

(2011) 09 BOM CK 0106
In the Bombay High Court
Case No : Writ Petition No. 2842 of 2011

Abhijit Balkrishna Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Caste Certificates Validation Act, 2000 — Section 6(1)
Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate
Rules, 2003 — Rule 9

Citation : (2012) 1 BomCR 144 : (2011) 113 BOMLR 3202 : (2012) 1 MhLj 98

Hon'ble Judges : Mridula Bhatkar, J; D.D. Sinha, J

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; S.R. Nargolkar, Addl. Govt.
Pleader for Respondent Nos. 1 to 3., for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Rule, returnable forthwith.

The learned Addl. Govt. Pleader for the Respondent Nos. 1 to 3 waives service.

Heard finally on merits by consent of parties.

2. This Writ Petition is directed against the order dated 29.4.2009 passed by the Scheduled Tribe Certificate Scrutiny Committee, Pune Division, Pune, whereby the caste claim of the Petitioner as belonging to Koli Mahadeo Scheduled Tribe came to be invalidated. The counsel for the Petitioner has submitted that the Petitioner has primarily challenged the decision of the Scheduled Tribe Certificate Scrutiny Committee on the ground that the constitution of the Committee was not valid as per the decision of the Apex Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, .

3. The counsel for the Petitioner has submitted that the composition of the Committee which has invalidated the caste claim of the Petitioner by the impugned order is thus:

(i) Mr. V.K. Mahavarkar, Vice-Chairman.

(ii) Mr. A.D. Shejale, Member Secretary.

(iii) Mr. A.V. Hankare, Member.

It is submitted that on an earlier occasion, the same Caste Scrutiny Committee invalidated the caste claim of one Abhay Dnaneshwar Jagtap vide order dated 15.7.2008. Being aggrieved by the same, Abhay Dnaneshwar Jagtap filed Writ Petition No. 8413 of 2008 before this Court. This Court vide order dated 1.9.2009 rendered in the said Writ Petition as well as other connected Writ Petitions in paragraph 7 has observed thus:

7. What is important to be noted that in case of Scheduled Tribes, the Officer who has intimate knowledge in identifying the tribes, tribal communities, part of or groups of tribes or tribal communities can be appointed as a Research Officer and in the case of Scheduled Caste officer who has intimate knowledge in verification and issuance of the social status certificates is required to be appointed. In the above Petition, we are concerned with Scheduled Tribe because the Petitioner is claiming status as "Thakar" -Scheduled Tribe. Conspicuously it is required to be mentioned that the Affidavit and Additional Affidavit filed by the State Government nowhere mentions that Shri A V. Hankare is a person having intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities so also his educational qualification and his knowledge and expertise in the field has not been disclosed in the said affidavits. On the contrary, the Respondents have dared to make a statement, that by way of stop-gap arrangement Shri A V. Hankare has been appointed so as to complete the coram of three members of the committee. This in our view is absolutely a casual approach to the provisions of law and much more to the directions given by the Apex Court. In our view, since Shri A V. Hankare is not possessed of intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities, he cannot be termed as "Member and Research Officer, of the said committee. Shri A V. Hankare who is not having experience as desired by the Apex Court was made a Member and Research Officer of the said Committee and was asked to participate in the proceedings and hence the said proceedings stand vitiated. We therefore hold that the said committee was not properly constituted and on the said ground the proceedings stand vitiated. Therefore we set aside the impugned orders passed by the Scrutiny Committee in respect of each of the Petitioners in the above Petitions and remit the matters back to the Scrutiny Committee and direct the Government to appoint a Member and Research Officer as per the provisions of the said Act and as directed by the Apex Court in the judgment of Madhuri Patil, and thereafter the cases of the Petitioners shall be decided by the said Scrutiny Committee. A proper Scrutiny Committee shall be constituted within a period of three weeks from date. After constitution, the Scrutiny Committee shall dispose of the matters of the Petitioners within a period of eight weeks thereafter on their own merits and in accordance with law.

4. The counsel for the Petitioner has submitted that in view of the above referred observations made by this Court in paragraph 7 of the judgment, it shows that Mr. A.V. Hankare did not possess intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities and, therefore, he cannot be termed as a "Member and Research Officer of the Committee". The learned Counsel for the Petitioner further contended that Mr. A.V. Hankare is a Member of the present Caste Scrutiny Committee also which has invalidated the caste claim of the Petitioner.

5. Rule 9 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 deals with the meetings and quorum of Scrutiny Committee and the relevant portion thereof reads thus:

9. Meetings and Quorum of Scrutiny Committee.--(1) The quorum of Scheduled Tribe Certificate Scrutiny Committee for any hearing or sitting for decisions shall be of the following three members out of the total five members:-

- (1) Chairman or Vice Chairman
- (2) Member Secretary
- (3) any other Member.

It is submitted that though the present Scrutiny Committee consist of Vice-Chairman, Member Secretary and a Member, since Mr. A.V. Hankare cannot be treated to be a Member, in view of the observations made by this Court in paragraph 7 of the above referred judgement, hence the Committee cannot be treated to be a validly constituted Committee as required by Rule 9 of the Rules, therefore, for want of requisite quorum, the impugned order invalidating the caste claim of the Petitioner cannot be sustained in law since it has not been passed by Committee having proper quorum required as per Rule 9 of the Rules of 2003 and, therefore, is liable to be quashed and set aside.

6. The counsel for the Petitioner has submitted that one Baliram Babu Patil filed Review Petition No. 84 of 2009 in Writ Petition No. 5707 of 2008. In the Review Petition which was decided by this Court on 1.2.2010 in paragraphs 2, 3, 4 and 5 the Division Bench of this Court has observed thus:

2. The learned Counsel appearing for the Petitioner submits that this Court in identical matters involving the same issue, has held that Shri A.V. Hankare, one of the Members of the Caste Scrutiny Committee, was not qualified to act as a Research Officer and, therefore, prays that the order passed by this Court under Review be recalled and fresh orders be passed.

3. In view of the fact that this Court having held the Caste Scrutiny Committee constituted u/s 6(1) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, was not constituted properly, we re-call our order dated

17th June 2009 and quash and set aside the order dated 30th May 2008 passed by the Caste Scrutiny Committee and remand the matter back to the Caste Scrutiny Committee for fresh consideration.

4. Review Application allowed. No. order as to costs.

5. Original record and proceedings be returned.

7. The counsel for the Petitioner has submitted that the above referred observations made by the Division Bench of this Court also show that the Committee of which Mr. Hankare was a Member was not valid Committee, therefore, the Review Petition was allowed on this count.

8. The learned Addl. Govt. Pleader for the Respondent Nos. 1 to 3 has not disputed that the present Scrutiny Committee consists of the above referred Members and one of them is Mr. A.V. Hankare (Member of the Committee). It is submitted that so far as the decision of this Court dated 1.9.2009 rendered in Writ Petition No. 8413 of 2008 and other connected Petitions is concerned, the affidavit-in-reply filed by the Committee in the said Writ Petition was completely silent as to whether Mr. A.V. Hankare had intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities and, therefore, the Division Bench of this Court in paragraph 7 of the said decision has observed that Mr. A.V. Hankare cannot be treated to be a "Member and Research Officer of the Committee" and the order of the Caste Scrutiny Committee which was impugned in those Writ Petitions was set aside and the matters were remanded back to the Scrutiny Committee for re-consideration of the caste claim afresh, in accordance with law.

9. The learned Addl. Govt. Pleader for the Respondent Nos. 1 to 3 further contended that in the present case, the Scrutiny Committee has filed the affidavit of Mr. Prakash S. Wani, Research Officer, dated 2.8.2011 and in paragraph 14, the Research Officer has stated on oath that Mr. A.V. Hankare has been working in the Tribal Development Department for more than 27 years and has intimate knowledge of the traits, characteristics, customs and traditions of genuine Scheduled Tribes as he has spent more than 27 years in the Tribal Development Department on various posts. It is also stated on oath in the affidavit that Mr. A.V. Hankare has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities. The learned Addl. Govt. Pleader has, therefore, submitted that Mr. A.V. Hankare fulfilled the criteria laid down by the Apex Court in Madhuri Patil's case since he has intimate knowledge in identifying the tribes and tribal communities, etc., and has intimate knowledge in this regard. It is submitted that earlier decisions rendered by this Court for want of the specific averments in the affidavit-in-reply filed by the Committee to demonstrate that Mr. A.V. Hankare has intimate knowledge in identifying the tribes, etc., set aside the order of the Committee.

10. The learned Addl. Govt. Pleader has further contended that the Member Secretary of the present Caste Verification Committee Mr. A.V. Hankare is a

Senior Research Officer possessing necessary qualification i.e. Post-Graduate Degree in Sociology. This is the additional circumstance which further proves that the Committee in question is a validly constituted Committee and the decision of the said Committee which is impugned in the present Writ Petition is not liable to be quashed and set aside on the ground that the composition of the Committee was not valid.

11. The learned Addl. Govt. Pleader has submitted that at the time of considering the Review Petition, there was No. material placed before this Court to show that Mr. Hankare had intimate knowledge in identifying the tribes, tribal communities, etc., and in the absence thereof, the Review Petition came to be allowed and the order of the Caste Scrutiny Committee was quashed and set aside.

12. We have considered the contentions canvassed by the respective counsel. The following facts are not in dispute. In the present case, the main ground on which the impugned order passed by the Caste Scrutiny Committee has been challenged is that the Caste Scrutiny Committee is not validly constituted and being inconsistent with the decision of the Apex Court in Madhuri Patil's case, the order impugned passed by the said Committee cannot be sustained in law and is liable to be quashed and set aside. In order to appreciate the rival contentions, we have considered the relevant observations made by the apex Court in paragraph 13 of the judgement in Madhuri Patil's case which show that in case of Scheduled Tribe, the Research Officer who has intimate knowledge in identifying the tribes, tribes communities, parts of or groups of tribes or tribal communities can act as a Research Officer. It is, therefore, evident that the Research Officer who is a Member of the Committee must have intimate knowledge in identifying the tribes, tribal communities, etc., is competent to be a Member of the Committee. In the instant case, Mr. Hankare who is the Member of the Caste Scrutiny Committee which has passed the impugned order, fulfills the criteria mentioned by the Apex Court in Madhuri Patil's case. In paragraph 14 of the affidavit filed by the State, it is stated on oath that Mr. A.V.Hankare is working with the Tribal Development Department for more than 27 years on various posts and has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities. It is, therefore, evident that Mr. Hankare who is working with the Tribal Development Department for 27 years does have intimate knowledge in identifying tribes, tribal communities, etc., and therefore he fulfills the criteria mentioned by the Apex Court in Madhuri Patil's case in respect of Research Officer.

13. It is no. doubt true that in the earlier two decisions of this Court relied upon and cited by the counsel for the Petitioner, this Court has observed that Mr. Hankare cannot be treated to be a Research Officer and a Member of the Committee. However, those observations were made by the Division Bench of this Court for want of necessary material which was not placed by the Committee before this Court to show that Mr. Hankare was/is working with the Tribal Development Department for more than 27 years on different posts and,

therefore, had intimate knowledge in identifying the tribes, tribal communities, etc. There is No. quarrel with the Division Bench decision of this Court since it was rendered entirely in different facts and circumstances. Since there was No. material before the Court placed by the Committee to show that Mr. Hankare had intimate knowledge in identifying the tribes, etc., the Court was justified in holding that Mr. Hankare cannot be treated to be a Research Officer and a Member of the Committee. However, in the instant case, in paragraph 14 of the affidavit filed by the Scrutiny Committee, it is specifically stated that Mr. Hankare is working with the Tribal Development Department for 27 years on various posts and has intimate knowledge in identifying tribes, tribal communities, etc., there is No. reason for us to disbelieve the statement made on oath. The said statement clearly demonstrates that Mr. Hankare fulfills the criteria mentioned by the Apex Court in Madhuri Patil's case and, therefore, in these changed circumstances, the earlier decisions rendered by this Court would not come in the way of this Court in holding that Mr. Hankare who fulfills the criteria mentioned by the Apex Court in Madhuri Patil's case, can be treated to be a Research Officer and a Member of the Scrutiny Committee and, therefore, the composition of the Committee in question cannot be said to be invalid in law. The contentions canvassed by the learned Counsel for the Petitioner in this regard lack merit and, therefore, rejected. We would like to express that in the instant case, Mr. A.D.Shejale (Member Secretary of the Scrutiny Committee) is, in fact, a Senior Research Officer with Post-Graduate Degree in Sociology.

14. The counsel for the Petitioner has also cited another Division Bench of this Court in Akshay Kishor Bhisikar v. Joint Commissioner & Vice-Chairman 2010 All MR (Supp.) 890. In paragraph 2 of the said decision, this Court has observed thus:

2. Mrs. B.H. Dangre, learned Additional Government Pleader for Respondent Nos. 2 & 3, does not dispute the Petitioner's contention that the Research Officer one Shri K.M. Pathak who was associated with the Committee was not qualified to be on the Committee since he does not possess Degree of M.A. in Sociology or Anthropology in terms of judgement of the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and the impugned order is thus set aside. The matter is remanded back to the Committee for a fresh decision in accordance with law. All issues are kept open.

15. The counsel for the Petitioner could not point out to us the specific observations of the Apex Court in Madhuri Patil's case which require the Research Officer to possess Post-Graduate Degree in Sociology or Anthropology. However, in order to substantiate this aspect, he placed reliance on the Government Resolution dated 9.7.1998 issued by the Government of Maharashtra, Tribal Development Department. The counsel for the Petitioner could not point out in which clause of the Government Resolution, it is stipulated that the Research Officer who is associated with the Caste Scrutiny Committee

needs to possess Post-Graduate Degree in Sociology or Anthropology subject. The learned

counsel for the Petitioner is relying on the head note of the Government Resolution wherein there is a reference made in this regard. It is well-settled that the head note of the Government Resolution cannot be treated to be the integral part of the Government Resolution. However, while interpreting the Government Resolution, if it is necessary to find out the object and purpose of the Government Resolution, the head note and the preamble is looked into, but the same cannot be treated to be the Resolution of the Government. In the instant case, in the body of the Government Resolution, it is nowhere stated that the Research Officer who is a Member of the Caste Scrutiny Committee must have Post-Graduate Degree in Sociology or Anthropology. So far as the decision of this Court in Akshay Kishor Bhisikar's case (supra) is concerned, it is rendered by this Court on the concession given by the Addl. Govt. Pleader and, therefore, the said decision does not further case of the Petitioner.

16. For the reasons stated herein above, the petition suffers from lack of merits and the same is dismissed.