

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 919 OF 2020

Ku. Priyanka

PETITIONER

...VERSUS...

1. District Caste Certificate Scrutiny Committee,
Chandrapur, through its Chairman.
2. Sant Gadge Baba Amravati University,
Amravati, through its Registrar. ..

RESPONDENTS

Shri S.R.Narnavare, Advocate for petitioner.

Ms N. P. Mehta, Assistant Government Pleader for respondent no. 1.

Shri J.B.Kasat, Advocate for respondent no.2.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

ARGUMENTS WERE HEARD ON : 26th AUGUST, 2022.

JUDGMENT IS PRONOUNCED ON : 30th AUGUST, 2022

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner claims to belong to 'Madiga' Scheduled Caste. The petitioner has taken admission in the Bachelor of Technology (B.Tech.) course being conducted at the respondent No.2-University. With a view to pursue higher education, the petitioner sought verification of her caste claim based

on the caste certificate dated 05.01.2014. The Scrutiny Committee by its order dated 29.07.2019 has held that the said caste certificate issued in favour of the petitioner was in contravention to Rules 5 (1), (2) and 14 of the Maharashtra Scheduled Castes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance of Verification of) Caste Certificate Rules, 2012 (for short, the Rules of 2012). The Scrutiny Committee therefore declared the caste certificate as invalid and proceeded to cancel the same. The benefits derived pursuant to the said caste certificate were directed to be withdrawn. Being aggrieved, the petitioner has challenged the aforesaid order.

3. Shri S.R.Narnavare, learned counsel for the petitioner submitted that the Scrutiny Committee was not justified in cancelling the petitioner's caste certificate on the ground that the same was issued in contravention to Rule 5(1) and (2) as well as Rule 14 of the Rules of 2012. The basis for arriving at such conclusion was only in view of the fact that in the service record of the petitioner's grandfather his permanent address was shown to be in District Karimnagar, Andhra Pradesh. The petitioner grandfather was appointed in Western Coalfields Limited on 22.02.1968 and on that basis the Scrutiny Committee concluded that he was a migrant in the State of Maharashtra having settled here in 1968. It was concluded that the petitioner could not prove

that her forefathers were ordinary residents of the State of Maharashtra. According to him, this conclusion was arrived at without granting any proper opportunity to the petitioner to substantiate this aspect and without conducting a detailed enquiry through the Vigilance Cell. Inviting attention to the judgments of this Court in *Badalsingh Bharosa Rawale vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and another* [2016(1) *Mh.L.J.77*] and *Rajanna Ganganna Rashalawar vs State Of Maharashtra and others* [2022(4) *Mh.L.J.283*], it was submitted that the question with regard to migration of forefathers was required to be answered after permitting the petitioner to adduce evidence to indicate otherwise. No such opportunity was granted to the petitioner. The said finding had been recorded merely on the basis of the fact that the petitioner's grandfather had secured employment in the year 1968 and that in his service record his permanent address was shown as Karimnagar, Andhra Pradesh.

It was further contended that the insistence of the Scrutiny Committee to require the petitioner to submit pre-constitutional documents was without any legal basis. There was no such requirement prescribed either in the Maharashtra Scheduled Castes and 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, the Act of 2000) or in the Rules of 2012.

Placing reliance on the decision in *Mahesh Pralhadrao Lad vs. State of Maharashtra and others* [2009(2) *Mh.L.J.90*] it was submitted that the Scrutiny Committee was required to consider all documents produced by a claimant irrespective of the fact that they were of the pre-constitutional or post-constitutional period.

Without prejudice to the aforesaid, the learned counsel submitted that the petitioner was willing to pay the requisite fees to enable her result to be declared by the respondent No.2-University. This was for the reason that the petitioner desires to pursue further studies. The petitioner had also filed an undertaking dated 11.07.2022 in which she had stated that she was willing to pay difference of fees in case if it was found that the petitioner was not entitled to a caste validity certificate. The undertaking was given subject to outcome of the decision of the Scrutiny Committee and this writ petition. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in Civil Appeal No.4864 of 2021 (*Pankaj Kumar vs. State of Jharkhand and others*) decided on 19.08.2021. It was thus prayed that the writ petition be allowed.

4. Ms N. P. Mehta, learned Assistant Government Pleader for the respondent no.1 supported the order passed by the Scrutiny Committee. She submitted that from the material collected by the Scrutiny Committee, it was

clear that the forefathers of the petitioner had migrated in the State of Maharashtra from 1968 and onwards. The petitioner's father was born in the year 1974 in Maharashtra but the same was not sufficient to prove that the petitioner and her forefathers were ordinary residents of the State of Maharashtra. From the permanent address of the petitioner's grandfather, it was clear that the family was residing in Karimnagar, Andhra Pradesh. It was necessary for the petitioner to have produced pre-constitutional documents to establish her claim of belonging to 'Madiga' Scheduled Caste. Since all relevant material was considered by the Scrutiny Committee, no interference with the impugned order was called for. The learned Assistant Government Pleader placed reliance on the decision in *Bir Singh vs. Delhi Jal Board and others [(2018) 10 SCC 312]* as well as on paragraph 38 of the decision in *Pankaj Kumar (supra)*. It was thus submitted that the petitioner was not entitled for any relief whatsoever.

Shri J.B.Kasat, learned counsel for the respondent no.2-University submitted that since the petitioner had secured admission from the reserved category, her result has been withheld for want of validity certificate and on production of the same her results would be declared.

5. We have heard the learned counsel for the parties and we have perused the documents on record. It is seen that the petitioner has been

issued a caste certificate on 05.01.2014. His father has been issued a birth certificate by the then Municipal Council, Chandrapur dated 28.04.1974. The petitioner has secured admission at the B. Tech. course being conducted by the respondent No.2-University in the reserved category. When the petitioner sought verification of her caste claim based on the caste certificate dated 05.01.2014, the Scrutiny Committee found that the petitioner's grandfather was employed with the Western Coalfields Limited since 22.02.1968 and in his service record the permanent address given was of District Karimnagar, Andhra Pradesh. On that basis, the Scrutiny Committee concluded that as per Rule 5(1) of the Rules of 2012 a caste certificate could be issued to a person who himself or whose father or grandfather was ordinarily residing within the area of the territorial jurisdiction of the Competent Authority on the deemed date. In absence of the claimant being such ordinary resident, a caste certificate cannot be issued. By holding that the petitioner had failed to prove her claim of being an ordinary resident of Chandrapur Sub-Division on the deemed date which was 10.08.1950, the caste certificate has been cancelled. This is by treating the petitioner as a migrant and by relying upon Rule 14 of the Rules of 2012 which prohibits the Scrutiny Committee from verifying such caste certificate issued by the Authorities beyond the State of Maharashtra. Consequentially, the said caste certificate has been cancelled.

6. The question whether an applicant is an ordinary resident of the area within the territorial jurisdiction of the Competent Authority on the deemed date as required by Rule 5(1) is a question of fact which is required to be adjudicated by granting an applicant necessary opportunity to prove the same. A finding that the applicant was not an ordinary resident cannot be recorded by taking a summary enquiry. In *Badalsingh Bharosa Rawale* (supra), the Division Bench of this Court has considered this aspect by observing that the same has to be decided by permitting the claimant to tender evidence in that regard. In the present case, there was no such opportunity granted to the petitioner to demonstrate that she and her forefathers were residing in the State of Maharashtra prior to 1950. Admittedly, there was no enquiry conducted by the Vigilance Cell and the Scrutiny Committee has merely referred to the service record of the petitioner's grandfather to conclude that since he was appointed in the year 1968 at Western Coalfields Limited, it was clear that he was a migrant in the State of Maharashtra from 1968.

We find that firstly, the petitioner was not put to notice that her caste certificate was liable to be cancelled for the reason that it was issued in contravention to Rule 5 of the Rules of 2012. Had such opportunity been granted to the petitioner, she would have been in a position to put-forth her stand in that regard. Secondly, the aforesaid conclusion has been recorded

without any report of the Vigilance Cell. As per the Rules of 2012 the Vigilance Cell is empowered to visit the place of residence of the claimant and his/her forefathers for making a detailed enquiry. If such enquiry would have been undertaken by the Vigilance Cell, relevant material with regard to ordinary residence of the petitioner could have been gathered. The same has not been done in the present case.

7. Insofar as Rule 14 of the Rules of 2012 is concerned, the same prohibits verification of caste certificate by the Scrutiny Committee when such caste certificate is issued to a migrant from another State. In other words, a caste certificate issued to a claimant by an Authority other than one from the State of Maharashtra cannot be verified. Thus, even for relying upon Rule 14 of the Rules of 2012 it would have to be first conclusively established that the claimant seeking verification is a migrant from another State and hence such verification is not possible. Rule 14 has been relied upon pursuant to a summary enquiry which would not be permissible. It is to be borne in mind that the conclusion recorded by the Scrutiny Committee that the claimant is a migrant has multiple consequences. Such conclusion is likely to affect the academic as well as service prospects of such claimant and hence it is necessary that before such finding is recorded, the procedure prescribed by the Rules of 2012 in the matter of verification of caste/tribe claim is complied

with.

8. The decision of this Court in *Niraj Kamlakar More vs. Scheduled Tribe Certificate Scrutiny Committee, Aurangabad [2012 (5) Mh.L.J.367]* is required to be noted. After considering the provisions of Sections 4, 6 and 7 of the Act of 2000, it was held that a caste certificate issued by the Competent Authority in accordance with Section 4(1) of the Act of 2000 is valid only when a validity certificate is granted by the Scrutiny Committee. Under Section 7(1) of the Act of 2000 the power of cancellation and confiscation of a caste certificate can be exercised only if the Caste Scrutiny Committee is of the opinion that the caste certificate was obtained fraudulently. The aforesaid legal position is also to be kept in mind before a caste certificate is sought to be cancelled. The Scrutiny Committee has not adverted to these aspects while passing the impugned order.

9. For these reasons we find that the order passed by the Scrutiny Committee is not sustainable since the conclusion that the petitioner is a migrant and that the caste certificate issued to her on 05.01.2014 is in contravention of Rules 5(1) & (2) and 14 of the Rules of 2012 has been recorded in a summary enquiry. It is therefore necessary to direct the scrutiny Committee to conduct a fresh enquiry into the caste claim of the petitioner in accordance with the Rules of 2012 after giving due opportunity

to the petitioner. For this reason, it is not necessary to go into the question of benefits to which the petitioner would be entitled to if she is treated as migrant as sought to be urged by the respondents by relying upon the decision in *Bir Singh* (supra).

The petitioner has completed her education from the respondent no.2-University. She seeks declaration of her result to enable her to further prosecute studies. She has also tendered her undertaking in that regard. In these facts, the result of the petitioner can be directed to be declared provisionally subject to outcome of the proceedings before the Scrutiny Committee and on paying difference of fees as payable by the candidates from the open category.

10. Accordingly, the following order is passed:

(i) The order dated 29.07.2019 passed by the Scrutiny Committee passed by the Scrutiny Committee cancelling the petitioner's caste certificate is set aside.

(ii) The Scrutiny Committee is directed to re-examine the petitioner's claim of issuance of caste validity certificate by following the prescribed procedure including conducting an enquiry by the Vigilance Cell, if found necessary. The petitioner shall be granted due opportunity after putting her on notice if the

Scrutiny Committee proposes to cancel her caste certificate. To facilitate such exercise, the petitioner shall appear before the Scrutiny Committee on **15.09.2022**. A decision on the petitioner's caste claim be taken within a period of six months from the date of her appearance before it.

(iii) The respondent no.2-University shall provisionally declare the petitioner's result of her B.Tech.(Chemical Technology) examination held in Summer 2021 subject to her depositing the difference of fees as payable by candidates from the open category. The result declared provisionally would be subject to final outcome of the validity proceedings before the Scrutiny Committee. The mark-sheet and the degree certificate issued to her may mention this fact.

Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)