

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 2116 OF 2019

Kum. Deepali D/o Vasant Kamble

Petitioner

Versus

Deputy Collector (Setu) & others

Respondents

Mr. S.S. Phatale, advocate for petitioner.

Mrs. A.V. Gondhalekar, AGP for respondent no. 1.

Mr. A.S. Bayas, advocate for respondent no. 3.

Mr. V.S. Kadam, advocat for respondent no. 4.

**CORAM : PRASANNA B. VARALE AND
NITIN W. SAMBRE, JJ.**

DATE : 4th April, 2019.

P.C. :

Petitioner claims to be belonging to 'Koli Mahadev' Scheduled Tribe and holds a validity certificate. For cancellation of the said certificate, respondent no. 2 – Scheduled Tribe Certificate Scrutiny Committee has taken out a proceeding and by the impugned order dated 30.09.2016, cancelled caste certificate issued in favour of petitioner, with following observations :

"The Hon'ble High Court, Bombay bench at Nagpur in case [Pragati R. Thakur Vs The Scheduled Tribe Certificate Scrutiny Committee, Nagpur and another (W.P. No. 5307/2010)] observed as follows :

"We find that father of the petitioner is basically from Jalgaon district and he claims to have migrated to Nagpur in 1962. The Government Resolution dated 23.4.1987 specifically states that candidate like petitioner

has to obtain caste certificate from competent authority of a place which is native place of his/her father. It is, therefore, obvious that petitioner ought to have obtained a basic certificate dated 18.6.1992 from competent authority at Jalgaon."

However, the Aurangabad Bench of Hon'ble High Court, Bombay vide Judgement dtd. 11/5/2012 in case [Neeraj Kamlakar More Vs. Scheduled Tribe Certificate Scrutiny Committee, Aurangabad & ors. (W.P. No. 2016/2012) took different view and held the findings of the committee on migration issue as erroneous and illegal. The said decision is challenged by the government in Supreme Court by filing Special Leave Petition (C) No. 11388-11392/2014. The Hon'ble Supreme Court vide Order dated 10/08/2014 stayed the operation of said Judgment & Order passed by Hon'ble High Court, bench at Aurangabad.

10. In view of the aforesaid facts and circumstances, we pass the following order :

ORDER

The applicant is a permanent resident of village Kadoli Tq. Sengaon Dist. Hingoli on the date of Notification i.e. 6th September, 1950 which does not fall within the jurisdiction of the Deputy Collector (Setu) Aurangabad and therefore who is not a competent authority to issue caste certificate to the applicant. Therefore, the caste certificate bearing No. 2011/Caste/ST/CR-15, dated 27/07/2011 is hereby cancelled and confiscated which has been issued in favour of applicant without jurisdiction.

The applicant is at liberty to obtain a caste certificate in the manner prescribed above and submit it to the appropriate scrutiny committee. This cancellation of the

certificate is without affecting the merit of her tribe claim.

2. Submissions of learned counsel for petitioner are that while furnishing reason for cancellation of caste certificate, the Committee has relied upon the order passed by the Apex Court granting stay to the judgment of Division Bench at Principal Seat in the matter of *Neeraj Kamlakar More Vs. Scheduled Tribe Certificate Scrutiny Committee, Aurangabad and others* reported in **2012(5) Mh.L.J. 367** and another judgment of Division Bench at Nagpur Bench in the matter of *Pragati R. Thakur Vs. The Scheduled Tribe Certificate Scrutiny Committee, Nagpur and another* in Writ Petition No. 5307/2010.

3. The Special Leave Petition preferred by the Scrutiny Committee came to be dismissed on 20.03.2018 with following observations :

“There is a delay of 372 days in filing and 266 days in refiling these special leave petitions, which we are not inclined to condone.

These special leave petitions are, accordingly dismissed on the ground of delay only.

Pending application(s), if any, shall stand disposed of.

Question of law kept open.”

As such, learned counsel for the petitioner submits that the reasons which are furnished by the Committee for cancellation of

caste certificate of the petitioner are not *germen* to the cause viz., cancellation of validity certificate.

4. According to him, the Committee has not gone into as to whether the petitioner genuinely belongs to Scheduled Tribe category and, on technical ground of want of territorial jurisdiction for issuance of caste certificate, cancelled the same. He submits that the issue is squarely covered by the Division Bench judgment of this Court in the matter of Neeraj More (*supra*).

5. Learned AGP submits that there are two divergent views; one expressed in Writ Petition No. 5307/2010 in the matter of Pragati Thakur (*supra*) and, another in the matter of Neeraj (*supra*), against which the SLP is dismissed however, question of law in the matter of Neeraj (*supra*) is kept open by the Apex Court. In the aforesaid backdrop, according to her, the Committee has correctly reached to the conclusion of cancellation of caste certificate issued in favour of petitioner. She would submit that, even if the decision in the matter of Neeraj (*supra*) is to be followed, still it is open for the Committee to look into the issue of cancellation of caste certificate in favour of petitioner on merit, particularly, if any fraud is noticed at the behest of the petitioner,

6. Having appreciated the submissions, what is noticed is the Division Bench of this Court in the matter of Neeraj (*supra*) has dealt with the case therein in the backdrop of provisions of Section 4(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance

and Verification of) Caste Certificate Act, 2000, and proceeded to observe that merely because the caste certificate is issued by the competent authority not having territorial jurisdiction, will not *ipso facto* invalidate the caste certificate. The said view is already confirmed in the Special Leave Petition which was preferred by the Committee, however, question of law therein was kept open.

7. In the aforesaid backdrop, this Court, keeping in mind the law laid down by the Division Bench of this Court in the matter of Neeraj (supra), is of the view that the impugned order passed by the Scrutiny Committee cancelling validity certificate on technical ground is not sustainable.

8. However, learned AGP is right in pointing out that setting aside impugned order will not preclude the Scrutiny Committee from looking into the issue of holding of validity by father and brother of the petitioner, provided fraud is noticed in the act of securing the validity.

9. In the aforesaid backdrop, writ petition deserves to be allowed, reserving the right of respondent-Committee to take out fresh proceeding, if so desired, in case if any fraud is noticed at the behest of the petitioner in securing validity certificate. As such, writ petition stands allowed in terms of prayer clause 'A' which reads thus :

(A) Issue writ of Certiorari or any other appropriate in the like nature thereby quash and set aside impugned order passed by Respondent No. 2- Scheduled Tribe Certificate,

Scrutiny Committee, Aurangabad dated
30/9/2016.

10. We further direct respondents no. 3 and 4 to declare result of the petitioner, provided it is withheld only for the purpose of grant of validity.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE

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