

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO.2595 OF 2023

Hitendra s/o Nimba Navsare,
Age-32 years, Occu-Service,
Presently residing at -
Flat No.B-301, Bench Mark Tower,
Vrindavan Nagar, Adgaon Shivar,
Nashik, Tq. and Dist. Nashik

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Tribal Development Department,
Mantralaya, Mumbai- 32
Through its secretary.

2. The Sub Divisional Officer,
Dhule, Tq. & Dist. Dhule.

-- RESPONDENTS

Mr.S.C.Yeramwar, Advocate for the Petitioner.
Mr.PS.Patil, AGP for the Respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : MARCH 9, 2023

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

1. Rule. Rule made returnable forthwith and heard finally by
the consent of the parties.

2. This is yet another case wherein a litigant is made to run from pillar to post.

3. The Petitioner was issued with a “Tokare Koli (29)” Scheduled Tribe Certificate on 28.03.2005 by the District Magistrate, Dhule. By the mistake of the said Authority, the Tribe was spelt as “Tokare” instead of “Tokre”. So also, instead of mentioning the Sr.No.28, the said authority mentioned ‘29’. The Petitioner’s proposal for seeking a Tribe Validity Certificate was tendered on 25.09.2007, alongwith the Tribe Certificate. His father and grand father have a Tribe Certificate and his paternal cousin uncle Vikas Ramdas Navsare also has a Tribe Validity Certificate. The Vigilance Enquiry was concluded on 09.07.2009, a show cause notice was issued by the Committee on 15.11.2016 and the Petitioner tendered his detailed reply on 15.09.2019. The case was thereafter transferred to the newly constituted committee at Dhule. By order dated 08.09.2022, the Dhule Committee cancelled and confiscated the Tribe Certificate of the Petitioner on the ground that it contend an incorrect spelling “Tokare”. This invalidation proceeding was closed and disposed off. This is atrocious. We can only term such action of the Respondent/authorities

as “*taking advantage of/capitalising on one’s own wrong*”.

4. The learned AGP submits that though he cannot defend such action on the part of the Committee, such decision was not intentional or deliberate. It was not aimed at harassing the Petitioner. As the spelling of the caste has to match with the spelling set out in the presidential order, the Committee insists on a corrected certificate. He further submits that this Court has drawn a conclusion in its order dated 15.12.2022 in WP No.12624/2022 filed by Satish Baliram Jadhav Versus State of Maharashtra and others. Our general directions are set out in paragraph Nos. 10, 11 and 12, read as under :-

"10. *Taking into account the above circumstances, we are constrained to issue the following directions to the Commissioner, Tribal Research and Training Institute, Pune, (TRTI), who is the head of all the Scheduled Tribe Certificate Scrutiny Committees and to the Commissioner, Dr.Babasaheb Ambedkar Research and Training Institute, Pune, (BARTI), who is the head of all the Scheduled Caste Certificate Scrutiny Committees, in the State of Maharashtra :-*

(a) *After the proposal reaches the office of the Scrutiny Committee, an accurate entry be made in the inward register mentioning the date and time of receipt of the proposal.*

(b) *While causing the scrutiny of the proposal that has been received, the Scrutiny Committee shall prepare the scrutiny sheet/check*

list and list out all objections in the proposal, which would include the spelling mistake in the tribe or caste certificate or the requirement of the certificate in a particular format or of any nature or even with regard to the documents that have been filed.

(c) The applicant's email address or employer's email address and their cell phone numbers should be recorded and all objections should be communicated by email and whatsapp, to the applicant/employer, who has forwarded the proposal, within FIFTEEN DAYS.

(d) An opportunity to remove the objections within a period of 45 days, shall be normally granted to the candidate, save and except in cases involving grave urgency.

(e) After the deficiencies are removed and the file is accepted by the Scrutiny Committee for verification, no further objection with regard to the tribe or caste certificate or its format or spelling of tribe or caste, etc., should be raised by the Scrutiny Committee.

(f) Henceforth, if any such order is noticed by us vide which, the proposal is disposed off only on such technical grounds and the candidate is directed to resubmit a fresh proposal, we would be imposing heavy costs on the members of the Scrutiny Committee for having indulged in dereliction of duties in not scrutinizing the proposals properly at the time of receiving them and raising such objections after a period of five years or 10 years when the candidate is handed down a final order.

(g) We direct (a) the Principal Secretary, Tribal Development Department, State of Maharashtra, Mantralaya, Mumbai, (b) the

Principal Secretary, Social Justice and Special Assistance Department, State of Maharashtra, Mantralaya, Mumbai, (c) the Commissioner, Tribal Research and Training Institute, Pune, (TRTI) and (d) the Commissioner, Dr.Babasaheb Ambedkar Research and Training Institute, Pune, (BARTI), to issue standing instructions in this regard to all the Scrutiny Committees in the State of Maharashtra, which are empowered to conduct such scrutiny for the purpose of grant of validity certificates 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, 2000.

11. *We direct the learned Registrar (Judicial) of this Court to place this order before the Chief Secretary of the State of Maharashtra, the Principal Secretary, Tribal Development Department, the Principal Secretary, Social Justice and Special Assistance Department, the Principal Secretary, Law and Judiciary Department, State of Maharashtra, the Commissioner, TRTI and the Commissioner, BARTI, for perusal and necessary action. We expect these authorities to issue appropriate directions to all the Scrutiny Committees within their jurisdiction to ensure that the directions set out in this order are strictly complied with.*

12. *These authorities would be at liberty to direct the Scrutiny Committees to make assessment as regards such orders having been passed and recall such orders by issuing notices to the applicants.*

Thereafter, the original certificates be returned to the applicants so as to be got corrected and to be produced in the same pending proceedings for adjudication, which shall not be disposed off on technical grounds."

5. The learned AGP submits that the impugned order is prior to the above referred order of this Court.

6. We notice from the order passed by Respondent No.2 / S.D.O. that he has refused to issue a corrected certificate on the ground that the Petitioner has failed to make out a case for issuance of certificate. The learned AGP submits that the Petitioner had moved an application in the tenor of seeking a fresh Tokre Koli Certificate. This created a confusion and hence the S.D.O. concluded that there is no record prior to 1950 to indicate that the Petitioner would be covered by the Tokre Koli Scheduled Tribe Category.

7. We do find from the record that the Petitioner has worded his application dated 20.10.2022 which creates an impression that he desires a fresh "Tokre Koli" Scheduled Tribe Certificate. The Petitioner has an explanation to offer that the online form available on the website does not have a provision for seeking issuance of a

corrected certificate. So also the Committee confiscated his original certificate. We find from the said application dated 20.10.2022, tendered by the Petitioner, that he had mentioned the social status of his father, grandfather and the tribe validity certificate issued to his cousin uncle. This should have been taken into account by the S.D.O.

8. In view of the above, this petition is entertained without relegating the Petitioner to the alternate remedy to prefer an appeal for challenging the order of the S.D.O. before the Committee, only to reduce the rigours of litigation already suffered by him. We make it clear that this order shall not be treated as a precedent and would not be cited to seek similar orders without exhausting the remedy of approaching the competent committee by preferring a statutory appeal.

9. This petition is partly allowed. The impugned order dated 15.10.2022 is quashed and set aside. Taking into account the record pertaining to the father and grand father of the Petitioner and a paternal cousin uncle having acquired a validity certificate, that we direct the S.D.O. to issue the "Tokre Koli Scheduled Tribe Caste Certificate" in Form 'C', on or before 31.03.2023. The S.D.O. can be

granted the liberty to verify the authenticity of the wrongly spelt certificate, when the original is tendered by the candidate and thereafter issue the corrected certificate .

10. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)