

(2024) 02 BOM CK 0087

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 3181 Of 2022

Megha Mohan Shivpure

APPELLANT

Vs

District Caste Certificate Scrutiny
Committee, Amravati And Others

RESPONDENT

Date of Decision: Feb. 27, 2024

Acts Referred:

- Maharashtra Scheduled Castes De Notified Tribes (Vimukta Jatis), Nomadic Tribes Other Backward Classes And Special Backward Category (Regulation Of Issuance And Verification Of) Caste Certificate Rules, 2012 - Rule 16, 17, 17(10), 17(11), 17(12)

Hon'ble Judges: Nitin W. Sambre, J; Abhay J. Mantri, J

Bench: Division Bench

Advocate: P.A. Kadu, Deepali Sapkal, V.M. Kulsange, V.M. Kulsange

Final Decision: Allowed

Judgement

Nitin W. Sambre, J

1. Heard. Rule. Rule made returnable forthwith with consent of the learned Counsel for the parties.

2. The challenge in the petition is to the order dated January 31, 2022 passed by respondent No.1-District Caste Certificate Scrutiny Committee, Amravati. The petitioner claims to be belonging to Telangi NT-C category and has obtained the Caste Certificate dated May 27, 2011. Since the petitioner has secured employment from the said reserved category, her claim was forwarded by respondent No.2 to respondent No.1 vide communication dated 02-2-2021.

3. The Telangi to which the petitioner claims to be belonging is included in the NT-C category as per the Notification issued by the State Government on November 21, 1961 is not a fact in dispute.

4. The Committee rejected the claim of the petitioner for issuance of validity though her brother namely Bharat Mohan Shivpure holds a validity. As such the petitioner preferred this petition.
5. The contentions of the learned Counsel for the petitioner Mr. P.A. Kadu are that once the brother of the petitioner was granted a validity, that too after following due process as prescribed under Rule 17 of the Maharashtra Scheduled Castes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as the "Rules"), it is not open for respondent No.1-Committee to seat in an appeal over the decision of the other Committee who has granted validity in favour of her brother and reject the claim.
6. Apart from above, he has drawn support from the judgment of this Court in the case of Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010 (6) Mh.L.J. 401 wherein the law is laid down that in case if a blood relation is granted the validity, same will have direct bearing over the claim for issuance of validity in relation to other blood relations.
7. As against above, the learned Assistant Government Pleader would urge that the Committee was sensitive about the validity being granted in favour of the brother of the petitioner namely Bharat s/o Mohan Shivpure. According to her, the Committee has perused the file containing the documents in relation to grant of validity in favour of the brother of the petitioner namely Bharat s/o Mohan Shivpure and has noticed that the Vigilance Cell has not conducted a proper enquiry in the matter, still the validity was granted.
8. As such she would urge that the order of the Committee cannot be faulted with particularly when the Committee vide reasoned order has rejected the claim of the petitioner.
9. The learned Counsel for respondent No.2 would submit that in the facts and circumstances, the Court may pass an appropriate order in the matter.
10. We have delved upon the controversy in the petition based on the rival submissions.
11. The fact remains that vide impugned order dated January 31, 2022 the claim of the petitioner as that of belonging to Telangi NT-C category came to be rejected.
12. In support of the claim for issuance of such validity the petitioner has relied on document in the matter of the issuance of validity in favour of Bharat s/o Mohan Shivpure, the elder brother of the petitioner. The said validity was issued on September 8, 2011, which was duly produced by the petitioner along with her application for grant of validity.

13. Once the claim for validity is received by the Committee, the Committee is required to follow a procedure as laid down in Rule 17 of the Rules.

14. Rule 16 of the Rules contemplates the information to be supplied by the candidate like the applicant or her brother so as to substantiate the claim for issuance of validity. The Committee thereafter is required to follow the procedure laid down in Rule 17 of the Rules. The Committee is thereafter required to maintain the roznama as to the transactions of that day in relation to the proceedings of the Committee. The same is required to be signed by the Member of the Scrutiny Committee. Sub-rule (6) of the said Rule further contemplates that the Scrutiny Committee upon appreciating the statement of the claimant submitted in the form of affidavit, as well as oral and documentary evidence furnished along with the application if satisfied, can forthwith issue Validity Certificate without causing any enquiry by Vigilance Cell.

15. Sub-rule (7) of the said Rule further contemplates that the Committee if is not in agreement with the claim of the petitioner for issuance of validity based on the contents in the application and the evidence in support thereof, may cause a vigilance cell enquiry in the matter. Sub-rule (8) of the said Rule contemplates the Vigilance Cell to complete such enquiry within six weeks and upon receipt of the Vigilance Cell Report if the Committee is satisfied about the genuineness of the claim can proceed to issue the validity in favour of such claimant as is contemplated under sub-rule 10 of the said Rule. In case if the Committee is not satisfied with the claim of the claimant or the informant based on the Vigilance Cell Report, the Committee is required to make available such Vigilance Cell Report along with the documentary evidence if any collected by the Vigilance Cell to the claimant and seek his explanation/response. The Committee is thereafter required to hear the concerned party and may pass appropriate order either granting validity or rejecting the same.

16. The Committee, in the case in hand, on September 8, 2011 after conducting vigilance cell enquiry issued the validity in favour of the brother of the petitioner namely Bharat Mohan Shivpure. The Committee while rejecting the said Validity Certificate of blood relation has noticed that the enquiry caused through the Vigilance Cell was not carried out properly. Such vague observations by two Committees are at all not substantiated.

17. Once the earlier Vigilance Cell has conducted an enquiry which fact is not in dispute in relation to the grant of validity in favour of the brother of the petitioner namely Bharat Mohan Shivpure, the Committee while passing the impugned order in relation to blood relation cannot seat in an appeal over the decision of the earlier Committee accepting the Vigilance Cell Report. Once such Committee pursuant to the provisions of Rule 17 sub-rules (10), (11) and (12) of the Rules has recorded a satisfaction as regards material produced before it in the form of the Vigilance Cell Report and proceeded to issue validity, the statute i.e. the Act or the Rules framed

thereunder is not conferring any power with the respondent-Committee to disregard the Vigilance Cell Report or the Validity Certificate which was considered and granted by the Committee in blood relation viz. in the case in hand about the brother of the petitioner namely Bharat Mohan Shivpure unless it is demonstrated that fraud or suppression is noticed in fresh Vigilance Cell report. Even it is not the case of the respondent that while issuing validity in favour of brother of the petitioner any misrepresentation was made.

18. In the aforesaid background, we are of the view that the Committee has not only acted contrary to the very scheme of Rule 17 of the Rules but has also exceeded its jurisdiction in commenting upon merit of the Validity Certificate issued in favour of the brother of the petitioner. In case if the Committee was of the view that the brother of the petitioner was granted validity illegally, it was open for the said Committee to make a reference for recalling/cancellation of said Validity Certificate, which the Committee has not taken recourse to.

19. As a sequel of above, the validity granted in favour of the brother of the petitioner namely Bharat Mohan Shivpure after following due process of law, holds the field whereas on other hand the Committee has rejected the claim for issuance of validity in favour of the petitioner though his blood relation holds a validity.

20. The aforesaid approach on the part of the respondent Committee goes contrary to the law laid down by the Division Bench of this Court in the case of Apoorva d/o Vinay Nichale cited supra.

21. The Committee merely because is not in agreement with the Vigilance Cell Report in case of blood relation who is holding validity cannot be recorded a different finding as the remedy in such an eventuality available with the Committee is to take out proceedings for cancellation of the Validity Certificate issued in favour of such blood relation that too based on strong reasons and evidence.

22. Admittedly such proceedings are not taken recourse to by respondent No.1-Committee in relation to the brother of the petitioner namely Bharat Mohan Shivpure who is granted validity on September 8, 2011. That being so, in our opinion, the validity certificate granted in favour of the brother of the petitioner namely Bharat has to be formed to be basis for granting validity in favour of the petitioner.

23. From the record it is further apparent that the grandfather of the petitioner namely Purnayya Rudrayya is shown to be belonging to Telangi as is apparent from entries of 1925-1926 and also of 1946 in the revenue record and the Birth Certificate. The aforesaid entries which are prior to the date of notification of the Telangi being notified as NT-C category needs to be appreciated. Even otherwise the aforesaid both entries in relations to grandfather of the petitioner are of pre-independence era has more evidentiary value.

24. That being so, the order impugned dated January 31, 2022 rejecting the claim of the petitioner for issuance of validity as that of belonging to Telangi NT-C category is hereby quashed and set aside. We direct respondent No.1-Committee to issue the Validity Certificate in favour of the petitioner within a period of six weeks from today.

25. The petition as such stands allowed in the above terms.