

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3725 OF 2018**

Yogesh Umesh Pakhale

..Petitioner

Vs.

State of Maharashtra & Ors

..Respondents

Mr. R. K. Mendadkar a/w Ms Priyanka Shaw for the Petitioner

Mr. B. B. Sharma for the Respondent No.3

Mr. A. I. Patel AGP for the Respondent Nos.1 and 2

**CORAM :R. M. SAVANT, &
K. K. SONAWANE, JJ
DATE : 14th SEPTEMBER, 2018**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 16-6-2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, by which order the Committee has come to the conclusion that the Petitioner is not entitled to get the concession / benefits of Scheduled Tribe meant for Scheduled Tribes in the State of Maharashtra.

2 The Petitioner has a caste certificate issued by the Sub Divisional Magistrate, Bhopal dated 27-12-1990, wherein the Petitioner's caste is recorded as "Halba". The entry of Halba is appearing as Scheduled Tribe qua the State of Madhya Pradesh. The Petitioner came to be appointed as Assistant Engineer in the Respondent No.3 City and Industrial Development

Corporation (CIDCO for short). The Petitioner was appointed in a post meant for Scheduled Tribe as the Petitioner had produced his Tribe certificate issued by the Sub Divisional Magistrate as belonging to Halba Scheduled Tribe. The said caste certificate was sent for validation to the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane. The Petitioner relied upon number of documents which have been listed in the order passed by the Scheduled Tribe Certificate Scrutiny Committee. A glance at the said documents discloses that the said documents have been issued by the institution/authorities in the State of Madhya Pradesh. In so far as Halba is concerned, the same is also identified as the Scheduled Tribe in the State of Maharashtra. However, there can be no gain saying of the fact that the considerations that weigh in respect of a particular State for declaration of a particular tribe/caste as ST or SC can be different than the consideration for another State. The Petitioner had earlier approached this Court by way of Writ Petition No.360 of 2017 on the apprehension that since he had not produced the Validity certificate, his services could be terminated as a show cause notice was issued to the Petitioner.

3 A Division Bench of this Court had disposed of the said Writ Petition NO.360 of 2017 by order dated 2-3-2017 on the basis of the statement recorded of the Learned Counsel for the Petitioner that the Petitioner would have no objection to appear before the Scheduled Tribe Certificate Scrutiny

Committee, on the contention of the Petitioner in respect of the jurisdiction of the Committee to go into the validity of the caste certificate, is kept open. The Division Bench accordingly directed the Scheduled Tribe Certificate Scrutiny Committee to verify and scrutinize the claim as expeditiously as possible.

4 In so far as the statutory regime under which the claim has to be adjudicated. The same is now covered by the Scheduled Castes, 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 and Rules known as Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules 2003 framed thereunder. Rule 5(C) of the said Rules has been referred to by the Committee in its impugned order. The said Rule is reproduced hereinunder for the sake of ready reference :

5. Grant of Scheduled Tribe Certificate to migrated persons:-

(C) A Scheduled Tribe Certificate holder who was migrated to Maharashtra from State of his origin for the purpose of seeking education, employment etc., will be deemed to a Scheduled Tribe of the State of his origin and would 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 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.

Hence a reading of the said Rule makes it explicitly clear that a Scheduled Tribe certificate holders who has migrated to Maharashtra from the State of his origin would be deemed to a Scheduled Tribe of State of his origin and would be entitled to derive benefits from the State of his origin and not from the State of Maharashtra. The explanation classifies as to who is migrant.

5 In the instant case there is no dispute about the fact that the Petitioner is a migrant from the State of Madhya Pradesh as he has a caste certificate issued by the Sub Divisional Magistrate, Bhopal. Hence there is an embargo which is imposed by Rule 5(C) from the Petitioner deriving any benefits in the State of Maharashtra. It is in the said context that the Scheduled Tribe Certificate Scrutiny Committee has concluded that the Petitioner is not entitled to get concession / benefits available to a Scheduled Tribe in the State of Maharashtra. The Scheduled Tribe Certificate Scrutiny

Committee in the said process has referred to the judgments of the Division Benches of this Court in Bankimchandra Makhanbhai Patel & Ors. vs. Sate of Maharashtra in Writ Petition No.5431 of 2005, in Kum. Shital Mathias Ekka Vs. State of Maharashtra in Writ Petition No. 3684 of 2005 and the Judgments of the Apex Court in Marri Chandrashekhar Rao Vs. Seth G. S. Medical College & Ors. reported in (1990) 3 SCC 130, Action Committee & Anr Vs. Union of India & Ant reported in 1994 (5) SCC 244, to come to the said conclusion.

6 The Learned Counsel for the Petitioner sought to raise a contention but in our view not with any deal of conviction that the Scheduled Tribe Certificate Scrutiny Committee ought to have recorded a finding on merits. In our view, having regard to the fact that the Petitioner's caste certificate as belonging to Halba, Scheduled Tribe has been issued by the Sub Divisional Magistrate Bhopal as also having regard to the fact that the documents on which the Petitioner relied to support his claim have all been issued by the institution / authorities in the State of Madhya Pradesh as also having regard to Rule 5(C) of the Rules, the course of action adopted by the Scheduled Tribe Certificate Scrutiny Committee cannot be faulted with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

7 Though we have dismissed the above Writ Petition, we restrain the

Respondent No.3 from taking any precipitative action on the basis of the impugned order passed by the Scheduled Tribe Certificate Scrutiny Committee for a period of 8 weeks from date. We however make it clear that except adjudicating upon the order passed by the Scheduled Tribe Certificate Scrutiny Committee we have not adjudicated any other aspect in the above Writ Petition and the contention of the parties are kept open in that regard.

[K. K. SONAWANE, J]

[R.M.SAVANT, J]

Meera
Mahesh
Jadhav

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