

Gujarat Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Issuance and Verification of Caste Certificates) Act, 2018

GUJARAT

India

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Act 19 of 2018

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Gujarat Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Issuance and Verification of Caste Certificates) Act, 2018(Gujarat Act No. 19 of 2018)(First Published, after having received the assent of the President, in the "Gujarat Government Gazette", on the 16th October, 2018)An Act to provide for regulation of issuance and verification of the Caste Certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes or Other Backward Classes and for matters connected therewith or incidental thereto.Whereas it is expedient to provide for the regulation of the issuance and verification of the Caste Certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes or Other Backward Classes and for matters connected therewith or incidental thereto;It is hereby enacted in the Sixty-ninth Year of the Republic of India as follows:-

1. Short title and commencement.

(1)This Act may be called the Gujarat Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Issuance and Verification of Caste Certificates) Act, 2018.(2)It shall come into force on such date, as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"Caste Certificate" means the certificate issued by the Competent Authority to an applicant indicating therein the Scheduled Caste, Scheduled Tribe or Other Backward Class, as the case may be, to which such applicant belongs;(b)"Competent Authority" means an officer or authority authorized by the Government, by

notification in the Official Gazette, to issue a Caste Certificate, for such area and for such purpose as may be specified in the said notification;(c)"Educational Institution" means any School, Degree College, College of Education, Polytechnic, Industrial Training Institute, College of Fine Arts and Architecture, College of Music and Dance, Engineering College, Agricultural College, Veterinary College, Medical College, Dental College, Ayurvedic College, Homoeopathic College, Unani College, Nurses Training School, Health Visitors Training School, Vocational Training Institution, Deemed University, Open University and various colleges under the control of any University established by or under an Act of the Central or State Legislature and such other Institution, by whatever name called, which is carrying on (either exclusively or among other activities) the activity of imparting education;(d)" Government " means the Government of Gujarat;(e)"Local authority" means,-(i)a Municipal Corporation constituted under the Gujarat Provincial Municipal Corporations Act, 1949, (Bombay LIX of 1949);(ii)a Municipality constituted under the Gujarat Municipalities Act, 1963;(iii)a Panchayat constituted under the Gujarat Panchayats Act, 1993, (Gujarat 18 of 1993);(f)"Other Backward Classes" means any Socially and Educationally Backward Classes of citizens as declared by the Government and includes other Backward Classes declared by the Government of India in relation to the State of Gujarat;(g)"prescribed" means prescribed by rules made under this Act;(h)"Scheduled Castes" and "Scheduled Tribes" shall have the meanings respectively assigned to them in clause (24) and clause (25) of article 366 of the Constitution of India;(i)"Scrutiny Committee" means the Committee or committees constituted under sub-section (1) of section 6 for verification of the Caste Certificate and to perform the functions of Scrutiny Committee under this Act.

3. Application for a Caste Certificate.

- Any person belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes, required to produce a Castes Certificate in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes, either for admission into any educational institution under article 15 or in any public employment under article 16 of the Constitution of India or for the purpose of contesting for elective post in any local authority, co-operative society or any other purposes specified by the Government, shall apply in such form and in such manner as may be prescribed, to the Competent Authority for the issuance of a Caste Certificate.

4. Caste Certificate to be issued by the Competent Authority.

(1)The Competent Authority may, on an application made to it under section 3, after satisfying itself about the genuineness of the claim and following the procedure as prescribed, issue a Caste Certificate in such form as may be prescribed or reject the application for reasons to be recorded in writing.(2)A Caste Certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee.

5. Appeal.

(1) Any person aggrieved by an order of rejection of application passed by the Competent Authority under sub-section (1) of section 4 may, within a period of 30 days from the date of receipt of an order, appeal to the Appellate Authority specified by the Government by notification in the Official Gazette. (2) The Appellate Authority may within a period of three months, after giving the appellant an opportunity of being heard and after satisfying itself about the genuineness or otherwise of the claim of the appellant either confirms the rejection order, or set aside the order of the Competent Authority and directs the Competent Authority to issue the Caste certificate within seven days from the receipt of the direction."

6. Verification of Caste Certificate by Scrutiny Committee.

(1) The Government shall constitute, by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each Scrutiny Committee or Committees. (2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes or Other Backward Classes for the purposes mentioned in section 3 may make an application, within such time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issuance of a validity certificate. (3) The appointing authorities of the Central or a State Government, local authority, public sector undertakings, educational institutions, co-operative societies or any other Government aided institutions shall make an application in such form and in such manner as may be prescribed to the Scrutiny Committee concerned for the verification of the Caste Certificate and issuance of a validity certificate, in case a person selected for an appointment with the Government concerned, local authority, public sector undertakings, educational institutions, co-operative societies or any other Government aided institutions has not obtained such certificate. (4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as may be prescribed.

7. Application pending prior to the Commencement of the Act.

- All applications pending for issuance of Caste Certificate or validity certificate prior to coming into force of this Act shall stand transferred to the Competent Authority or, as the case may be, the Scrutiny Committee on the coming into force of this Act: Provided that the State Government may direct, by Order published in the Official Gazette, that authorities to whom the applications for issuance of Caste Certificate or the validity certificate were to be made prior to the date of coming into force of the Act, shall continue to function for such time as may be specified in the Order.

8. Confiscation and cancellation of false Caste Certificate.

(1)Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as may be prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority.(2)The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under article 226 of the Constitution of India.

9. Burden of proof.

- In any proceedings either before the Competent Authority, the Scrutiny Committee or the Appellate Authority under this Act or in any trial of offence under this Act, the burden of proving that the person belongs to any of the Scheduled Castes/Scheduled Tribes or Other Backward Classes shall be on such claimant/applicant.

10. Powers of Civil court to Competent Authority, Appellate Authority and Scrutiny Committee.

- The Competent Authority, the Scrutiny Committee or the Appellate Authority shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, (V of 1908) and in particular in respect of the following matter, namely:-(a)summoning and enforcing the attendance of any person and examining him on oath;(b)requiring the discovery and production of any document;(c)receiving evidence on affidavits ;(d)requisitioning any public record or copy thereof from any Court or office ; and(e)issuing commissions for the examination of witnesses or documents.

11. Benefits secured on the basis of false Caste Certificate to be withdrawn.

(1)Whoever, not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes, secures or has secured admission in any educational institution against a seat reserved for such Caste, Tribe or Class, or secures any appointment in the Government, local authority, co-operative society or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution against a post reserved for such Caste, Tribe or Class by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be,(a)debarred from the concerned educational institution, or as the case may be,(b)discharged from the said employment forthwith,and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.(2)Any amount paid to such person by the Government or any other agency by

way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as arrears of land revenue.(3)Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate, by the Scrutiny Committee.(4)Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes or Other Backward Classes by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class, on such false Caste Certificate being cancelled by the Scrutiny Committee; and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.

12. Offences and penalties.

(1)Whoever,-(a)obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means ; or(b)not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes secures any benefits or appointments exclusively reserved for such Castes, Tribes or Classes in the Government, local authority, co-operative society or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or cooperative society against the office, reserved for such Castes, Tribes or Classes, by producing a false Caste Certificate,shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend up to three years and with fine which shall not be less than ten thousand rupees, but which may extend up to fifty thousand rupees.(2)No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee for this purpose.

13. Offences under Act to be cognizable and non-bailable.

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974)-(a)offences punishable under section 12 shall be cognizable and non- bailable;(b)every offence punishable under this Act, shall be tried by any Magistrate of First Class following summons case procedure prescribed in the Code of Criminal Procedure, 1973, (2 of 1974).

14. Penalty for issuing false Caste Certificate.

(1)Whoever, being the Competent Authority, intentionally issues a false Caste Certificate shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend up to three years and with fine which shall not be less than ten thousand rupees but which may extend up to fifty thousand rupees:Provided that the person who abets the

production of false documents on the basis of which the Competent Authority issues the Caste Certificate, such person shall also be liable.(2)Whoever, not being the Competent Authority, intentionally issues a Caste Certificate shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend up to three years and with fine which shall not be less than ten thousand rupees but which may extend up to fifty thousand rupees.(3)No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government.

15. Bar of jurisdiction of civil court.

- No civil court shall have jurisdiction, to entertain, to continue or to decide any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order, if the claim involved in such suit or proceeding, or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

16. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against any officers discharging the functions of Competent Authority or Appellate Authority or any member of the Scrutiny Committee, for anything which is done in good faith or intended to be done in pursuance of this Act or the rules made thereunder.

17. Acts not in derogation to any other law.

- The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

18. Power to make rules.

(1)The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.(2)All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such "modifications as the State Legislature may make, during the session in which they are so laid or the session immediately following.(3)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

19. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:Provided that no such order shall be made under this section after the expiry of a period of three years from the date of commencement

of this Act.(2)Every order made under this section shall be laid, as soon as may be after it is made, before the House of State Legislature.