

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9906/2017

Jivan Machhindra Palampalle.
...Petitioner..

Versus

The State of Maharashtra & others.
...Respondents...

.....
Shri S.M. Vibhute, Advocate for petitioner.
Shri S.G. Karlekar, AGP for respondent nos.1 to 3.
.....

**CORAM: S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE: 04.08.2017

ORDER :

- 1] Heard learned counsel appearing for the parties.
- 2] The petitioner applied through the Principal of a school in Omerga Taluka Dist.Osmanabad for scrutiny of his tribe certificate namely Koli Mahadev scheduled tribe. The certificate was issued by the Sub-Divisional

- 2 -

Officer, Nilanga Dist.Latur, wherein it is certified that the petitioner and his family is resident of Dapka Tq.Nilanga Dist.Latur.

3] During the course of scrutiny, according to the committee, it was revealed that the petitioner's permanent place of residence is village Kolewadi Post Naichakur Tq.Omrga Dist.Osmanabad. Photo copy of the tribe certificate issued by the Executive Magistrate, Omernga Dist.Osmanabad in respect of the petitioner's father was also perused. The committee observed that two orders of the Division Bench of this Court would enable it to conclude that the tribe certificate could not have been issued by the Sub-Divisional Officer, Nilanga Dist.Latur as he is not a competent authority to issue the same. The committee held that it has been issued without jurisdiction. Hence, the tribe certificate dated 21.8.2009 was canceled and confiscated.

4] The only contention raised before us by Shri Vibhute is that the petitioner's case is covered by Rule 5 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003.

- 3 -

Rule 5 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. Shri Vibhute invites our attention to Clause (b) of Sub-Rule (2) of Rule 5 to urge that the tribe certificate was issued on the basis that the petitioner's father resided in Omerga Taluka. It is stated that the petitioner's name is Jivan Machhindra Palampalle. The caste / tribe certificate, copy of which is at page no.11 of the paper book, is issued to Machhindra Palampalle, who is father of the petitioner. That being not disputed, the Tahsildar and Executive Magistrate, Omerga Tq.Omerga Dist.Osmanabad issued this tribe certificate to the father. Once it is issued to the father where he resided originally, then, it is but natural that the petitioner has also resided with him. Once the petitioner relied upon a certificate of the father and certificate of validity issued to two real cousins, then, according to Shri Vibhute, the impugned order cannot be sustained.

5] Shri S.G. Karlekar, learned AGP supported the impugned order.

6] We have perused the petition and the annexures

- 4 -

thereto with the assistance of both the learned Advocates.

7] The petitioner relied upon Rule 5 Sub-Rule (2), which reads as under:-

"5. Grant of Scheduled Tribe Certificate to migrated persons

(2) Migration for 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 grandfather, 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 grandfather by the then Competent Authority of the district of his father or grandfather'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-

- 5 -

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, grandfather at the time of the notification of the Presidential Order for Scheduled Tribes."

8] The petitioner points out that his permanent place of residence is Kolewadi Tq.Omerga Dist.Osmanabad. The then competent authority - the Tahsildar, Omerga, has issued the tribe certificate to the petitioner. The petitioner produced it before the respondent no.3 and the respondent no.3 issued the tribe certificate to the petitioner. Pertinently, the respondent no.2 is the Sub-Divisional Officer, Omerga Dist.Latur, where the petitioner is presently residing.

9] Sub-Rule (2) of Rule 5 deals with migration from one District to another District or from the jurisdiction of one competent authority to another within the State.

- 6 -

Clause (b) deals with the situation where a competent authority shall issue the certificate in Form C to an applicant from other District where he has migrated to the present place on 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 6.9.1950 or thereafter, for Scheduled Tribes.

10] We do not see how the committee, therefore, could have held otherwise. The committee relied upon certain notifications issued and Government resolutions on the point, however, it conveniently forgot that now the Rules have been notified and they are in place. If the Rules are merely referred in paragraph no.6 of the impugned order, then, we do not see how the Government resolutions could have been and preceding this Rule, interpreted otherwise. We do not see any reason, therefore, to take this hyper-technical view.

11] In the result, we set aside the impugned order passed by the respondent no.2 - scrutiny committee. We direct the committee to now accept the caste / tribe

- 7 -

certificate produced by the petitioner and verify the claim thereunder in accordance with law. That be done as expeditiously as possible.

12] The writ petition is disposed of accordingly.
No costs.

(MANGESH S. PATIL, J.) (S.C. DHARMADHIKARI, J.)