

(2013) 03 BOM CK 0103
In the Bombay High Court
Case No : Writ Petition No. 10183 of 2012

Samadhan

APPELLANT

Vs

The State of Maharashtra, The Scheduled Certificate Scrutiny
Committee and The Sub-Divisional Officer

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Maharashtra Scheduled Castes, 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 — Section 3, 4, 4(1), 4(2), 5

Citation : (2013) 3 ABR 1193 : (2013) 3 ALLMR 871 : (2013) 4 BomCR 457 : (2013) 4 MhLj 457

Hon'ble Judges : Sunil P. Deshmukh, J;A.H. Joshi, J

Bench : Division Bench

Advocate : Pratap V. Jadhavar, for the Appellant; V.H. Dighe, AGP for Respondent Nos. 1 and 3 and Shri Y.K. Bobade, Advocate H/f Shri S.S. Tope, Advocate, for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule made returnable forthwith and taken up for final disposal with the consent of learned Advocate for the parties. Heard learned Advocate for the petitioner, learned AGP for the respondent nos. 1 & 3 and the learned Advocate for the respondent no. 2.

2. The petitioner had applied to the respondent no. 3 for issue of a tribe certificate. His claim was that he belongs to Koli Mahadev - scheduled tribe. His application has been rejected by order dated 22.9.2011.

The said order is a speaking order and is seen at Annexure C - page 33 of the paper book of the petition.

3. The petitioner preferred appeal before the respondent no. 2. It is designated as appellate authority u/s. 5 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 (hereinafter referred to as the Act in short). The respondent no. 2 - committee has rejected the petitioner's appeal by the speaking order. Its copy is on record of the writ petition at Annexure E - page 38 of the paper book of the petition.

4. In this petition, the petitioner has challenged both the orders i.e. passed by the respondent no. 3 as an original authority and the appellate order passed by the respondent no. 2.

5. Heard learned Advocate for the petitioner at length, learned AGP for the respondent nos. 1 & 3 and learned Advocate for the respondent no. 2.

6. In the course of hearing, learned Advocate for the petitioner had addressed following points:-

[a] The jurisdiction of the committee was to see the correctness of the claim.

[b] Inquiry in depth was not within the purview of the respondent no. 3.

[c] The appellate authority - respondent no. 2 fell in the same error as the competent authority fell in.

7. Reliance is placed by learned Advocate for the petitioner on unreported judgments of this Court decided at Aurangabad in following five cases:-

[1] Writ Petition No. 11115/2010 -

Priti d/o. Subhash Kamble V/s The Union of India & others, decided on 9.12.2010

[2] Writ Petition No. 6762/2009 -

Sandip Nagorao Dandewad V/s The State of Maharashtra & others, decided on 9.10.2009.

[3] Writ Petition No. 7129/2010 -

Priyanka d/o Ghansham Shankpal V/s The State of Maharashtra & others, decided on 15.12.2010.

[4] Writ Petition No. 11361/2010 -

Nagin d/o Narayan Rajgirwad V/s The State of Maharashtra & others, decided on 15.12.2010.

[5] Writ Petition No. 2864/2012 -

Namdeo Hanmantrao Totawade V/s The State of Maharashtra & others, decided on 4.4.2012.

8. The point which arises for consideration is:-

What is the extent and compass of jurisdiction of the competent authority u/s. 4 and the appellate authority u/s. 5 of the Act in relation to issue of certificate and

deciding the appeal against rejection of request for issue of caste/tribe certificate ?

9. In order to examine the issue which has arisen before this Court, it has become necessary to advert to the scheme of the enactment and the rules made thereunder.

10. The jurisdiction and procedure as to issue of certificate is described and provided in Section 4 of the Act. For ready reference, Section 4 is quoted below:-

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

(1) The Competent Authority may, on an application made to it u/s 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.

11. The power and procedure of appeal is prescribed in Section 5, which reads as follows:-

5. Appeal:-

(1) Any person aggrieved by an order of rejection of application passed by the Competent Authority under sub-section (1) of section 4 may, within 30 days from the date of receipt of order, appeal to the Appellate Authority specified by the Government by notification in the Official Gazette.

(2) The Appellate Authority may within a period of three months, after giving the appellant an opportunity of being heard and after satisfying itself about the genuineness or otherwise of the claim of the appellant either confirm the rejection order, or set aside the order of the Competent Authority and direct the Competent Authority to issue the caste certificate.

12. Rules which govern the procedure of issue of certificates are the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. The Rule which relates to the procedure to be followed by the competent authority in the process of issuance of certificates is Rule 4 thereof. The Clauses (1), (3), (4), (6), (11), (12) and (13) of Rule 4 which are relevant for the purpose of present case are quoted below:-

4....

(1) The Competent Authority shall have jurisdiction to issue Scheduled Tribes Certificate in respect of an applicant who himself or whose father/grand father was ordinarily residing within the territorial jurisdiction of that Competent Authority on the date of notification of the Presidential Order scheduling that

particular Tribe.

(2)....

(3) On receipt of the application u/s 3 of the Act, the Competent Authority shall ensure that the applicant has furnished complete information in all respects and shall give the acknowledgement with the date or receipt of the application alongwith the list of documents furnished by the applicant with the application.

(4) The Competent Authority shall maintain a register of such applications in Form B.

(5)....

(6) The Competent Authority shall verify the documents with the original documents and if satisfied about the correctness of the information, documents and evidence furnished by the applicant he shall issue the Scheduled Tribe Certificate in Form C within fifteen days from the date of receipt of the duly completed application.

... (7), (8), (9) and (10) (Not quoted)....

(11) Where the applicant fails to appear before the Competent Authority, the Competent Authority shall complete the enquiry within a period of thirty days from the date of the order of enquiry.

(12) After considering the evidence produced by the applicant or any other person on his behalf, and the statement of the applicant and after taking into account the material gathered by the Competent Authority, if the Competent Authority is satisfied about the genuineness of the claim, he shall grant the Scheduled Tribe Certificate to the applicant within a period of forty-five days from the date of the application. In case the authority is not satisfied, he may reject the application after recording reasons therefor.

(13) In case of the rejection of the application, the Competent Authority shall give a copy of the Order, free of cost, immediately, after passing of the Order, to the applicant and obtain an acknowledgement thereof. The Competent Authority shall specifically state below the operative part of the Order, that the applicant has a right to appeal and shall mention about the Appellate Authority and the period of limitation for appeal.

The Rule which pertains to the procedure of appellate authority is Rule 8. The procedure and extent of authority is provided in Rule 8(2). The relevant Rule is quoted below.

8....

(1)....

(2) The Appellate Authority shall examine the grounds on which the appeal is filed and also receive or call for further documents and call for further record of

the Competent Authority if considered necessary, and pass such orders within a period of three months as the Appellate Authority considers fit and proper in the matter.

13. Now this Court has to see in the light of the scheme of the Act and the Rules as to what was the extent and jurisdiction of the competent authority and that of the appellate authority.

14. Upon common reading of the Act, Rules and in particular Section 4(1) and Clauses (1), (3), (4), (6), (11), (12) & (13) of Rule 4, it reveals that the authority u/s. 4(1) has to satisfy himself as to "genuineness of the claim". The term "genuineness of the claim" is commonly and often appearing in Sections 4, 5 as well as Rules quoted hereinbefore.

15. As we have noticed from oral submissions advanced and the body of scheme of provisions namely Sections 4 & 5 and Rules thereunder, in isolation, an enquiry and satisfaction in the matter of "genuineness of the claim" is to be seen ostensibly. Plain reading of these provisions may suggest a detailed rather full-fledged i.e. formal enquiry.

16. It is seen from the unreported judgments cited before us that the provisions namely Sections 4(1), 5 and Rules are not specifically referred, however, this Court has taken a view that the jurisdiction of the competent authority as well as the appellate authority is extremely limited.

In Priti Subhash Kamble V/s The Union of India & others in Writ Petition No. 11115/2010 decided on 9.12.2010, this Court (Coram: B.R. Gavai & R.M. Borde, JJ.) held that the jurisdiction of authority u/s. 4 is limited to the extent of seeing what is "apparent and prima facie" from the record produced before the authority.

17. The view of this Court depicted in case of Priti Kamble (supra) is keeping in more or less like view taken in other three cases. Therefore, in the background of plain reading of Sections 4 & 5 on one hand and the judgments of this Court referred to in foregoing paras, this Court has ascertained the legal position emerging from the entirety of scheme of the statute i.e. 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.

18. The scrutiny committee constituted under the said Act has to undertake the exercise of verification and scrutiny of claim for scheduled tribe is prescribed u/s. 6 of the Act. Rule 6 Sub-clause (2), which is quoted in foregoing part of this judgment refers to the procedure to be adopted by the appellate authority whereas the procedure to be followed by the scrutiny committee is prescribed in Rule 12.

19. The modality laid down by incorporation in Rule 12 is in keeping with rather totally in tune with the dictum of the Hon"ble Supreme Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . It

contemplates various stages, such as:-

[a] Furnishing of documents by the claimant;

[b] Reference to Vigilance Cell;

[c] Home and local inquiry by Vigilance Cell as regards the social status, affinity etc.;

[d] Furnishing of report by Vigilance Cell;

[e] If necessary, the applicant has to have liberty to controvert and refute any adverse observation or a report favourable to candidate given by Vigilance Cell if the committee does not accept tribe claim independently;

[f] Personal hearing; and

[g] A reasoned order.

20. It is seen that the stages as contemplated by Rule 12 are not found either bodily incorporated directly/indirectly or by necessary implication in the procedure in relation to issuance of certificate u/s. 4 or decision by the appellate authority u/s. 5.

21. Reading of the scheme as emerging from set of Sections 4 & 5 together read with Rules 4 & 8, on one hand and the set of Sections 6, 7, 8 & 9 of the Act together read with Rule 12 on the other hand, reveals that the power of:-

[a] The competent authority u/s. 4 and the appellate forum is carved out as an administrative forum/authority with limited power and constituted for the purpose of examination of "prima facie" genuineness of documents and evidence in support of claim and then to issue certificate.

[b] The appellate authority hearing appeals arising out of rejection of issue of caste/tribe certificates is to hear and decide the appeal based on the same yardstick/measuring device with which the authority u/s. 4 had to act.

[c] The scheme of functioning of scrutiny committee u/s. 6 is quasi-judicial. It has all trappings of quasi-judicial forum with powers of the Civil Court and it stands on entirely different plane and footing.

22. What necessarily emerges from this comparison and on harmonious reading and construction of Sections 4 & 5 on one hand and Section 6 onwards on the other hand, is as follows:-

[a] Though the terminology employed in the statute and Rules in relation to powers and procedure for issue of certificates is to "satisfy about genuineness of the claim after inquiry", its true purport is of "inquiry" of preliminary nature and of what appears prima facie from the documents produced.

[b] What is to be ascertained by authorities u/s. 4 and 6 is genuineness of the documents and prima facie correctness thereof, excluding a quasi-judicial act of

having finality in law about recording a finding of fact that the claim that the applicant belongs to a particular caste or tribe.

23. In the result, we hold from what we have noted in the foregoing paras as to the extent of jurisdiction of the competent authority u/s. 4 and of the appellate authority u/s. 5, that the material available on record was adequate to issue the certificate on what had emerged prima facie. The genuineness of the claim is bound to be thoroughly enquired in detail when the scrutiny would be done, which is a mandatory requirement.

24. Now it has to be seen on facts what has happened in present case. It is seen that the petitioner had made the claim for issue of certificate that he belongs to Koli Mahadev tribe. The application is furnished in the prescribed form.

25. Documents accompanying in support and relied upon by the petitioner are as follows:-.

[1] Copy of extract of school register showing admission and transfer/exit of students of Municipal Primary School No. 20, Osmanabad, dated 6.12.2010 showing admission on 20.6.1994 and transfer of the petitioner from the school on 16.6.1997.

[2] Copy of extract of school register showing admission of the petitioner on 20.6.1997 and transfer on 7.12.2010 of Karmaveer Bal Mandir Primary School, Osmanabad dated 7.12.2010.

[3] Copy of extract of school register showing admission of the petitioner on 15.6.1988 and transfer on 17.6.1992 of Municipal School No. 7, Osmanabad, dated 6.12.2010.

[4] Copy of transfer certificate dated 6.6.2009 issued by Principal, late Ambumata Junior College, Salgara (D) Tq.Tuljapur Dist. Osmanabad, showing admission of the petitioner on 30.6.2007 and exit on 31.5.2009.

[5] Copy of certificate 18.1.2011 issued by Principal, Venkatesh Mahajan Senior College, Osmanabad, stating that the petitioner was a bona fide student of the college in 2010-11.

[6] Copy of certificate dated 15.1.2011 issued by Sarpanch, Grampanchayat, Kolwadi Dist. Osmanabad, stating that the petitioner belongs to Hindu Koli Mahadev.

[7] Copy of certificate dated 9.4.2011 issued by Gram Sevak, Grampanchayat, Kolewadi, stating that the petitioner belongs to caste - Hindu Mahadev Koli.

[8] Copy of certificate dated 17.1.2011 issued by Police Patil, Kolewadi, stating that the petitioner belongs to Koli Mahadev caste.

[9] Copy of domicile certificate dated 10.5.2011 issued by Talathi, Kolewadi, stating that the petitioner is resident of Kolewadi.

[10] Copy of caste certificate dated 10.5.2011 issued by Talathi, Kolewadi, stating that the petitioner belongs to Hindu Mahadev Koli caste.

[11] Copy of extract of first page of service book of the petitioner's father, issued by Accounts Officer, GMS, Udgir.

[12] Copy of caste certificate dated 9.12.1977 of the petitioner's father issued by Executive Magistrate, Osmanabad, showing that that the petitioner's father belongs to Koli Mahadev caste.

[13] Copy of affidavit dated 13.5.2011 of Kamalakar Baburao Akoskar, cousin of the petitioner, stating that his (cousin's) caste certificate has been validated.

[14] Copy of application dated 23.5.2011 made by Kamalakar Baburao Akoskar to the Sub Divisional Officer, Osmanabad, requesting to issue caste certificate to be belonging to Koli Mahadev caste in his favour.

[15] Copy of caste validity certificate dated 31.8.2012 issued by the Scheduled Tribe Certificate Scrutiny Committee in favour of Kamalakar Baburao Akoskar who is cousin of the petitioner.

[16] Copy of report of Talathi dated 21.6.2011 given to Tahsildar, Osmanabad, about inquiry in respect of caste of the petitioner.

[17] Copy of panchanama dated 16.6.2011 made by Talathi on the spot about caste inquiry of the petitioner.

26. It is seen that the report was called by the respondent no. 3. The Tahsildar had caused an inquiry through the Circle Inspector. The report is furnished.

27. All aforesaid documents do reflect without creating any room for a doubt or suspicion about genuineness either of the documents or of claim that the petitioner belongs to Koli Mahadev tribe. It appears that all these documents were liable to be taken into account on their face since any doubt or suspicion does not emerge from bare perusal thereof.

28. We, therefore, hold that the scrutiny on merits done by the respondent no. 3 as well as the respondent no. 2 was unjust and by transgressing the limits of jurisdiction vested in them u/s. 4 and 5 of the Act respectively. In the result, the petition succeeds. We make the Rule absolute as follows:-

[1] The impugned order dated 12.7.2012 passed by the respondent no. 2 - committee rejecting the appeal of the petitioner challenging the order dated 22.9.2011 passed by the respondent no. 3 thereby rejecting the application of the petitioner for issuance of tribe certificate of "Koli Mahadev", is quashed and set aside.

[2] The respondent no. 3 is directed to issue the tribe certificate of "Koli Mahadev" asked for by the petitioner within a period of 15 days from the date of receipt of writ of this Court.

[3] It is made clear that the said certificate shall be subject to validity as available in law i.e. subject to scrutiny as noted in Section 4(2) of the Maharashtra S.C., S.T. Caste Verification Act, 2000.

[4] Learned AGP is directed to communicate the order to the concerned authorities.