

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11477 OF 2015

Master Mukul Jagannath Sapkale Petitioner
V/s.

The State of Maharashtra,
Through the Secretary,
Tribal Development Department,
Mantralaya, Mumbai & Ors. Respondents

ALONG WITH

WRIT PETITION NO.11478 OF 2015

Pranjal Jagannath Sapkale Petitioner
V/s.

The State of Maharashtra,
Through the Secretary,
Tribal Development Department,
Mantralaya, Mumbai & Ors. Respondents

ALONG WITH

WRIT PETITION NO.11809 OF 2015

Master Gaurav Sudhir Navsare Petitioner
V/s.

The State of Maharashtra,
Through the Secretary,
Tribal Development Department,
Mantralaya, Mumbai & Ors. Respondents

Mr. Abhijeet J. Kandarkar for the Petitioner in all the Petitions.

Ms. Sushma Bhende, A.G.P., for Respondent Nos.1 and 2 in all the Petitions.

Mr. Pramod J. Pawar for Respondent No.3 in WP/11478/2015.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 29TH JULY, 2016.

P.C. :

1. In all these Petitions, the tribe claim of the Petitioners as belonging to "Tokare Koli / Malhar Koli" Scheduled Tribe has not been scrutinized and verified on merits, simply because the Petitioners' ordinary / permanent place of origin at the time of notification is not within District Nashik. The claim is treated by the Committee as made by the candidates/applicants, who have migrated from within the State of Maharashtra. Therefore, they ought to produce the Scheduled Tribe Certificate issued to the migrated persons within the meaning of Rule 5(2) (a) and (b), read with explanation thereto, of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003.

2. In the affidavit-in-reply filed in one of these Writ Petitions, namely Writ Petition No.11478 of 2015, it is stated that the Caste Certificate is issued by the Deputy Collector and Special Land Acquisition Officer, Nashik. That was not in proper form as per Rule 5(2)(a) and (b) of these Rules. The Petitioner's father resided in Jalgaon District and is an ordinary resident of a Village and Taluka in Jalgaon District. The Scheduled Tribe Certificate was issued to the Petitioner by the Deputy Collector and

Special Land Acquisition Officer, Nashik. The Petitioner's family may ordinarily reside in Nashik, which is the statement in the certificate, but the Committee has found that this is a case of migration from one District to another. In case of such persons, the rules, and particularly the above rules, have to be complied with.

3. With the assistance of Mr. Kandarkar, appearing for the Petitioners, and Ms. Bhende, learned AGP, who appears in all these Petitions, we have perused the Rules and particularly Rule 5 of the aforesaid Rules, which is relied upon. That reads as under :-

“5. Grant of Scheduled Tribe Certificate to Migrated Persons :

(1) Migration from other States to Maharashtra State :-

- (a) The Competent Authority, if satisfied, may issue Scheduled Tribe Certificate, in FORM C 1 to an applicant who has migrated to Maharashtra State from any other State or Union Territory, on production of the Scheduled Tribe Certificate issued to his father or grand-father by the concerned Competent Authority of that State.***
- (b) If the Competent Authority feels that before issuing such a Scheduled Tribe Certificate a detailed enquiry is necessary, he may do so through the applicant's State of origin.***
- (c) A Scheduled Tribe Certificate holder, who has migrated to Maharashtra from the State of his origin for the purpose of seeking education,***

employment etc., will be deemed to be a Scheduled Tribe of the State of his origin and will be entitled to derive benefits from the State of his origin and not from the State of Maharashtra.

Explanation – For the purpose of sub-rule (1), “Migrant from other State” means -

- (i) a person who has migrated to Maharashtra State from any other State/Union Territory on or after the First Presidential Order i.e. 6th September 1950;*
 - (ii) a person whose tribe is scheduled as a Scheduled Tribe in his original State, but not in Maharashtra State and the person whose tribe is scheduled as Scheduled Tribe in Maharashtra State as well as in his original State having his ordinary residence on the date of the notification of Presidential Order scheduling his tribe has been in the State / Union Territory other than Maharashtra would both be treated as migrants.*
- (2) Migration from one district to another district or from the jurisdiction of one Competent Authority to another within the State :-*
- (a) The Competent Authority, if satisfied, may issue Scheduled Tribe Certificate in Form C to an applicant who has migrated from one district to another district or from the jurisdiction of one Competent Authority to another, within the State, on production of the Scheduled Tribe Certificate issued to his father or grand-father, by the concerned Competent Authority of that district.*
 - (b) The Competent Authority shall issue Scheduled Tribe Certificate in Form C to an applicant of other district from which he had migrated to the present place, on the production of the Scheduled Tribe Certificate issued to his father or grand-father by*

the then Competent Authority of the district of his father or grand-father's origin at the time of passing of the first Presidential Order dated the 6th September 1950 or thereafter, for Scheduled Tribes.

Explanation – For the purpose of this sub-rule “Migrant within the State” means -

(i) the persons who have migrated from one district to another district or from the jurisdiction of one Competent Authority to another within the State on or after the first Presidential Order dated the 6th September 1950 for Scheduled Tribes and whose parents had been the ordinary residents of Maharashtra State.

(ii) in the case of persons born after the first Presidential Order dated 6th September 1950, the place of ordinary residence for the purpose of acquiring Scheduled Tribes status, shall be the place of permanent abode of their father, grand-father at the time of the notification of the Presidential Order for Scheduled Tribes.

(3) The provisions of sub-rules (9) to (13) of Rule 4 shall mutatis mutandis apply in respect of the rejection of application of a migrated person.”

4. A bare perusal of this Rule would indicate that it deals with grant of Scheduled Tribe Certificate to migrated persons. Sub-rule (1) deals with case of migration from other States to Maharashtra State and presently we are not concerned with that. Sub-rule (2) deals with migration from one district to another district or from the jurisdiction of one Competent

Authority to another within the State. Perusal of this Rule, together with its heading, would indicate that the situation and contingency dealt with is migration from one district to another district in Maharashtra State or from the jurisdiction of one Competent Authority to another within the State.

5. Therefore, if there is a migration from one district to another, but the Committee wants and desires to scrutinize as to whether this migration has, indeed, taken place and if from the resident district, to which the claimant or the applicant has migrated, a certificate was obtained by the father or grand-father from the authority competent to issue it, on scrutiny of the same, the claim can be granted.

6. In case of sub-rule (2), admittedly, the Competent Authority of the present place has jurisdiction. The authority now granting the Caste Certificate was, indeed, competent, but it did not have the territorial jurisdiction, or, it did not have the jurisdiction or authority over the area from where the Petitioner migrated.

7. This is a case of a migration from the jurisdiction of one Competent Authority to another. In both situations, prima facie, the form is not decisive. The form in which the certificates have been issued in cases of migrants is definitely relevant, but, what is of more importance and rather

paramount is the particulars and the correctness thereof, mentioned in such forms. The authority must scrutinize these particulars and verify and scrutinize the claim of the applicant accordingly. The Committee need not have objection with the format. It is too well settled that to require any reiteration that what is important are the contents and not the format. It may be that, in a given case, the authority has not issued the certificate in the prescribed format, but, over such situation, the claimants or applicants ordinarily do not have any control. The Committee cannot go about penalizing and punishing the applicants for the fault of the authorities. Therefore, it is not necessary that the certificate produced, namely, the Caste Certificate, is not in the prescribed format, but, if the authority was otherwise competent and the particulars would indicate that the Petitioner, indeed, has complied with Rule 5 and sub-rule (2) in this case, then, the claim should be scrutinized ordinarily on merits and not rejected on any technical grounds. That is all that is emphasized by this Court in its orders passed from time to time.

8. We do not think that we should multiply this order by giving reference to all the decisions of this Court. Merely because a common impugned final Judgment and Order dated 11th May 2012 passed by this Court's Bench at Aurangabad is challenged by the Committee before the Hon'ble Supreme Court of India and in its order, there is a stay to the

operation of the Judgment and Order passed by this Court, does not mean that its existence is wiped out or it should be treated as quashed and set aside automatically. Even that understanding of the Committee leaves much to be desired.

9. Nothing would be lost if such claims, as are made by the Applicants and Petitioners before us, are scrutinized on merits, so that injustice is caused to neither. The anxiety of the Committee ought to be that genuine and *bona fide* claimants obtain the benefit of reservation and those not entitled or ineligible shall not obtain them by back-door or oblique methods. It is this prime concern which should guide the Committee and not some technical compliances or procedural matters.

10. We hope and trust that this much is enough and Respondent No.2-Committee will now scrutinize the claims strictly in accordance with the rules and law. Further, in one of the matters we have noticed, namely, in Writ Petition No.11477 of 2015 that Master Mukund Jagannath Sapkale sought admission to the Bhosala Military College at Nasik. The Principal of that College may have referred the Tribe claim or the Certificate for scrutiny and verification by this Committee, but it was the duty of the Committee to verify whether the Maharashtra Act XXIII of 2001 applies to such an Institution; whether the Bhosala Military College can be termed as

an 'Educational Institution', as defined in Section 2(d) of the Maharashtra Act No.XXIII of 2001; and whether Section 3 of the Maharashtra Act No.XXIII of 2001, and particularly Section 6(3) thereof, would apply to such a case. If that was an unnecessary and futile exercise, not warranted by law, then, it was no business of the Committee to go about and find faults in the Caste Certificate.

11. When we emphasize all this, it is needless to state that the Committee having not applied its mind to all the relevant factors and refusing to scrutinize the claim on merits, requires us to remand the cases by setting aside the impugned orders.

12. The Writ Petitions are allowed accordingly. Each of the orders impugned in these Writ Petitions are set aside. The claims will now be scrutinized in terms of the law laid down by this Court and as per the provisions of the Maharashtra Act No.XXIII of 2001 and the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]