
(2014) 03 BOM CK 0192
In the Bombay High Court
Case No : W.P. No. 6391 of 2013

Anand Dhananjay Nalawade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-03-2014

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 4, 4(1), 5(1), 6, 6(2)

Citation : (2014) 6 ALLMR 620 : (2015) 1 BomCR 290 : (2014) 4 MhLj 77

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.A. Sayed, J

Bench : Division Bench

Advocate : R.K. Mendadkar and Helen Koli Mandlik, Advocate for the Appellant;
S.N. Patil, AGP, Advocate for the Respondent

Judgement

A.S. Oka, J.—Heard learned counsel appearing for the Petitioners and the learned AGP for the Respondents. Taken up forthwith for final disposal. The Petitioner applied for grant of a caste certificate. The Petitioner claims that he belongs to a caste Thakur which is notified as a Scheduled Tribe. An Application was made by the Petitioner under sub-section (1) of section 4 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 (for short "the said Act"). The Application made by the Petitioner was rejected by the third Respondent. Being aggrieved by the said order of the third Respondent, an Appeal was preferred by the Petitioner in accordance with section 5(1) of the said Act. The Appeal was allowed by the Caste Scrutiny Committee and a direction was issued to the third Respondent to issue a caste certificate to the Petitioner. It appears that the third Respondent instead of issuing a caste certificate rejected the application made by the Petitioner. A Writ Petition was filed by the Petitioner for challenging the said order of the third Respondent. In the said Writ Petition, the Petitioner was

relegated to a remedy of appeal u/s 5(1) of the said Act. The Appeal preferred by the Petitioner accordingly was dismissed. Being aggrieved by the said order, a Writ Petition was filed by the Petitioner. In the Writ Petition, an order of remand was passed. On 27th January 2010, the Appeal was again dismissed. Being aggrieved by the said order, a Writ Petition was filed by the Petitioner. In the Writ Petition, an order was passed remanding the Appeal to the Caste Scrutiny Committee. By the impugned judgment and order dated 6th May 2013, the Caste Scrutiny Committee has dismissed the Appeal.

2. The learned counsel appearing for the Petitioner in support of the challenge to the order dated 6th May 2013 submitted that the scope of inquiry for issuing a caste certificate u/s 4(1) of the said Act is very limited. If there is a prima facie evidence produced by the Petitioner of his caste claim, the Competent Authority is under an obligation to issue a caste certificate. He submitted that considering the limited scope of the inquiry while issuing a caste certificate u/s 4(1) of the said Act, even the scope of adjudication in an appeal against the order rejecting an application for grant of such caste certificate is limited. He relied upon a decision of this Court in the case of Shri Kumar Balkrishna Nayaran Bedekar and another vs. State of Maharashtra and others, Writ Petition No. 3801 of 2012 decided on 23rd September 2013. He also relied upon a decision of the Division Bench in the case of Niraj Kamlakar More, Being minor represented through his natural guardian i.e. father: Shri. Kamlakar Rajaram More Vs. Scheduled Tribe Certificate Scrutiny Committee, Aurangabad,

3. The learned AGP invited our attention to the provisions of the said Act and the provisions of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short "the said Rules"). He invited our attention to sub-rule (2) of Rule 8 of the said Rules which confers the power on the Appellate Authority to call for further documents. He relied upon a decision of the Full Bench in the case of Shilpa Vishnu Thakur Vs. State of Maharashtra and Others, He submitted that the Caste Scrutiny Committee being the Appellate Authority has all the powers of a Civil Court under the Code of Civil Procedure, 1908 such as summoning and enforcing the attendance of any person, requiring the discovery and production of documents, receiving evidence on affidavit, requisitioning any public record and issuing commissions for the examination of witnesses or for the production of documents. He, therefore, urged that the Caste Scrutiny Committee was duly authorised to call for the vigilance cell report even in such Appeal and to make an in-depth inquiry into the caste claim of the Petitioner. He submitted that no interference is called for.

4. Learned counsel appearing for the Petitioner submits that voluminous documentary evidence was produced in support of the caste claim of the Petitioner and there was more than enough prima facie evidence available before the Appellate Authority.

5. We have carefully considered the submissions. It will be necessary to consider the scheme of the said Act. In Paragraph 6 of the decision in the case of Niraj

Kamalakar More and others (supra), a Division Bench of this Court observed thus:

6. From the scheme of the said Act, it appears that a caste certificate is to be issued by the competent authority defined under the said Act after following prescribed procedure. It is well settled that a caste certificate granted by the competent authority in accordance with the section 4 of the said Act is not conclusive and it is only a prima facie evidence of caste of a person. Sub-section (2) of section 4 of the said Act makes it clear that a caste certificate issued by the competent authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee. Thus, a caste certificate issued by the competent authority in accordance with section 4 of the said Act is valid, only when a validity certificate is granted by the Scrutiny Committee. Sub-section (2) provides that a caste certificate is invalid when it is issued by any person, officer or authority other than the competent authority within meaning of the said Act. By virtue of section 6(2) of the said Act, a power is conferred on the Scrutiny Committee to make verification of the caste certificate issued by the competent authority. Therefore, for the purposes of making adjudication of caste claim of a person on his application, the caste certificate issued by the competent authority u/s 4 must be before the Scrutiny Committee. The reason being that power of the Scrutiny Committee as" indicated by sub-section (2) of section 6 is to make verification of the caste certificate issued by the competent authority.

(Underline added)

6. It will be also necessary to make a reference to the decision of the Division Bench of this Court in the case of Kumar Balkrishna Narayan Bedekar and another (supra). In Paragraphs 2 to 4 of the said decision, the Division Bench held thus:

2. The issue involved in the petition is regarding the correctness of the orders passed by the Sub Divisional Officer as well as by the Caste Scrutiny Committee in the Appeal. Law as regards grant of caste certificates is well settled. A caste certificate is required to be issued by the competent authority in accordance with section 4 of the Maharashtra Scheduled Castes, 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 (hereinafter referred to as "the said Act"). The caste certificate issued by the competent authority is never conclusive and it is at highest a prima facie evidence of caste claim. Such a caste certificate is always subject to scrutiny and verification by the Caste Scrutiny Committee in accordance with section 6 of the said Act.

3. When the Caste Scrutiny Committee constituted under the said Act makes enquiry into the caste claim on the basis of a caste certificate granted by the competent authority, in-depth enquiry is contemplated. The Scrutiny Committee in such cases is assisted by the report of the Vigilance Cell for verification of the genuineness of the documentary evidence relied upon by the Applicant and for

other purposes specified in Rules. The Caste Scrutiny Committee can take recourse to the affinity test for adjudicating upon the caste claim.

4. However, scope of inquiry in the application for grant of caste certificate is totally different. If there is prima facie evidence of caste claim, a caste certificate is required to be granted.

(Underline added)

7. Perusal of Rule 8 of the said Rules shows that an appeal is maintainable against the order rejecting the application for grant of caste certificate by the Competent Authority. A power under sub-rule (2) of Rule 8 of the said Rules has been given to the Appellate Authority of receiving evidence or calling for additional evidence and calling for further record if the Appellate Authority is satisfied that such evidence is necessary for effectively disposing of an Appeal.

8. While deciding such Appeal, the Appellate Authority cannot ignore the difference between an adjudication to be made on the caste claim on the basis of a caste certificate issued in accordance with the provisions of the said Act and adjudication to be made for grant of a caste certificate. The determination of the validity of a caste certificate issued u/s 4(1) of the said Act involves a detailed exercise of calling for the report of the vigilance cell in the event, the Caste Scrutiny Committee is not satisfied with the documents produced by the Applicant. It involves holding of an in-depth inquiry inasmuch as a caste claim of a person is established only when a caste certificate is validated. Even if a caste certificate is ordered to be issued, it is again subject to scrutiny and verification.

9. As stated earlier, if a strong prima facie evidence of the caste claim is produced by an Applicant, a caste certificate u/s 4(1) of the said Act has to be issued. It is never conclusive and is always subject to the verification and scrutiny by the Caste Scrutiny Committee in accordance with the said Act. It is not necessary for the Competent Authority while exercising powers u/s 4(1) of the said Act to hold an in depth inquiry on par with the inquiry contemplated under the said Act for considering the validity of the caste certificate. The scope of adjudication in an Appeal against order rejecting to grant caste certificate is not different.

10. Now turning to the impugned order, we find that the Caste Scrutiny Committee has completely misunderstood the scope of an Appeal u/s 5(1) of the said Act read with Rule 8(1) of the said Rules and the Caste Scrutiny Committee was perhaps under an impression that the Caste Scrutiny Committee was dealing with verification of the caste claim of the Petitioner on the basis of a caste certificate. Therefore, the Caste Scrutiny Committee ordered a vigilance cell inquiry.

11. The duty of the Appellate Authority was to examine whether there was sufficient prima facie material produced before the Competent Authority to enable it to issue a caste certificate. It is true that the Caste Scrutiny Committee

could have exercised the powers under rule 8(2) of the said Rules. However, the Caste Scrutiny Committee could not have converted the Appeal into a full-fledged adjudication of the caste claim of the Petitioner. Normally, such adjudication is required to be undertaken when a caste certificate issued to an Applicant is submitted for verification before the Caste Validity Committee. Without advertent to the limited scope of the adjudication in Appeal, the Caste Scrutiny Committee has committed an error by holding an inquiry on the footing that the Caste Scrutiny Committee was finally determining the caste claim of the Petitioner.

12. Considering the erroneous approach adopted by the Caste Scrutiny Committee, we propose to direct the Caste Scrutiny Committee to look into the documents produced by the Petitioner before the Competent Authority and the additional documents which may be produced before the Caste Scrutiny Committee. If the said documents make out a strong prima facie case in support of the caste claim of the Petitioner, the Caste Scrutiny Committee will have to allow the Appeal and direct the Competent Authority to issue a caste certificate to the Petitioner which will be again subject to the scrutiny and verification. We, accordingly, pass the following order.

ORDER:

- (a) The impugned order dated 22nd April 2013 is hereby quashed and set aside;
- (b) The Case No. TCSC/Satara-Appeal-Remand-08/2010 is restored to the file of the second Respondent-the Scheduled Tribe Caste Certificate Scrutiny Committee, Pune Division, Pune;
- (c) We direct the Petitioner to appear before the second Respondent on 24th April 2014 at 11. a.m.;
- (d) The Caste Scrutiny Committee shall decide the appeal afresh in the light of the observations and directions issued in this judgment and order;
- (e) Appropriate order shall be passed by the Caste Scrutiny Committee within a period of two months from 24th April 2014;
- (f) The Petition is disposed of on above terms;
- (g) All concerned to act upon an authenticated copy of this order.