

(2004) 12 BOM CK 0085
In the Bombay High Court
Case No : Writ Petition No. 5333 of 2004

Vasant Shripad

APPELLANT

Vs

Scheduled Tribe Caste Certificate Scrutiny Committee and
Another

RESPONDENT

Date of Decision : 20-12-2004

Acts Referred:

Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 — Rule 12(8)

Citation : (2005) 2 ALLMR 178 : (2005) 3 BomCR 173 : (2005) 2 MhLj 224

Hon'ble Judges : M.G. Gaikwad, J; D.D. Sinha, J

Bench : Division Bench

Advocate : M.G. Bhangde, for the Appellant; S.W. Deshpande and Fulzele, AGP, for the Respondent

Judgement

D.D. Sinha, J.—Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. Rule made returnable forthwith by consent of the parties.

3. The present writ petition is directed against the interim order dated 16-10-2004 passed by the respondent No. 1 - Scheduled Tribe Caste Certification Scrutiny Committee, Nagpur, whereby the caste claim of the petitioner as belonging to Halbi - Schedule Tribe came to be invalidated.

4. Mr. Bhangde, learned counsel for the petitioner states that in the instant case the petitioner received the complete copy of the Police Vigilance Cell Report on 9-8-2004 and was called for hearing on 6-9-2004. It is submitted that on 6-9-2004 the petitioner requested for 15 days time to file reply to the Police Vigilance Cell Report as well as to produce evidence. This request of the petitioner was rejected by the Scrutiny Committee on 6-9-2004 itself in view of the judgment of the Apex Court reported in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, on the ground that

petitioner was duty bound to submit his say on Police Vigilance Cell Report within two weeks from the date of receipt of the notice and in no case more than 30 days time can be given after receipt of the notice and did not permit the petitioner to adduce evidence as well as to file say to the Police Vigilance Cell Report.

5. Mr. Bhangde, the learned counsel for the petitioner states that in the year 2000, 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 came into force and the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules are framed in 2003 and as per Sub-rule (8) of Rule 12, the Caste Scrutiny Committee is vested with the powers to grant time beyond 30 days, which is reasonable in the opinion of the Caste Scrutiny Committee. It is, therefore, contended that the order passed by the Caste Scrutiny Committee is bad in law and therefore, may be quashed and set aside and the matter may be remanded back to the Caste Scrutiny Committee for reconsideration of the caste claim of the petitioner, the petitioner be given an opportunity for submitting reply to the Police Vigilance Cell Report and further opportunity to adduce any other evidence in support of his caste may be given.

6. Mrs. Deshpande, the learned counsel for the Caste Scrutiny Committee contended that the Caste Scrutiny Committee after taking into consideration the observations of the Apex Court in the above referred case made in para 6 rejected the request of the petitioner for grant of time to adduce further evidence on 6-9-2004. However, she does not dispute that in view of Sub-rule (8) of Rule 12 of the above referred Rules-2003, the Caste Scrutiny Committee does have power to grant reasonable time beyond 30 days.

7. We have considered the contentions canvassed by the learned counsel for the parties, perused the Rules and perused the impugned order. Perusal of the impugned order shows that the Caste Scrutiny Committee rejected the request of the petitioner for grant of time to submit reply to the Police Vigilance Cell Report beyond period of 30 days from the date of service of the notice to the petitioner. It is no doubt true that in the instant case copy of the Police Vigilance Cell Report was served on the petitioner on 9-8-2004 and the petitioner on 6-9-2004 made a request to the Caste Scrutiny Committee to grant him 15 days time to submit reply to the Police Vigilance Cell Report and also to adduce further evidence. This request was rejected by the Caste Scrutiny Committee which in our opinion is not sustainable in law in view of Sub-rule (8) of Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003.

Sub-rule (8) contemplates that 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. The rule further contemplates that 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. The rule further contemplates that in case the applicant requests for adjournment or extension of time-limit, reasonable time may be granted.

8. The rule empowers the Caste Scrutiny Committee in a given case to grant reasonable time beyond 30 days and therefore, the action of the Caste Scrutiny Committee of rejecting the request of the petitioner for grant of time made on 6-9-2004 on the ground that 30 days time is already over from the date of receipt of the notice cannot sustain in law.

9. For the reasons stated hereinabove, the impugned order dated 16-10-2004 passed by the Respondent No. 1 - Scheduled Tribe Caste Certificate Scrutiny Committee is hereby quashed and set aside. Matter is remanded back to the Scrutiny Committee for reconsideration of the caste claim of the petitioner and the petitioner is permitted to file reply to the Police Vigilance Cell report and is also entitled to file any other evidence, documentary or otherwise, before the Caste Scrutiny Committee within a period of four weeks from today. After submission of the reply by the petitioner to the Police Vigilance Cell report and evidence, if any, the Caste Scrutiny Committee is directed to consider the caste claim of the petitioner according to the procedure applicable and take a decision as early as possible not beyond the period of 3 months from the date of receipt of the reply filed by the petitioner or evidence adduced by the petitioner in support of his claim.

10. The learned counsel for the petitioner further contended that the respondent No. 2 in view of the invalidation of the caste claim of the petitioner by order dated 16-10-2004 issued order dated 1-11-2004 whereby the petitioner is reverted from the post of Sub-Divisional Officer to the post of Sectional Engineer. The learned counsel states that since this Court has quashed and set aside the order of the Caste Scrutiny Committee, the order dated 1-11-2004 passed by respondent No. 2 may also be quashed and set aside.

11. The learned AGP appearing on behalf of respondent No. 2 states that the order dated 1-11-2004 is consequential order passed on the basis of order of the Caste Scrutiny Committee dated 16-10-2004.

12. On the backdrop of the above referred facts, it is evident that the order of reversion dated 1-11-2004 passed by respondent No. 2 is purely based on the invalidation of the caste claim of the petitioner vide order dated 16-10-2004. Since we have quashed and set aside the order dated 16-10-2004 and matter is remanded for fresh consideration of the caste claim of the petitioner and by necessary consequences, the order dated 1-11-2004 must go since the same is purely based on the order dated 16-10-2004.

In the circumstances we quash and set aside the order dated 1-11-2004 passed by respondent No. 2.

Rule is made absolute in the above term.

No order as to costs.