

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8788 OF 2013**

Saraswati Rajnikant Mayekar,
Aged 40 years, residing at G-1,
Rahulkunj, Rahul Park Colony,
Near Jesal Park, Bhayandar (E),
District- Thane 401 105.

....Petitioner.

Vs.

- 1 State of Maharashtra through
its Secretary, Social Justice and
Special Assistance Department,
Mantralaya, Mumbai-32.
- 2 Divisional Caste Certificate
Scrutiny Committee No.1,
Mumbai Division, through its
Member Secretary having its
Office at Konkan Bhavan,
Room No. 525, 5th Floor, CBD,
Belapur, Navi Mumbai.
- 3 Mira Bhayandar Municipal
Corporation through its
Commissioner, having its office
at Late Indira Gandhi Bhavan,
Chhatrapati Shivaji Maharaj
Marg, Bhayandar (W),
Dist. Thane.
- 4 State Election Commissioner,
Maharashtra State, having its office
at Administrative Building, Opposite
Mantralaya, Mumbai-32.

5 Naramada Yashwant Vaiti,
Alias Naramada Nandlal Vaiti,
residing at 2/B/315/Ostawan Orner,
Near Jain Mandir, Jesal Park,
Bhayandar (East), Dist. Thane.Respondents.

Mr. S.G. Deshmukh a/w Mr. R.K. Mendadkar a/w Ms. Helen Koli-
Mandlik a/w Mr. C.K. Bhangoji for the Petitioner.
Ms. S.S. Bhende, AGP for Respondent Nos. 1 and 2.
Mr. N.R. Bubna for Respondent No.3.
Ms. Shriya Jadhav I/by Mr. S.B. Shetye for Respondent No.4.
Mr. A.Y. Sakhare, Senior Advocate a/w Mr. Dilip B. Shinde for
Respondent No.5.

**CORAM : ANOOP V. MOHTA AND
A.A. SAYED, JJ.
DATE : 19 NOVEMBER 2015.**

ORAL JUDGMENT(PER ANOOP V. MOHTA, J.):

Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

2 The Petitioner has challenged the order passed by
Respondent No.2-Divisional Caste Certificate Scrutiny Committee No.1
dated 30 July 2013, thereby declined to validate her Caste Certificate
belonging to “*Macchimar Daldi*”, Other Backward Caste, though the
Vigilance Report supports her caste claim. The Petitioner thereby, also

suffered an action of automatic disqualification as elected Corporator because of invalidation of her Caste Claim. Therefore, the present Petition.

3 This Court by order dated 24 October 2013, directed Respondent No.4-State Election Commissioner not to declare by-election from ward No.4(A) which is reserved for Backward Class of Citizens women of Respondent No.3-Corporation. The said order has been in force till this date.

4 The basic contention raised by the learned counsel appearing for the Petitioner is revolving around Rule 17(11)(i) 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 and related Form No.25. Rule 17(11)(i) is reproduced hereunder:-

“17(11)(i) In case of those cases which are referred to Vigilance Cell, upon considering the report of Vigilance Cell, if the Scrutiny Committee is not satisfied about the claim of the applicant, it shall call upon the applicant to prove his Caste claim, by discharging his burden, as contemplated under

*section 8 of the Act, by issuing a notice in **FORM-25** coupled with copy of report of Vigilance Inquiry;”*

5 After hearing both the parties and after going through the documents on record, we have noted that no show cause notice was issued/served upon the Petitioner as mandated by above Rules. This Court (Coram:- Anoop V. Mohta & K.R. Shriram, JJ.) in Mr. Sapremsing Madhavrao Patil Vs. State of Maharashtra & Ors.¹ has already considered the Rule. The relevant paragraphs are as under:-

“2. The learned counsel appearing for the petitioner contended that the basic requirement of Rule 17(11) of the Maharashtra Scheduled Castes, denotified tribes (Vimukta Jatis), nomadic tribes, other Backward classes and Special Backward Category (Regulation of Issuance and verification of) Caste Certificate Rules, 2012 is not followed. No show cause notice and/or mandatory notice issued and/or served. The learned AGP appearing for the Respondent, on instructions of the law officer Mr. Milind Patil, makes statement and confirmed the said position, after verifying the record of the Petitioner. However, submission is made that the Petitioner did file reply to the Vigilance Committee report. This, in our view, in no way sufficient, not to issue show cause notice as contemplated. It is not the case of the Department that they are satisfied with the Vigilance Committee report and the reply so filed by the Petitioner. The purpose of so called notice is to give opportunity to all the parties concerned so that after due deliberation and giving opportunity of all kind, final order for and/or against can be passed deciding

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the caste claim of the Petitioner. Therefore, as the basic show cause notice was not issued, the order so passed, in our view, is unsustainable and contrary to the law, apart from the principle of natural justice.

3. *This Court in Writ Petition No. 10570/2014-Harshalsing S. Patil vs. State of Maharashtra, decided on 20.2.2015, in similar matter, has set aside such order for want of show cause notice. Therefore, we are inclined to set aside the impugned order. However, liberty is granted to the concerned Respondents to issue show cause notice in accordance with law.”*

6 Another Division Bench of this Court (Coram:-Smt. Vasanti A. Naik & Shri. C.B. Bhadang, JJ) in Lawrence Salvador D’Souza Vs. The State of Maharashtra (Writ Petition No. 475 of 2015) dated 11 February 2015, while dealing with the same Rule and respecting the mandate, allowed the Petition in following terms:-

“For the reasons aforesaid, the writ petition is partly allowed. The impugned orders dated 29.12.2014 and 30.12.2014 are hereby quashed and set aside. The matter is remanded to the respondent no.2-scrutiny committee for deciding the caste claim of the petitioner and the application filed by the respondent no.5 in accordance with law. It is needless to state that the scrutiny committee would be required to grant an opportunity to the petitioner to cross-examine the principal and the clerk of the concerned school if the petitioner, so desires and also issue a show-cause notice to the petitioner in FORM-25 as per Rule 17(11) of the Rules of 2012, if the scrutiny

committee is not satisfied with the claim. We direct the scrutiny committee to decide the matter as expeditiously as possible and positively within a period of three months from the date of appearance of the parties before the scrutiny committee. The Petitioner undertakes to appear before the scrutiny committee on 27.2.2015 so that issuance of notice to the petitioner could be dispensed with. Since the order of the scrutiny committee is set aside, the consequential order of the corporation, disqualifying the petitioner would not survive and the same is set aside. Rule is made absolute in the aforesaid terms with no order as to costs.

7 The submission is also made that there is no dispute that the Vigilance Report supports the case of the Petitioner, referring to the Caste in question. After going through the order passed by the Divisional Caste Certificate Scrutiny Committee, we have also noted that no specific reasons are given to disregard the findings in support of the caste claim of the Petitioner. Apart from this, no opportunity as required under Rule 17(11)(i) and show cause notice was given to the Petitioner. This, in our view, is sufficient to interfere with order dated 30 July 2013 passed by the Divisional Caste Certificate Scrutiny Committee. As the impugned order so passed is in breach of mandate of the Rule and contrary to the judgments so referred above, we are not inclined to accept the contention of the learned counsel appearing for the Respondents that the Petitioner, after receipt of the Vigilance

Report made submission in writing in support of the same and therefore, there was no question of giving the fresh show cause notice. Considering the scope and purpose and the object as contemplated in the Rules, specifically when there is Vigilance Report in favour of the Claimant, for taking any adverse decision and/or for any contrary view, it is necessary to issue show cause notice and to give opportunity to the Claimant in whose favour Vigilance Report is placed on record. Therefore, admittedly, as no show cause notice and/or the opportunity so contemplated were given, we are inclined to allow this Petition and pass the consequential order in the following terms:-

ORDER

- a) Impugned order dated 30 July 2013 passed by Respondent No.2-Divisional Caste Certificate Scrutiny Committee, is quashed and set aside, with liberty to issue fresh show cause notice, if so advised.
- b) Matter is remanded back to Respondent No. 2-Divisional Caste Certificate Scrutiny Committee, for deciding the Caste Claim of the Petitioner in accordance with law, by giving equal opportunity to all the concerned as early as possible, preferably within

three months from the date of receipt of copy of the Judgment/Order.

- c) In view of above, consequential order dated 26 August 2013, passed by the Respondent-Corporation disqualifying the Petitioner would not survive and the same is also quashed and set aside.
- d) Rule made absolute in the above terms.
- e) There shall be no order as to costs.

(A.A. SAYED, J.)

(ANOOP V. MOHTA, J.)