

(2007) 06 BOM CK 0069
In the Bombay High Court
Case No : Writ Petition No. 3158 of 2007

Santosh Nirude

APPELLANT

Vs

The State of Maharashtra, Tribal Development Department,
The Scheduled Tribe Certificate, Scrutiny Committee, The
Collector and The Headmaster, Sarswatidevi Primary Ashram
School

RESPONDENT

Date of Decision : 22-06-2007

Acts Referred:

Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate
Rules, 2003 — Rule 12, 12(7)

Citation : (2007) 5 ALLMR 734 : (2007) 5 BomCR 111 : (2007) 109 BOMLR 1340

Hon'ble Judges : S.J. Vazifdar, J;P.R. Borkar, J

Bench : Division Bench

Advocate : A.S. Bayas, for the Appellant; K.G. Patil, AGP and M.S. Deshmukh,
for the Respondent

Judgement

S.J. Vazifdar, J.—Rule. Rule made returnable and heard forthwith.

2. The petitioner has challenged an order dated 23.4.2007 passed by respondent No. 2, Scheduled Tribe Certificate Scrutiny Committee, Aurangabad and sought a declaration that he belongs to the Mahadeo Koli Scheduled Tribe.

3. Respondents 3 and 4 are the Collector, Latur and the Headmaster of the School in which the petitioner is employed, respectively.

4. As we intend remanding the matter it is not necessary to refer to the facts in detail.

5. The impugned order refers to various documents including the admission registration extracts of the applicant's relatives. Details thereof are tabulated in paragraph 21 of the impugned order. The important aspect is in respect of the petitioner's father. In the admission registration extract of 8.8.1959 he is referred to as Hindu Koli. The factor certainly is against the petitioner.

6. Pausing here it must be noted that while tabulating the particulars in the remarks column against each of the persons what is mentioned is "Relative". The nature of the relationship is not noted. We have noticed in several matters that the Scrutiny Committee does not specify the relationship between the applicant and the relatives. It is important to do so. For instance it makes all the difference whether the relative is from the maternal side or from the paternal side. Even if the relative is from the paternal side it would be necessary to further trace the genealogy to ascertain whether the concerned relative is from the father's paternal side or maternal side. In the absence of these particulars it is difficult to examine the orders of the Caste Certificate Scrutiny Committee when they fall for consideration. We therefore request the Caste Certificate Scrutiny Committee to specify the relationship between the applicants and the relatives in future.

7. The petitioner relied upon a document allege to be a copy of the regular extract in the Court of J.M.F.C. at Gulbarga in C.C. No. 451 1356 Fasli.

As per the translation furnished by the petitioner (annexed at page 57 of the Writ Petition) the petitioner's paternal grand father is said to belong to Mahadeo Koli Scheduled Tribe.

8. Mr. Deshmukh challenged the document on various grounds. He, inter-alia, submitted that there is nothing to indicate the authenticity of the document or the accuracy of the translation. He submitted that the petitioner made no efforts to call for any records or to establish the genuineness of the document. Nor did he establish the relationship between himself and the person referred to in the said document.

9. We do not for a moment suggest that Mr. Deshmukh's submissions are without force. However in the impugned order respondent No. 2 does not reject the document for these reasons. It would be convenient to extract the findings of respondent No. 2 in the impugned order in this regard which read as follows:

The Committee obtained report from the Sr. Research Officer, and also observed decision of J.M.F. Court by considering the Vigilance Cell report and the clearly entries of Caste as Koli the Committee has not considered the same.

10. It appear therefore that respondent No. refused to even consider the document. This, with respect, was not permissible. It was open to the Committee to test the authenticity of the document, ascertain the correct translation and to give it such weightage as the Committee thought appropriate. That would be within the jurisdiction of respondent No. 2. However it was necessary for respondent No. 2 to have considered the document. It is on this limited ground that we intend setting aside the order and remanding the matter to respondent No. 2 for a fresh hearing.

11. Mr. Bayas further submitted that the Vigilance report is in favour of the petitioner. We will presume that is so. He submitted that as a matter of law the Scrutiny Committee is always bound by the Vigilance report. He submitted that

all that the Scrutiny Committee is entitled to do is to read the Vigilance report and act in accordance therewith.

12. We are unable to agree. To accept Mr. Bayas' statement would reduce the task of the Scrutiny Committee to a merely clerical one.

13. Mr. Bayas was unable, understandably, to invite our attention to any judgment supporting his contention. He however relied upon Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification) Certificate Rules, 2003 which reads as under:

12. Procedure to be followed by Scrutiny Committee.

(1) On receipt of the application, the Scrutiny Committee or a person authorised by it shall scrutinise the application, verify the information and documents furnished by the applicant, and shall acknowledge the receipt of the application. The Member Secretary shall register the application, received for verification, in the register prescribed by the Chairman.

(2) If the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry.

(3) The Vigilance Officer shall go to the local place of residence and original place from which the applicant hails and usually resides, or in case of migration to the town or city or place from which he originally hailed from.

(4) The Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or the guardian, as the case may be.

(5) The Vigilance Cell shall also examine the parents or guardian or the applicant for the purpose of verification of their Tribe, of the applicant.

(6) After completion of the enquiry, the Vigilance Cell shall submit its report to the Scrutiny Committee who will in turn scrutinise the report submitted by the Vigilance Cell.

(7) In case the report of Vigilance Cell is in favour of the applicant, and if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and true, the Scrutiny Committee may issue the validity certificate. The validity certificate shall be issued in Form G.

(8) If the Scrutiny Committee, on the basis of the Vigilance Cell report and other documents available, is not satisfied about the claim of the applicant, the Committee shall issue a show cause notice to the applicant and also serve a copy of the report of the Vigilance Officer by registered post with acknowledgment due.

A copy shall also be sent to the Head of the Department concerned, if necessary. The notice shall indicate that the representation or reply, if any, should be made within fifteen days from the date of receipt of the notice and in any case not

more than thirty days from the date of receipt of the notice. In case the applicant requests for adjournment or extension of the time-limit, reasonable time, may be granted.

(9)(a) After personal hearing if the Scrutiny Committee is satisfied regarding the genuineness of the claim, Validity Certificate shall be issued in Form G.

(b) After personal hearing, if the Scrutiny Committee is not satisfied about the genuineness of the claim and correctness of the Scheduled Tribe Certificate, it shall pass an order of cancellation and of confiscation of the Certificate and communicate the same to the Competent Authority for taking necessary entries in the register and for further necessary action. The Scheduled Tribe Certificate shall then be stamped as "cancelled and confiscated."

14. Far from supporting, Rule 12 in fact militates against Mr. Bayas' submission. There is nothing in the Rule which supports Mr. Bayas' submission. In fact Sub-rule (7) indicates the contrary. Even where the Vigilance Cell is in favour of the applicant it is only if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and true that it may issue the validity certificate. This is clear from the use of the term "and" in Sub-rule (7) which provides : "In case the report of the Vigilance Cell is in favour of the applicant, and if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and true, the Scrutiny Committee may issue the validity certificate...." Thus the mere fact that the report of the Vigilance Cell is in favour of the applicant is not sufficient. The Scrutiny Committee is bound to apply it's own mind and to examine all the material before issuing the validity certificate even where the report of the Vigilance Cell is in favour of the applicant.

15. Mr. Bayas relied upon the judgment of the Division Bench of this Court dated 9.4.2007 in the case of Shammi Kadir Naglekar v. State of Maharashtra and Ors. in Writ Petition No. 2121 of 2007. Mr. Bayas relied upon the following observations from the judgment of the Division Bench dated 9.4.2007 in the case of Shammi Kadir Naglekar v. State of Maharashtra and Ors. in Writ Petition No. 2121 of 2007:

The committee has rejected the case of the petitioner on the premises that there are no supporting documents. The Vigilance enquiry was in favour of the Petitioner. On behalf of the Petitioner, the learned Counsel points out the G.R. dated 22.7.1996 which sets out that in case of Muslim/Musalman, it is necessary for conducting vigilance/home study enquiry. In the instant case, vigilance report was available. That was in favour of the petitioner. No reasons have been assigned as to why that report could not be considered.

16. The judgment does not support Mr. Bayas' submission. There is nothing in the judgment which suggests that the task of the Scrutiny Committee is to merely endorse the report or finding of the Vigilance cell. Indeed a reading of the judgment as a whole militates against Mr. Bayas' submission. This is clear from the last sentence quoted above. The Division Bench set aside the order inter-alia

as the Scrutiny Committee had not furnished any reasons for not accepting the findings in the Vigilance report.

17. In the circumstances Rule is made absolute in the following terms:

(I) The impugned order dated 23.04.2007 is set aside. The matter is remanded to respondent No. 2 who shall pass a fresh order after considering the said document. The petitioner shall be at liberty to adduce any further evidence only in respect of the said document. Respondent No. 2 is at liberty to deal with and consider the same in such manner as it deems fit.

(II) Pending the decision of respondent No. 2 and for a period of two weeks after the communication thereof to the petitioner no adverse action shall be taken against the petitioner in respect of his employment on the ground that his caste certificate has been invalidated.

18. All parties to act on a copy of this order duly authenticated by the Court Sheristedar/Personal Assistant.