

(1995) 09 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No's. 1905 1913, 2141, 3089, 3097, 3164, 3496, 3596
and etc. etc. of 1995

Ramesh Kishan More

APPELLANT

Vs

The State of Maharashtra and others, etc.

RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:

Constitution of India, 1950 — Article 136, 342

Citation : AIR 1996 Bom 74 : (1996) 2 BomCR 27 : (1996) 1 MhLj 175

Hon'ble Judges : G.R. Majithia, J;A.C. Agarwal, J

Bench : Division Bench

Advocate : Y.S. Jahagirdar, Nitin Jamdar, R.V. More, D.B. Bhosle, G.N. Salunke, N.V. Gangal, V.G. Majumdar, R.S. Deshpande, L.T. Pokhalkar and P.J. Pawar, for the Appellant; M.N. Zambre and U.G. Kerker Asstt. Govt. Pleaders, for the Respondent

Judgement

Majithia, J.—This judgment disposes of Writ petition Nos. 1905 of 1995, 1913 of 1995, 2141 of 1995, 3089 of 1995, 3097 of 1995, 3164 of 1995, 3496 of 1995, 3596 of 1995, 3677 of 1995, 3679 of 1995, 3716 of 1995, 3818 of 1995, 3940 of 1995, 3941 of 1995, 4177 of 1995, and 4195 of 1995 as common question of law arises for adjudication therein.

2. Reference to relevant facts has been made from the pleadings in Writ Petition No. 1905 of 1995. The petitioner, Ramesh Kishan More, is working as a Peon in the Collectorate of Satara. He entered service against a seat reserved for a candidate belonging to Scheduled Tribe representing that he belonged to Scheduled Tribe Mahadeo koli. On the basis of the Caste Certificate issued by the Executive Magistrate, Koregaon, his claim against the reserved seat was recognised. The case of the petitioner was referred to the Committee for Scrutiny and Verification of Tribes Claims, Pune, as provided for in Government Resolution dated January 23, 1985, by the Executive Engineer, Public Works Department, Satara, in whose office the petitioner was previously working. The Scrutiny Committee comprising of Chairman -- Deputy Director (R), Member -- Research

Officer, vide its order dated Oct. 27, 1994 cancelled the caste certificate dated Sept. 10, 1982 issued by the Executive Magistrate that the petitioner belonged to Mahadeo koli scheduled Tribe community. The Scrutiny Committee held that the petitioner did not belong to the Mahadeo koli Scheduled Tribe Community.

3. Government of Maharashtra, by Resolution No. CBC-1684/2818/(291)/ XI, dated January 23, 1995 appointed a Scrutiny Committee for Verification of Caste certificate of Scheduled Tribe for the following purpose:-

"2. The Scrutiny Committee will do the following work:--

(i) Verify the caste certificates of the Scheduled Tribe students seeking admission in different educational institutions at different levels.

(ii) Verify the caste certificates of the Scheduled Tribes recommended by the Maharashtra Public Service Commission and different Commissions appointed by the Government for the seats reserved for the Scheduled Tribes.

(iii) Verify the caste certificates of the Government Servants according to the request / complaints made by the concerned departments / offices.

(iv) Any work entrusted by Government in respect of Scrutiny of caste certificate of Scheduled Tribes.

By Resolution No. CBC-1684/(392)/D-XI dated March 8, 1985 the State Government appointed Appellate Authorities. So far as the work of verification of Caste Certificates of Scheduled tribe candidates seeking admission of different educational institutions at different levels, mentioned in para 2(i) of Government Resolution No. CBC-1684/2818/(291)/D-XI dated January 23, 1985, Additional Commissioner, Tribal Development, Nagpur, and Additional Commissioner, Tribal Development, Nashik, were the Appellate Authorities for Nagpur and Amravati Divisions and Bombay, Konkan, Nashik, Pune and Aurangabad Divisions respectively. The State Government, by the said Resolution, appointed the Divisional Commissioners as Appellate Authorities so far the work of verification of Caste Certificates mentioned in para 2(ii) and (iii) of government resolution dated January 23, 1985. The resultant effect was that decisions of the Scrutiny Committee were tested by the Appellate Authorities in appeal.

By Resolution No. STC-1893/M. No. 13/D.10 dated July 17, 1993, the state Government revoked Resolution No. CBC-1684/(892)/D-XI dated march 8, 1985 and the decision of the Scheduled Tribes Caste Certificate Verification Committee in respect of claims of members of Scheduled Tribes seeking admission in Medical and Engineering Colleges and in respect of service matters was made final and the right of appeal provided against the decision of the said Committee under the Resolution dated march 8, 1985 was revoked. It will be useful to reproduce the English translation of the relevant portion of this Resolution dated July 17, 1993 which reads thus:--

"PREFACE:

In pursuance of the Government Resolution at Sr. Nos. 3 and 9 mentioned hereinabove, Orders had been issued that the appeal against the decision of the Scheduled Tribe Certificate Verification Committee in respect of the verification of certificate of Scheduled Tribe Candidates desirous of seeking admission to Medical College/Engineering College on the seats reserved for Scheduled Tribes, can be preferred to the Additional Commissioner, Adiwas Development, Nasik/Nagpur/Amravati/Thane as an appellate authorities and in case of a against the decision of Scheduled Tribe Caste Certificate Verification Committee in the matters of service and allied matters, can be preferred to the Additional Commissioner of the concerned Revenue Division, as the Appellate Authority. It was also mentioned in the said order that the Appellate Authority referred to in the said Government Resolution shall give the decision in such matters. However, it has been seen that the work load with the Divisional Commissioner, Revenue Department, Additional Commissioner, Revenue Department, Additional Commissioner, Adiwas Development, has considerably increased and hence, they are not in a position to give decisions in the appeal matters within a specific time limit. Further, now the Government, in order to speed up verification of the Caste Certificate of the Scheduled Tribe Candidates, under Government Resolution Adiwas Development Department No. STC-1090/23942/(186)/D-10, dated 3rd June 1992, has established Scheduled Tribe Certificate Verification Committees at Nasik and Nagpur apart from Pune. Due to establishment of such committees and the said committees being comprised of trained and expert members, it is not deemed necessary to continue the provision, which had been made to prefer an appeal to the Divisional Commissioner (Revenue Department), Additional commissioner (Revenue Department) and Additional Commissioner, Adiwas Development. Hence, the question of revoking the provision regarding the said appeal was under consideration of the Government.

Government Resolution:-- In this behalf the Government now order that the provision to prefer an appeal to the Appellate Authority against the decision given by the Scheduled Tribes Caste Certificate Verification Committee in respect of the claims of members of Scheduled Tribes for seeking admission in Medical and Engineering Colleges and in respect of service matters is revoked from the date issue of the said Government Resolution. Hereafter, the decision given by the Verification Committee shall be final.

2. It is further ordered that the appeal regarding the claim of Caste Certificate of Scheduled Tribes, preferred to the Appellate Authority up to the date of issue of this Government Resolution, should be disposed of by the said authorities within a period of three months and report to that effect should be sent of the Government forthwith.

3. Pursuant to Paragraph No. 6 of the Government Resolution dated 29-10-1980, the Divisional Commissioners concerned have been given powers to consider and give decision of the appeal preferred to them in case of denial of Scheduled Tribe Certificate to a person by the Authority Competent to give such certificate and

also the power to inquire into and to give decision on complaints or objections about issue of Scheduled Tribe Caste Certificate of person, who are not member of Scheduled Tribe. The said power shall continue hereinafter.

In all these writ petitions, the challenge, in substance, is not to the validity of Resolution No. STC-1893/M.No. 13/D.10 dated July 17, 1993.

4. Before we examine the question arising for adjudication, it will be necessary to refer to the decision of the Apex Court rendered in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . Suchita and Madhuri, the appellants before the Apex Court, were sisters. They claimed admissions to the against seats reserved for Scheduled Tribes. Suchita applied for a Caste Certificate as "Mahadeo koli", a Scheduled Tribes. The Sub-Divisional Officer, Bombay Suburban District refused to issue the Caste Certificate. The decision of the Sub-Divisional Officer was challenged in appeal before the Additional Commissioner, Konhan Division, Bombay. She had applied for admission into the M.B.B.S. course. She moved this Court through Writ Petition No. 3516 of 1990 for a direction to the Additional Commissioner to dispose of her appeal expeditiously and also for a direction to the Dean of D.Y.C. Naik Medical College to permit her to appear for interviews and admit her in the college if she was found fit. This Court in the judgment render in Writ Petition No. 438 of 1985, had held that "Koli" was "Mahadeo koli" (a Scheduled Tribe). Suchita was admitted in the M.B.B.S. course as a result of a direction issued by this Court. The Additional Commissioner directed the Tahsildar to issue Caste Certificate. Accordingly, Caste Certificate as belonging to Scheduled Tribe was issued to her. She applied to the Verification Committee for confirmation of her status as Scheduled Tribe. Madhuri applied for issuance of a Scheduled Tribe certificate before the Divisional Executive Magistrate, Greater Bombay. She annexed a copy of the order passed in Writ petition No. 3516 of 1990, dated Dec. 4, 1990, which was partly in favour her sister Suchita. Madhuri got admission to the B.D.S. course in the year 1992. She also applied to the Verification Committee for confirmation. The proceedings in their claims were jointly conducted by the Verification Committee. The Committee considered their claims and found that they were Koli by caste which is recognised as Other Backward Class in the State of Maharashtra and that they were not Mahadeo Koli (a Scheduled Tribe) and their claim for Scheduled Tribe was untenable. Their appeal against the decision of the Verification/Scrutiny Committee was also rejected by the Appellate Authority, viz. the Additional Commissioner. They challenged the order of the Scrutiny Committee and of the Appellate Authority in Writ Petition No. 1849 of 1993 in this Court which was dismissed by order dated August 17, 1993. The order of this Court was challenged in appeal before the Apex Court. The Apex Court upheld the decision of the Court and held that the appellants did not belong to the tribe, Mahadeo Koli, entitled to the Constitutional benefits. The Apex Court also gave the guidelines to be followed by the Scrutiny Committee while deciding caste claims. The Apex Court noted that considerable time is taken by the Scrutiny Committee for deciding caste claims and for this purpose,

the Apex Court streamlined the procedure, for the issuance of the social status certificates, their scrutiny and their approval thus:--

"1 The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, or tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institutions or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, 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 of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residents 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 also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other person 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 concerned castes or tribes or tribal communities etc.

6. The Directions concerned, on receipt of the report from the vigilance officer if he found the claim for social status go be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a

registered post with acknowledgment due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the Committee and the Joint/Adl. Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case of the report is in favour of the candidates and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in part 6 be followed.

8. Notice contemplated in para 6 should be issue to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result be only provisional subject to the result of the inquiry by the scrutiny committee.

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

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

13. The High Court would dispose of these case as expeditiously as possible within a period of three months. In case, as per its procedure, the writ/petition/

Miscellaneous petition/matter is disposed of by a single Judge, then no further appeal would lie against that order of the Division Bench but subject to special leave under Art. 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.

The Apex Court has provided for the constitution of a Committee comprising of the senior officers of the State for scrutinising the caste claim/caste certificates. The decisions of the Committee have been made final and conclusive, subject only to the proceedings under Art. 226 of the Constitution.

5. The Scrutiny Committee as alluded to in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, has not so far been constituted. The petitioner's caste claims have been examined by the Committee for Scrutiny and Verification of Tribe Claims constituted under Government Resolution No. CBC-1684/2818/(291)/D-XI dated January 23, 1985. Their caste claims is the one which is envisaged in *Madhuri Patil's* case.

6. The reason given in Government Resolution dated July 17, 1993 for disallowing the challenge to the decision of the Scheduled Tribe Caste Certificate Verification Committee before the Appellate Authorities on the ground that the work load had increased with the Appellate Authorities and hence they are not able to render decisions in appeals within a specified time limit are wholly unjustified. Administrative convenience cannot be adopted as a yardstick for abrogating the valuable right of a citizen. The students/Government servants who are seeking admission/appointments against reserved seats lose a very valuable right. If for any reason the Scrutiny Committee decides on a point of fact against them, they have for got no forum to challenge the decision. Furthermore, the Caste Certificate Verification Committee referred to above does not comprises of the experts as envisaged in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, . The Apex Court was alive to the situation which was existing in the State relating to the constitution

of the Committee. It is for this reason that the Apex Court had to give directions for constituting the Committee and Officers who were to comprise the same. As the Scrutiny Committee as contemplated by the judgment in Madhuri Patil's case has not been constituted, we do not approve the decision of the State Government stated in its Resolution dated July 17, 1993 revoking the right to appeal against decisions of the Scrutiny Committee. The position which existed prior to the Resolution dated July 17, 1993 should continue till such time the State Government positions itself for complying with the directions contained in Madhuri Patil's case. At time we have found that the questions of fact adjudicated upon by the Scrutiny Committee should be reappraised by the Appellate Authority. This has also weighed with us for maintaining the position existing prior to July 17, 1993.

7. For the reasons recorded above, the writ petitions succeed and the following direction are issued:--

(i) The State Government shall constitute the Appellate Authority for hearing appeals against order of Scrutiny Committee in the Scheduled Tribe claim matters as mentioned in Government Resolution No. CBC/1684/(392)D-XI dated March 8, 1985 within six weeks from the date of receipt of copy of this order.

(ii) The petitioners can file appeals before the Appellate Authority so constituted with in the month thereafter. The State Government or the concerned party/ parties will not raise the plea of bar of limitation before the Appellate Authority.

(iii) The Appellate Authority shall dispose of the appeals so preferred as mentioned in (ii) above, expeditiously, preferably within three months from taking cognizance thereof. Till the final decisions of the appeal/appeals, the ad-interim/ interim orders issued by this Court will remain in operation.

(iv) In Writ Petition No. 1905 of 1995, the counsel for the respondent made a statement in this Court that the services of the petitioner will not be terminated. The concession so given will enure for the period mentioned in (iii).

8. Rule in each petition is made absolute in the above terms. A copy of this order should be place on the file of each of the petitions. Registry to send down the writs immediately.

9. Petitions allowed.