

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.127 OF 2019**

Suraj Ulhas Uike] **Petitioner**

Vs.

State of Maharashtra and others.] **Respondents**

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Mr. S.S. Patwardhan a/w Mr. Bhooshan Mandlik and Ms. Mrinal Shelar, for Petitioner.

Mrs. P.N. Diwan, A.G.P, for Respondents-State.

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**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 10th MARCH, 2022.

P.C.

1. Heard Mr. Patwardhan, learned Counsel for the petitioner and Ms. Diwan, learned A.G.P, for Respondents No.1 and 2 - State. Nobody is present for respondent No.3 though respondent No.3 is duly served.

2. Rule. Rule is made returnable forthwith. Heard finally by consent of learned Counsel for the parties present before this Court.

3. On going through the impugned order, we find that only reason on which the scrutiny committee invalidated the caste tribe certificate of the petitioner is that the petitioner being migrant to the State of Maharashtra was not entitled to the benefit of any caste or tribe certificate issued in his favour. This finding, in our considered opinion, is contrary to the provisions made in Rule-5 of The Maharashtra Scheduled Tribes (Regulations of Issuance and Verification of) Certificate Rules, 2003 (for short "Rules of 2003") as rightly submitted by the learned Counsel for the petitioner. Of course, Ms. Diwan, learned A.G.P, appearing for respondents No.1 and 2 - State has different opinion which is premised on the observations of the committee appearing in paragraph 5, particularly, the observations to the effect that father of the petitioner had made a statement that he or his family was not permanent resident of State of Maharashtra on or before 6th September, 1950 i.e on the proclamation of first Presidential Order of 1950.

4. Before we consider the import of the observations of the scrutiny committee, it is necessary to have careful look at Rule-5 of Rules of 2003. Relevant portion of Rule-5 of Rules of 2003, for the

sake of convenience is reproduced as under;

“5. Grant of Scheduled Tribe Certificate to migrated persons._ (1) Migration from other States to Maharashtra State:

(a) The Competent Authority, if satisfied, may issue Scheduled Tribe Certificate, in FORM C 1 to an applicant who has migrated to Maharashtra State from any other State or Union Territory, on production of the Scheduled Tribe Certificate issued to his father or grandfather by the concerned Competent Authority of that State.

(b) If the Competent Authority feels that before issuing such a Scheduled Tribe Certificate a detailed enquiry is necessary, he may do so through the applicant's State of origin.

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

5. A careful perusal of Rule- 5 (a) would show that a person is entitled to issuance of scheduled tribe certificate in his favour if he is migrated to Maharashtra State from any other State or Union Territory, provided he supports the claim by producing scheduled tribe certificate issued to his father or grandfather by the concerned Competent authority of that State. It would be further clear that “Migrant from other State” is 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. It would also be clear that a person whose tribe is scheduled as a Scheduled Tribe in his original State, but not in Maharashtra State and also a 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 notification of Presidential Order scheduling his tribe in the State/Union Territory other than Maharashtra would both be treated as migrants. This becomes clear from the explanation appended to sub-rule (1) of Rule-5.

6. If we consider the explanation to sub-rule (1), Rule-5, we can notice that it is only that 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 from another State would fall within the definition of migrant. In the present case, admittedly, the petitioner has been born and brought up in Kalyan. Admittedly, his father had migrated along with parents to Bhusaval in the year 1961 from State of Madhya Pradesh. He was born in 1991 at Kalyan and brought up there only. The petitioner is not the person who has

migrated to Maharashtra State from the State of Madhya Pradesh and that it was his father who had migrated to Maharashtra along with his parents to State of Maharashtra from State of Madhya Pradesh. Thus, the petitioner does not fall within the explanation (i) appended to Rule-5 (1). As regards explanation (ii), we find that case of the petitioner is also not covered by it. The reason being that the petitioner is not a person who is an ordinary resident, on the date of notification of Presidential Order scheduling his tribe, in his native State i. e State of Madhya Pradesh. The petitioner was born in the year 1991 and since then the petitioner is having his ordinary residence in the State of Maharashtra. Therefore, the scrutiny committee could not have found that the petitioner was a migrant to the State of Maharashtra and, therefore, was not entitled to have benefit of tribe certificate and it's validity in the State of Maharashtra. The impugned order is thus illegal and deserves to be quashed and set aside.

7. The writ petition is allowed. The impugned order is quashed and set aside. The matter is remanded to the scrutiny committee to decide tribe claim of the petitioner on it's own merits by treating

him as non migrant to the State of Maharashtra. The scrutiny committee shall decide the tribe claim accordingly as early as possible and in any case within six months from the date of receipt of copy of the order. The petitioner is at liberty to produce before the Scrutiny Committee relevant documents and other evidence. Respondent No.3 is directed to release all the original educational documents to the petitioner within a period of two weeks from the date of receipt of the order while retaining their photo copies.

8. Rule is made absolute in the above terms no costs.

9. Authenticated copy of the order be made available to the learned Counsel for the petitioner in two sets.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]