

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4442 OF 2012

Shri Pravin s/o Pundlik Suryawanshi,
Age: 42 years, Occ. Service,
R/o "Vedant", Plot No.8, Shivaji Nagar,
Wadi-Bhokar Road, Deopur,
Dhule, Dist. Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra
Department of Tribal Development
Mantralaya, Mumbai-32.
Through its Secretary
2. The Scheduled Tribe Caste Certificate
Scrutiny Committee,
Nashik Division, Nashik.
Through its Member Secretary
3. The Sub Divisional Magistrate,
Nasik City Division, Nashik
Dist. Nashik
4. The Commissioner,
Food & Drugs Administration,
Maharashtra State,
Wandre Kurla Sankul,
Wandre (East), MUMBAI
5. The Assistant Commissioner,
Food & Drugs Administration,
Maharashtra State, Nashik

..RESPONDENTS

Mr S.C. Yeramwar, Advocate for petitioner;
Mr S.R. Yadav-Lonikar, AGP for respondents

**CORAM : RAVINDRA V. GHUGE
AND
S.G. MEHARE, JJ**

DATE : 28th July, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally, by the consent of the parties.
2. By this petition, the petitioner has put forth prayer clauses (B) and (C) as under :-

“(B) To quash and set aside the impugned order dated 12.3.2012 (Exhibit-L) passed by Respondent No.2 – Committee by restoring the matter with the Committee to decide it on its own merits by issuing appropriate writ, orders, or directions as the case may be;

(C) To grant stay to decision of the Respondent No.2 – Committee dated 12.3.2012 (Exhibit-L) and direct the Respondents No.4 & 5 not to take any adverse / coercive action like termination / reversion on the basis of decision of the Committee and allow the petitioner to work as Food Inspector / Security Officer pending final adjudication of his Tribe Claim by the Respondent No.2 – Committee; or by the appropriate Scheduled Tribe Certificate Scrutiny Committee, in case, if this Hon’ble Court directs the Petitioner to obtain fresh Caste Certificate from the Competent Authority from original place of residence of the Petitioner by way of interim relief pending decision of the Committee, i.e., Respondent No.2 or the appropriate Scheduled Tribe Certificate Scrutiny Committee, as may be decided by this Hon’ble Court.”

3. Having considered the strenuous submissions of the learned Counsel for the respective parties, we find that there is no necessity to advert to their

entire submissions, considering the order that we intend to pass, in view of the settled position of law.

4. There is no dispute that the petitioner's claim for validation of his tribe 'Thakur', has been rejected by the competent committee respondent no.2 vide the impugned order dated 12.03.2012, on the solitary ground that the caste certificate issued to the petitioner by the Sub-Divisional Magistrate, Nasik City Division, bearing No.EDN.ST.SR.141/1993, dated 23.02.1993 is being held invalid, is cancelled and confiscated since it was not obtained from the competent authority in proper format. The three members of the committee, namely, Shri D.D. Mayee, Vice Chairman; Shri E.G. Bhalerao, Member Secretary and Shri D.P. Ahire, Member, have apparently not read Rule 5 (2) (b) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, framed under the Maharashtra 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, 2001, which reads as under:-

"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-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.”

5. It is, therefore, obvious that the Scrutiny Committee has declined to consider the claim of the petitioner only for the reason that his tribe certificate was issued at a different place in the backdrop of his father having acquired his tribe certificate from the place of his birth. The above reproduced Rule is absolutely clear and cannot be said to be ambiguous in any way. We are surprised that the three members of the Tribe Scrutiny Committee, they were unable to understand the examination and import of Rule 5 (2) (b).

6. This Court, at its principal seat, has delivered an order on 1st March, 2012 in Writ Petition No.1772 of 2012 filed by Kiran Shahaji Gaikwad vs. The State of Maharashtra & ors., wherein the said Rule has been reproduced for reference purpose. Placing reliance upon the said Rule, the impugned order of the Scrutiny Committee, declining to go into the claim of the said petitioner who has been non-suited for the reason, that his caste certificate was doubtful, was quashed and set aside.

7. The learned Advocate for the petitioner submits that during the pendency of this petition, the tribe validity claim of his daughter namely, Rucha Pravin Suryawanshi has been validated by this Court by order dated 19.01.2021 in Writ Petition No.1007 of 2021. He hastens to add that his father's tribe claim has also been validated by this Court by judgment dated 16.12.2004, delivered in Writ Petition No.3870 of 1997 (Pundlik Ramdas Suryawanshi vs. The State of Maharashtra & ors.).

8. In view of the above, this petition is partly allowed. The impugned order dated 12.03.2012 at annexure "L" to the petition, stands quashed and set aside and the claim petition of the petitioner is restored to the file of respondent no.2. It is hereby directed that respondent no.2 shall consider the claim of the petitioner on the basis of the tribe certificate bearing No.EDN.ST.SR.141/1993, dated 23.02.1993. The validity granted to the father of the petitioner and so also to his daughter, shall be factors which the Committee shall take into account in accordance with the law applicable. A notice of hearing shall be issued by the Committee to the petitioner, as expeditiously as possible and preferably on or before 31.08.2021 and the proceedings shall be concluded expeditiously and preferably on or before 31.01.2022.

9. Rule is made partly absolute in the above terms. No order as to costs.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]

amj