
(2014) 12 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 2386 of 2014

Namdeo

APPELLANT

Vs

Scheduled Tribe Caste Certificate Scrutiny Committee

RESPONDENT

Date of Decision : 16-12-2014

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 15, 2(a), 2(k), 3, 4

Citation : (2015) 1 ABR 506 : (2015) 2 ALLMR 370 : (2015) 3 BomCR 374 : (2015) 2 MhLj 707

Hon'ble Judges : P.R. Bora, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : Amit Balpande, Advocate for the Appellant; K.P. Sadavarte, Advocate and N.R. Patil, Asstt. Govt. Pleader, Advocate for the Respondent

Judgement

A.B. Chaudhari, J.—Rule. Rule is made returnable forthwith. Learned Adv. Mr. K.P. Sadavarte waives service on behalf of respondent no. 1, and learned AGP Mr. N.R. Patil, for respondent nos. 2 and 3. With the consent of rival parties, this Writ Petition is taken up for final hearing.

2. Being aggrieved by the impugned orders dated 14th December, 2011 passed by the Sub-Divisional Officer, Malkapur, in the matter of refusal to issue Caste Certificates to the petitioners, and confirmed in appeals by the Appellate Authority vide its orders dated 18th February, 2014, the petitioners have approached this Court by present petition.

3. In support of the Writ Petition, learned counsel for the petitioners made the following submissions:-

[a] The petitioners belong to Thakur, Scheduled Tribe enlisted at Sr. No. 44 in Part-IX [Maharashtra] of the Constitution (Scheduled Tribes) Order, 1950.

[b] All the petitioners applied to Sub-Divisional Officer, Malkapur, for issuance of Scheduled Tribe Caste Certificates to them with relevant documents in support of their claim as belonging to Thakur, Scheduled Tribe.

[c] The Sub-Divisional Officer made a long-drawn order in respect of each petitioner and discussed all the documents filed by the respective petitioners, so also the decisions of the High Court and also adjudicated that the petitioners did not belong to Thakur, Scheduled Tribe community and also did not fulfill the requirement of affinity test and, therefore, they could not be issued any Caste Certificate, he having come to the conclusion that the petitioners do not belong to Thakur caste, Scheduled Tribe. He, thus, refused to grant certificates to the petitioners.

[d] The petitioners filed appeals before the Appellate Authority which merely affirmed the orders passed by the Sub-Divisional Officer for the reasons recorded by him.

The petitioners have, therefore, filed the instant petition.

4. Learned counsel for the petitioners then submitted that after coming into force of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000 (Act No. 23 of 2001) and the Gazette Rules framed therein, the competent authority to issue a Caste Certificate is the Sub-Divisional Officer having jurisdiction over the area or place to which the applicant originally belongs. According to the learned counsel for the petitioners, all the petitioners belong to the villages in the Taluka of Malkapur and within the jurisdiction of Sub-Divisional Officer, Malkapur, and, therefore, their places of origin being in the Taluka of Malkapur, it was the Sub-Divisional Officer alone, who was the competent authority to issue Caste Certificates. According to the learned counsel for the petitioners, the Sub-Divisional Officer, who is supposed to issue Caste Certificates, has no authority in law to make a detailed adjudication as if it were the Scheduled Tribes Castes Certificates Scrutiny Committee, whose function is to adjudicate and validate/invalidate the Caste Certificate issued by the Sub-Divisional Officer. Learned counsel for the petitioners contended that the Sub-Divisional Officer or the competent authority, whose job is to issue a Caste Certificate, has clearly usurped his authority and acted as if the competent authority or the Sub-Divisional Officer, Malkapur, was the Scheduled Tribes Castes Certificates Scrutiny Committee. According to learned counsel for the petitioners, the Act and the Rules do not contemplate Sub-Divisional Officer to adjudicate before issuing a Caste Certificate and record a finding accordingly. Learned counsel for the petitioners also submitted that the Appellate Authority too mechanically rejected the appeals filed by the petitioners. The counsel for the petitioners, therefore, prayed for reversal of the orders impugned and also urged this Court to define the jurisdiction of the authorities under the Act.

5. Per contra, learned counsel for the Scrutiny Committee as well as other respondents supported the impugned orders passed by the Sub-Divisional Officer, Malkapur, so also by the Appellate Authority. They contended that the competent authority or the Sub-Divisional Officer is entitled to verify the genuineness of the claims of the petitioners or the applicants as provided by the Rules and, therefore, no fault can be found out with the impugned orders. According to the learned counsel for the respondents, the competent authority or the Sub-Divisional Officer has found the claim of the petitioners to be false, though they belong to Taluka of Malkapur and though Sub-Divisional Officer, Malkapur, is the competent authority having jurisdiction over the area. However, learned counsel for the respondents submitted that the Sub-Divisional Officer has examined the details and come to the conclusion that the petitioners do not belong to Thakur, Scheduled Tribe and the reasons are based on the judgment of this Court quoted by him in the impugned orders. The counsel for the respondents, therefore, prayed for dismissal of the Writ Petition.

CONSIDERATION;

6. Perused the entire record of the Writ Petition. Heard learned counsel for the rival parties at length.

7. The important question defining the jurisdiction of the competent authority or the Scrutiny Committee for Verification of Castes Certificates of Scheduled Tribes has fallen for consideration in the present Writ Petition. Survey of the provisions Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000 (Act No. 23 of 2001), and the Rules framed thereunder is required to be made in order to decide the question.

8. The preamble of the Act shows that it was enacted to provide for the regulation of the issuance and verification of the Caste Certificates. Section 2(a), (b) and (k) reads thus:-

2. In this Act, unless the context otherwise requires,-

(a) Caste Certificate means the certificate issued by the Competent Authority to an applicant indicating therein the Scheduled Caste, Scheduled Tribe, De-notified Tribe (Vimukta Jatis), Nomadic Tribe, Other Backward Class or Special Backward Category, as the case may be, to which such applicant belongs;

(b) Competent Authority means a officer or authority authorized by the Government, by notification in the Official Gazette, to issue a Caste Certificate, for such area or for such purposes as may be specified in the said notification and shall include all the Competent Authorities already designated by the Government before the coming into force of this Act, having jurisdiction over the area or place to which the applicant originally belongs, unless specified otherwise;

(k) Scrutiny Committee means the Committee or committees constituted under

sub-section (1) of section 6 for the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for verification of the Caste Certificate and to perform the function of Scrutiny Committee under this Act;

From above provisions, it is clear that the Caste Certificate has to be issued and the authority doing so is the Competent Authority. The Competent Authority means such authority, and in the instant case, the Sub-Divisional Officer, Malkapur, having jurisdiction over the area or place to which the applicant originally belongs. This clearly shows that a person cannot apply for issuance of a Caste Certificate as per his choice and if he wants a Caste Certificate, he must apply to the concerned competent officer of the area or place to which such applicant originally belongs, means his father, forefathers belong to. Thus, a person, whose forefathers or he himself belong/belongs to a place, namely Malkapur, cannot apply for issuance of a Caste Certificate at a place other than Malkapur and the competent authority must first find out from the applicant as to the place or area where he originally belongs before entertaining the application for issuance of a Caste Certificate. In our opinion, this is one of the criteria or requirement to find out the genuineness of the claim of a candidate or the applicant claiming a Caste Certificate from the competent authority. It is, however, found that merely because father or parents of a student or the applicant are transferred and posted at a place other than to which the applicant or his forefathers belong, the application is made for issuance of a Caste Certificate at such a place of transfer and even the competent authority at such a place to which the applicant does not originally belong, issues a Caste Certificate. In our opinion, that is completely wrong and illegal. And, therefore, we lay down a guideline that when an application is received by Competent Authority for issuance of a Caste Certificate, the first thing, that should be done, is to make enquiry and verify the area or the place to which the applicant or his forefathers originally belong and after finding out the area or the place accordingly, to direct the applicant to go to the appropriate competent authority, as the case may be. We are fortified by the provision of Section 4(2) of the Act, since it provides that a Caste Certificate issued by any authority other than the competent authority, shall be invalid, which clearly means that if a Caste Certificate is issued by the competent authority, in

9. With the above preface, now we proceed to determine the other question. Section 2(k) defines Scrutiny Committee which means the Committee constituted under Section 6 of the Act for verification of the Caste Certificate and to perform functions of Scrutiny Committee. It is, thus, clear from the close reading of these provisions that the competent authority or the Sub-Divisional Officer, Malkapur, in this case, has only the power to issue a Caste Certificate, while the Scrutiny Committee has the power to verify the Caste Certificate issued by the competent authority or the Sub-Divisional Officer, Malkapur. Unless a Caste Certificate is issued by the Competent Authority or the Sub-Divisional Officer, as discussed above, the question of verification of the said Caste Certificate would not arise.

At any rate, a cart cannot be put before the horse.

10. Section 4, as quoted above, shows that the competent authority has been asked to satisfy itself about the genuineness of the claim and to follow the procedure as prescribed. The question is what is the scope and ambit of the words genuineness of the claim as per Section 4(1)? Can the meaning of the word genuineness supersede or surpass what is provided in Section 6 in relation to the constitution of Scrutiny Committee, job of verification and issuance of a Caste Validity Certificate upon verification? Section 6 then reads thus:-

6.(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee (s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of Section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in Section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative societies or any other Government aided institutions who has not obtained such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.

It is clear from reading of Section 6 of the Act that the Caste Scrutiny Committee constituted as per Sub-section (1) of Section 6 has to have a Caste Certificate issued by the competent authority before it for verification and for issuance of a Caste Validity Certificate. Caste Scrutiny Committee is thereafter required to follow the procedure vide sub-section (4) of Section 6 for verification and grant of a Validity Certificate.

11. Section 15 of the Act then reads thus:-

15. No Civil Court shall have jurisdiction to entertain, to continue or to decide any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order, if the claim involved in such suit or proceeding, or if

the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

The above provision provides a bar of jurisdiction of the Civil Court.

12. Rule 2 (g) and (h) defines Scheduled Tribe Certificate and Validity Certificate. They read thus:-

2. Definitions.

(g) Scheduled Tribe Certificate means a certificate issued by the Competent Authority indicating therein the Scheduled Tribe to which the applicant belongs;

(h) Validity Certificate means a Certificate issued by the Scheduled Tribe Certificate Scrutiny Committee validating the Scheduled Tribe Certificate issued by the Competent Authority.

13. It is, thus, clear that Caste Certificate and Validity Certificate are two different things, so also the authorities issuing them. The Validity Certificate cannot be issued unless the Competent Authority issues the Caste Certificate, which is required to be verified by the Caste Scrutiny Committee in exercise of power under Section 6 of the Act. The decision given by the Caste Scrutiny Committee, which is constituted as per Section 6 of the Act, cannot be challenged before Civil Court and, therefore, it can safely be said that the decision given by the said Committee has been given finality under the Act.

14. The contention raised by the learned counsel for the respondents that the Competent Authority is empowered to find out the genuineness of the claim for issuance of the Caste Certificate and, therefore, consequently is entitled to make adjudication in accordance with the said principles regarding documentary evidence as well as the affinity test etc., and that, therefore, the Sub-Divisional Officer, Malkapur, was right in rejecting the requests of the petitioner for issuance of Caste Certificates does not appeal to us. We find that Rule 4 (5) provides for the Competent Authority to scrutinize the claim of applicant and satisfy himself about the genuineness of claim. But then, this must be construed in harmony with the form and procedure prescribed by the act and the Rules, by which a separate Caste Scrutiny Committee has been constituted with experts therein and the procedure has been laid down for appointment of the Vigilance Cell etc., which is not so in the case of the Competent Authority. We quote Rule 12 of the Rules which reads thus:-

12. Procedure to be followed by Scrutiny Committee.

(1) On receipt of the application, the Scrutiny Committee or a person authorized by it shall scrutinize 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.

(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 scrutinize the report submitted by the Vigilance Cell.

(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 acknowledgment 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.

(9) (a) After personal hearing if the Scrutiny Committee is satisfied regarding the genuineness of the claim, Validity Certificate shall be issued in Form G.

(b) After personal hearing, if the Scrutiny Committee is not satisfied about the genuineness of the claim and correctness of the Scheduled Tribe Certificate, it shall pass an order of cancellation and of confiscation of the Certificate and communicate the same to the Competent Authority for taking necessary entries in the register and for further necessary action. The Scheduled Tribe Certificate shall then be stamped as cancelled and confiscated.

15. Perusal of the above Rule 12 clearly shows that the Scrutiny Committee has been empowered to make an adjudication in various details and from all angles and the function of the Vigilance Cell is investigative, while that of Scrutiny Committee is adjudicative and it clearly acts as a quasi judicial authority, if not a Court of Law. The Committee consists of various members and experts. To sum

up, in our opinion, it would not be harmonious, but also inconsistent with the scheme of the Act, to hold that the Competent Authority, who is required to satisfy itself about genuineness of the caste claim, would be entitled to make adjudication about the validity of the claim of the applicant under the garb of satisfying the genuineness of the claim for a Tribe Certificate. The fact that under the scheme of the Act, the Caste Scrutiny Committee constituted under Section 6 can verify the Caste Certificate only after its issuance by the Competent Authority and not otherwise, clearly shows that the only harmonious construction keeping in mind the scheme of the Act and the Rules would be to hold that the Sub-Divisional Officer does not have a power to verify the claim for issuance of a Caste Certificate, but has to only find out whether minimum requirement is made out for issuance of a Caste Certificate. To hold otherwise would be making the constitution of Caste Scrutiny Committee as well as power of verification of Caste Certificates nugatory and to completely deface, defile or remove the provisions of verification of caste certificates by the Scrutiny Committee.

16. In view of the above discussion, we must set aside both the impugned orders, namely the orders dated 14th December, 2011 (Annex.2 collectively] passed by the Respondent No. 2, Sub-Divisional Officer, Malkapur, Distt. Buldana, as well as the appellate orders dated 18th February, 2014 (Annex.1 collectively] passed by the respondent no.1, Caste Scrutiny Committee, Amravati. We, therefore, make the following order:-

O R D E R

[a] Rule is made absolute in terms of Prayer Clause (i] of the Writ Petition.

[b] No order as to costs.

17. A copy of this Judgment be sent to the Principal Secretary, Social Welfare & Tribal Development Department, Mantralaya, Mumbai, for communicating the guidelines in the Judgment to all Competent Authorities in the State.