

(2007) 04 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 903 of 2007

Avinash Tulshiram Limje

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 — Rule 11, 12, 9

Citation : (2007) 4 ALLMR 9 : (2007) 4 BomCR 270 : (2007) 4 MhLj 305

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : S.R. Narnaware, for the Appellant; S.S. Doifode, AGP for Respondents Nos. 1, 3, 5 and 6, S.M. Puranik, in Writ Petition No. 903 of 2007, N.W. Sambre, in Writ Petition No. 904 of 2007 and M.I. Dhatrak, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—Rule. Rule is made returnable forthwith and is heard, as the petitions can be decided on the basis of contents of the petitions and annexures thereto, and returns filed on record.

2. The petitioners in these two petitions claim that both of them have been elected as Municipal Councillors from Wards No. 16 and 18 of Bhandara Municipal Council, reserved for Scheduled Tribe. However, the document at page No. 46 in Writ Petition No. 903 of 2007 shows that the petitioner therein was Municipal Councillor of Ward No. 16, whereas the document at page No. 49 in Writ Petition No. 904 of 2007 describes the petitioner as Municipal Councillor of Ward No. 17, though she has signed as Councillor of Ward No. 16.

3. Both the petitioners claim that they belong to Halba (Scheduled Tribe). Their caste claim was referred to the Caste Scrutiny Committee, which, by the impugned orders dated 20-2-2007, invalidated their caste claim. Aggrieved thereby, the petitioners have filed these petitions praying for quashing and

setting aside the impugned orders and a direction to the Collector not to disqualify the petitioners on the basis of invalidation of their caste claim.

4. We have heard Shri Narnaware, the learned Advocate for the petitioners, who pressed two grounds for challenging the impugned orders of the Caste Scrutiny, namely:

(i) That the principles of natural justice had been violated inasmuch as the Committee did not grant an opportunity to the petitioners to meaningfully participate in the proceedings before it; and

(ii) That the Caste Scrutiny Committee as well as Vigilance Cell were not validly constituted. As to observance of principles of natural justice.

5. Learned Advocate for the petitioners contended as facts leading to first ground that the Caste Scrutiny Committee had listed the petitioners' matter on 20-2-2007 at 4 p.m. when the Committee was not available for hearing. The petitioners and their Advocate were present on 20-2-2007, at 4. p.m. when normally Committee hears the cases. The petitioners' Advocate wanted to file reply and old pre-independence documents, but was informed through a Peon after telephonic conversation between the Peon and the Presiding Officer that the counsel and the petitioners should appear on 21-2-2007 at 11 a.m., but the Committee slapped the petitioners with the orders of invalidation passed on 20-2-2007 itself. The petitioners claim to have informed of these developments by a telegram sent on 21-2-2007.

6. Respondent No. 2 Committee has, in its preliminary submissions, countered these contentions. It was stated that the Vice Chairman of the Committee had to leave for official business on 20-2-2007 in the first half, i.e. from 11 a.m., and thereafter he reached his office only at 4.30 p.m. whereafter the hearing of caste scrutiny of caste claims began and was concluded till 7.30 p.m. Respondent No. 2 Committee submitted that the petitioners and their Advocate did not turn up for hearing. On behalf of the respondent-Committee, an attendance- sheet had been filed at Annexure R-2, which shows that nine other persons were present before the Committee on that day. In view of this, the contention of the learned Advocate for the petitioners that the principles of natural justice had been violated has to be rejected. We find that the contention is half-hearted inasmuch as the petitioners themselves contend that time granted to the Advocate is usually 4 p.m. Therefore, if the Vice Chairman of the respondent-Committee commenced hearing after 4.30 p.m., the petitioners should not have any grievance.

7. Ordinarily record of a Court proves itself. When the record of the Committee does not indicate any events as alleged by the petitioner, and on the other hand shows that hearing was granted to nine persons, it would be difficult to believe the petitioners' story. There is no reason why the Committee would hear nine others but avoid hearing the petitioners. Further, the petitioners' claim that Peon of the Committee, after telephonic conversation with the Presiding Officer

conveyed them to appear on the next day is gravely suspicious because such an event has not been mentioned in the telegram (Annexure 5 in both the petitions). When the petitioners were meticulously enough to send a telegram to have it recorded as to what had happened according to them on 20-2-2007, obviously for its use at a later stage, ordinarily they would not have failed to mention their version about the talk with the Peon. Secondly, the petitioners have not named the Peon, who allegedly had telephonic conversation with superiors and passed on such a message. This omission possibly is deliberate aimed at avoiding a rebuttal on oath. Therefore, the petitioners' contentions in this regard have to be rejected.

8. The petitioners' contention that the principles of natural justice were violated by the petitioners being denied two months' time sought by application dated 24-11-2006 to respond to the Vigilance Cell Report, has also to be rejected. When the Committee has to decide the caste scrutiny claim within a particular time-frame, it would be impermissible for the petitioners to seek two months' time to respond to the Vigilance Cell Report. Since the report had presumably been received before 24-11-2006 and since the hearing was over on 20-2-2006 had the petitioners so desired, they could have placed their objections to the report before the Committee. Petitioners hold political offices. They know that if scrutiny is not done within three months, they have to vacate the office by deeming fiction. The claim that the petitioners should have been permitted to cross-examine the Research Officer, Vigilance Officer or Head Master is ridiculous. The question of cross-examination arises only if a person is examined in the first place.

9. We find that the foundation of the petitioners' case that they were denied of opportunity to cross-examine Research Officer and Vigilance Officer is based on failure to take appropriate note of the scheme of verification of caste certificate as envisaged under the Act and Rules. We find that under Rule 11 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, the candidate has to supply information and documents as narrated therein. Thereafter the information furnished by the candidate is to be referred to the Vigilance Cell. It may so happen that the Vigilance Cell Report based on home enquiry, etc., would satisfy the Committee as to genuineness and then the Committee may issue the validity certificate. Whenever the Committee is not satisfied as to the genuineness of caste/tribe claim of the candidate in case of unfavourable or even favourable report of Vigilance Cell, it has to issue show cause notice to the claimant. Clauses 7 and 8 of Rule 12 of the said Rules, 2003 providing above modality read as follows:

(7) In case the report of Vigilance Cell is in favour of the applicant, and if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and true, the Scrutiny Committee may issue the validity certificate. The validity certificate shall be issued in Form G.

(8) If the Scrutiny Committee, on the basis of the Vigilance Cell report and other

documents available, is not satisfied about the claim of the applicant, the Committee shall issue a show cause notice to the applicant and also serve a copy of the report of the Vigilance Officer by registered post with acknowledgement due. A copy shall also be sent to the Head of the Department concerned, if necessary. The notice shall indicate that the representation or reply, if any, should be made within fifteen days from the date of receipt of the notice and in any case not more than thirty days from the date of receipt of the notice. In case the applicant requests for adjournment or extension of the time-limit, reasonable time, may be granted.

10. At this stage, it is necessary to advert to Section 8 of the Maharashtra Scheduled Caste, 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, which comes into picture no sooner, due to the adverse report or otherwise, the candidate is served with notice under Clause (8) of Rule 12 aforesaid. For ready reference, Section 8 is quoted below :

Section 8 : Burden of proof. Where an application is made to the Competent Authority u/s 3 for the issue of a Caste Certificate in respect of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category and in any enquiry conducted by the Competent Authority and Scrutiny Committee or the Appellate Authority under this Act or any trial of offence under this Act, the burden of proving that the person belonged to such Caste, Tribe or Class shall be on such claimant applicant.

If Section 8 quoted above and Clauses (7) and (8) of Rule 12 are read together, the fallacy underlying the alleged right of cross-examination of Vigilance Cell/ Research Officer will become apparent.

11. Once the Scrutiny Committee decides that the candidate should prove his caste/tribe claim, it is the candidate alone who has to take positive steps to bring proof and evidence as to caste/tribe claimed by him.

The desire that the petitioners should have been afforded opportunity of cross-examination is thus based on totally erroneous perception of the scheme of the Maharashtra Scheduled Caste, 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 and even the dictum as laid down in Madhuri Patil's case.

12. For the discussion in foregoing paras, we do not find any substance in the petitioners' contention that the procedure followed by the Caste Scrutiny Committee resulted in violation of the principles of natural justice in denying proper opportunity to the petitioners. Recourse if Committee's order is ex parte.

13. In regard to the point of allegation as to what transpired on 20-2-2007,

petitioners could have treated the order of Committee to be ex parte order, and appeared before the Committee for rehearing. This course was liable to be adopted particularly in the light of story which petitioners plead as to what transpired on 20-2-2007, as it is common knowledge that dispute as to record and proceedings of Courts and Tribunals ought not be dragged in controversy. Best course available for the petitioner, was to apply to the same forum and have the grievance redressed. It seems that though petitioners have built the story with ingenuity, they were not ready for said story being put to acid test by offering it for scrutiny by appearing before same authority. Petitioners, therefore, seem to have chosen simpler course of approaching this Court and make allegations which can be made easily and attempt can be made to use those to whatever extent possible by invoking the compassion of this Court. The allegations made before this Court for the first time, therefore, fall too short of worth belief and deserve to be rejected. Grievance as to legality of constitution of Committee.

14. The learned Advocate for the petitioners contended that the Committee was not properly constituted inasmuch as Smt. V.P. Naik, shown as Member-Secretary of the Caste Scrutiny Committee in the coram mentioned in the order dated 20-2-2007, was in fact not the Member-Secretary, but only a Senior Research Officer and, therefore, direction No. 4 in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , provisions of Section 6(1) of the Maharashtra Scheduled Caste, 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 and Rule 9 of the Rules framed thereunder were violated. First, it has to be realized that vacancies are bound to occur in various offices created under Statutes. It does not, however, follow that such an office is really vacant. Person holding a statutory position or a position created under the Rules is a juristic entity and, therefore, ordinarily there is a perpetual succession with somebody else filling in the position and not permitting occurrence of the vacuum.

15. The contention of the learned Advocate for the petitioners that the Director could not have asked Smt. V.P. Naik to hold the post of Member-Secretary, is equally unfounded, since the petitioners have not shown that the Director or controlling officer at the regional headquarter was devoid of any such power to ensure that the charge of the post, which had fallen vacant, should be held by another office.

16. We find from the Act, rules made thereunder and the schedule thereunder that persons occupying different positions in the Committee are appointed, are ex officio. This position will be clear from Section 6 of the Maharashtra Scheduled Caste, 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 and notification dated 4-6-2003 issued by the State Government thereby nominating various officers ex officio.

This notification is published on 5-6-2003. None of the positions in the Committee are appointment by name. The appointments are not of the nature of Persona Designata. The scheme envisaging entrustment of the task of scrutiny to the Committee by Madhuri Patil's judgment and then by the statute and rules is to entrust the job to a team of personnel having special knowledge, training and expertise. The personnel serving on various technical posts in Social Welfare/ Tribal Welfare Department are the persons drawn from discipline of Sociology/ Social Work and only such persons are involved in this work. It is not the petitioners' case that persons who were not having expertise were inducted in the Committee.

17. Similar question of constitution of Committee was raised in Writ Petition No. 5415 of 2005, where this Court held that so long as the officer concerned was holding the additional charge of the post of Deputy Director under the orders and/or instructions of the superiors, it could not be said that the Committee was not properly constituted. Therefore, the petitioners' attempt to assail the orders passed by the Committee on this vague ground has to be rejected. While this is so superior officers should issue standing orders as to who shall hold charge in absence of officer who is unavailable or take care for nomination of particular officer. Any room for agitating such point can be eliminated. Such orders could be duly notified, if necessary, in the Gazette. As to improper composition of Vigilance Cell.

18. The learned Advocate for the petitioner next submitted that the Vigilance Cell was also not properly constituted, since there was no senior Deputy Superintendent of Police in the Vigilance Cell of the Committee. It is not shown as to what prejudice was caused to the petitioners by the Vigilance Cell not having a senior Deputy Superintendent of Police, since it is not the head of the Vigilance Cell, who is to evaluate the report, but the Committee. It is not a requirement of dictum of Apex Court or of the Act that Deputy Superintendent of Police should himself conduct the home enquiry. We find that due compliance to directions in Kumari Madhuri Patil's case, and the Act and the Rules, the Vigilance Cell Report was provided to the petitioners and the petitioners had adequate opportunity of pointing to the Committee as to why the findings in the Vigilance Cell enquiry were not correct. Of Facts and Conclusion.

19. The petitioners sought an elective office, without having a validity certificate. They are presumed to be aware of the requirement to obtain validity within requisite period, as also the consequences of failure to secure such validity. Yet they failed to respond to and to rebut the findings of Vigilance Cell. Therefore, they may blame themselves for the brinkmanship in which they indulged by pushing themselves to the very extremes of time-limits prescribed.

20. The Committee had duly considered the report of the Vigilance Cell, which had found that the entries in the school admission registers prior to 1950 in respect of both the petitioners showed that their caste was recorded as Koshti. There is nothing in the petition, or in the submission advanced before us, to

show that the Committee was not justified in relying on these documents collected by the Vigilance Cell in absence of any positive act of proof of petitioners' caste/tribe according to their claim. The enquiry by the Vigilance Cell is meant to assist the Caste Scrutiny Committee in coming to proper conclusions. In view of this, the petitioners cannot assail the conclusions drawn by the Caste Scrutiny Committee on this ground.

21. The Committee has rightly concluded that since pre-1950 entries of caste of petitioners' relations show that they belong to the caste Koshti and not Halba (Scheduled Tribe), and petitioners did not withstand affinity test. We find that petitioners callously neglected the opportunity offered to them to prove their claim independently and even failed to dispute and deny what they were faced as material adverse to their claim. Only conclusion that emerges from the conduct of the petitioners is that they have miserably failed to prove that they belong to Halba (Scheduled Tribe).

22. We have gone through some decisions of this Court, which were referred to by the learned Advocate for the petitioners, and do not find that any of the decisions on facts of those cases could assist the petitioners in any manner. Each case would have to be decided with reference to the facts established. The issue involved is purely a question of fact. As the foregoing discussion would show, no fault can be found with the conclusions drawn by the Committee that the petitioners failed to prove that they belong to Halba. (Scheduled Tribe). In view of this, both these petitions lack merit and are consequently dismissed.