

(2024) 01 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No.13605 Of 2019

Prakash And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 19-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Scheduled Tribes (Regulation Of Issuance And Verification) Of Certificate
Rules, 2003 — Rule 3, 4, 8, 8(2)
Maharashtra Act No.XXIII Of 2001 — Section 4, 4(1), 5(2), 6(2)

Citation : (2024) 01 BOM CK 0055

Hon'ble Judges : Vibha Kankanwadi, J;S. G. Chapalgaonkar, J

Bench : Division Bench

Advocate : M. L. Paithane, M. A. Golegaonkar, S. K. Shirse

Final Decision : Dismissed

Judgement

S. G. Chapalgaonkar, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioners have approached this Court under Article 226 of the Constitution of India, thereby assailing the order dated 23.07.2015 passed by respondent no.3-Sub Divisional Officer, Shirpur rejecting the applications of the petitioners for issuance of caste certificates, so also the order dated 21.06.2018 passed by Scheduled Tribe Certificate Scrutiny Committee confirming the order of Sub Divisional Officer.

3. Mr. Paithane, learned Advocate appearing for the petitioners submits that the petitioners had submitted the proposal for issuance of caste certificates with respondent no.3-Sub Divisional Officer, Shirpur, who is the competent authority. The petitioners had submitted supporting documents like school leaving certificates, wherein caste is recorded as 'Tokre Koli', Scheduled Tribe, the caste

certificate issued in favour of petitioner no.1 as belonging to the 'Tokre Koli', Scheduled Tribe dated 04.09.1980, the caste certificate issued by Tahsildar, Sindkheda in favour of Shivram Nimba Nikumbh i.e. father of petitioner no.1 and the genealogy in the form of affidavit alongwith certificates issued by the Talathi and Sarpanch of village Shewade, Tq. Sindkheda. All these documents clearly depict the caste status of the petitioners as belonging to 'Tokre Koli', Scheduled Tribe. However, respondent no.2 discarded the aforesaid evidence giving reason that the documents are of recent past i.e. issued 1970 onwards. Similarly, respondent no.3 entered into deeper enquiry and by referring to some contra entries, refused to entertain the applications of the petitioners. The aggrieved petitioners had approached respondent no.2-Committee in its appellate jurisdiction in terms of Section 5(2) of the Maharashtra Act No.XXIII of 2001 (for short 'Act of 2001') challenging order of respondent No.3. However, respondent-Committee exceeded the appellate jurisdiction conferred under Section 5(2) of the Act of 2001 and called for the report of Vigilance Officer alongwith certain documents and consequently rejected the Appeal relying upon report of Vigilance Officer and documents appended thereto.

4. The learned Advocate appearing for the petitioners would place reliance on the judgment of the Division Bench of this Court in case of Samadhan Suryakant Akoskar Vs. State of Maharashtra and Ors. 2013 (4) Bom.C.R. 457. to contend that once the competent authority finds that the documents submitted by the applicant in support of his caste claim are genuine, the caste certificate needs to be issued without entering into deeper enquiry. The Committee in exercise of appellate powers cannot enter into area of verification of the claim, but will have to limit its enquiry to record prima facie conclusion as regards to the entitlement of the claimants to receive caste certificates. The jurisdiction of the Committee under Rule 8(2) of the Act of 2001 is different than the jurisdiction under Section 6(2) of the Act of 2001 for considering validity of the caste claim.

5. The learned AGP, however, supports the impugned order. He would submit that on consideration of the petitioner's documents, they are not found entitled for issuance of the caste certificates as claimed. The respondent nos.2 and 3 have rightly rejected the proposal.

6. We have considered the submissions advanced on behalf of the respective parties and also perused the documents tendered into service. The petitioner no.1- and his daughters-petitioner nos.2 and 3, approached respondent no.3-Sub Divisional Officer, Shirpur for issuance of caste certificates. They supported their claims by filing school leaving certificate of petitioner no.1-Prakash, which records his caste as 'Tokre Koli', Scheduled Tribe on 14.07.1981, caste certificate of Shivram Nimba Nikumbh issued in the year 1980 by then Tahsildar alongwith genealogy. Apparently, all these documents refer to the caste as 'Tokre Koli', Scheduled Tribe. The Presidential order dated 06.09.1950 enlisted 'Tokre Koli' Tribe at serial no.28. Section 4 of the Act of 2001 provides for issuance of caste certificate by the competent authority. The respondent no.3 is designated as

competent authority. Section 4 prescribes jurisdiction and procedure to be followed by competent Authority which reads thus:

"4. Caste Certificate to be issued by Competent Authority:-

(1) The Competent Authority may, on an application made to it under section 3, after satisfying itself about the genuineness of the claim and following the procedure as prescribed, issue a Caste Certificate within such time limit and in such form as may be prescribed or reject the application for reasons to be recorded in writing.

(2) A Caste Certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee."

7. The order passed by the Competent Authority (S.D.O.) is made appealable in terms of Section 5 before the Appellate Authority (Caste Scrutiny Committee). The procedure is prescribed under Maharashtra Scheduled Tribes (Regulation of Issuance and Verification) of Certificate Rules, 2003. Clause nos.(1), (3), (4), (6), (11), (12) and (13) of Rule 4 prescribe the procedure to be adopted by the Competent Authority while dealing with the claim for issuance of Schedule Tribe Certificate. Any person who is applying in terms of Rule 3 is required to furnish the complete information in all respects supported by the documents. The Competent Authority is then required to verify such documents with original and on recording his satisfaction about correctness of the information, documents and evidence furnished by the applicant, he is bound to issue Scheduled Tribe Certificate in Form C. However, if the Authority is not satisfied, he can reject the application for the reasons recorded and also apprise the applicant regarding his right to Appeal with specified Appellate Authority. The Rule 8 deals with the powers of the Appellate Authority, who is under obligation to examine the claim based on the documents submitted before the Competent Authority and decide the same. The scheme underlined under the provisions of the Rules nowhere prescribes any vigilance or investigation at the stage of issuance of the caste certificate either by the Competent Authority or the Appellate Authority.

8. The issue regarding the scope of the enquiry under Rules of 2000 has been considered in depth by the Division Bench of this Court in case of Anand Dhananjay Nalawade Vs. State of Maharashtra and Others 2014 (4) Mh.L.J. 77 It has been held that the scope of enquiry in the application for grant of caste certificate is totally different and on consideration of prima facie evidence, the caste certificate is required to be granted. Further while dealing with the scope of Rule 8 regarding procedure of Appeal, it has been observed that the Appellate Authority is given power under Rule 8(2) of receiving evidence or calling for additional evidence and calling for further record if such evidence is necessary for effectively disposing of an Appeal. However, Appellate Court shall not ignore the difference between an adjudication of caste claim and grant of caste certificate.

The determination of the validity of a caste certificate issued under section 4(1) of the Act of 2001 requires deeper inquiry including calling for Vigilance Cell report for recording satisfaction in respect of the documents produced by the applicant. Such is not case when caste certificate is to be issued. It is apposite to mention here that any caste certificate issued in terms of Section 4(1) of the Act of 2001 is subject to the validity by the Caste Scrutiny Committee. At that stage, the Caste Scrutiny Committee can order vigilance enquiry and also subject the applicant to the affinity test. The aforesaid legal position appears to be persistent and has been asserted in case of Govind S/o. Sayanna Kamtamwad Vs. The State of Maharashtra and Ors. (Writ Petition No.860/2011 dated 28.02.2011) and in case of Samadhan Suryakant Akoskar (supra).

9. Reverting back to the facts in the present case, it appears that respondent no.3 while dealing with the claims of the petitioners for issuance of caste certificates observed that the petitioners have produced documents like school leaving certificate in respect of Nimba Awaji Koli, who is grandfather of petitioner no.1. The said entry refers to the year 1922 depicting date of birth as 1916. It is observed that the grandfather of petitioner no.1 was resident of Taluka Sindkheda, Distict Dhule since before 1916, which indicate that originally family of the petitioners resides beyond specified area of 'Tokre Koli', Scheduled Tribe. The other documents relied upon by the petitioners are post Presidential Notification dated 06.09.1950. The respondent no.3 has further observed that school record of Nimba Awaji Koli relied upon by the petitioners refers his caste to be 'Malhar Koli' which is recognized as Other Backward Class and inconsistent with the claim of the petitioners for 'Tokre Koli', Scheduled Tribe.

10. In Appeal filed by the petitioners, Scrutiny Committee obtained documents through Vigilance Officer regarding blood relations of the petitioners for pre-Constitutional period depicting caste entries as 'Koli', 'Malhar Koli', 'Suryawanshi Koli' and 'Hindu Koli'. The school record of petitioner no.1-Prakash itself shows his caste entered as 'Hindu Koli' in the year 1981. The entry regarding paternal cousin grandfather of the year 1916 shows caste as 'Koli'. The entry regarding grandfather of petitioner no.1 in the year 1922 refers caste as 'Malhar Koli'. The entry of father of petitioner no.1 recorded in the year 1945 shows caste as 'Suryawanshi Koli'. All aforesaid castes are included as Special Backward Category. Previously they were categorized as Other Backward Category.

11. We have given anxious consideration to the aforesaid observations of the Committee as well as reasoning adopted by respondent no.3-Sub Divisional Officer. We find that except oldest record of 1922 in respect of Nimba Awaji Koli, no other pre constitutional document was before respondent no.3-Competent Authority indicating contra entry. The Competent Authority relied on same being pre-Constitutional and oldest one. The subsequent entries in the school record of the petitioners have been discarded on the basis of oldest record that was placed into service.

12. It is apparent that even on prima facie consideration of the aforesaid record,

which is not disputed by the petitioners, it can be inferred that the grandfather's caste was shown as 'Malhar Koli' in the year 1922.

13. Although we find that the Scrutiny Committee has exceeded his appellate jurisdiction and called for the report of the Vigilance Officer and entered into unwarranted deeper inquiry as regards to the caste of the petitioners at the level of issuance of caste certificates, even on consideration of the record that was placed into service by the petitioners themselves before the Competent Authority, it can be concluded that the petitioners could not support their caste claims as 'Tokre Koli', Scheduled Tribe. Particularly, when entry regarding grandfather of petitioner no.1 in the year 1922 refers caste as 'Malhar Koli'

14. For the aforesaid reasons, we find that there is no merit in the Writ Petition, hence, dismissed.

15. Rule is discharged.