

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 4137 OF 2006

Anil Narayan Joshi. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents
—
Shri R.K. Mendadkar for the Petitioner.
Ms. S.S. Bhende, AGP for Respondent Nos.1 and 2.
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CORAM : A.S. OKA & G.S.PATEL, JJ
DATE : 31ST JULY 2013

ORAL JUDGMENT : (PER A.S. OKA, J)

1. Rule has been already issued. The third Respondent has been duly served with the notice. The first and the second Respondents are represented by the learned AGP.

2. The caste claim of the Petitioner that he belongs to Gabit, a Scheduled Tribe, was placed before the second Respondent Scheduled Tribe Certificate Scrutiny Committee. The Petitioner was relying upon a caste certificate issued by the learned Chief Metropolitan Magistrate, Mumbai. By the impugned order, the Scheduled Tribe Certificate Scrutiny Committee came to the conclusion that as the Petitioner was a permanent resident of Taluka- Deogad, District – Sindhudurg, the learned Magistrate had no territorial jurisdiction to issue the caste

certificate to the Petitioner and, therefore, the caste certificate is without jurisdiction. Only on this ground, the caste claim of the Petitioner was negated and a liberty was granted to the Petitioner to obtain caste certificate from the Competent Authority and thereafter, submit it to the Scheduled Tribe Certificate Scrutiny Committee for adjudication.

3. The law on this aspect is no more res integra. In the case of Neeraj Kamlakar More & Others v. Scheduled Tribe Caste Scrutiny Committee & Others [2012(6) BCR 221], in Paragraph 12, a Division Bench at Aurangabad has stated thus:-

“12. Thus, a caste certificate issued by the competent authority cannot be said to be invalid or nullity only on the ground that the competent authority did not have territorial jurisdiction. Thus, it follows that in the facts of these cases, the caste certificates issued by the competent authority cannot be said to be invalid. The Scrutinee Committee cannot refuse to exercise its power on the ground that the caste certificate produced before it for validation was issued by the competent authority having no territorial jurisdiction to issue the same. When a caste certificate issued by the competent authority is not invalid within meaning of sub-section (2) of Section 4 of the said Act, the Scrutiny Committee cannot refuse to exercise its jurisdiction of adjudication or verification of caste claim. In cases in hand, the only finding of the Scrutinee Committee is that the competent authority which issued caste certificate had no territorial jurisdiction to issue the certificate. Therefore, we hold that the caste certificates are not invalid and the Caste Scrutiny Committee was duty

bound to make adjudication on the respective caste claims of the petitioners.”

(Underlines added)

4. Hence, the view taken by the Caste Scrutiny Committee is erroneous and the matter will have to be remitted to the Scheduled Tribe Certificate Scrutiny Committee. Learned counsel appearing for the Petitioner states that even as of today, the Petitioner continues to be in the employment of the third Respondent Mumbai Municipal Corporation. He has relied upon the Government Resolution dated 18th May 2013. He submits that if the Petitioner fails to produce the caste validity certificate by today, the employment of the Petitioner will be terminated.

5. Hence, we dispose of the Petition by passing the following order:

ORDER :

- (a) The impugned order dated 3rd March 2006 is quashed and set aside and the Case No.DD/TCSC/SER/Bombay-2/04/ANJ is restored to the file of the second Respondent – Scheduled Tribe Certificate Scrutiny Committee;

- (b) We direct the Scheduled Tribe Certificate Scrutiny Committee to adjudicate upon the caste claim of the Petitioner in the light of the observations made in this judgment and order;
- (c) We direct the Petitioner to appear before the second Respondent Scheduled Tribe Certificate Scrutiny Committee on 29th August 2013 at 11.00 a.m. The Petitioner shall produce an authenticated copy of this judgment and order before the Scheduled Tribe Certificate Scrutiny Committee;
- (d) The Scheduled Tribe Certificate Scrutiny Committee shall pass final order after adjudicating the caste claim of the Petitioner within a period of four months from 29th August 2013;
- (e) All contentions of the Petitioner on merits are kept open;
- (f) If employment of the Petitioner is not yet terminated, the same shall not be terminated till the caste claim is decided by the Scheduled Tribe Certificate Scrutiny Committee, only on the ground

that the Petitioner has failed to produce caste validity certificate;

(g) If the order passed by the Scheduled Tribe Certificate Scrutiny Committee be adverse to the Petitioner, the limited protection granted as above shall continue to operate for a period of two weeks from the date on which the order passed by the Scheduled Tribe Certificate Scrutiny Committee is communicated to the Petitioner;

(h) The Rule is made partly absolute on above terms.

(G.S.PATEL, J)

(A.S. OKA, J)