

(2018) 09 BOM CK 0121

In the Bombay High Court

Case No : Writ Petition No.7457 Of 2018

Akash Sanjay Pawar

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

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 — Section 2(b), 4, 4(2), 7(1)

Citation : (2018) 09 BOM CK 0121

Hon'ble Judges : S.C. Dharmadhikari, J; Bharati H. Dangre, J

Bench : Division Bench

Advocate : R.K. Mendadkar, V.M. Mali

Final Decision : Allowed

Judgement

BHARATI H. DANGRE, J

1 Rule.Â Rule made returnable forthwith.Â Heard by consent of the parties.

The petitioner, who claims to be belonging to Thakar Tribe, a recognized Scheduled Tribe has invoked the jurisdiction of this Court by filing the present petition on 6th June 2018, thereby seeking direction to the Scheduled Tribe Certificates Scrutiny Committee, Nashik to decide his application dated

31st October 2007 for grant of Caste Validity Certificate and a direction was sought to permit the petitioner to prosecute his studies in Mechanical

Engineering Degree course from the said category.Â During the pendency of the petition, the petitioner sought leave, which came to be granted by

this Court on 30th July 2018 and the petitioner challenged the order dated 28th March 2012 passed by the respondent no.2 Committee invalidating the

claim of the petitioner as belonging to Thakar Scheduled Tribe in relation to his caste certificate dated 17th May 2004.

2 The petitioner obtained a caste certificate from the Sub-Divisional Officer, Sub-Division Karla, District Ahmednagar as belonging to Hindu Thakar

(ST-44) on 17th May 2004. The petitioner approached the Caste Validity Scrutiny Committee seeking to validate the said certificate and he

relied on the caste validity certificate granted in favour of his father and other paternal relatives. Pending the decision of the Committee, the

petitioner came to be admitted to a Mechanical Degree course in the Government College of Engineering, Pune in the reserved category belonging to

Scheduled Tribe and at the time of filing of the petition, he was pursuing his final year of Mechanical Engineering. The petitioner was awaiting the

decision of his claim and therefore, he approached this Court by filing the present writ petition. However, during the pendency of the petition, an

order on 30th July 2018 was served on the petitioner and this order is passed by the Scheduled Tribe Scrutiny Committee, Nashik on 28th March

2012. The said order invalidates the claim of the petitioner as belonging to Thakar Scheduled Tribe on the ground that the caste certificate of the

petitioner is not obtained from the competent authority in proper format. By way of amendment, the petitioner has urged that though he was called

by the respondent no.2 Committee for inquiry into his claim, he was never informed that his claim was already rejected on dated 28th March 2012

itself. However, by amending the petition, he raises a challenge to the impugned order dated 28th March 2012.

3 The learned counsel for the petitioner Shri Mendadkar places reliance on the Division Bench of this Court in case of Neeraj Kamalakar More & ors

Vs. Scheduled Tribe Certificate Scrutiny Committee & ors 2012(6) Bom.C.R.221, and he would submit that the Division Bench of this Court

has considered the efficacy of Rule 5(2) of the Maharashtra Scheduled Tribe Certificate Rules, 2003 (Regulation of Issuance & Verification) and it

has been held by this Court that caste certificate cannot be declared as invalid only on the ground that the competent authority did not have territorial

jurisdiction and Shri Mendadkar would also submit that the said judgment of this Court has been upheld by the Hon'ble Apex Court by its order dated

20th March 2018.

3 We have heard Shri V.M.Mali, learned AGP appearing for the respondent no.2 Committee who made a feeble attempt to justify the impugned order passed by the Scrutiny Committee.

4 With the assistance of the learned counsel for the parties, we have perused the copy of writ petition along with its annexures, including the impugned

order dated 28th March 2012.Â Perusal of the impugned order would reveal that reliance has been placed on a letter issued by the Government of

India dated 22nd March 1977 where it is directed that Revenue Authority of one district is not competent to issue caste certificate in respect of

persons belonging to another district and reliance is also placed on the Government Resolution dated 29th October 1980 in relation to the instructions

issued to the authorities for issuance of caste certificate.Â Reliance is also placed on the Government Resolution dated 13th June 1985 which

determines the authority competent to issue the caste certificate to an incumbent based on his place of permanent residence.Â Based on the

aforesaid resolution issued by the State Government, the Committee has inferred that the petitioner is a permanent resident of P.O. Patas, Taluka

Daund, District Pune on the date of notification i.e. 6th September 1950, whereas the caste certificate which has been placed before the Committee is

issued by the SubÂdivisional Officer, Karjat, Ahmednagar.Â It is also noted that the certificate has not been issued in terms of provisions of Rule

5(2) subÂ?rule (a) and (b) which reads thus :

Rule 5(2)(a)Â : The Competent Authority if satisfied may issue Scheduled Tribe Certificate in Form C to an applicant who has migrated from one

district to another district or from the jurisdiction of one Competent Authority to another, within the State, on production of the Scheduled Tribe

Certificate issued to his father or grandfather, by the concerned Competent Authority of that districtâ??

Rule 5(2)(b)Â â??The Competent Authority shall issue Scheduled Tribe Certificate in Form C to an applicant of other district from which he had

migrated to the present place, on the production of the Scheduled Tribe Certificate issued to his father or grandfather by the then Competent Authority

of the district of his father or grandfather's origin at the time of passing of the first Presidential order dated the 6th September, 1950 or thereafter, for

Scheduled Tribesâ??

The Committee, therefore, infers that the authority has not followed the instructions contained in the Government Resolution and has simply issued the caste certificate by declaring as an ordinary/permanent resident of Ahmednagar District, whereas it is evident that the petitioner's ordinary/permanent place of origin at the time of notification is P.O. Patas, Taluka Daund, District Pune. It is further mentioned by the Committee that the concerned authority has not mentioned anything that the petitioner has migrated from Pune district to Ahmednagar district. In such circumstances, the Committee concludes that the petitioner has not obtained the caste certificate from competent authority in proper format and therefore, it proceeds to declare the caste certificate issued by the Sub-Divisional Officer, Sub-Division Karjat. District Ahmednagar dated 17th May 2004 to be invalid and has cancelled and confiscated the same. Liberty is granted to the petitioner to obtain the caste certificate from the competent authority in proper format and submit it to the Committee for its verification.

5 Perusal of the provisions of the Maharashtra Scheduled Caste, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 would reveal that the entire procedure right from the issuance of caste certificate along with its verification has been carved out by the said legislation. Section 4 of the said Enactment empowers a competent authority to issue a caste certificate in such form as may be prescribed or it may reject the application for the reasons recorded in writing. The term "competent authority" has been defined in clause (b) of Section 2 of the said Act No.23 of 2000 in the following terms.

(b) "Competent Authority" means a officer or authority authorized by the Government, notification in the Official Gazette, to issue a Caste Certificate, for such area or such purposes as may be specified in the said notification and shall include all the Competent Authorities already designated by the Government before the coming into force of this Act, having jurisdiction over the area or place to which the applicant originally belongs, unless specified otherwise.

It is thus clear that the caste certificate issued by the competent authority after following the prescribed procedure is then subjected for further

verification since it is not a conclusive document, but a prima facie evidence of the caste of a person. The Enactment then proceeds to set out the

procedure for verification of such a caste certificate.Â The issue as to whether the caste certificate issued by a competent authority can be said to be

invalid within the meaning of subÂsection (2) of Section 4 on the ground that the competent authority which is otherwise competent to issue a caste

certificate had no territorial jurisdiction to issue the particular caste certificate, was raised in a writ petition filed before this Court in case ofÂ Neeraj

K. More & ors Vs. Scheduled Tribe Certificate Scrutiny Committee (supra).Â A Division Bench of this Court on examining the entire scheme of the

Enactment recorded the following finding :

â??Thus, a caste certificate issued by the Competent Authority cannot be said to be invalid or nullity only on the ground that the Competent Authority

did not have territorial jurisdiction. Thus, it follows that in the facts of these cases, the caste certificate issued by the Competent Authority cannot be

said to be invalid.Â The Scrutiny Committee cannot refuse to exercise its power on the ground that the caste certificate produced before it for

validation was issued by the Competent Authority having no territorial jurisdiction to issue the same.Â When a caste certificate issued by the

Competent Authority is not valid within meaning of subÂsection (2) of section 4 of the said Act, the Scrutiny Committee cannot refuse to exercise its

jurisdiction of adjudication or verification of caste claim in cases in hand, the only finding of the scrutiny committee is that the competent authority

which issued caste certificate had no territorial jurisdiction to issue the certificate.Â Therefore, we hold that the caste certificates are not invalid and

the Caste Scrutiny Committee was duty bound to make adjudication on the respective caste claims of the petitioners.

The Division Bench has also dealt with the act of the Committee in cancelling and confiscating such a caste certificate and has observed thus :

There is one more aspect which will have to be noted.Â The Scrutiny Committee under the impugned order has directed cancellation and confiscation

of caste certificates.Â We may note here that under subÂsection (1) and of section 7 of the said Act, the power of cancellation and consfiscation of

the caste certificate can be exercised only if the caste scrutiny committee is of the opinion that the certificate was obtained fraudulently.Â Therefore,

the direction under the impugned order to cancel and confiscate the caste certificates is illegal.Â The finding that the caste certificates were obtained fraudulently could have been recorded only by deciding the caste claim on merits.Â In the cases in hand, there is no adjudication made on merits and hence, there is no finding that the caste certificates were obtained fraudulently.

6 In light of the earlier decision of this Court in case of Niraj K. More & Ors Vs. Scheduled Tribe Certificate Scrutiny Committee (supra), whether

the Division Bench had set aside the order passed by the Scrutiny Committee and directed the Committee to verify the claim of the petitioner, we are

inclined to grant a similar relief in favour of the petitioner.Â We set aside the impugned order passed by the concerned Caste Scrutiny Committee and

direct the Respondent no.2 Committee to proceed to adjudicate the claim of the petitioner in accordance

with the provisions of the Maharashtra Scheduled Caste, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward

Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and the Rules framed thereunder.

7 We direct the Committee to pass appropriate orders as expeditiously as possible and within a period of six months.

We also direct that till the disposal of the claim by the Scrutiny Committee, the petitioner would not be subjected to any coercive action on the ground

of nonÂ?production of validity certificate.

Writ Petition is allowed.

Rule is made absolute accordingly.