

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8719 OF 2015

Sau Lata Uttam suryawanshi
@ Lata d/o Dashrath Shewale
age: 33 years, Elected Member
& subsequently elected as Sarpanch
Gram Panchayat Arvi, tq. Dist. Latur
R/o Arvi, tq. Dist. Latur.

Petitioner

Versus

- 1 The State of Maharashtra
through its Secretary
Social Welfare Department
Mantralaya, Mumbai 32
- 2 Divisional Caste Verification
Scrutiny Committee No.2, Aurangabad
Division Latur, through its
President/Member Secretary
- 3 The Collector
Latur, District: Latur
- 4 The Sub-Divisional Officer
Sub-Divisional Office, Latur
District : Latur
- 5 The Tahsildar
Tahsil Office, Latur
District: Latur
- 6 Gram Sevak,
Gram Panchayat Office Arvi
Tq. Dist. Latur
- 7 Sau. Vaishali Prashant Kalunke
Age: 23 years, occu: household
R/o Navratna Nagar, Sai Road,
Arvi, tq. Dist. Latur
- 8 Vinod S/o Shivaji Chavan
Age: 35 years, occu: agriculture
R/o Navratna Nagar, Sai Road,
Arvi, tq. Dist. Latur

Respondents

Mr. Gatsagar Santosh B. advocate for the petitioner
Mr. V.H. Dighe AGP for Respondent No.1 to 5
Mr. S.B. Bhapkar advocate for respondent Nos. 7 and 8

CORAM : R.M. BORDE &
P.R. BORA, JJ

Dated : 26th AUGUST, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Rule.

2 With the consent of the parties, matter is taken up for final decision, at admission stage.

3 The petitioner is objecting to the order passed by respondent No.2 thereby confiscating the caste certificate issued in her favour. A caste certificate certifying that the petitioner belongs to Maharar SC category, issued by the Sub Divisional Officer, Latur, was produced for verification to Aurangabad Divisional Caste Scrutiny Committee having jurisdiction in respect of Latur, Nanded, Osmanabad, Hingoli districts. The committee, noticing that the father and forefathers of the petitioner were ordinarily residing within the area of territorial jurisdiction of Beed district, Ambajogai sub division, refused to verify the certificate and issue validation order. Reliance is placed on Rule 5 of The Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward

Category (Regulations of issuance and verification of) Caste Certificate Rules, 2012. Sub-rule 1 of Rule 5 provides that the competent authority may issue caste certificate to an applicant who himself or whose father or grand father or great grand father was ordinarily residing within the area of territorial jurisdiction of that competent authority on deemed date. The committee has opined that it is incumbent upon the applicant to secure a certificate from the authority, having territorial jurisdiction to issue certificate i.e. Sub Divisional Officer, Ambajogai, District: Beed. The petitioner places reliance on the decision in the matter of ***Niraj Kamalakar More Versus Scheduled Tribe Certificate Scrutiny Committee, Aurangabad*** reported in 2012 (5) Mh.L.J. 367. The Division Bench expressed opinion that, a caste certificate issued by the Competent Authority is not invalid merely because said authority did not have territorial jurisdiction to issue certificate and further observed that the scrutiny committee cannot refuse to exercise its jurisdiction to accept or verify the caste claim, on the ground that, it was issued by the authority having no territorial jurisdiction. The view expressed by the Division Bench in the aforesaid matter has not been accepted by the other Division Bench while dealing with Writ Petition No.4918 of 2012 in the matter of ***Rajendra Thakur V/s The State of Maharashtra***. The Rules prescribing the procedure for issuance

of certificate in case of ST category are paramateria with the Rules framed as regards issuance of certificate in favour of SC category applicant. The Judgment delivered by the Division Bench dealing with the regulations relating to issuance of caste certificate in favour of a tribal individual also applies to cases relating to issuance of caste certificate in favour of SC category applicant. The Division Bench dealing with the matter of **Rajendra Thakur** has adopted a different view and expressed opinion that the regulations relating to issuance of caste certificates and jurisdictional power exercisable by the authority to issue the caste certificate or the tribe certificate must be strictly adhered-to. Since there is a conflict in the opinions between two division benches, in respect of interpretation of the relevant rules, the matter has been directed to be placed before the Honourable Chief Justice for consideration for referring the issue/issues to the larger bench.

4 In the instant matter, the adjudication need not wait until the decision on the issues referred to the larger bench, in view of the decision in the matter of **Rajendra Thakur**. This petition can conveniently be disposed of by granting liberty to the petitioner to tender an application to the Sub divisional Officer, Ambajogai for issuance of caste certificate in her favour. There is sufficient

material placed on record entitling the petitioner to secure a caste certificate which at a later point of time will be subjected to verification by the scrutiny committee. As has been held by this Court in several judgments that caste certificate is required to be issued by the authority, on prima facie satisfaction and a detailed scrutiny of the documents is not expected at the stage of issuance of certificate. In order to grant benefits available to a particular backward caste or tribe, the certificate shall have to be subjected to the scrutiny by the competent authority. At the stage of issuance of validation certificate, the scrutiny committee has jurisdiction and entitlement to conduct in depth enquiry.

5 In this view of the matter, we are of the view that since the brother of the petitioner is holder of a caste certificate issued by the competent authority and that there are entries in the school record of the petitioner, demonstrating her caste as Mahar, SC, the petitioner shall have to be issued a certificate by the Sub-divisional Officer, Ambajogai. If the petitioner tenders an application for issuance of caste certificate to the Sub Divisional Officer, Ambajogai within a period of two weeks from today, the Sub Divisional Officer shall issue certificate to the petitioner within a period of two weeks from the date of receipt of the application. The petitioner shall comply with the procedural formalities in

respect of production of certified copies of the documents such as a caste certificate issued in favour of her brother and the school record of the petitioner. On receipt of the caste certificate, the petitioner shall tender the same for verification to the competent scrutiny committee within a period of two weeks from the date of its receipt. The concerned scrutiny committee, on receipt of proposal from the petitioner, for verification of the caste certificate, shall, after extending opportunity of hearing to the petitioner as well as any other individual objecting to the caste claim of the petitioner, on observance of the procedure prescribed under the relevant regulations, verify the status claim/caste claim of the petitioner and render its decision as expeditiously as possible and preferably within a period of six months from the date of receipt of proposal. Until the decision by the competent scrutiny committee in respect of caste status or the caste claim of the petitioner, no adverse action shall be taken against the petitioner.

6 Rule is accordingly made absolute.

7 Petition stands disposed of.

(P.R. BORA, J)

(R.M.BORDE, J)