly, it is contended on behalf of the State that the Resolution dated 1.4.1987 may be read as an amendment to the Resolution dated 21.11.1961 issued by the State consequent to which the

reservation made in favour of Nomadic tribes stands excluded in regard to the members of Sindhi Samaj. We are unable to accept this contention for more than one reason. First of all, it is not the case of the State of Maharashtra, as seen in its pleadings, that by virtue of the Resolution dated 1.4.1987 they have brought about any amendment in its earlier Resolution dated 21.11.1961 nor such an argument was put forward before the High Court. Even otherwise, a careful reading of the Resolution dated 1.4.1987 does not show that the State of Maharashtra intended to amend its earlier Resolution dated 21.11.1961 nor does the Resolution dated 1.4.1987 contain any material which could be treated as a basis to show that the State brought about an amendment to its earlier Resolution dated 21.11.1961. For all these reasons, the last contention of the State also fails. For the foregoing reasons, this appeal fails and is hereby dismissed. No costs. For the reasons stated in the judgment in C.A. No. 2308/89, as above, this appeal also fails and is hereby dismissed. No costs.