

(2010) 04 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No. 1869 of 2007

Bharat Gulabsing Thakur

APPELLANT

Vs

State of Maharashtra, Tribal Development Department,
Scheduled Tribe Certificate Scrutiny Committee, Konkan
Division and Member Secretary, Brihanmumbai Municipal
Corporation and Sub-Divisional Officer Mumbai Suburban
District

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate
Rules, 2003 — Rule 10, 12, 12(1), 12(2), 12(3)

Citation : (2010) 4 BomCR 316

Hon'ble Judges : Mridula Bhatkar, J; F.I. Rebello, J

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; Ravi Kadam, General, Shekhar
Ingawale, for Respondent Nos. 1 and 2 and S.A. Module, for the Respondent

Judgement

F.I. Rebello, J.

Rule.

By consent, heard forthwith.

1. Considering the controversy, we had requested the learned Advocate General to assist the Court.

2. The main question for consideration apart from the ancillary questions is " Whether report of the Research Officer associated with the committee is evidence which can be considered for rejecting the tribe claim of the applicant without giving an opportunity to the applicant to cross-examine the Research Officer if request is so made ? "

3. We shall first address ourselves to this main question. The petitioner claims to

belong to Thakur tribe which is a notified scheduled tribe in the State of Maharashtra. The petitioner is working in the office of the respondent No. 4. By the present petition, the petitioner is impugning the order dated 27th April, 2007 passed by the respondent No. 2 committee invalidating the caste claim of the petitioner as belonging to Thakur scheduled tribe.

4. The petitioner was granted a caste certificate by the respondent No. 4 on 10th December, 1997 as belonging to the Thakur tribe. The petitioner relied on various documents which include entries in school records of himself, his family members as also death certificates of his relatives where the tribe was shown as Thakur. The petitioner submitted an application on 26th September, 2005 directly to the committee for verification of his certificate along with documentary evidence.

5. The Police Inspector attached to the Vigilance Cell of respondent No. 4 interviewed the uncle of the petitioner as also examined him as to the traits and characteristics and obtained the genealogy tree of the family of the petitioner. The entries from the school records in respect of the relatives of the petitioner were also examined. A report was submitted to the committee on 27th February, 2006. By a show cause notice dated 14th March, 2006 the petitioner was called to file reply on or before 31st March, 2006. In the show cause notice it was set out that an inquiry has been completed by the vigilance cell and as several aspects of the claim were found to be inconsistent, petitioner was asked to give his say in writing and also to remain present. The petitioner filed a reply on 30th March 2007 explaining various aspects including the documents and also pointed out the legal position governing the issuance of caste validity certificate and to grant him an opportunity of hearing.

6. According to the petitioner, he was directed to appear before the committee for hearing on 22nd February, 2007. The petitioner accordingly remained present along with an advocate. The advocate for the petitioner by his application of 22nd February, 2007 moved an application to cross-examine the Research Officer attached to the committee in so far as the remarks made on the inquiry report. The petitioner on the date of hearing reiterated his right to cross-examine the Research Officer. The respondent No. 2 committee without considering the request, proceeded to hear the petitioner and closed the case of the petitioner on 22nd February, 2007 and thereafter passed the impugned order.

7. At the hearing of this petition, on behalf of the petitioner the learned Counsel submits that considering the provisions 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 (hereinafter referred to as the said Act), the committee has all the powers of a civil court conferred on it by Section 9 including summoning, and attendance of any person and examining him on oath. Once the committee has placed reliance on the report to invalidate the caste claim the Research officer ought to have been made available for cross

examination. The Research Officer it is submitted is an expert and evidence of an expert cannot be relied upon unless the party against whom the expert evidence is sought to be used has an opportunity to cross-examine the expert.

8. On the other hand, on behalf of the State, learned Advocate General submits that the committee was initially constituted based on the judgment of the Supreme Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . The State of Maharashtra, it is submitted has thereafter enacted an Act and also framed rules which are known as the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. (which hereinafter shall be referred to as the Rules).

9. We may consider some of the rules. Under Rule 10 a vigilance cell has been constituted to assist each Scheduled Tribe Certificate Scrutiny Committee for conducting an inquiry, which shall consist of:

- (i) A senior Deputy Superintendent of Police
- (ii) Police Inspector (number of Inspectors depending upon the number of cases)
- (iii) Police Constables to assist the Police Inspector.
- (iv) Research Officer.

10. We may reproduce Sub-rule 12(1) (2) (3) (4) and (5) (6) and (7) which read as under:

12. Procedure to be followed by Scrutiny Committee.

- (1)
- (2) If the Scrutiny committee is not satisfied with the documentary evidence produced by the applicant the Scrutiny committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry.
- (3) The Vigilance Officer shall go to the local place of residence and original place from which the applicant hails and usually resides, or in case of migration to the town or city or place from which he originally hailed from.
- (4) The Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or the guardian as the case may be.
- (5) The Vigilance cell shall also examine the parents or guardian or the applicant for the purpose of verification of their Tribe of the applicant.
- (6) After completion of the enquiry, the Vigilance Cell shall submit its report to the Scrutiny Committee who will in turn scrutinise the report submitted by the Vigilance Cell.
- (7) In case the report of the 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 ,a reasonable time, may be granted.

11. The rules would indicate that though the procedure for verification, requires an enquiry to be conducted which consists of school, home and other enquiry, and it has to be done by police personnel, in other words, the field work, the vigilance cell has been conferred the powers to examine the parents and guardian or the applicant for the purpose of verification of the claim and submit the report. The report therefore to the scrutiny committee has to be submitted by the vigilance cell.

12. The first step by the scrutiny committee is to examine the documents. If it is not satisfied then it has to refer the application to the vigilance cell for conducting the school, home or other enquiry. After following the procedure under Sub-rule (3) (4) and (5) of Rule 12, the report has to be prepared and submitted. If the committee is of the opinion that the claim of the applicant is genuine it shall issue the validity certificate on examining the report. If the committee is not satisfied it has to issue a show cause notice, calling on the applicant to make his representation and thereafter after personal hearing the application may either be accepted or rejected. If accepted, the validity certificate shall be issued in Form G.

13. The Vigilance Cell therefore, is a part of the machinery attached to the scrutiny committee. It is part of the machinery meant to assist the scrutiny committee. The Vigilance Cell is not a witness to that extent. Their function is to prepare a report after giving opportunity to the applicant and gather information including documents.

14. Our attention is invited to the judgment in Avinash Tulshiram Limje Vs. State of Maharashtra and Others, . One of the contentions raised there was that they should be allowed to cross-examine the Research Officer and Vigilance Officer. The learned Bench held that on consideration of Section 8 and Sub-rule (7) and (8) of Rule 12 that there was no right to cross-examine the Research Officer/ Police Officer.

15. Section 8 of the Act provides that the burden of proving that a person belongs to a particular caste, tribe or class is on the person who claim to belong

to such a tribe, class or caste. Rule 12 which was referred to earlier under Sub-rule 7 and 8 provides the procedure if the scrutiny committee is not satisfied with the report of the vigilance officer.

16. Our attention is also invited to the judgment in Shailesh Kohad Vs. The Scheduled Tribe Caste Certificate Scrutiny Committee, The Director of Medical Education and Research and The Dean, Indira Gandhi Medical College, . One of the contentions raised was that he was not allowed to cross-examine the uncle or head master of the school. The court held that though an opportunity was given to the petitioner by the committee the petitioner could not tender any evidence to show who were his paternal relatives thereby indicating absence of relationship with persons whose documents were collected by the vigilance Cell. It is in that context that the plea for cross-examination the court held could not be faulted.

17. The Hon"ble Supreme Court in Madhuri Patil (Supra) has issued various directions. We may gainfully reproduce directions (4) (5) (11) and (12) of para 13 which reads as under:

4. All the State Governments shall constitute a committee of three officers, namely (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned (ii) the Director Social Welfare/Tribal Welfare/Backward class Welfare as the case may be and (iii) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes the Research Officer who has intimate knowledge in identifying the tribes, tribal communities parts of or groups or tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian as the case may be. He should also examine the parent, guardian or the candidate in relation to their caste etc or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma in particular of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity rituals customs mode of marriage, death ceremonies, method of burial of dead bodies etc by the castes or tribes or tribal communities concerned etc.

11. The order passed by the committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

18. Thus, the Research Officer must form a part of the scrutiny committee. In terms of the rules, a Research Officer is also made part of the vigilance cell. This officer is distinct from the officer having intimate knowledge or research officer who form a part of the scrutiny committee in terms of the judgment in Madhuri Patil (supra). The object behind constituting the committee is speedy disposal of the caste/tribe claims.

19. In State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, the learned bench of the Supreme Court was pleased to observe that the scrutiny committee has to consider not only the documentary but, also the oral evidence. The court noted that because the scrutiny committee is a quasi-judicial body, Courts should not issue directions as to how it should appreciate evidence. This case in fact dealt with the claim of the applicant who belonged to Thakur scheduled tribe.

20. On considerations of the judgments referred to earlier, the constitution of the vigilance cell under Rule 10 of the rules and the procedure to be followed by the Scrutiny Committee it will be clear that the vigilance cell is a machinery provided to gather information which is to be considered by the Scrutiny Committee. Rule 12 would further show that the report being submitted by the vigilance cell, the scrutiny committee if satisfied that the same is true will grant the validity certificate. The claimant therefore, at this stage can have no grievance against the report of the vigilance cell. If the Scrutiny committee is not satisfied based on documents and the report of the vigilance cell then a show cause notice has to be issued to the applicant with a copy of the report. Thus, a party has an opportunity of meeting the report of the vigilance cell if it be adverse. It is no doubt true that in terms of Sub-rule (8) what is set out is that the copy of the report of the vigilance officer be made available to the applicant. Rule 12 does not speak about the report of the vigilance officer. It only speaks about the report by the vigilance cell. The report therefore in Rule 12 (8) is a report by the vigilance cell which no doubt will include the report of the Vigilance Officer. Thus, a party against whom the report is to be used adversely has an opportunity of meeting the contents of the report of the vigilance cell including of the Vigilance officer whilst leading evidence. In that context, it is material available to the scrutiny committee in the form of evidence which is given to the claimant in terms of the procedure if it be adverse to him. The claimant then can discharge the burden of proof cast on him by producing evidence to the contrary and in support of his claim. The scrutiny committee is not duty bound either by the strict rules of procedure except Section 9 and the provisions of the Evidence Act. It however, has to give a fair opportunity coupled with compliance with the principles of natural justice and fair play. This mechanism is in built so as to avoid delay and speedy disposal of the matters considering the number of applications on record of the scrutiny committee.

21. The question is whether the officers who constitute the vigilance cell have to be made available for cross-examination to the applicant. The committee if not

satisfied with the report of the vigilance cell has to make the report available to the applicant. An applicant therefore, can have no grievance against the report. Only if the report be adverse, the party then has an opportunity of meeting the contents of the report. This could be either by leading further documentary evidence, leading oral evidence or expert evidence to show their linkage to the traits based on family genealogy or tribal traits and characteristics and the like. To that extent, the report of the vigilance cell of which the Research Officer is a part cannot be said to be the report of the Commissioner or an expert. The report of the vigilance cell attached to the scrutiny committee is to aid the scrutiny committee to arrive at the right conclusion. The powers of the civil court have been conferred on the scrutiny committee. The applicant who participated in the proceedings has power to lead evidence both documentary and oral. Once that be the case, in our opinion, the question of making available the officers of the vigilance cell who have prepared the report for cross-examination does not arise. The burden of proving that a person belongs to a particular tribe is always on a claimant. The report of the vigilance cell only assists the scrutiny committee in arriving at a correct conclusion. The report does not preclude the applicant from leading evidence and discharging the burden. In these circumstances, in our opinion, the question of making available the officers named in Rule 10 who form part of the vigilance cell will not arise. As noted in the judgment of Madhuri Patil (Supra), the object of constituting the committee is to enable speedy disposal of tribe/caste claims. The argument therefore, on behalf of the petitioner herein that he was denied an opportunity in our opinion, is devoid of merit.

22. Having answered the main question, we now proceed to consider whether the impugned order of the committee can be sustained. The committee while considering the case of the petitioner noted that the relatives of the petitioner have been granted validity certificates. This no doubt would raise a strong presumption in favour of the petitioner that he belongs to the tribe to which he claims he belongs to. The committee however, proceeded to hold that the validity certificates then were issued on the basis of the legal position, prevailing at that time and that by itself could not be the basis for allowing the claim of the petitioner. The Committee proceeded to hold that Thakur as a surname is also listed amongst the scheduled tribe, nomadic tribe and forward castes and in these circumstances mere reliance on the documentary evidence would not suffice and therefore, the tribal traits, customs and characteristics have to be examined. After so saying the Committee proceeded to hold that the petitioner has not established affinity towards Thakur scheduled tribe. There is no reason given as to why the petitioner's claim on that count has been rejected. The quasi judicial authority while rejecting the claim has to give reasons which are open to judicial scrutiny. The failure to give reasons will amount to a non-speaking order. If the order be non-speaking, that order is liable to be set aside.

23. While parting we make it clear that considering that the scrutiny committee is a quasi judicial body which has been conferred the powers of a civil court,

witnesses can be examined. Those witnesses then must be made available for cross-examination to the parties before the committee if an application is made and found not to be frivolous. This will however, exclude the officers of the vigilance cell who act in aid and assistance of the scrutiny committee.

24. Having said so, the impugned order is set aside. The matter is remanded back to the committee for re-consideration and determination according to law including granting further opportunity to the petitioner if so advised, to produce any additional evidence if not already produced. The continuance of the petitioner in the office of respondent No. 3 will be subject to the decision of the committee. The entire exercise to be completed within four months from today.

Rule made absolute to that extent. In these circumstances of the case, there shall be no order as to costs.