

(2002) 10 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 6284 of 2002

Laxmi R. Karhadkar

APPELLANT

Vs

Resident Deputy District Collector and Others

RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 ALLMR 715 : (2003) 4 BomCR 289 : (2003) 2 MhLj 14

Hon'ble Judges : C.K. Thakker, C.J.;Ranjana Desai, J

Bench : Division Bench

Advocate : A.V. Anturkar, for the Appellant; R.D. Rane, Additional Government Pleader and P.A. Pol, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—This petition is filed by the petitioner for quashing and setting aside an order passed by the Resident Deputy District Collector, Mumbai City, respondent No. 1 herein, on October 7, 2002 by which he informed the President of the Regional Caste Scrutiny Committee, Konkan Division, Navi Mumbai, to cancel the caste certificate obtained by the petitioner by submitting false documents in support of her claim.

2. We have heard Mr. Anturkar, learned counsel for petitioner, Mr. R.D. Rane, Additional Government Pleader, for respondent Nos. 1 and 2 and Mr. P. A. Pol, learned counsel appearing for the newly-added respondents, in pursuance of an order passed by us today in Civil Application (Stamp) No. 42171 of 2002.

3. Mr. Anturkar raised three contentions. (1) Once the Scrutiny Committee had scrutinised the case of the petitioner, and granted caste validity certificate, it had no power of reviewing the said decision. The only remedy available to an aggrieved party was to file a petition by invoking Article 226 of the Constitution. (2) The Scrutiny Committee had considered all relevant documents and without relying and even referring to the school leaving certificate in respect of which

complaint was made, came to the conclusion that the petitioner belonged to "Muslim Bagwan". There was no reason to interfere with the order passed by the Scrutiny Committee or to cancel caste validity certificate on the basis of school leaving certificate. (3) The principles of natural justice were violated inasmuch as before issuing the impugned communication, the Resident Deputy District Collector had neither issued show cause notice nor accorded an opportunity of hearing, and an action was taken of cancelling the certificate. Hence, even on that ground, the impugned order deserves to be quashed and set aside.

4. So far as review is concerned, the learned counsel for the petitioner is right in urging that there cannot be inherent power of review in an authority and such power must be conferred by a statute. In *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, , it has been specifically observed by Their Lordships that "the order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution". The contention on behalf of the petitioner is that by the impugned action, the action of issuance of certificate in favour of the petitioner is sought to be reviewed. If it is so, obviously, the contention must be upheld, and since there is no express power of review, the action must be held to be illegal and unlawful. It is, however, clear from the communication dated October 7, 2002 addressed by respondent No. 1 to the President of the Regional Caste Scrutiny Committee, Konkan Division, Navi Mumbai, as also from the affidavit-in-reply dated October 29, 2002 that the school leaving certificate was not correct, but was false and on the basis of such certificate, no caste certificate could have been granted to the petitioner.

5. Now, whether the allegation was correct and the certificate was false or not will have to be decided in the light of evidence before the Scrutiny Committee, and the Committee, after affording opportunity of hearing to the petitioner, as also to the contesting respondent, will record a finding, one way or the other. In our opinion, therefore, this is not a case of review of an earlier order, but a case wherein an allegation is made that a certificate, which has been obtained by the petitioner, and on the basis of which she was treated as belonged to "Muslim Bagwan", was not legal and valid. If it is so, the certificate cannot be said to be lawful, and the defect goes to the root of the matter. In our considered opinion, therefore, this is not a case of reviewing the order but to ascertain the basis of certificate, came to be issued in favour of the petitioner. Such proceedings can always be initiated and Madhuri Patil is no bar to the proceedings in question.

6. It is true, as contended by the learned counsel for the petitioner, that the Scrutiny Committee had relied upon documents other than the school leaving certificate. For that, our attention was invited by the learned counsel to an order dated May 16/17, 2002 (Annexure A-3 to the petition). All the five documents, which the Scrutiny Committee referred, did not relate to school leaving certificate alleged to have been falsely obtained. In our opinion, however, when a certificate had been obtained by the petitioner, and it was alleged that the said certificate

was false or fabricated, the Scrutiny Committee has to consider the case of the petitioner in the light of the allegations. At the same time, we may clarify that since, in the affidavit-in-reply filed by respondent No. 1, it was stated that an inquiry was instituted, and the certificate was found to be false, such finding should be treated as of prime facie nature. As and when the Scrutiny Committee will consider the case of the petitioner, it will afford an opportunity of hearing to the petitioner to the contesting respondents and will record an appropriate finding in accordance with law.

7. So far as the constitution of Scrutiny Committee is concerned, it is contended on behalf of the newly-added respondents that only Bombay Committee has jurisdiction, and not Pune Committee. In that connection, reliance was placed on the certificate which was annexed to Civil Application (Stamp) No. 42171 of 2002, which shows that the petitioner was born in Mumbai. But in the affidavit-in-reply filed on behalf of respondent No. 2, it was stated that the Scrutiny Committee, Pune Division, has jurisdiction. Hence, let the said Committee consider the matter. It is, however, open to the objectors/complainants to raise an objection that Pune Committee has no jurisdiction. As and when such objection will be raised, the Committee will take an appropriate decision after considering the objection.

8. For the foregoing reasons, in our opinion, this petition deserves to be allowed, and is, accordingly, allowed. It is held that the Order dated October 7, 2002 will not be treated as order cancelling the certificate issued in favour of the petitioner. The Scrutiny Committee, however, is directed to consider the validity of the certificate in the light of allegations and averments, and will take an appropriate decision after affording an opportunity of hearing to the petitioner, as also to the objectors. Such decision shall be taken by the Committee as expeditiously as possible, preferably within three months from today.

9. Petition allowed to the above extent with no costs.