

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12865 OF 2016

- 1) Ganesh s/o Nagnath Pitale,
Age : 20 years, Occu. Education,
R/o Kanvha, Dist. Latur- 413529.
- 2) Rajesh s/o Nagnath Pitale,
Age 17 ½ years, Occu. Education,
R/o Kanvha, Dist. Latur- 413529,
Minor, under guardianship of Father,
Nagnath S/o Mahadu Pitale,
Age 42 Years, Occu: Pvt. Service. .. Petitioners

Versus

- 1] The State of Maharashtra,
Through its secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2] The Scrutiny Committee for verifying
Claims of Scheduled Tribes,
Aurangabad.
- 3) The Competent Authority,
Sub-Divisional Officer, Latur. .. Respondents

Shri Sagar S. Phatale, Advocate h/f Shri G. J. Kore, Advocate for
the Petitioners.

Mrs. M. A. Deshpande, Addl.G.P. for the Respondent Nos. 1 to 3.

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

DATE : 12 JULY 2023.

FINAL ORDER (Per Shailesh P. Brahme, J.) :

. Heard both sides. With the consent of parties taken up for

final disposal.

2. The grievance of the petitioner is that their appeals U/Sec. 5 (2) of 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 (for short "Act") were dismissed confirming the order of rejection of applications for issuance of tribe certificates. The petitioners claim to be belonging to 'Koli Mahadev' (Scheduled Tribe). They had submitted applications before the respondent No. 2 on 18.12.2015 seeking tribe certificates in the prescribed format. Along with applications supporting documents of school record of the blood relatives, certificates issued by the village panchayat were produced on record.

3. The respondent No. 3 rejected their applications by order dated 30.12.2015. Being aggrieved, petitioners preferred Appeal No. TCSC/APPEAL/LAT/03/2016 and Appeal No. TCSC/APPEAL/LAT/02/2016 before the respondent No. 2/Scrutiny Committee. By separate judgment and order dated 24.10.2016 the appeals were dismissed.

4. During the pendency of the writ petition, the petitioners produced on record the tribe certificates issued in prescribed format in favour of their father Shri Pitale Nagnath Mahadu dated 23.01.2018 and their sister Anjali Nagnath Pitale dated 22.10.2018. They have placed on record validity certificates of

Muktaram Tukaram Pitale and Shreya Muktaram Pitale. The petitioners submit that there is cogent evidence to issue tribe certificates. Learned advocate for the petitioners submits that the scrutiny committee has committed error of jurisdiction in applying wrong parameters while considering claims of the petitioners.

5. In support of his submissions he relied upon judgment of this Court in the matter of **Ankita Anup Rathor Vs. State of Maharashtra and others** reported in **2009(3) Mh. L. J. 396**. He has also relied on the judgment dated 16.12.2014 passed by this Court in Writ Petition No. 2386 of 2014 and judgment in the matter of **Anand Dhananjay Nalawade Vs. State of Maharashtra** reported in **2014(4) Mh.L.J. 77**.

6. Having considered the rival submissions of the parties, we notice that there is *prima facie* evidence on record to issue caste certificates in favour of the petitioners. Already there is a school record depicting the tribe of the petitioners. Additionally there are tribe certificates of father and brother on record. There is affidavit depicting the genealogy, caste validity certificate of the close relative of the petitioners Shreya Muktaram Pitale. We find that this material is more than satisfactory.

7. Both the authorities below have committed error of jurisdiction in adopting hyper technical view and expecting full proof conclusive evidence at this juncture. It is not expected of the petitioners to produce validity certificates of any blood

relatives for the scrutiny contemplated under Section 3 of the Act.

8. The appellate authority committed material irregularity in conducting in-depth enquiry into the caste status of the petitioners. The certificate to be issued to the claimant would not be conclusive. The same would be subjected to scrutiny in future. Therefore, undertaking an enquiry threadbare by going into the report of the vigilance cell is not contemplated. We find that this is grave error of jurisdiction committed by the appellate authority.

9. Both the authorities below have not followed the principles laid down in the matter of (i) **Ankita Anup Rathor Vs. State of Maharashtra and others** (*supra*) in para No. 10 which reads thus :

10) The purpose of obtaining a caste certificate is to enable a person to get the benefit of reservation either for admission to an educational institution or in the matter of employment. Entries in the school registers are normally made on the basis of information conveyed by the parents and recorded in the records by the school authorities. It is in these circumstances, we have to consider the issue whether such a person would be entitled to a caste certificate under the provisions of Maharashtra Scheduled Tribe, Denotified Tribe (Vimukt Jatis), Special Backward Classes and Special Backward Category (Regulation of Issuance and Verification) of Caste Certificate Act, 2000 and the Rules framed thereunder.

. Ordinarily, a caste certificate is to be issued based on the documents produced by a party before the Competent Authority. The Competent Authority, at the time

of issuance of caste certificate, does not decide the issue finally, but proceeds on the prima facie material placed before it either in the form of documentary evidence or other evidence in absence of documentary evidence. It is possible that in cases, there could be situations where there is a conflict in records available. In these circumstances, it is for the Committee to go into that aspect and consider whether on the basis of the material before it, the applicant, who has applied, is entitled to issuance of the caste certificate. We may gainfully refer to the judgment of the Supreme Court in *Gayatri laxmi B. Nagpure Vs. State of Maharashtra* (1996) 3 SCC 685, where the Court observed that by wrongly denial of caste certificate to a genuine candidate, such a candidate would be deprived a privilege conferred upon such candidate by the Constitution and, therefore, utmost care must be taken before granting or rejecting any claim for issuance of caste certificate. This was in the context of a caste validity certificate, but that would all the more relevant, in so far the issue of caste certificate is concerned, as only on obtaining a caste certificate, can the certificate be verified by a competent committee which has been constituted. A burden is, therefore, cast on the Competent Authority, based on the material available, to decide whether the applicant before it is entitled to issuance of a caste/tribe certificate.

. In that context, material which was placed by the petitioner either before the Respondent no.3 or Respondent no.2 or before this Court must be considered. We proceed, on the basis that this court, in exercise of its writ jurisdiction in such matter, contesting parties have no other remedy is not hedged by the Rules of procedure and of evidence. It is also open to a civil Court to consider subsequent events and or to consider additional material which was not available at the time the decision was taken. We see no reason as to why a writ court which exercises extra ordinary jurisdiction is precluded from doing so.

and in the matter of (ii) **Anand Dhananjay Nalawade Vs. State of Maharashtra** (supra) para Nos. 8 and 9 which reads thus :

8. Perusal of Rule 8 of the said Rules shows that an appeal is maintainable against the order rejecting the application for grant of caste certificate by the Competent Authority. A power under Sub Rule (2) of Rule 8 of the said Rules has been given to the Appellate Authority of receiving evidence or calling for additional evidence and calling for further record if the Appellate Authority is satisfied that such evidence is necessary for effectively disposing of an Appeal.

9. While deciding such Appeal, the Appellate Authority cannot ignore the difference between an adjudication to be made on the caste claim on the basis of a caste certificate issued in accordance with the provisions of the said Act and adjudication to be made for grant of a caste certificate. The determination of the validity of a caste certificate issued under Section 4(1) of the said Act involves a detailed exercise of calling for the report of the vigilance cell in the event, the Caste Scrutiny Committee is not satisfied with the documents produced by the Applicant. It involves holding of an indepth inquiry inasmuch as a caste claim of a person is established only when a caste certificate is validated. Even if a caste certificate is ordered to be issued, it is again subject to scrutiny and verification.

10. Considering the facts and circumstances, we are of the considered opinion that the petitioners are entitled to the tribe certificate in prescribed format. We therefore pass the following order.

ORDER

A. The judgment and order dated 24.10.2016 passed by the Scrutiny Committee in appeal No. TCSC/APPEAL/LAT/03/2016 and Appeal No. TCSC/APPEAL/LAT/02/2016 and the orders

dated 30.12.2015 passed by the respondent No. 3/Sub Divisional Officer, Latur are quashed and set aside.

B. The respondent No. 3 shall issue tribe certificates to the petitioners in prescribed format forthwith.

C. The writ petition is allowed in above terms. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/July 23