

(2017) 07 BOM CK 0121

BOMBAY HIGH COURT

Case No: 4533 of 2005

Premlal s/o Poonamsingh Maria

APPELLANT

Vs

State of Maharashtra, through
its Secretary, Tribal Development
Department, Mantralaya, & Anr.

RESPONDENT

Date of Decision: July 14, 2017

Acts Referred:

- Bombay Reorganisation Act, 1960, Section 2(a) - Definitions

Hon'ble Judges: R.K. Deshpande, Swapna Joshi

Bench: DIVISON BENCH

Advocate: P.V. Thakre, S.M. Ukey

Judgement

1. The caste certificate dated 21-6-1988 issued by the Executive Magistrate, Nagpur, is held to be valid by the Committee for Scrutiny and Verification of Tribe Claims at Nagpur and certificate validity dated 27-8-2003 is granted stating that the claim of the petitioner belonging to Gond (Scheduled Tribe) is held valid. However, the certificate of validity further incorporates a clause that as per the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes DeNotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification) Caste Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001), the petitioner is not entitled to any concessions/facilities extended to the Scheduled Tribes by the Government of Maharashtra. This petition is, therefore, filed by the petitioner challenging the condition and seeking a declaration that the petitioner is entitled to get concessions/facilities available to the Scheduled Tribes in the State of Maharashtra.

2. The father of the petitioner Poonamsingh Marai was born on 1-7-1932 in

Dongargarh, District Rajnandgaon, in the erstwhile Central Provinces and Berar, of which Nagpur City was the capital. Presently, Rajnandgaon District is in the State of Chhatisgarh and adjoining to or touching the boundary of Bhandara District (now to Gondia District) in the State of Maharashtra. It is the statement made in the petition that the father of the petitioner came to Nagpur in search of employment and he was appointed as Tractor Cleaner in the year 1961 in the office of Superintending Agricultural Officer, Nagpur. Then, in the year 1977, the father of the petitioner was appointed as Chowkidar in the office of Deputy Commissioner of Sales Tax, Nagpur. After his retirement on superannuation in the year 1992, he died due to old age on 3-1-2000.

3. The petitioner was born on 4-9-1968 at Nagpur. In the year 1995, he was selected by the duly constituted Selection Committee for the ClassIV post of Peon in the office of Deputy Commissioner of Sales Tax, Nagpur, and since then he is working on the said post till this date.

4. On 18-7-2002, the Deputy Commissioner of Sales Tax, Nagpur referred the caste certificate produced by the petitioner for scrutiny by the Committee for verification and validity. The petitioner submitted all the relevant documents to the said Committee and after due investigation and enquiry, the certificate of caste validity dated 27-8-2003 has been issued, incorporating the condition that the petitioner shall not be entitled to any concessions/facilities in the State of Maharashtra. The petitioner has, therefore, approached this Court in this petition. The matter was admitted on 14-2-2006.

5. The learned counsels appearing for the parties have referred to the following decisions of the Apex Court as well as of this Court :

(1) (2000) 2 SCC 20 Union of India and others v. Dudh Nath Prasad.

(2) 2004(4) Mh.L.J. 784 Sudhakar Vithal Kumbhare v. State of Maharashtra and others.

(3) 2007(5) Mh.L.J. 454 Hitesh Dasiram Murkute v. State of Maharashtra and others.

(4) (2009) 2 SCC 109 Sau Kusum v. State of Maharashtra and others.

(5) 2010(2) Mh.L.J. 904 Shweta Santalal Lal v. State of Maharashtra and others.

(6) 2010(6) Mh.L.J. 401 Apporva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee No.1 and others.

(7) 2013(5) Mh.L.J. 946 Bharat s/o Bhimrao Malakwade v. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and another.

6. The certificate of validity dated 27-8-2003 issued by the Committee for Scrutiny and Verification of Tribe Claims, Nagpur, annexed to the petition, is reproduced below :

"TRIBAL RESEARCH AND TRAINING INSTITUTE

MAHARASHTRA STATE

28, QUEEN'S GARDEN, PUNE-411 01

Committee for Scrutiny and Verification of Tribe Claims,

Maharashtra State, Nagpur

CERTIFICATE OF VALIDITY

Ref : Maharashtra Scheduled Castes, Scheduled Tribes, DeNotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.XXIII of 2001).

Case No.DD/TCSC/NGP/III624/ 31/2002-03 Date: 27-8-2003

After considering the documents and associated facts, the Scrutiny Committee certifies that Shri Prem S/o Punamsingh belongs to Gond, Scheduled Tribe, by birth and migrated to the State of Maharashtra from

Rajnandgaon District/Division of State/Union territory Madhya Pradesh and the Caste Certificate issued by the Executive Magistrate, Nagpur, Distt. Nagpur vide R.C. No.1493/MRC/81/87-88 dated 21-06-88 is held valid.

As per Maharashtra Government Act quoted at Sr.No.2 in the preamble, the holder of this Validity Certificate is not entitled to any concessions/facilities of any nature whatsoever extended to Scheduled Tribe by the Government of Maharashtra.

Member-Secretary

Scrutiny Committee

and

Dy. Director (R)"

It seems that the petitioner is treated as migrant in the State of Maharashtra. Rule 5 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 deals with the grant of Scheduled Tribe certificate to migrated persons. Forms "C" and "C1" under the said Rules prescribe the formats for issuance of caste certificate. Form "G" prescribes the format in which a certificate of validity is required to be issued under Rules 12(7) and 12(9)(a) of the said Rules.

7. Perusal of the certificate of validity issued in the present case shows that it is not in Form "G". The Rules nowhere prescribe issuance of conditional certificate of validity. In para 2 of the certificate of validity, reproduced above, it is stated that "As per Maharashtra Government Act quoted at Sr.No.2 in the preamble, the holder of this Validity Certificate is not entitled to any concessions/facilities of any nature whatsoever extended to Scheduled Tribe by the Government of Maharashtra". We fail to understand as to how such condition can be incorporated in the certificate of validity in the absence of any rule or provision in Form "G" under the said Rules. There are no reasons stated for imposing such condition. The certificate of validity does not state as to how the petitioner is treated as migrant. It nowhere shows the date on which the petitioner migrated from the State of Madhya Pradesh to the State of Maharashtra. It is not known as to whether the petitioner was an "ordinarily resident", as defined under Section 20 of the Representation of the People Act, 1950, of the State of Maharashtra prior to 6-9-1950. It is not known as to whether a person

is to be treated as migrant if he was an ordinarily resident of the State of Maharashtra as on 1-5-1960, which is the "appointed day", as defined under Section 2(a) of the Bombay Reorganization Act, 1960.

8. We find that no reasons are recorded by the Scrutiny Committee for imposing such condition. There is no adjudication to deny the petitioner the benefits available to the recognized Scheduled Tribes in the State of Maharashtra. The claim is required to be judged in the light of the several decisions cited before this Court. Hence, the certificate of validity in this petition will have to be quashed and set aside with an order of remand.

9. In the result, we allow the petition and quash and set aside the certificate of validity dated 27-8-2003 issued in the name of the petitioner. Since the certificate incorporates the condition, we set it aside in its entirety. Though the certificate validates the caste certificate issued by the Scrutiny Committee in the name of the petitioner, we send the matter back to the said Committee for decision on merits of the claim in accordance with law. The petitioner to appear before the Committee on 28-8-2017. The Committee thereafter to decide the claim of the petitioner within a period of one year by following the procedure prescribed for that purpose.

10. Rule is made absolute in above terms. No order as to costs.