

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 425 OF 2014

Kiran Balkrishna Koyal

... Petitioner.

V/s.

1. State of Maharashtra,
2. Scheduled Tribe Certificate Scrutiny Committee,
3. Municipal Corporation of Greater Mumbai
4. Tahsildar and Executive Magistrate, Akola ... Respondents.

Mr. R. K. Mendadkar, Advocate for the Petitioner.

Mr. B. V. Samant, AGP for the State.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.**

DATE : 29th NOVEMBER, 2017

P.C. : (Per Smt.Bharati H. Dangre, J.)

1 Rule, made returnable forthwith. Heard finally by consent of the parties.

2 The petitioner, who claims to be belonging to 'Mannewar', a scheduled tribe, has approached this Court for quashing and setting aside the order dated 18.07.2013 passed

by the Scheduled Tribe Certificates Scrutiny Committee, Amaravati Division, Amravati. The foremost ground in assailing the said impugned order is that the said order is passed in utter violation of principles of natural justice, without conducting any vigilance inquiry or affording any opportunity to the petitioner to support his claim and on this ground, the petitioner has prayed that the order impugned herein is liable to be quashed and set aside. The Petitioner has also prayed for quashing and setting aside the consequential order passed by the respondent no.3-Corporation by which the Corporation has asked the petitioner to show-cause as to why his appointment on the establishment of Respondent No. 3, in the capacity of security guard, be not cancelled.

3 The Petitioner claims to be belonging to 'Mannewar caste', which is recognized as a "scheduled tribe". The Petitioner acquired/obtained a caste certificate from the competent authority i.e. Tahsildar and Executive Magistrate, the Respondent No.4. The said certificate was issued in his

favour on 21.07.1989 by the Tahsildar and Executive Magistrate, Akola, certifying that the petitioner belongs to caste - "Mannewar", which is recognized as Scheduled Tribe. On the basis of the said caste certificate, the petitioner was appointed on the post of "security guard" with the Respondent No. 3 -Corporation on 29.09.2000, on contract basis, on a seat reserved for scheduled tribe candidate. On 05.11.2003, the petitioner was issued an order placing him on probation for period of three years and since that date the petitioner is holding the post of security guard on the establishment of the respondent no.3. On the petitioner's employment with the respondent no.3, his caste certificate was forwarded to the respondent no. 2 -Committee for its verification vide letter dated 06.01.2009 and the claim of the petitioner was pending with the respondent no. 2-committee since then.

It is the case of the petitioner that on 14.10.2013 a show-cause notice came to be issued to him by respondent no. 3-Corporation, asking him to show cause as to why his

services should not be terminated in view of invalidation of his caste certificate as belonging to 'Munnewar', said scheduled tribe. The petitioner filed his response to the show-cause notice and prayed for deferring the adverse action against him, as he was not intimated about invalidation of his caste claim.

4 Being aggrieved by the action of the concerned Respondents, the petitioner approached this Court by filing this writ petition on 15.01.2014. This Court on 17.01.2014 was pleased to issue notice to the respondents for final disposal and was pleased to pass the following order :

“Considering the grounds that the impugned order passed by the Committee is an exparte order at this stage, therefore, we are inclined to observe that no coercive steps be taken, based upon show cause notice dated 14.10.2013 and impugned order till then.”

5 In support of the petition, we have heard the learned counsel Mr. R. K. Mendadkar appearing for the

Petitioner and Mr. B.V. Samant, Assistant Government Pleader appearing on behalf of State of Maharashtra. Mr. Mendadkar would contend that the impugned order passed by the caste scrutiny committee is passed in utter violation of the principles of natural justice as it is passed behind back of the petitioner. Mr. Mendadkar would argue that the said order passed is in utter breach of the procedure laid down by the Hon'ble Apex Court in case of **Madhuri Patil vs. Additional Commissioner, Tribal Development**, reported in 1994 (6) SCC 241, and also in violation of the provisions of the 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 (Mah.Act No. 23 of 2001). His emphasis is specifically on non-following of the mandatory requirement of vigilance inquiry, specifically when the caste claimed is a scheduled tribe. He is also apparently critical of the blanket observations made by the Committee and of the far-reaching

consequences recorded by the Committee, attributing fraud to the petitioner only on the ground that the report was received from the Tahsildar, mentioning that the entry of caste certificate is not found in the register maintained by the Office of the Executive Magistrate, Akola for the year 1988-89. Mr. Mendadkar would argue that the Committee, based on these observations, has gone to the extent of initiating an action under section 11(1)(a)(b),(2) of the Act 23 of 2001. He would argue that the said order of the Committee is unsustainable and liable to be quashed and set aside.

6 The learned Assistant Government Pleader Mr. Samant would argue that the Committee has observed that the very caste certificate forwarded for verification of the claim of the petitioner issued by the Tahsildar and Executive Magistrate, Akola on 21.07.1989 is found by the Committee to be suspicious as the police vigilance cell has obtained the report from Tahsildar, Akola, who, vide his communication dated 05.07.2013, has informed the vigilance cell that the

certificate which the petitioner claims to be issued on 21.07.1989 in his favour, belonging to the caste 'Munnewar' do not find any entry in the register record maintained, regarding caste entries for the year 1988-89 and on the basis of the said communication received from Tahsildar, the Committee has concluded that the said certificate on which the petitioner placed reliance has not been issued from the Competent Authority. Mr. Samant would also argue that in light of the aforesaid facts, the Committee has arrived at a conclusion that since the certificate produced by the petitioner, declaring him to be belonging to caste - 'Munnewar' dated 21.07.1989, being suspicious is liable to be cancelled. The Committee has also entailed the petitioner with consequences under section 11 of the Act of 2001 for obtaining the false caste certificate as contemplated under section 11(1)(a) and also for claiming benefits reserved for the scheduled tribe candidates on the basis of such certificate and has clamped action under section 11 (1)(b) of the Act, 2000.

7 We have perused the impugned order dated 18.07.2013 passed by the respondent no. 2-Committee. The Committee has recorded that the petitioner has obtained a certificate as belonging to 'Munnewar', a scheduled tribe, from the Executive Magistrate, Akola on 21.07.1989. The Committee has also observed that the Petitioner is in service with the Respondent Corporation, who has forwarded the claim of the Petitioner for verification. The Committee had adopted an aberrant mechanism and has forwarded the claim for verification to the police vigilance cell, to verify the existence of caste certification itself. The police vigilance cell initiated inquiry by addressing a letter on 20.06.2013 to the Tahsildar and the Tahsildar responded to the letter from the Vigilance Cell, informing the Committee that on verification of the caste certificate dated 21.07.1989 in favour of Mr. Kiran Balkrushna Koyal, it is revealed that the entry of the said caste certificate has not been taken in the register of the year 1988-89. Based on these remarks, the Committee concludes that the certificate forwarded by the petitioner to the

Committee is not issued by the competent authority. The Committee proceeds to observe that the claimant has obtained a caste certificate by illegal means by playing a fraud on the authority concerned and based on this certificate he has gained an entry into the government service on a seat, reserved for scheduled tribe. The Committee then proceeds to set out the provisions contained in section 11 of the Act, 2001 and further proceeds to rely upon extracts of the judgments delivered by the Hon'ble Apex Court and also of this court. After discussing the extracts of such judgments, the Committee proceeds to observe that in all the aforesaid judgments relied upon by the Committee the caste certificate is found to be suspiciously issued and the benefits flowing from such certificates ought to be denied to the claimants. Resultantly, the Committee concludes that the certificate produced by the Petitioner vide certificate no.MRC-81/S.R.-M.B.7-89/KB/ Akola /1989 dated 21.07.1989 is suspicious and, therefore, it liable to be cancelled and confiscated.

8 We are surprised by the mechanism adopted by the Committee and the whole approach of the Committee in dealing with the claim of the petitioner as the Committee failed to follow the statutory procedure which ought to have been followed and which has been extensively laid down in the Maharashtra Act of 2001. The said Act provides for the regulation of the issuance and verification of the Caste Certificates to the persons and in detail prescribes the procedure for obtaining the caste certificate and scrutiny of the caste certificate issued by the competent authority. As per section 4 of the said Act 2000, the Competent Authority, on an application made to it by the applicant, after satisfying itself about the genuineness of the claim and following the procedure as prescribed, would issue a caste certificate in such form, as may be prescribed. The caste certificate so issued is declared to be valid subject to the verification and grant of validity certificate by the Scrutiny Committee. Section 6 of the Act 2000 prescribes the procedure for verification of the caste certificate by the scrutiny committee.

Section 7 of the Act provides for confiscation and cancellation of caste certificate which is found to be obtained fraudulently. At this stage, it would be necessary to reproduce section 7 of the Act, which reads as under :

“7. Confiscation and cancellation of false caste certificate.

(1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India.”

Section 11 of the said Act provides for offences and penalties and reads as below :

“11. Offences and Penalties .

(1) Whoever, –

(a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or

(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or Co-operative Society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate;

shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny

Committee or by any other officer duly authorized by the Scrutiny Committee for this purpose.

9 It is no doubt true that a fraud vitiates all solemn acts and if any order /certificate is obtained by playing a fraud, such a certificate is liable to be cancelled and confiscated. However, as per section 7 when an action of confiscation and cancellation is involved, it contemplates an inquiry into the correctness of such certificate and also mandates an opportunity of hearing to the person concerned and communication of the same to the concerned person. Respondent no. 2- Committee has completely ignored the well settled principle of “Audi Alter-em Partem”, no man be condemned unheard. The confiscation and cancellation of the certificate is permissible only when the Committee arrives at a conclusion, after due inquiry, that the certificate was obtained by fraud. The legislation intended that such action being entailing serious civil consequence, requires the procedure to be followed which contemplates an opportunity of hearing to the person against whom the action is

contemplated. The Respondent No. 2 committee has completely ignored the fact that confiscation/ cancellation of the caste certificate entails serious civil consequences and therefore, it ought to have offered an opportunity of hearing to the petitioner. More-soever, the Committee ought to have satisfied itself, based on the report of an inquiry conducted by it that the said certificate was obtained fraudulently.

10 In the present case, the Committee only relying upon the report of the police vigilance cell, which in turn inquired from the Tahsildar, Akola, who has issued the certificate and forwarded a report to the effect that the certificate dated 21.07.1989 issued in favour of the petitioner, as belonging to the caste "Munnewar", did not find an entry in the register of the year 1988-89, where the entries in relation to the caste are normally entered into. Based on this reporting, the Committee jumps to the conclusion that the petitioner has obtained said certificate by fraud and it is not obtained from the competent authority. The Committee did not bother to

offer an opportunity to the petitioner before arriving at such a drastic conclusion. The observation of the Tahsildar is that the entry of the certificate is not taken in the register for the year 1988-89. Mere failure to take an entry, which may be on account of an error, mistake etc., do not wipe-out the existence of such a document and the Committee ought to have gone into details since the certificate bears outward number and it ought to have inquired from Tahsildar and the Executive Magistrate, Akola whether the said certificate with a specific outward number has been issued or not. Instead, the Committee straightway jumps to the conclusion of fraud and it do not stops at this but further fastens the petitioner with the consequences under section 11 and holds him responsible for a criminal act. The petitioner was not even offered an opportunity to rebut the said findings recorded by the Committee, where it records that the certificate issued is a suspicious one. Mere suspicion about a document cannot partake an act of fraud or an intentional act. The word "fraud" has a definite connotation and it is deliberate deception to

secure unfair or unlawful gain and requires an element of deceit and falsehood. The Committee has not attributed any such act to the petitioner, amounting to fraud. In our view, it would be sufficient to observe that the committee has failed to follow the principles of natural justice and on this ground itself we intend to set aside the impugned order passed by the Committee.

11 We direct the Committee to inquire into caste certificate and verify the caste certificate of the petitioner by giving an opportunity of hearing and in any case as per section 8 of the Act, when an application is made to the competent authority for issuance of the caste certificate or if any inquiry is conducted before the Scrutiny Committee, the burden of proving that the person belongs to a particular caste or tribe is always on the claimant. We are of the opinion that the petitioner must discharge the said burden and prove that the caste certificate has been validly issued by the competent authority and adduce proof that he belongs to said reserved

caste/tribe. In such circumstances, and in the interest of justice, we quash and set aside the impugned order.

12 In such circumstances, we quash and set aside the impugned order dated 18.07.2013 passed by the Respondent No.2-Committee and remand the matter back to the Committee to decide the claim of the petitioner, flowing from the caste certificate produced by the petitioner before the scrutiny committee and direct the Committee to decide/scrutinize the same within the period of six months from the date of receipt of the writ of this order. Needless to say that interim protection / order granted by this court dated 17.01.2014 to continue till then.

13 The Petition is allowed in the aforesaid terms. Rule is made absolute accordingly.

(SMT.BHARATI H.DANGRE,J.) (S.C.DHARMADHIKARI,J.)

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