
(2016) 06 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 9293 of 2013

Smt. Sunanda Arun Mahale

APPELLANT

Vs

Schedule Tribe Scrutiny Committee, Nashik

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Citation : (2016) 6 BCR 810 : (2016) 4 MhLJ 840

Hon'ble Judges : Anoop V. Mohta and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : Mr. Vaibhav A. Sugdare, Advocate, for the Appellant; Mr. V.N. Sagare, AGP, for the Respondent

Final Decision : Disposed Off

Judgement

Anoop V. Mohta, J.(Oral)—Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The Petitioner has challenged impugned order dated 25 January 2012 passed by Respondent No.1 Schedule Tribe Scrutiny Committee, Nashik whereby, the Petitioner's caste claim was rejected solely on the ground that the caste certificate issued by the Sub Divisional Magistrate, Nasik City, Dist. Nashik is invalid as the Applicant is ordinary resident of village Betawad Tal. Sindkheda Dist. Dhule.

3. The submission is made by the learned counsel appearing for the Petitioner that the Petitioner's forefathers were definitely, at the relevant time, resident of village Betawad Tal. Sindkheda Dist. Dhule. However, the whole family migrated to Nashik in the year 1965 and therefore, being resident of Nashik, he applied for the Caste Certificate in question, at Nashik. The Division Bench of this Court (Coram: A. M. Khanwilkar and S.S. Shinde, JJ.) in Pratibha W/o Rajendra Thakur @ Pratibha D/o. Bapurao Thakur v. Scheduled Tribe Certificate Scrutiny Committee & Ors., WP No. 2248 of 2012 dated 9 April 2012, observing Rule 5(2) of Maharashtra Schedule Tribes (Regulation of Issuance and Verification of)

Certificate Rules, 2003 (for short, "the Schedule Tribe Rules") directed the Scrutiny Committee to decide the original caste certificate, in accordance with law. In another Judgment, *Niraj Kamlakar More v. Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, 2012(5) Mh. L.J. 367*, the Division Bench of this Court, considering the same Rule, in para 12 observed as under:

"12. Thus, a caste certificate issued by the competent authority cannot be said to be invalid or nullity only on the ground that the competent authority did not have territorial jurisdiction. Thus, it follows that in the facts of these cases, the caste certificates issued by the competent authority cannot be said to be invalid. The Scrutineer Committee cannot refuse to exercise its power on the ground that the caste certificate produced before it for validation was issued by the competent authority having no territorial jurisdiction to issue the same. When a caste certificate issued by the competent authority is not invalid within meaning of subsection (2) of Section 4 of the said Act, the Scrutiny Committee cannot refuse to exercise its jurisdiction of adjudication or verification of caste claim. In cases in hand, the only finding of the Scrutineer Committee is that the competent authority which issued caste certificate had no territorial jurisdiction to issue the certificate. Therefore, we hold that the caste certificates are not invalid and the Caste Scrutiny Committee was duty bound to make adjudication on the respective caste claims of the petitioners".

4. Even otherwise, considering the scheme and purpose of the Act and the Rules so referred above and as there is no contra and/or different provisions read and referred and/or pointed out, we are inclined to observe that for applying the caste certificate and/or validation of the same, the resident of a person/party/claimant is a requisite condition, specifically when migrated from one district to another, in and within the same State.

5. In the present case, in view of above admitted position, we see there is no reason that the Competent Authority should not consider the case of the Petitioner in accordance with law on its own merits and decide the validity of the caste certificate.

6. Resultantly, we pass the following order: -

ORDER

- a) Impugned order dated 25 January 2012, is quashed and set aside.
- b) The Application of the Petitioner-Claimant, is restored to the file of the Scheduled Tribe Certificate Scrutiny Committee, Nashik Division, Nashik, to decide the original case in accordance with law, at the earliest.
- c) Rule made absolute accordingly.
- d) There shall be no order as to costs.