
(2015) 10 BOM CK 0069
In the Bombay High Court
Case No : Writ Petition No. 9560 of 2012

Hamid Abdulgani Pansare

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-10-2015

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 11, 18

Citation : (2016) 2 ALLMR 158 : (2016) 2 BomCR 222 : (2015) 6 MhLj 883

Hon'ble Judges : N.H. Patil and S.B. Shukre, JJ.

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; P.G. Sawant, AGP, for the Respondent

Final Decision : Disposed Off

Judgement

S.B. Shukre, J.—Heard.

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. By this petition, the petitioner has challenged the legality and validity of the order dated 18th May 2012 passed by respondent No. 2 Committee invalidating the caste certificate of the petitioner showing him as belonging to Fakir Bandarwala caste, a caste recognised as Other Backward Class (OBC) in the State of Maharashtra. The order further directs respondent No. 3- Collector to register offence under section 11 of the Maharashtra Scheduled Castes, Scheduled Tribes, Vimukta Jati, Nomadic Tribes, Other Backward Classes and Special Backward Category Cast Certificate (regulation of Issuance and Verification of) Act, 2000 (hereinafter referred to as the "Caste Certificate Act" for short) for obtaining false caste certificate.

3. We have heard Mr. Mendadkar, learned counsel for the petitioner, learned A.G.P. for respondent Nos. 1 to 3, and Ms. Gauri Godse with Mr. Rohit Joshi for

respondent No. 5. None appeared for respondent No. 4.

4. The caste certificate of the petitioner has been invalidated by respondent No. 2- Committee after making enquiry into the allegations made in the complaint filed by respondent Nos. 4 and 5 against the petitioner. It was the contention of respondent Nos. 4 and 5 that the caste certificate had been obtained by the petitioner by resorting to fraudulent means and furnishing false information.

5. Although, the petitioner has raised several objections to the impugned order dated 18th May 2012 passed by respondent No. 2- Committee, we are of the view that the primary objection of the petitioner, which goes to the root of the very matter, needs to be considered first. This objection relates to the illegal constitution of the committee which passed the impugned order. According to the petitioner, the committee which passed the impugned order was not constituted in accordance with rule 11 of the Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as "Rules of 2012" for short), with one of the members thereof, namely, Shri B.B. Borgave not holding the rank of Deputy Commissioner or Regional Deputy Commissioner (Social Welfare) or Divisional Social Welfare Officer. Learned counsel for the petitioner submits that Shri Borgave was holding the rank of District Social Welfare Officer, which was below the rank of Deputy or Regional Deputy Commissioner or Divisional Social Welfare Officer. Thus, according to the learned counsel for the petitioner, the impugned order is nullity. Since the objection pertains to the constitution of committee, it would be necessary to consider the provisions contained in rule 11 of the Rules of 2012, which deal with constitution of scrutiny committee. The said rule reads as under:

11. Constitution of Scrutiny Committee-.The Scrutiny Committee shall consist of the following members, namely:-

6. It is clear from the provisions of rule 11 that the scrutiny committee consists of three members, one of them being its Chairman. These three members are drawn from distinct and separate categories of officers. The Chairman, as mentioned in clause (a) of rule 11, is drawn from the category of officers who are either of the rank of Divisional Commissioner or Additional Divisional Commissioner Revenue or Collector or Additional Collector (I.A.S.) or Additional Collector (Selection Grade) or Joint Secretary of State Government. The member of the committee, as described in clause (b), is drawn from the category of officers who are holding such rank as Deputy Commissioner (Social Welfare) or Regional Deputy Commissioner (Social Welfare) or Divisional Social Welfare Officer. The third member is described in clause (c) as Member-Secretary and he is drawn from the category of officers holding such rank as Research Officer or Assistant Commissioner (Social Welfare) or Special District Social Welfare Officer.

7. The nature of rule 11, without any doubt, is mandatory. This is clear from the

use of word "shall" in the opening lines and also from the purpose for which the rule is made. Rules of 2012 have been made by the Government of Maharashtra in exercise of power conferred in that regard under section 18 of the Caste Certificate Act. Section 18 power has been made available to the State Government to carry out the purposes of the said Act, one of which is to regulate the verification of the caste certificates. There is a certain procedure to be followed for verification of the caste certificates and the power of verification is subject to judicial review. Therefore, constitution of Scrutiny Committee assumes great significance in law. It cannot be left to some administrative authority's discretion to decide if an officer properly holding a rank or an officer holding only charge of post of an officer holding a rank should sit as a member. As such, in our opinion, rule 11 has an imperative character. Therefore, any departure from the provisions contained in rule 11 would not be permissible.

8. Now, it is well settled law that when an act is directed to be performed by a Statute or Rule having force of law, in the instance case rule 11 of Rules of 2012 which has the force of law, the act has to be performed in the manner prescribed by law or not to be performed at all. So, it would have to be seen as to whether or not the impugned order has been passed by a committee constituted strictly in accordance with rule 11 of the Rules of 2012.

9. The impugned order has been signed by Shri Dilip Pandharpatte as Chairman, Shri B.B. Borgave as Member and Shri Balbhim Shinde as Member Secretary. Shri Dilip Pandharpatte was the Additional Collector and Shri Balbhim Shinde was the Research Officer at the time of passing of the impugned order and there is no dispute about their ranks. The objection is with regard to the name and rank of Shri B.B. Borgave as he was not holding the rank of a Deputy Commissioner or a Regional Deputy Commissioner or a Divisional Social Welfare Officer and was only a District Social Welfare Officer at the relevant time.

10. Learned A.G.P. for the State submits that Shri Borgave was indeed of the rank of District Social Welfare Officer at the time when the impugned order was passed and that it was a rank below and not equivalent to ranks mentioned in clause (b) of rule 11. It is, thus, obvious that the requirement of clause (b) of rule 11 i.e. member to be of the rank of Deputy Commissioner or Regional Deputy Commissioner or Divisional Social Welfare Officer has not been fulfilled in this case. This would make the impugned order as a nullity in the eye of law. We find that the impugned order has been passed by a committee not constituted in accordance with the mandatory provisions of rule 11 of Rules of 2012 and is liable to be quashed as set aside and the matter deserves to be remanded to the Scrutiny Committee for consideration afresh in accordance with law.

11. At this stage, learned counsel for respondent No. 5, on instructions, submits that if the matter is going to be remanded to the Scrutiny Committee, the respondent No. 5 may be given an opportunity to raise all the contentions before the said committee. There would be no difficulty on this count.

12. In view of the above, there is no need to consider other objections of the petitioner.

13. The impugned order is quashed and set aside and the matter is remanded to respondent No. 2- Committee for fresh consideration and disposal in accordance with law. All contentions of the parties are kept open and, if raised, be appropriately considered by respondent No. 2- Committee. The respondent No. 2- committee shall endeavour to dispose of the matter as expeditiously as possible, preferably, within a period of six months from the date of this order.

14. Petition is disposed of accordingly. Rule is made absolute in terms of this order. No costs.