

(2011) 07 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 5061 of 2011

Aniket Salunke

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 — Rule 12, 12(1)
Special Backward Category (Regulation of issuance and verification of) Casts Verification Act, 2000 — Section 18(1)

Citation : (2012) 4 ALLMR 598 : (2012) 2 MhLj 417

Hon'ble Judges : S.B. Deshmukh, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : S.W. Mundhe holding for E.G. Irale, for the Appellant; A.G. Gondhalekar for respondent Nos. 1, 3 and 4 Assistant Government Pleader and R.P. Phatke, for the Respondent

Judgement

D.B. Bhosale J.

1. Heard learned counsel for the parties. In this writ petition, the petitioner is seeking the following reliefs :-

[B] By issuing appropriate writ, order or direction in like nature, the respondent Nos. 3 and 4 may kindly be directed to accept the admission form/preference form of the petitioner to the medical degree course from the S.T. Reserve category without submission of caste validity certificate and undertaking the seal reserve for the schedule tribe category, pending decision of the respondent No. 2 committee and for that purpose issue necessary orders.

[C] By issuing appropriate writ, order or direction in like nature, the respondent No. 2 Scrutiny Committee may kindly be directed to decide the tribe claim of the petitioner as Thakur and for that purpose issue necessary orders.

2. Petitioner claims that he belongs to "Thakur-tribe" which is recognized and

notified as a scheduled tribe. He passed HSC examination, which is a qualifying examination for admission to health sciences courses, in February, 2010. It appears from the record that while he was in Junior College, his application/proposal was submitted to the respondent scrutiny committee for validity of his tribe claim, in March, 2010. The scrutiny committee, however, returned the petitioner's application forwarded through Junior College, with the covering letter dated 23-2-2011, being incomplete, asking him to re-submit the same along with the documents mentioned in the said communication, within 7 days from the date of communication. Petitioner states that he re-submitted the proposal to the scrutiny committee on 6th July, 2011 i.e. after more than 3 months. In view thereof and in view of the judgment of this court dated 7th July, 2011 in a group of four writ petitions, the petitioner has filed the present writ petition on 11th July, 2011 for the reliefs, as prayed for, in the writ petition.

3. Recently, we had an occasion to deal with 4 Writ Petitions (W.P. Nos. 4871, 4873, 4740 & 4797 of 2011), wherein, similar prayers were made. On the basis of the judgment dated 7-7-2011 in that group of four petitions, the learned counsel for the petitioner submitted that in view of clause (9) of the brochure of preference system for admission to health science courses - MHT-CET-2010, the preference form of the petitioner for admission to the health science course from S.T. Category was not accepted. Clause (9) of the brochure, insofar as the candidates belonging to ST category are concerned, clearly provides that they should submit the caste validity certificate at the time of submitting the preference form, failing which the category claim would not be granted and the candidates would be treated as general candidates. Such is not the case if the candidate belongs to Backward class categories, namely, SC, VJ/DT (A), NT-B, NT-C, NT-D and OBC. In case of B.C. categories, clause (9) provides that in case the validity certificate is not issued by the authorities till the date of submission of preference form and if the candidate is in possession of proof of application for validity of caste submitted to his/her school/junior college, by 30th May, 2011, as per the Govt. Resolution dated 2nd May, 2011, he/she would be allowed to fill the preference form. All such candidates are required to submit an undertaking as per the proforma given in the brochure on Rs. 50 stamp paper. A perusal of clause (9) shows that it creates an artificial discrimination amongst the students belonging to ST category and students belonging to Backward Class categories. This clause remained un-amended since last about 3 years and every year, students belonging to ST category approach this court, seeking directions to the concerned authorities to accept their preference forms for admission, on production of the proof of application for validity of caste submitted to their junior college or directly to the concerned scrutiny committee. This court has passed orders in several matters in past and even this year directing the concerned authorities to accept the petitioners' preference forms. It would be relevant to reproduce the relevant paragraph from the judgment dated 7-7-2011 passed in the aforementioned 4 Writ Petitions.

7. From bare perusal of the clause 9, it is apparent that insofar as candidates

belonging to the Scheduled Tribe category are concerned they are required to submit the caste validity certificate at the time of submitting the preference form, failing which their category claim would not be granted and the candidates would be treated as general candidate. Insofar as the candidates belonging to backward class categories are concerned, though such clause is there, in their case, it is further mentioned that if the caste validity certificate is not issued by the authorities till the date of submission of preference form, and the candidate is in possession of proof of application for validity of caste submitted, by 30th May, 2011 the candidate will be allowed to fill in the preference form and such candidate would have to submit an undertaking as per the proforma given in the brochure on stamp paper with further rider that admission secured by such applicant shall stand cancelled if the caste claim is invalidated by the scrutiny committee.

4. At this stage, it would be necessary to reproduce clause 9 in the brochure, which reads thus :-

The Caste Validity Certificate :

The candidates belonging to the ST category will be required to submit the Caste Validity Certificate at the time of submitting the preference form, failing which the category claimed will not be granted and the candidate will be treated as a general candidate. The candidates belonging to the following Backward class categories i.e. SC, VJ/DT{A). NT-B. NT-C, NT-D, OBC will be required to submit the Caste Validity Certificate at the time of submitting the preference form. However, in case the certificate is not issued by the authorities till the date of submission of preference form, and the candidate is in possession of proof of application for validity of caste submitted to his/ her school/ Jr. College by 30th May, 2011, as per G.R. No. CBC10/2011/CR25/MNVK 5 dated 2nd May, 2011 he/ she will be allowed to fill the preference form. All such candidates will have to submit an undertaking as per the Proforma given in this brochure on Rs. 50/ stamp paper. Admission secured by an applicant with pending claim shall stand canceled if the said claim is invalidated by the scrutiny committee.

5. In the present case, in our opinion, the case of petitioner is not covered by the judgment dated 7th July. 2011 in the four writ petitions. Having regard to the judgment dated 7th July, 2011, it was possible to issue direction to the concerned authority to accept the petitioner's preference form for admission to health science courses along with the proof of application for validity of caste submitted to his junior college or directly to the scrutiny committee. However. the petitioner has not produced any proof in support of his claim that he submitted the application to the Junior College or to the scrutiny committee directly within the stipulated time, and that his caste claim is pending for consideration.

6. The petitioner claims that he submitted the application/proposal to the scrutiny committee for seeking validity certificate on 6th July. 2011. Earlier, the

cut off date for submitting application for validity of caste to the Junior College or directly to the scrutiny committee was 30th May, 2011. This date, however, has been extended to 15th July, 2011, by another Govt. Resolution dated 22nd June, 2011. and hence, the petitioner has approached this court by way of present writ petition, placing reliance upon the judgment dated 7th July, 2011. in the four writ petitions, so also, on the order dated 11th July, 2011. passed by another Division Bench, in Writ Petition No. 5028/2011 (Coram : Nishita Mhatre and M. T. Joshi, JJ.) for the reliefs as prayed in the petition.

7. Insofar as the order dated 11th July, 2011 in W.P. No. 5028/2011 is concerned, that was passed on the basis of the judgment dated 7th July, 2011, passed by this Bench, observing that similar petitions were heard and disposed of by judgment dated 7th July, 2011. We are sure that the Division Bench, while passing the order dated 11th July, 2011, examined the facts of the case in the said writ petition and having satisfied that the case of the petitioner therein was covered by judgment dated 7th July, 2011. passed the order directing the concerned authorities to accept the petitioner's preference form. In our opinion, the petitioner in the present writ petition cannot place reliance either upon the judgment dated 7th July, 2011 or the order dated 11th July, 2011 in W.P. No. 502X/2011. since, the facts of the present case are totally different.

8. In the present case, our attention was invited to the covering letter, placed on record by the petitioner, at Page 21 of the writ petition. This letter, shows that the petitioner simply tendered/delivered his application/proposal, at the dispatch counter where Inward-Outward register is maintained by the office of respondent No. I. On the basis of the acknowledgment given by the inward/outward clerk at the dispatch counter, the petitioner claims that his proposal for validity of caste has been duly submitted and is pending before the respondent scrutiny committee. and since the cut off date has been extended till 15th July, 2011. vide Govt. Resolution dated 22-6-2011, he is entitled to submit preference/admission form for health science courses and to participate in the admission process.

9. Mr. Phatke. learned counsel for the Scrutiny Committee on the other hand submitted that by merely tendering the application at the dispatch counter in the office of the respondent committee one cannot claim that his application is accepted and numbered by the scrutiny committee and on the basis thereof to seek permission to participate in the admission process. He submitted that when a candidate submits his application directly to the scrutiny committee, as per Rule 12(1) of the Maharashtra Scheduled Tribe Certificate Rules, 2003. the concerned officer in the office of the scrutiny committee examines/scrutinizes the application and they accept it only if it is complete and then they register the same. He further submitted that if the scrutiny committee registers the application, issues receipt to that effect to the candidate who approaches the committee directly. He. therefore, submits that unless the application is accepted. and numbered, it cannot be stated to be pending before the scrutiny

committee. Mr. Phatke further submits that the petitioner ought to have re-submitted the application within the time stipulated vide communication dated 22-3-2011.

10. 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) Casts Verification Act, 2000 (hereinafter referred to as, "the Act" for sake of brevity) was brought into force on 23rd May, 2001 to provide for regulation of issuance and verification of caste certificates to the persons belonging to Scheduled Castes., Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes. Other Backward Classes and Special Backward Category and for matters connected therewith or incidental thereto. In exercise of the powers conferred by sub-section (1) of section 18 of the Act and of all other powers enabling it in that behalf, the Government of Maharashtra framed Rules, called, The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. (for short, "the Rules"), for regulating issuance and verification of scheduled tribe certificates to the persons belonging to the scheduled tribes. Rule 12 of the Rules provides the procedure to be followed by the Scrutiny Committee. Sub-rule (1) of Rule 12 is relevant for our purpose, which reads thus :-

12(1) On receipt of the application, the Scrutiny Committee or a person authorised by it shall scrutinise the application, verify the information and documents furnished by the applicant, and shall acknowledge the receipt of the application. The Member Secretary shall register the application, received for verification, in the register prescribed by the Chairman.

11. From bare perusal of sub-rule (1), it is clear that on receipt of the application, the committee or a person authorised by it shall scrutinize the application, verify the information and documents submitted by the applicant and only on being satisfied therewith, shall acknowledge the receipt of the application. The Member Secretary thereafter shall register the application, received for verification in the register prescribed by the Chairman.

It is thus clear that merely tendering/delivering an application at the dispatch counter, where inward-outward clerk receives all the correspondence addressed to the committee, does not amount to tendering an application to the scrutiny committee or a person authorized by it as contemplated by Rule 12(1) of the Rules. In other words the acknowledgment given by dispatch/in ward- outward clerk cannot be treated as an acknowledgment contemplated by sub-rule (1) or Rule 12 of the receipt of the application for seeking validity certificate. In view thereof, the application tendered by the petitioner in the present case, at the dispatch counter of the committee, cannot be stated to be filing/submitting an application, as contemplated by sub-rule (1) of Rule 12, and/or the acknowledgment given by the dispatch clerk cannot be accepted as a proof of submission of the application to the scrutiny committee.

12. We would like to make reference to one of the petitions which we heard today, namely, writ petition No. 5056/2011. In this writ petition also, the application for validity of caste was submitted to the scrutiny committee on 2-7-2011. The petitioner therein placed on record, the certificate/receipt issued by the concerned scrutiny committee of having accepted the said form in the manner provided under sub-rule (1) of Rule 12 of the Rules. When we asked for such certificate/receipt in the present writ petition to the learned counsel for the petitioner, he could not and did not produce such certificates issued by the scrutiny committee and he placed reliance only on the endorsement made by the dispatch/inward outward clerk having tendered the application at the dispatch counter. Such tendering of the application, in any case, cannot be accepted as proof of submission of the application to the scrutiny committee, particularly when, it is submitted by the candidate/applicant, directly to the scrutiny committee. We have accepted direct submission/presentation of the application to the scrutiny committee, in other matters, after having satisfied that submission of the application was in the manner provided under sub-rule (1) of Rule 12 of the Rules.

13. At this stage, we would also like to make reference to the submissions made by learned AGP. Learned AGP submitted that their survey show that 80 to 90% of the applications for verification of the tribe claim are ultimately found to be bogus and, therefore, distinction is made between these 2 reserved categories, namely, scheduled tribe and backward class categories, in clause (9) of the brochure. We don't wish to comment on this controversy. However, we cannot ignore the plight of the students/candidates who are in the race for admission to health science courses, and who have taken all care to comply with the procedure for obtaining validity certificate of their tribe claim within time and are now waiting in queue. If we allow the persons like petitioner at last minute to tender the application to dispatch clerk and on the basis thereof, allow them to participate in the admission process, perhaps, we would be doing injustice to the students who are waiting in queue for admission, after complying with all the formalities, contemplated by the Act, Rules, Govt. Resolutions and Instructions issued in the brochure.

14. In any case, an Application/proposal cannot be treated as pending before the scrutiny committee, unless it is submitted in the manner provided in the Rules. In other words, the acknowledgment given by the inward-outward clerk, as is in the present writ petition, cannot be treated as a proof of application for validity of caste submitted to the scrutiny committee. The petitioner, therefore, is not entitled to participate in the admission process. In the circumstances, prayer clause (B) of the writ petition is rejected.

15. Insofar as prayer clause (C) is concerned, if the proposal of the petitioner is registered and numbered, same may be considered and decided expeditiously. Writ petition is accordingly disposed of.