

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 7309 / 2023

Rajeshri Rambhau Thore,
Age 32 years, Occu. Service as Anganwadi Sevika,
R/o. Telgaon (Bk),
Tq. Dharur, Dist. Beed.

...Petitioner

Versus

1. Sub Divisional Officer,
Majalgaon, Tq. Majalgaon,
Dist. Beed.
2. Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad Division,
Aurangabad.
Through its Secretary.

...Respondents

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Mr. Umesh B. Gite, Advocate for the Petitioner
Mr. A. S. Shinde, AGP for Respondents/State

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 3 JULY, 2023.

ORDER [PER : SHAILESH P. BRAHME, J.] :

. Heard the learned Counsel for petitioner and learned AGP for State. The matter is taken up for final adjudication with their consent.

1. The petitioner is challenging an order dated 01.09.2022 passed by the respondent no.1/Sub Divisional Officer, rejecting her application for issuing tribe certificate as well as judgment and order dated 03.05.2023 passed by the respondent no.2/Scrutiny Committee in appeal preferred against the order of the Sub-Divisional Officer.

2. The petitioner claims to be member of scheduled tribe 'Koli Mahadev'. She approached respondent no.1 for securing the tribe certificate vide application under Section 3 of the Maharashtra Scheduled Caste, 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 (hereinafter referred to as Act for the sake of brevity). Alongwith the application documentary evidence was produced in the form of school record, affidavits, tribe certificate issued to her cousin Mauli. The respondent no.1 rejected her application by order dated 01.09.2022 because the school record was not reliable. No revenue record produced and the tribe certificate of the cousin was not acceptable piece of evidence.

3. Being aggrieved by order dated 01.09.2022, the petitioner preferred appeal under Section 5(2) of the Act before the respondent no.2. By judgment and order dated 03.05.2023, the appeal was dismissed confirming the findings recorded by the competent authority. It was held by the Appellate Authority that the surname and the place of residence of the petitioner were not compatible with the claim. There was tendency of taking disadvantage by recording false tribe in the school record. No evidence of any record prior to 1950 was produced. There was no cogent evidence to support her claim.

4. The learned Counsel for the petitioner submits that the findings recorded by both the respondents are perverse. There is prima facie evidence on record in the form of school record and especially the tribe certificate issued to the cousin. He would further submit that there was no record available prior to 1950, but that would not non-suit the petitioner.

5. In support of his submission, reliance is placed on the law laid down in Writ Petition No. 12479/2017 in the case of

Shubham Harikishan Sonkusre Vs. Sub Divisional Officer and another decided on 01.11.201 and in the case of Devanand Balajirao Chukewad Vs. Sub Divisional Officer, Bhokar and Others, reported in 2021(3) All M.R. 596.

6. The learned AGP submits that no satisfactory evidence was produced by the petitioner. Petitioner failed to discharge the burden and therefore her application was rightly rejected by the respondents.

7. We have considered rival submissions of the parties. The school record of her cousin 'Mauli Babasaheb Thore' shows tribe 'Koli Mahadev'. The tribe certificate was issued to cousin Mauli Babasaheb Thore, in the prescribed format by the competent authority that is Sub Divisional Officer, Majalgaon. The certificate has not been revoked or cancelled. No proceedings are initiated in that regard by the Scrutiny Committee. There are affidavits produced on record to show the relationship through genealogy. There is no dispute about the relation of the petitioner with her cousin 'Mauli'.

8. The above referred evidence is cogent enough to issue tribe certificate to the petitioner. When the petitioner's cousin was issued with a tribe certificate there is no reason to deny similar benefit to the petitioner. We therefore, allow the writ petition by directing the competent authority to issue tribe certificate to the petitioner.

9. We are fortified in our view from paragraph no.5 of the judgment in the case of Shubham Harikishan Sonkusre (supra), which is as follows.

"5. We have gone through the orders passed by the Committee. Time and again we have directed the Committee to decide the application for caste/ tribe certificate based on the documents submitted by the parties. There cannot be a thumb rule that only if documents prior to independence are produced, then only the certificate is to be granted. At the time of issuance of tribe/ caste certificate, the authority has to be prima facie satisfied. Even otherwise, the said certificate has to face the test of scrutiny at the time of verification by the Committee."

10. Paragraph No.12 of the judgment in the case of Devanand Balajirao Chukewad (supra) is also relevant which reads as under.

"12. In Writ Petition No.12479 of 2017, Shubham Harikishan Sonkusre and two other cases, decided on

01-11-2017, a Division Bench of this Court held that there cannot be a thumb rule that only if documents prior to independence are produced, then only caste/tribe certificate is to be granted. At the time of issuance of tribe/caste certificate, the authorities are only required to take a prima facie view inasmuch as, after issuance of such certificate it has to pass the test of scrutiny of the Caste/Tribe Certificates Scrutiny Committee. Alike in the present case, in those cases also fathers and paternal uncles of the petitioners were issued tribe certificates, which were denied to the petitioners. This Court while setting aside the decisions of the Sub-Divisional Officer and the Scheduled Tribe Certificates Scrutiny Committee directed the Sub-Divisional Officer to issue Scheduled Tribe certificate to the petitioners as belonging to the particular Scheduled Tribe community which would have to undergo verification by the Scrutiny Committee in due course."

11. We therefore pass the following order.

O R D E R

- (i) The writ petition is allowed.
- (ii) The judgment and order dated 03.05.2023 passed by the respondent no.2/Scrutiny Committee is quashed and set aside.
- (iii) The respondent no.1/Sub Divisional Officer shall issue tribe certificate of tribe Koli Mahadev, to the petitioner in the prescribed format.

(iv) Rule is made absolute in the above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]