

(2002) 04 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 1513 of 1987

Ramsingh Hiralal Sulane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Citation : (2002) 4 MhLj 784

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : Ajay Pawar, holding for S.B. Talekar, for the Appellant; S.K. Tambe, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D.G. Karnik, J.—The petitioner claims that he belongs to Rajput Bhamta caste/tribe, which is recognised as "V.J.N.T.". The petitioner obtained the caste/tribe certificate from the Tahsildar, Gangapur, District Aurangabad, in which petitioners caste/tribe was certified to be "Rajput Bhamta". On the basis of the said certificate, the petitioner sought admission to the seat reserved for "V.J.N.T." in the Government Engineering College, Pune. After admission, the caste/tribe certificate, produced by the petitioner, was sent for scrutiny to the Director of Social Welfare, Maharashtra State, Pune, who was then authorised to scrutinise and validate or invalidate the caste/tribe certificate. The Director, Social Welfare, after inquiry and after giving an opportunity of hearing to the petitioner, held that the petitioner failed to establish that he belongs to "Rajput Bhamta" and, therefore, invalidated his caste/tribe certificate. This order of the Director of Social Welfare passed on 24.01.1985 was challenged by filing an appeal before the Divisional Commissioner, Aurangabad Division, Aurangabad, who was then the appellate authority. By an order dated 26th June, 1985, the Divisional Commissioner allowed the appeal.

2. The Government of Maharashtra entertained certain doubts about the order passed by the Divisional Commissioner, Aurangabad and, therefore, sought suo

motu to revise the order passed by the Divisional Commissioner, Aurangabad. The Government, therefore, issued notice to the petitioner of the suo motu revision and after hearing him, by an order dated 8th September, 1987, set aside the order dated 26th June, 1985 passed by the Divisional Commissioner, Aurangabad. This order dated 8th September 1987 passed by the Government is challenged in this petition.

3. In the case of Shivaji Bandappa Kalge Vs. The State of Maharashtra & others (W.P.No.1125 of 1988) decided on 23rd March, 2001, the Division Bench of this Court at Aurangabad, speaking through R. G. Deshpande, J. observed in para 10 as follows:

" The learned Advocate for the petitioner invited our attention to the orders passed by the Division Benches of this Court in Writ Petition No.4681 of 1989 and Writ Petition No.706 of 1985 wherein very same question as regards powers of the State Government to suo motu revise decision of the appellate authority i.e. the Divisional Commissioner was under consideration. This Court had already taken the view that such powers could not be said valid powers vested in the Government for the reasons that the Scrutiny Committee as well as the appellate authority, being the executive arm of the Government, their decision in effect would be the decision of the Government itself and therefore, the Government could not be said to have the powers to challenge the same. The Division Bench in the above matter was dealing with the Government Resolution dated December 11, 1985, issued by the Secretary to the Government, Tribal Development Department, wherein, as argued by the learned Advocates for both the sides in this matter, identical provision was made as is made in the present Government Resolution dated 6.10.1985. Shri Onkar Deshmukh, learned Advocate for the petitioner, also invited our attention to an order passed by the Division Bench of this Court at Bombay in Writ Petition No.3461 of 1993 wherein the view taken by the earlier Division Benches also appears to have been upheld."

4. It is thus amply clear that the Government, at the relevant time, did not have the power to review or revise the orders passed by the Divisional Commissioner regarding validity or invalidity of the caste/tribe certificate. The order passed by the Government dated 8th September, 1987 is thus without jurisdiction and has to be quashed and set aside.

5. It may be noted that after the judgment of the Hon"ble Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , the procedure for issuance of caste/tribe certificates and caste/tribe validity certificates has undergone a drastic change. The guidelines issued by the Hon"ble Supreme Court with regard to the manner of issuance of caste/tribe certificates and subsequent scrutiny thereof are required to be followed. Subsequently, the Legislature of Maharashtra has passed Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000

(Maharashtra Act No.XXIII of 2001). It is made clear that the Government is free to take any such action, if so entitled, under the provisions of the Maharashtra Act No.XXIII of 2001 and the order passed in this petition shall not be construed as a bar against such action. This Writ Petition is allowed only on the technical ground that the Government had no power of revision on 8th September, 1987, when it revised the order of the Additional Commissioner.

6. In the circumstances, the order dated 8th September, 1987, passed by the Government of Maharashtra, is hereby quashed. Rule made absolute in terms of prayer clause (B) only. No order as to costs.