

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8537 OF 2015

Atul Tukaram Patil	]	
Age - 45 years, Occup- Sarpanch	]	
Residing at A/p- Rashiwade	]	
Taluka - Radhanagari,	]	
District - Kolhapur.	]	.. Petitioner

V/s.

1]	The State of Maharashtra	]	
	Through its Secretary,	]	
	Social Justice Department,	]	
	Mantralaya, Mumbai-400 032.	]	

2]	Divisional Caste Certificate	]	
	Scrutiny Committee No.2,	]	
	Through its Chairman having	]	
	its office at Dr. Babasaheb	]	
	Ambedkar Samajik Nyaya	]	
	Bhavan, 2 nd Floor,	]	
	Vichare Mala, Kolhapur.	]	

3]	The Collector	]	
	District - Kolhapur.	]	

4]	Pandurang Daji Dhandure	]	
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5]	Bapuso Narshinha Gogane	]	
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Adult, Occup- Sarpanch,	]	
R/at A/P-Rashiwade,	]	
Taluka - Radhanagari,	]	
District - Kolhapur.	]	.. Respondents

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Mr. U. P. Warunjikar i/b. Mr. D. B. Shinde, Advocate for the
Petitioner.

Mr. P. P. Kakade, AGP for Respondent Nos.1 to 3.

Mr. A. Y. Sakhare, Senior Counsel i/b. Mr. P. D. Dalvi, Advocate
for Respondent No.4.

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**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

JUDGMENT RESERVED ON : 17.12.2015

JUDGMENT PRONOUNCED ON : 23.12.2015

JUDGMENT (Per S. B. Shukre, J.) :

Heard.

2. Rule.

3. Rule made returnable forthwith.

4. Heard finally by consent.

5. This petition challenges the legality and correctness of the order dated 13th August, 2015, passed by respondent no.2 - Divisional Caste Certificate Scrutiny Committee No.2, thereby invalidating the caste claim of the petitioner as belonging to "Kunabi" caste.

6. The petitioner, claiming himself to be belonging to the caste "Kunabi" falling in the category of Other Backward Class (hereinafter referred to as "OBC" for short), contested the election for the post of Member of Gram Panchayat from

ward no.6 of village Rashiwade, Taluka – Radhanagari, District – Kolhapur which ward was reserved for the OBC category and was declared winner, having secured highest votes. Respondent nos.4 and 5 doubted the caste claim of the petitioner and, therefore, they filed a complaint with respondent no.2, the Divisional Caste Certificate Scrutiny Committee No.2, Kolhapur alleging that the petitioner was from a general category and belonged to the “Maratha” caste. Respondent no.2 took cognizance of the complaint and directed an inquiry of its vigilance cell into the allegations made against the petitioner. The vigilance cell, following the procedure prescribed under the Maharashtra Scheduled Castes, 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 (hereinafter referred to as “the Act 2000”, for short) and 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 2012”, for short), submitted its report to respondent no.2. Thereupon, notice was issued to the petitioner calling upon him to address the issues raised in the report of the vigilance cell and mentioned in the notice. The petitioner replied to the same and thereafter an

inquiry was conducted. Respondent no.2 came to the conclusion that the petitioner could not establish his caste status as belonging to the "Kunabi" caste and therefore passed order on 13th August, 2015, invalidating the caste certificate dated 2nd June, 2012, issued to him by the Additional Collector, Radhanagari Division, Kolhapur and directed its forfeiture. Not being satisfied with the same, the petitioner has approached this Court by filing the present writ petition.

7. We have heard Mr. Warunjikar, learned counsel for the petitioner, Mr. P.P. Kakade, learned AGP for Respondent nos. 1 to 3 and Mr. A. Y. Sakhare, and learned senior counsel for respondent nos. 4 and 5, who were the original complainants. With their assistance, we have carefully gone through the paper book of this petition.

8. Mr. Warunjikar, the learned counsel for the petitioner has submitted that no effective opportunity of submitting final argument by the petitioner has been given by respondent no.2 as his counsel could not remain present on the rescheduled date of final hearing; that the birth and the death entries in the revenue record in respect of paternal aunts of the petitioner Sau Dnyanoba Aapa and Ranu Bapu Dnyanoba Aapa dating back to 1901 and 1903 as well as the school leaving certificate of Tukaram Dnyanoba Patil, father of the

petitioner, showing his caste as Kunabi which pertains to a pre-independence period have not been appreciated properly, that no proper procedure has been followed by the vigilance cell while making domestic inquiry, in particular provisions of Clauses (b), (c) and (d) of Rule 13 of Rules 2012 have not been followed; that statement of political rivals of the petitioner have been accepted wrongly and that the affidavits filed before the scrutiny committee by the petitioner have been ignored in violation of law. Learned Counsel, therefore, submits that the impugned order be set aside and the matter be remanded back to respondent no.2, for its consideration afresh.

9. Learned AGP submits that the roznama maintained by respondent no.2 committee would show that effective opportunity for making final submissions before the scrutiny committee has been given; that the pre-independence documents on which reliance is said to have been placed by the petitioner, being doubtful in nature, have been rightly rejected by respondent no.2; that the report of domestic inquiry would show that the procedure prescribed in Rule 13 of Rules 2012 has been followed in true letter and spirit; that the scrutiny committee has not passed its order entirely on the statements of residents of village Rashiwade and has considered all the relevant material and evidence brought before it and, therefore, the impugned order cannot be said to

have been passed in breach of law or arbitrarily.

10. Mr. Sakhare, learned senior counsel appearing for the complainants submits that roznama maintained by respondent no.2 - scrutiny committee would show that proper and effective opportunity of hearing has been given to the petitioner; that no specific grievance about the contents of roznama has been made in the petition; that the pre-independence documents have been properly appreciated by the scrutiny committee; that the vigilance cell report would show that proper procedure has been followed, particularly the procedure prescribed in Rule 13 of Rules 2012; that even past and present police patil's statements have been recorded both of whom have stated that the petitioner belongs to caste "Maratha" and not caste "Kunabi"; that reply given by the petitioner in respect of the notice issued to the vigilance cell, does not say that the vigilance cell's report is bad in law for non-compliance of Rule 13 of Rules 2012 and therefore, now the order of the scrutiny committee cannot be assailed on this ground; that the affidavits on which reliance being placed by the petitioner in any case do not support the caste claim of the petitioner; that under Section 8 of the Act 2000, the burden of proof is entirely upon the petitioner which the petitioner has failed to discharge and that the impugned order has not been shown to be perverse or arbitrary or illegal. On these grounds,

the learned senior counsel urges that no interference with the impugned order is warranted.

11. As regards the first objection of denial of opportunity of hearing, though learned Senior Counsel submits that it is absent in the body of petition, we find that it is generally raised in the petition, but has no foundation in the facts of the case. A careful perusal of the roznama maintained by the scrutiny committee discloses that final arguments were heard by the Committee on 12th February, 2015, and the case was closed for orders. However, the case was again reopened for final hearing, as submitted by the learned counsel for the petitioner and about which there is no dispute either, there being change in the composition of the scrutiny committee and the case was kept for final hearing on 14th July, 2015. On that day, the petitioner was present and so the complainants were. The roznama of 14th July, 2015 discloses that the learned counsel for the petitioner was not present. It further shows that the petitioner as well as the complainants were heard and the matter was closed for orders. The learned counsel for the petitioner submits that the counsel of the petitioner could not remain present as the petitioner was not aware as to for what purpose, he was called upon to be present before the committee on 14th July, 2015, and the petitioner was only intimated through SMS that he was required to attend the

proceedings before the scrutiny committee on 14th July, 2015. He submits that had he been properly intimated about the purpose, the petitioner would have been in a position to remain present along with his counsel before the committee. He further submits that after closing the case for orders on 14th July, 2015, about which the petitioner had no idea, suddenly the impugned order was passed on 13th August, 2015, and this is how there has been denial of effective opportunity of hearing to the petitioner. The argument, however, cannot be accepted for two reasons. Firstly, intimation was received by the petitioner which ought to have put him on guard and made him seek assistance of his lawyer. Secondly, after the closure of the case for orders on 14th July, 2015, a period of almost one month was available before the final order was passed and this period could and should have stood in good stead for the petitioner to make an application before the committee praying for giving of an opportunity to make his final submission through his learned counsel. But, the petitioner did not avail of this subsequent opportunity as well. The conclusion is irresistible. It leads us to believe that now the ground of denial of adequate opportunity of hearing is being taken by the petitioner only by way of an afterthought and so we reject it.

12. There has been another objection voiced by the petitioner that documents were not properly appreciated. However, upon carefully going through the vigilance cell

report, the impugned order and also the original record produced before us, we find that the objection is devoid of substance for the reasons given in forgoing paragraphs.

13. Respondent no.2 has observed in the impugned order that in the school leaving certificate of father of the petitioner, Tukaram Dnyanoba Patil, there is alteration at the place where the word "Kunabi" is written and at this very place the paper has worn out and turned whitish. It is further observed that there is a yellowish spot on the reverse side of the school leaving certificate, just behind the word "Kunabi". As regards the birth entry of Sau Dnyanoba Patil, claimed to be paternal aunt of the petitioner, respondent no.2 committee has found that the word "Sau" appeared to be written twice and that the ink used for writing the word "Aajari" (आजारी) in the remark column was darker in shade than the ink used for writing the remaining material. Respondent no.2 also found that though the petitioner claimed that Ranu Dnyanoba Patil and Sau Dnyanoba Aapa Patil were his paternal aunts, no satisfactory evidence was produced by the petitioner to establish his relationship with Sau and Ranu.

14. Now, in order to ascertain if these observations, really speaking the findings on facts, are founded upon factual settings of the case or not, we called for the original record

and examined it. It has, along with consideration of material available on record, led us to form a view that what has been observed by the scrutiny committee on the basis of the vigilance report cannot be said to be entirely incorrect. The school leaving certificate of the father of the petitioner is indeed blotched at the place where the word "Kunabi" is written. This word appears in such a manner that it gives an impression that it may have been written subsequently through some kind of alteration. It is true that this document being under the custody and control of the school authorities, the onus to explain the speckled nature of the entry would lie upon those authorities, unless there is some evidence suggesting otherwise. There is no evidence available on record which shifts the burden from school authorities to somewhere else and therefore, no blame for such a blemished entry can be placed upon the shoulders of the petitioner. At the same time, fact remains that the entry is suspicious and therefore, no reliance could be placed on it. Such a doubtful entry cannot be read in a manner as giving advantage to the petitioner. The reason for this observation has to be attributed to Section 8 of the Act, 2000 which casts a mandatory burden of proof on the claimant. It lays down that in any enquiry conducted by the scrutiny committee under the Act, 2000, the burden of proof shall lie on the person who claims to be belonging to any of the castes, tribes or categories mentioned therein. Obviously, the

petitioner was required to clear the air of suspicion about the said entry by furnishing some other reliable evidence. The petitioner, however, did not do so.

15. Learned senior counsel for the complainants has pointed out that no reliance could be placed even on the birth and death entries of two girls namely Sau and Ranu for the reason that these certificates fairly indicate that these two girls were born in the year 1901 with a gap of just about six months at the most in between their births. This has been disputed by the learned counsel for the petitioner. However, we find merit in the submission of the learned senior counsel for the complainants. The date of birth of Sau has been shown to be 12th June, 1901 in the birth entry maintained by the revenue authorities. The entry of death maintained by the revenue authorities in respect of Ranu Bapu Dnyanoba Aapa indicates that she died in the year 1903 when she was two years old. This would fairly suggest that the girl Ranu was born in the year 1901. Since the girl Sau was born in June 1901, even if the month of birth of the girl Ranu is taken as January 1901 or December 1901, the gap between the births of these two girls would not be more than six months, which biologically appears to be a remote possibility. Even if the possibility was there, having regard to the stage of development of medical science in those days, there was very

little possibility of survival of a premature child born in the year 1901 till the year 1903. Then, the word "Sau" appears to have been over written. Having regard to all these facts, we are of the view that the birth and death entries of the girls Sau and Ranu cannot be relied upon, even though both these entries indicate that their caste was "Kunabi".

16. There is yet another reason why these birth and death entries cannot be considered as strengthening the caste claim of the petitioner. There is a missing link between these two girls and the petitioner in the sense that their kinship with petitioner is not forged. The petitioner has not produced before the scrutiny committee any satisfactory evidence showing his relationship with the said girls. There is one affidavit sworn by Sindhutai Eknath Patil, a relative of the petitioner, which has been submitted before the committee. In this affidavit, Sindhutai has given the genealogy of the family of the petitioner showing that Sau and Ranu to be the daughters of the common ancestors Dnyanoba Aapaji Patil and Chandrabai. The genealogy so submitted before the scrutiny committee cannot be accepted as worthy of credit, unless the petitioner has given a satisfactory explanation about the failure to mention the names of the girls Sau and Ranu as his blood relatives in the genealogy submitted by him during the course of vigilance inquiry, which was the earliest possible

opportunity afforded to the petitioner. The explanation submitted by the petitioner in his reply dated 18th January, 2014 given to the notice of the scrutiny committee dated 7th January, 2014 is not at all satisfactory. In the reply, the petitioner has stated that the names of Sau and Ranu were not included in the first genealogy as at that time no documentary proof was available with him and that no sooner the documentary proof was secured by him than he submitted a revised genealogy showing inclusion of their names before the scrutiny committee. Such an explanation defies logic. There can be no manifest relation between non-inclusion of names of blood relatives in the genealogy at the first available opportunity and non-availability of documentary proof, as the blood comes first and the documents later. We must say, in law, an inescapable duty has been placed upon a person undergoing verification of his caste claim to make true and correct disclosure of all the information including adverse entries or materials which would have a bearing upon his caste status. Rule 17(12) of the Rules 2012 is clear in this regard and it reads thus:

“17 (12) Notwithstanding anything contained in these rules, it is incumbent on the applicant to disclose all the true and correct information, including disclosure of adverse entries or material; failing which, it shall be lawful for the Scrutiny Committee to draw adverse inference.”

The petitioner did not fulfill such an obligation when he submitted his first genealogy and the subsequent explanation given by him for non-inclusion of the names of Sau and Ranu in the first genealogy was not at all satisfactory. The petitioner also did not submit any other reliable evidence in this regard. The result is that the petitioner has been rightly held by respondent no.2 to have not established his kinship with the girls Sau and Ranu. This is apart from the fact that the birth and death entries of these two girls maintained by the revenue authorities being what they were could not be taken to mean that the girls were the paternal aunts of the petitioner, especially for the doubts pointed out earlier.

17. It is also the argument of the petitioner that there has been violation of the procedure prescribed under Rule 13 of Rule 2012 in making an inquiry by the vigilance committee. The petitioner has placed reliance upon the observations of the Division Bench of this Court made in the ***Judgment dated 15th October, 2013 delivered in Writ Petition No.4763 of 2013¹***. The Division Bench has held that functioning of the vigilance cell is not to only verify the correctness and genuineness of the documents produced by the applicant, but also to hold inquiry as contemplated under relevant clauses

1 Barkha Rajesh Manik v/s. State of Maharashtra & Ors.

and in particular clauses (a), (b) and (c) of the Rule, 2012.

18. There can be no two opinions about following of Rule 13 procedure by vigilance cell as a matter of course while conducting an inquiry. It is also true that the petitioner should have raised the grievance about non-compliance with Rule 13 procedure in his reply to notice issued to him by respondent No.2, which he did not. So, the inference would be that the petitioner has already waived the objection, which is of procedure and not of law, and now cannot be allowed to rake it up again. Even otherwise, upon a careful consideration of the report of the vigilance cell in the instant case, we find it difficult to agree with the contention of the petitioner that Rule 13 procedure has not been followed while making an inquiry. The vigilance cell had visited the place of residence of the petitioner and also the concerned school. It had also verified the official record and the documents. It had recorded statements of respected and responsible persons from the concerned area. We find such an effort on the part of the vigilance committee to be substantial compliance with the procedure prescribed under Rule 13.

19. Learned counsel for the petitioner insists that the vigilance cell ought to have collected information regarding the sociological and anthropological moorings; ethnological

kinship, and genetic traits of the persons belonging to the caste "Kunabi", as required by clause (d) of Rule 13 and submits that this has not been done by the vigilance committee. But, reading Rule 13 as a whole gives an impression that collection of information including that about sociological, anthropological and ethnological moorings and kinship and genetic traits would be necessary only when the committee finds that the material collected by the committee hints that the person under verification may belong to any of the reserved categories mentioned in clause (d) and this fact would require further corroboration from additional sources. If the inquiry made by the vigilance cell in accordance with Clauses (a) and (b) or Clause (c) reasonably reveals that the claimant does not belong to any of the reserved categories mentioned therein, we do not think, there would be any occasion for making any further effort to collect information about sociological moorings, anthropological and genetic traits and ethnological kinships, and even if the effort is made, it is doubtful, if it would be meaningful in the absence of relevant data yielded in inquiry under Clauses (a) to (c) of Rule 13. In the instant case, the material collected by the vigilance committee reasonably indicated that the petitioner was belonging to the caste "Maratha" and not "Kunabi" and, therefore, there was no occasion for scrutiny committee to collect any information regarding sociological and

anthropological moorings or genetic traits by way of further assurance. Need for collection of such an information or at least making of an effort in that direction, as stated earlier, would be necessary when an occasion arises for the vigilance committee to reassure itself about the material collected by it.

20. In the case of ***Barkha Rajesh Manik*** (Supra) reliance on which has been placed by the petitioner, the Division Bench of this Court had found that no domestic inquiry at all, as contemplated under Rule 13 of Rules 2012, was made and the report of the vigilance cell was based only upon the documentary evidence produced by the petitioner. Such is not the case here and the vigilance cell did comply substantially with the procedure prescribed under Rule 13. Therefore, in our view, the case of ***Barkha Rajesh Manik (Supra)*** gives no assistance to the case of the petitioner in this case.

21. About the argument that statements of political rivals of the petitioner have been wrongly accepted by respondent no.2 committee, we must say that the argument is devoid of any substance. While there is no doubt about the fact that one of the persons, Sangram Vasantrao Patil, whose statement was recorded by the vigilance committee, was an adversary of the petitioner in a civil suit pending between them

in respect of a property dispute, this fact by itself would not make the statements of other persons as unreliable. Dinkar Visnu Patil, a resident of village Waghawade, is a person holding additional charge as police patil of village Rashiwade, which is situated five kilometer away from village Waghawade. He being the incharge police patil of village Rashiwade, can be said to be having intimate knowledge about the residents of village Rashiwade and their places in the social structure of that village. Same can be said about Mahadev Vishnu Patil, a resident of village Rashiwade, who had been its police patil during the period from 1996 to 2012. Both of them have stated that petitioner belongs to caste "Maratha" and not "Kunabi". Their statements cannot be disbelieved just because the petitioner vaguely says that these two persons apart from the other two persons are his political rivals, unless the petitioner produces some material to probabalize his such a charge. The petitioner has not produced any material in this regard. We, therefore, find no infirmity in the reliance placed upon these persons in the impugned order.

22. The petitioner submitted before the scrutiny committee affidavits of three persons namely:- (1) Bajirao Nana Patil; (2) Vishnu Dnyanoba Patil; and (3) Sindhubai Eknath Patil. In these affidavits, it is stated that the petitioner is "Kunabi" by caste. We have already discussed one aspect of the

affidavit of Sindhutai, which was about revised genealogy of the petitioner and, therefore, it is not necessary to again refer to it. These affidavits have not been considered by respondent no.2 by following the ratio of the case of ***Sudhadevi Vs. M.P. Narayanan***². Relevant observations of the Supreme Court have also been reproduced in the impugned order and upon going through the same, we find that the ratio of this case could not have pressed into service by respondent no.2, as the principle of law laid down relates to operation of rules of procedure prescribed under the Code of Civil Procedure. The procedure that the scrutiny committee has to follow has been laid down in Rules 2012, in particular Rule 17. Sub Rule (6) of Rule 17 requires scrutiny committee to appreciate not only the statement of applicant or claimant, submitted in the form of affidavit, but also other evidence and documents furnished by the applicant or claimant. The explanation “other evidence and documents” in our view is wide enough to take in its fold the affidavits submitted by the applicant or the claimant. We must note that strict rules of evidence are not required to be followed while making verification of the caste claims by the scrutiny committee. This has been made clear by the Apex Court in the case of ***Kum. Madhuri Patil and other Vs. Additional Commissioner, Tribal Development and***

2.1988 Vol.III SCC 366

others³, when it observed that the inquiry to be made by the scrutiny committee should be such as would be expedient to the situation. This observation would suggest that the scrutiny committee would have some leeway in following the procedure for making an inquiry. Therefore, we find that the scrutiny committee has committed an error in refusing to consider the affidavits submitted before it by the petitioner. It is, however, a different thing that these affidavits, upon their due consideration do not make any difference to the overall case of the petitioner. These affidavits, except for setting a word against word, do nothing. According to these deponents, the petitioner is “Kunabi” by caste; while the other deponents swear by “Maratha” caste of the petitioner. These three deponents are relatives of the petitioner, and the other deponents barring Sangram, are independent persons and two of them are past and present police patils. Word of these other deponents, especially the police patils, being of independents, would carry more weight than the word of said three deponents, being not independents.

23. Lastly, we must say, the school leaving certificate of the petitioner produced by he himself finally closes the chapter. It discloses that his caste is “Maratha”. No satisfactory explanation in this regard has been given by the

3 1997 Vol.V SCC 437

petitioner except to say that his father was illiterate and therefore did not mention his caste as “Kunabi” at the time of taking admission of the petitioner to the school. The school leaving certificate of the petitioner shows that he was admitted to school on 2nd June, 1975 and was relieved from the school on 26th June, 1979. It further discloses that his caste in column no.3 has been shown to be “Hindu-Maratha”. Such caste of the petitioner has been admittedly written at the instance of the father of the petitioner. If petitioner's father was illiterate, who would not, due to illiteracy, disclose caste of his son as “Kunabi”; for the same reason, he would also not disclose caste of his son as “Hindu-Maratha”; after all an illiterate father does not understand importance of such earthly things. But, the illiterate father of the petitioner specifically mentioned his caste to be “Hindu-Maratha”. Such an act on the part of the father of the petitioner would only show that he disclosed the caste as it was, truly and innocently, without thinking of what benefits it would offer or refuse to the petitioner. The explanation given by the petitioner about this entry, therefore, cannot be accepted and would rather impel us to draw an inference that caste entry in the school leaving certificate of the petitioner reasonably seals the fate of the case of the petitioner, which is obviously against him.

24. In the circumstances, we find that the impugned

order is neither perverse nor arbitrary nor does it show any non application of mind to the relevant facts. In the case of ***Madhuri Patil (Supra)***, Supreme Court has held that the High Court can interfere with the findings of the scrutiny committee only when it finds that there is an error of law or non application of mind on the part of the scrutiny committee to the relevant facts. Such is not the case here. The petition deserves to be dismissed. The petition is dismissed. Rule is discharged.

25. After pronouncement of the order, learned counsel for the petitioner prays for continuation of ad-interim relief granted earlier. The request is opposed by the learned counsel for the respondents.

26. No adverse order be passed against the petitioner on account of dismissal of petition for a period of four weeks from today.

(S. B. SHUKRE, J.)

(NARESH H. PATIL, J.)