

(2022) 03 GUJ CK 0017
In the Gujarat High Court
Case No : R/Writ Petition (Pil) No. 151 Of 2021

Sacha Adivasi Adhikar Trust

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 14
Gujarat Scheduled Castes And Scheduled Tribes And Other Backward Classes
(Regulations Of Issuance And Verification Of Caste Certificates) Act, 2018 — Section
2(b), 3, 4, 5, 6, 6(2), 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, 19(1)

Citation : (2022) 03 GUJ CK 0017

Hon'ble Judges : Aravind Kumar,CJ;Ashutosh J. Shastri, J

Bench : Division Bench

Advocate : Aaditya D Bhatt, Chandni S Joshi, Dharmesh Devnani

Final Decision : ?Dismissed

Judgement

Ashutosh J. Shastri, CJ

1. By way of this Public Interest Litigation, - petitioner Trust have come forward to challenge the order issued by respondent no. 1 dated 22.11.2021 and letter dated 25.11.2021 at Annexures A and B respectively, inter alia contending to be ultra vires to the provisions of Parent Act being Gujarat Scheduled Castes and Scheduled Tribes and other Backward Classes (Regulations of Issuance and Verification of Caste Certificates) Act, 2018 and against the guidelines of Hon'ble Apex Court's decision in the case of Kumari Madhuri Patil, hence, requested to strike down the same and has consequently therein sought issuance of writ, order or direction declaring that those certificates which were issued under the umbrella of aforesaid impugned order and communication be declared as void ab-initio, without authority of law and State Government be directed to revoke those certificates forthwith in the interest of justice.

2. The premise on which the present petition is filed is that petitioner no. 1 is a registered Trust and petitioner no.2 is also a registered public trust, registered

under the provisions of Gujarat Public Trust Act, 1950 whereas, petitioner no. 2 – Trust is active for protection of the tribal rights and it has in the past filed two Public Interest Litigation for different issues pertaining to tribal rights. The grievance of the petitioners is that by way of passing the impugned order dated 22.11.2021 and letter 25.11.2021, the State authorities have made an attempt to dilute the stringent provisions of law having resultant effect of diluting the procedure in respect of issuance of caste certificates and thereby, unsettling the settled legal position. It has been asserted that by letter dated 02.05.1975, issued by the Cabinet Secretariat Department of Personnel and Administrative Reforms of Government of India, has provided list of authorities empowered to issue certificates of verification and in consonance with that, on 22.03.2017 the Home Ministry of Government of India has directed that caste certificates are to be issued by the Revenue Authorities only and based mainly on the Revenue Records to decide the permanent residence of a person. On 16.01.1996, a Departmental Order was issued by Union Government i.e. Deputy Commissioner for Scheduled Castes and Scheduled Tribes whereby he was pleased to direct the Secretary, Social Welfare Department, requesting that the entry relating to the Director of Social and Welfare and District Social Welfare Officer may be deleted from the name of authority authorized to issue the Scheduled Caste/Scheduled Tribe certificates. In the meantime, on 27.06.1986 as well as 25.01.1991 respectively by way of Notifications, the Government of Gujarat has completed and adopted the guidelines of Union of India as stated above.

2.1. It is contended later on, in the year 2018, the Legislative Assembly of Gujarat passed a Bill no. 24 of 2018 relating to the Gujarat Scheduled Castes, Scheduled Tribes and other Backward Classes (Regulation of Issuance and Verification of Caste Certificates) Act, 2018, whereas on 18.02.2019, the Government of Gujarat Tribal Development Department brought into force the Gujarat Scheduled Castes (SC) Scheduled Tribe (ST) and other Backward Classes (OBC) (Regulation of Issuance and Verification of the Caste Certificates), 2018 which came to be gazetted. It is the grievance of the petitioners that despite the aforesaid position prevailing, by way of passing the order on 22.11.2021, and letter dated 25.11.2021, the State authorities have made an attempt to dilute the stringent provisions of law. Hence, the same being ultra vires to the Constitution and to the provisions of the Parent Act, same has been challenged by way of present petition for the reliefs which are set out in paragraph 12 of the petition.

3. The main challenge basically is on the premise that caste certificate can be issued only by the Revenue Authorities not below the rank of Mamlatdar, however, by virtue of notification the caste certificate is permitted to be issued by the Taluka Development Officer also who is the officer under the Panchayat Department. It has further been contended by learned advocate Mr. Aditya Bhatt that powers can be exercised only upto the period of three years, hence, the impugned Notification can be valid only upto 25.02.2022. However, the notification does not speak about duration within which the same would be valid

and as such also, it is de hors the provisions of the Parent Act. Learned advocate Mr. Bhatt has further contended that in any case, the scope of Notification issued under Section 19(1) of the Act should be limited to the difficulty sought to be removed, which is limited only for the purpose of local election regarding verification and issuance of validity certificates of tribal candidates contesting the local elections. It has been submitted before us that powers can be exercised for removal of difficulties, but the same cannot be inconsistent with the provisions of the Act and by-passing entire Section 4 and Section 6 of the Act, an attempt is made to dilute the entire statutory mechanism. As such, the action under challenge is in gross inconsistency with the provisions of the Parent Act.

4. Learned advocate Mr. Bhatt has further submitted that notifications issued in exercise of the said powers is required to be laid before the House of State Legislature and despite that to the best of knowledge of petitioner, no such placement before the State Legislature has been done by the authorities and as such, the action under challenge being detrimental to the persons belonging to SC/ST which are recognized under the presidential order, as a result of this, the reliefs contained in the petition deserves to be granted.

5. For the purpose of strengthening his submissions, learned advocate Mr. Bhatt has cited few decisions mentioned in the petition, but not much emphasis has been laid and/or exhaustively argued to the same and has reiterated that on various issues the impugned orders are not sustainable in the eye of law and has prayed for grant of the relief as prayed for in the petition. No other submissions have been made.

6. Having heard the learned advocate appearing for the petitioners and having perused the papers, we notice that what has been prayed for in the petition is to cancel or declare those certificates issued or validated under the umbrella of order dated 22.11.2021 as well as letter dated 25.11.2021 as illegal and to direct the Government to revoke those certificates forthwith. This prayer in substance has been prayed for under the clause of prayer 12(A) for declaring the order dated 22.11.2021 as well as letter dated 25.11.2021 as being ultra vires to the provisions of the Parent Act being Gujarat Scheduled Castes Scheduled Tribes and other Backward Classes (Regulation of Issuance and Verification of Caste Certificates) Act, 2018.

6.1. Perusal of provisions of the Act of 2018 would indicate that with an object to provide for Regulation of Issuance and Verification of the Caste Certificates to the persons belonging to the Scheduled Castes and Schedule Tribes or other Backward Classes and for matters connected therewith or incidental thereto said enactment has been passed. Under this Parent Act, the competent authority as defined under Section 2(b) is empowered to examine an application made to it under Section 3 and after satisfying itself about the genuineness of the claim and following the procedure prescribed would issue a caste certificate in such form as has been prescribed or reject the application for reasons to be recorded. A person aggrieved by order of rejection passed by the competent authority is

permitted to prefer an appeal within a period of 30 days from the date of the receipt of the order under Section 5 of the Act before the appellate authority specified by the Government. By virtue of Section 6 of the Act, it is empowering the Government to constitute a Scrutiny Committee for verification of caste certificates consisting of several members and for the purpose of verification, the Scrutiny Committee has to follow such procedure as prescribed and adhere to the time limit for verification and grant validity certificate. By virtue of Section 7 of the Act, all pending applications prior to commencement of the Act, shall stand transferred to the competent authority or as the case may be to the Scrutiny Committee. Section 8 of the Act prescribes that whether, before or after commencement of the Parent Act, where any person not belonging to Scheduled Caste, Schedule Tribe or other backward classes obtains a caste certificate by false representation for himself or his children, the Scrutiny Committee can suo motu, or otherwise call for the records enquiring into correctness of such certificate and if in the opinion of the committee, such certificate appears to have been obtained fraudulently, the committee shall by order is empowered to cancel and confiscate the certificate after following due procedure and after granting opportunity to such person. The Competent Authority, Scrutiny Committee or even the Appellate Authority by virtue of Section 10 of the Act while holding an enquiry can exercise the powers of a civil court which it exercises while trying a suit under the Code of Civil Procedure in respect of matters which are specified in clause (a) to (e) and by virtue of Section 11 of the Act as provided that if benefits have been derived on the basis of such false certificate, same is permissible to be withdrawn and simultaneously, the penal provision as provided in Sections 12, 13 and 14 of the Act can be invoked. The Act has also provided the bar of jurisdiction of a civil court by virtue of Section 15 of the Act. By virtue of Section 18 of the Act, the State Government may, subject to the condition of previous publication can make rules for carrying out the purposes of this Act. The Rules that may be framed has to laid before the State Legislature as provided under Section 18 of the Act, in the course of time, if any difficulty arises in giving effect to the provisions of the Act, the Government is empowered under Section 19 of the Act by order publish in the Official Gazette, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty and every order made under this Section shall be laid as soon as may be after it is made before the House of State Legislature. Thus, a conjoint reading of the aforesaid provisions would indicate, the Act has provided mechanism to issue caste certificates and also cancel the same. Additionally to verify and put check on the issuance of false certificates by applying corrective measure, the object underlining is to provide regulations for issuance and verification of such certificates belonging to a particular classes for which, the Act is enacted.

7. In furtherance of the aforesaid provisions of the Parent Act, when order dated 22.11.2021 (Annexure-A) is perused it would disclose that same has been enacted by the State of Gujarat for Regulation of Issuance and Verification of

Caste Certificate to the persons belonging to the Schedule Castes and Schedule Tribes or Other Backward Classes. So there appears to be no conflict of any nature nor is effected of diluting the main object for the Parent Act set up. It further appears that over a period of time, the State machinery has realized that in implementing the object and the provisions of verification method by the Scrutiny Committee there arose some difficulties and as such, with a view to remove such difficulties, the order appears to have been issued in the name of Governor of Gujarat. The impugned order is issued in exercise of powers conferred under sub-section (1) of Section 19 of the Act whereby the authorities to whom the applications for issuance of caste certificate or the validity certificate were to be made, prior to commencement of the said Act, i.e. 25.02.2019, shall continue to function for the purpose of elections to Local Self Government Institutions (PRIs/ULBs) and admission to any educational institutions after 10th Standard till further orders. This appears to have been issued with a view to remove the difficulties which arose in implementing the provisions of the Act and the process to be carried out for verification of the caste certificate and as such, with a view to carry further object of the Parent Act, as empowered by virtue of Section 19 of the Act, the State appears to have issued this impugned order which in our considered opinion does not have any effect either of diluting the effect or object of any of the provisions of the Parent Act or adverse to the object for which the Act came to be enacted.

8. Communication dated 25.11.2021 issued in furtherance of the order dated 22.11.2021 which has entrusted powers of Mamlatdar, Taluka Development Officer and Assistant Commissioners, as inscribed in the Act prior to this enactment on 25.02.2019 to issue and verify the caste certificates issued for the purpose of local government elections and admissions to educational institutions after 10th Standard until further orders, are notified by the Government. This communication which is being issued by the Commissioner, Tribal Development, Gujarat State, Gandhinagar is noway can be said to be illegal in any form as it is issued for the purpose of carrying out the object of the Parent Act and for effective and proper implementation of the provisions of the Act. Hence, contentions which are tried to be raised are of no substance. This Court sees no inconsistency of this impugned order/communication with any of the provisions of the Parent Act and it cannot be said to be having effect of bypassing entire Sections 4 and 6 in any form. There are no proper, cogent or convincing pleadings with respect to challenge of this impugned order/communication as not having been placed/laid before the State Legislature and hence, in the absence of any inconsistency or in absence of any cogent pleadings, we are not inclined to entertain this Public Interest Litigation.

8.1. That apart we notice what has been prayed under the guise of challenge to the order/communication, petitioner has sought for revoking or declaring to invalidate all caste certificates which have been issued by the authority and to declare the same as null and void. For this relief, the Parent Act has provided a specific machinery to ventilate the grievances, if any. Hence, in the absence of

valid challenge, this Court sees no reason to grant any omnibus prayer of revoking all those certificates which are stated to have been issued under proper scrutiny by virtue of the order dated 22.11.2021 (Annexure-A) as void, that too when the pleadings lack details thereof.

8.2. A conjoint reading of the provisions of the Act and the impugned order/communication, we notice that in order to remove the difficulties in implementing provision of sub-section (2) of Section 6 of the Act the appropriate Government has directed that verification of Caste Certificates and issuance of validity Certificates issued to person of Scheduled Tribes, the authorities to whom such applications for issuance of Caste Certificate or the validity Certificate were to be made prior to commencement of the Act would continue to function for the purpose of elections of Local Self Government Institutions and admission to any educational institutions, which cannot be construed as violative of the Parent Act. Hence, we do not see any good reason to entertain this Public Interest Litigation. Not only the Public Interest Litigation appears to be devoid of merit, but it appears to be filed with ulterior purpose, which is not conveniently disclosed in the petition which obviously timed at the announcement of election to Local Self Government. Petitioners who are the members of Sacha Adivsai Adhikar Trust and Samast Adivasi Samaj, if aggrieved by any of those certificates, which are invalid according to them, can independently initiate appropriate proceedings known to law. Under the guise of this Public Interest Litigation, this petition does not deserve to be entertained. How and in what manner the Public Interest is jeopardized is also not clearly forthcoming from the averments made in the writ petition. Hence, we are of the view, this is not a fit case for entertaining this writ petition.

9. At this stage, the proposition of law laid down by the Hon'ble Apex Court in the case of *Madras Bar Association v. Union of India & Anr.*, reported in 2021 SCC Online SC 463 whereunder the contours of striking down an Act has been laid down or in other words, the scope of judicial review in the matter of dealing with the legislation or when an Act that is under challenge has been explained. The relevant observations of the Hon'ble Apex Court are reproduced herein below :

"39. The controversy that arises for the consideration of this Court relates to the legislative response to the judgment of this court in *MBA-III*. The power to strike down primary legislation enacted by the Union of India or the State legislatures is on limited grounds. The Court can strike down legislation either on the basis that it falls foul of federal distribution of powers or that it contravenes fundamental rights or other constitutional rights/ provisions of the Constitution of India. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment and a clear transgression of constitutional principles must be shown. In *State of Madhya Pradesh v. Rakesh Kohli*, this Court held that sans flagrant violation of the constitutional provisions, the law made by Parliament or a State legislature is not declared bad and legislative enactment

can be struck down only on two grounds : (1) that the appropriate legislature does not have the competence to make the law, and (ii) that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. Subsequently, the Court has also recognised “manifest arbitrariness” as a ground under Article 14 on the basis of which a legislative enactment can be judicially reviewed.”

10. In the background of the aforesaid circumstances and in view of the submissions made by the learned counsel appearing for the petitioners and the decisions which have been brought to the notice, we are of the considered opinion that no case is made out by the petitioners to consider the grievance voiced in this petition. Hence, this Public Interest Litigation being devoid of merit, stands dismissed.