

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 7293/2019

Rajeshree d/o Kanhaiyalal Kabire

...Petitioner

Versus

Scheduled Tribe Caste Certificate Scrutiny Committee,
Amravati and anr.

...Respondents

Shri T.S. Deshpande, Advocate for the Petitioner

Mrs. K. R. Deshpande, AGP for the Respondents - State

CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.

DATED : 17 FEBRUARY 2021

P.C.:

Heard learned Counsel for the parties.

2. Notice was issued. The Respondents are served. The Petition is taken up for disposal.

3. The Petitioner challenges the order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati dated 27 July 2017 invalidating the Caste Certificate of the Petitioner as belonging to 'Arakh' Scheduled Tribe.

4. The Petitioner's Caste Certificate was referred to the Respondent – Scrutiny Committee for verification. The Respondent –

Scrutiny Committee conducted inquiry through Vigilance Cell. After assessing evidence of the Petitioner, the Respondent - Scrutiny Committee proceeded to invalidate the caste claim of the Petitioner.

5. Main contention of the Petitioner is that the Respondent - Scrutiny Committee has not considered the document i.e. 'Hulia Form' of the year 1948, where the caste of Petitioner's grand-father is mentioned as 'Arak' and date of birth is given as 03 March 1920. The dispute is raised as to whether this document was on record before the Respondent - Scrutiny Committee and whether it was submitted by the Petitioner. The Petitioner has asserted on oath that alongwith Application, the Petitioner had submitted this document and in fact, the Respondent - Scrutiny Committee under Right to Information Act, 2005 had supplied the copy of the same to the Petitioner. Meaning thereby, it was on record. No reference of the said document is to be found in the order of the Respondent - Scrutiny Committee.

6. The learned Counsel for the Petitioner, therefore, justified it contending that since this document was completely omitted from consideration, the matter should be remanded to the Respondent - Scrutiny Committee. Document prior to the year 1950 was on record and the Respondent - Scrutiny Committee had completely omitted the same from consideration. The appreciation of evidence by the Respondent - Scrutiny Committee is perverse since it has considered the important piece of evidence.

7. The learned AGP sought to contend that it cannot be said that the Petitioner has submitted this document as there is no proof thereof that it was so submitted. This contention, however, cannot be accepted since the Respondent - Scrutiny Committee itself has supplied copy of the said document to the Petitioner under the Right to Information Act, 2005.

8. This, however, raises a question, which is raised in several matters that came before us, that how a dispute as to whether a particular document was submitted by the Applicant before Scrutiny Committee and not considered by the Committee is to be resolved. Quite often such a contention is raised and for lack of any evidence it becomes difficult to ascertain whether the Applicant alongwith the Application had in fact submitted the document in question or not. Therefore, we have passed the following order on 12 January 2021, 27 January 2021 and again on 10 February 2021.

9. Order dated 12 January 2021 reads as thus;

“Heard learned Advocate for the parties.

2. Issue notice to the Respondent returnable on 27 January 2021. Mr. Rao, learned AGP waives service of notice on behalf of sole Respondent 3.

3. The learned AGP seeks time to take instructions in respect of assertion of the Petitioner made in paragraph 4 of the petition and ground in paragraph 12.

4. The learned AGP will also inform the Court methodology adopted by the scrutiny committee of keeping record of the documents supplied by the candidate along with the

application, and whether any acknowledgment of each of the documents submitted by the candidate is supplied to the candidate.”

Further time was granted on 27 January 2021 and 10 February 2021.

10. The Registry has informed that these orders have been communicated to the Respondent - Scrutiny Committee. Neither any officer from the the Respondent - Scrutiny Committee is present to give instructions to the learned AGP nor any reply is filed.

11. The State of Maharashtra has enacted *the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003* (for short the “*Rules of 2003*”) in respect of issuance and verification of Caste Certificate. Rule 11(2)(a) the *Rules of 2003* states that the Applicant shall submit the documents which have been listed therein.

12. Rule 11 of the *Rules of 2003* reads thus:

“11. Verification of Schedule Tribe Certificate by Scrutiny Committee.-

(1) After obtaining the Scheduled Tribe Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Tribes for the purposes mentioned in Section 3 of the Act shall make an application well in advance in Form E to the concerned Scrutiny Committee for the verification of such Certificate and issue of validity certificate.

(2) The applicant shall submit the following documents with his application for verification of his Scheduled Tribe Certificate:-

(a) Original documents:-

(i) the original Scheduled Tribe Certificate of the applicant alongwith one attested copy;

(ii) an affidavit in Form F;

- (b) *Documents of which, only attested copies are to be submitted in respect of applicant-*
- (i) *Primary School leaving certificate.*
 - (ii) *An extract of school admission register.*
 - (iii) *An extract of birth.*
- (c) *Documents in respect of father -*
- (i) *An extract of birth register.*
 - (ii) *Primary school leaving certificate.*
 - (iii) *Extract of school admission register.*
 - (iv) *Scheduled Tribe Certificate.*
 - (v) *If a father is in service, the extract of the pages of the service record (book) which contain religion and tribe entry.*
 - (vi) *If a father is illiterate, the primary school leaving certificate of the real elderly blood relatives of the paternal side of the applicant and extract of school admission register.*
- (d) *Other documents,-*
- (i) *Revenue record like, birth register, extract of 7/12, Sale Deed etc.*
 - (ii) *Any other relevant documents in support of his Scheduled Tribe claim.*
 - (iii) *Affidavits of the near relatives whose Validity Certificates are submitted in support of the Schedule Tribe claim of the applicant.*
- (3) *The applicant shall submit original certificates and documents for verification whenever required by the Scrutiny committee.”*

The Application under Rule 11(1) of the *Rules of 2003* is to be made in Form-E which is prescribed under *the Rules*.

13. Rule 12 of the *Rules of 2003* deals with the procedure to be followed by the Scrutiny Committee upon submission of the Application and documents. The Rule 12 (1) the *Rules of 2003* reads as follow:

“12. Procedure to be followed by Scrutiny Committee.-

(1) On receipt of the application, the Scrutiny Committee or a person authorised by it shall scrutinize the application, verify the information and documents furnished by the applicant, and shall acknowledge the receipt of the application. The Member Secretary shall register the application, received for verification, in the register prescribed by the Chairman.”

Though, the Form-E appended to the Rules prescribes that the Applicant must mention that each documents submitted with the Application, in the case of present Petitioner, the copy of the Application which is shown to us bears the acknowledgment of the Respondent - Scrutiny Committee on the first page thereof and it has been informed to us that it is the practice of the Scrutiny Committee. This is also stated in Rule 12(1) of the *Rule of 2003*.

14. The learned AGP states that documents are not being submitted physically any more and the Application is being filed online by submitting scanned copy of the documents. The learned Counsel for the Petitioner asserts that this practice of submitting documents is not discontinued and the Application and documents shall to be received in physical form.

15. The question is even if a document is stated to be listed in the Application, it might be that it is not annexed or that it is annexed but not considered by the Scrutiny Committee. This dispute can be resolved, if the Scrutiny Committee develops a system of giving an acknowledgment on each of the documents that is listed with the Application. This

methodology will save judicial time and will be beneficial for the both Scrutiny Committee and the Applicant.

16. It is necessary that directions are issued till the Scrutiny Committee lays down a procedure to take care of above contingency.

17. As far as the present Petition is concerned, the impugned order dated 27 July 2017 is required to be quashed and set aside. The Petition needs to be remanded to the Respondent - Scrutiny Committee for fresh consideration.

18. Accordingly, we pass the following order:

i. Leave to add 'the Secretary, Tribal Development Department, Mantralaya, Mumbai' as a party Respondent is allowed. Amendment be carried out forthwith.

ii. The impugned order dated 27 July 2017 is quashed and set aside.

iii. The claim of the Petitioner stands restored to the file of the Respondent - Scrutiny Committee to be considered afresh in the light of directions as stated above within six months from the date the order reaches to it from the stage of 'Issuance of Show Cause Notice'.

iv. The Secretary, Tribal Development Department, Mantralaya, Mumbai is directed to issue necessary directions to the Scrutiny Committees in the State to develop a

methodology for acknowledgment each of the documents supplied by the Applicant and keep a record thereof with itself with a copy to the Applicant till appropriate Rules are formulated in that regard.

v. The Registry shall send the copies of this order to the Secretary, Tribal Development Department, Mantralaya, Mumbai.

vi. The Writ Petition is disposed of in above terms.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]