

(2010) 01 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 2527 of 2009

Rohit Ranjeetsingh Rathod

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 — Rule 9

Citation : (2010) 6 BomCR 382

Hon'ble Judges : Naik Vasanti A., J; Bobde S.A., J

Bench : Division Bench

Advocate : V.R. Choudhari and A.D. Dangore, for the Appellant; S.J. Jichkar, A.G.P. for Respondents 1 and 2 and T.D. Khade, for the Respondent

Final Decision : Allowed

Judgement

Bobde S.A., J.—Rule returnable forthwith. Heard by consent.

2. The Petitioner has challenged the order of the Caste Scrutiny Committee, dated 30.4.2009 holding the Petitioner's caste claim as invalid. The Petitioner claims that he belongs to Rajput Bhamta and he submitted his Caste Certificate for verification to the Caste Scrutiny Committee, Nagpur. The caste claim of the Petitioner came to be decided by the Caste Scrutiny Committee constituted under the notification dated 12.2.2009 u/s 6 of the Maharashtra Scheduled Caste, 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 i.e. Act Maharashtra Act No. XXIII of 2001 [hereinafter referred to as the Act]. By the said notification the Government has constituted various Scrutiny Committees for various areas. Paragraph 2 of the notification provides as follows:

2. Each Scrutiny Committee shall consist of the following members, namely:

2-A. Accordingly, the Petitioner's case was decided by the Scrutiny Committee

comprising of (1) Research Officer and Member Secretary, (2) Member & Divisional Social Welfare Officer, and (3) Additional Collector. Nagpur.

3. Shri Choudhari, learned Counsel for the Petitioner has thus assailed the decision by the Scrutiny Committee on the ground that the Scrutiny Committee has not been constituted in accordance with law, in that the Chairman of the Scrutiny Committee was the Additional Collector, Nagpur, whereas the Supreme Court has in the case - Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, , clearly laid down in paragraph 4 as follows:

4. With regard to prayer (c) also, we feel that the Caste Scrutiny Committee for Social Welfare, Cultural Affairs and Sports Department should comprise of Additional Commissioner (Revenue) - Chairman of the concerned Revenue Division; Divisional Social Welfare Officer - Member; and Research officer as a Welfare Officer - Member- Secretary to function in that behalf 4. According to Shri Choudhari, the Supreme Court having held that the Chairman of a Committee for the concerned Revenue Districts should be the Additional Commissioner (Revenue), it was not open for the State Government to constitute a committee with the Additional Collector as Chairman.

5. Shri Jichkar, learned A.G.P., however, submitted that the directions relied upon by the learned Counsel, were issued at a time when there was no legislation. He submits that thereafter, the State Legislature has passed the Maharashtra Act No. XXIII of 2001, Section 6(1) whereof reads as follows:

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.

6. According to learned A.G.P., the above provision does not require that the Government should constitute a committee of officers of a certain status such as a Collector, Commissioner etc. and therefore, government was free to constitute a committee of any officers it considered appropriate.

7. The learned A.G.P. further relies on Rule 9 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. Rule 9 reads as follows:

9. Meetings and Quorum of Scrutiny Committee:

(1) The quorum of Scheduled Tribe Certificate Scrutiny Committee for any hearing or sitting for decisions shall be of the following three members out of the total five members:

(1) Chairman or Vice Chairman

(2) Member Secretary

(3) any other Member

(2) If in a particular sitting, four members are present and two different opinions are formed by equal number of members, the matter may be placed before the full Committee for decision.

(3) A majority decision shall be the judgment of the Committee.

(4) The Scrutiny Committee shall meet at least once in a month.

He submits that even this rule does not impose any requirement that the committee should comprise of Additional Commissioner (Revenue) as a Chairman, as contemplated by the Supreme Court and therefore, the constitution of the committee, which passed the impugned order is proper.

8. We find that Section 6 of the Act or any other provision of the Act does not specify the constitution of the Scrutiny Committee in the sense that it does not provide as to who may be appointed to the Scrutiny Committee. Likewise, Rule 9 framed under the Act, does not provide as to who shall be appointed to the said committee. It merely provides that committee shall mandatorily have three members i.e. (1) Chairman or Vice Chairman, (2) Member Secretary and (3) Any other Member out of total number of five members.

9. The Act and Rules must be taken to have conferred unguided discretionary powers on the State Government to appoint any officer of any rank as a member of the committee for the purposes of acting as Chairman etc. Notionally, under such a statute even the appointment of a Tahsildar as a Chairman may be justified. Such a statute would be unconstitutional as being arbitrary and unreasonable, as held in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, However, there is no prayer for declaration of the statute as unconstitutional and it is not necessary for us to decide that question. The Petitioner has merely challenged the notification as illegal. Moreover, we find that in the present case, though there is no provision in the statute as to who should constitute the committee, the Supreme Court has clearly laid down in *Mathuri Patil's case (supra)* that the committee should be constituted by the officers of certain rank such as Additional Commissioner etc. In *Shri Vijay Kisan Karanjkar Vs. The State of Maharashtra and Others*, , this Court considered a somewhat similar situation. The Act does not prescribe minimum number of members of such Committee. It was therefore urged by the State that it was open to it to constitute a Committee or Committees of two or three members. And since a quorum of 2 members seems to have been prescribed in the Government resolution itself, the validity of the order passed by the Committee comprising of 2 members, cannot be held to be illegal. The Division Bench of this Court (Per C.K. Thakkar, C.J., as His Lordship then was), held that direction No. 4 in *Ku. Madhuri Patil's case* being clearly mandatory, that the State Government shall constitute a committee of three members, it was incumbent on State Government to constitute a Committee of three members in the following words:

17-We are not impressed by the said contention. True it is that the Act does not prescribe minimum number of members in Scrutiny Committee(s). But direction No. 4 in Kumari Madhuri Patil explicitly mandates all State Governments to constitute a Committee of three members. ("All the State Governments shall constitute a Committee of three members"). It is thus, incumbent on every State Government to constitute a Committee of three members and the submission of the Respondents that such Committee may be of two members cannot be accepted.

10. In this view of the matter, we hold that in view of the directions of the Supreme Court in the case of Madhuri Patil's case cited supra, that the Committee shall comprise of Additional Commissioner (Revenue) as Chairman, we are of the view that it was not open for the State Government to constitute the Committee with the Additional Collector of the District as a Chairman by relying on the absence of any such provision in the Act or the Rules. We accordingly quash and set aside the impugned order of the committee. Petitioner's admission to MBBS Course shall be protected till his caste claim is decided by the duly constituted Scrutiny Committee and dependent upon the decision of the Committee. Rule made absolute in the aforesaid terms.