

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6684/2014

(KUNDA VITTHALRAO BAHAD (SMT.SMITA KRUSHNARAO SATFALE) **VERSUS** DIVISIONAL
 CASTE CERTIFICATE SCRUTINY COMMITTEE NO.3, NAGPUR & ANOTHER)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri S.R. Narnaware, counsel for the petitioner.
 Shri N.S. Khubalkar, A.G.P. for the R-1.
 Shri R.E. Moharir, counsel for the R-2.

CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.

DATE : APRIL 29, 2015.

By this petition, the petitioner impugns the order of the scrutiny committee dated 22.07.2014 invalidating the claim of the petitioner of belonging to Otari Nomadic Tribe (B).

The petitioner was appointed as a Typist in the Office of the respondent no.2 on a post reserved for the Nomadic Tribe (B) in the year 1985. The petitioner claimed to belong to Otari Nomadic Tribe. The tribe claim of the petitioner was sent by the respondent no.2 to the scrutiny committee for verification. The vigilance enquiry was conducted and the scrutiny committee, by an order dated 22.07.2014, rejected the tribe claim of the petitioner. The said order is impugned in the instant petition.

Inter alia, it is submitted on behalf of the petitioner that the petitioner was not granted an opportunity inasmuch as, according to the petitioner, a copy of the vigilance cell report was not supplied to the petitioner and the petitioner was not asked to show cause in respect of the interpolation in the extract of the Kotwal book dated 15.04.1924. It is stated that in view of the

provisions of the Rules, it was necessary for the scrutiny committee to serve a copy of the vigilance cell report on the petitioner and also grant an opportunity to the petitioner of showing cause against the alleged interpolation in certain documents, that were considered by the scrutiny committee for rejecting the tribe claim.

Shri Khubalkar, the Assistant Government Pleader appearing on behalf of the scrutiny committee has produced the Record & Proceedings in the Court. It is stated that a notice was issued to the petitioner to remain present for hearing and a copy of the vigilance cell report was also supplied to the petitioner along with the said notice. It is stated that though the petitioner was asked to remain present, the petitioner did not remain present on 25.03.2014 and though the petitioner remained present on 22.07.2014, the petitioner did not produce any material. It is stated that it was clear to the scrutiny committee on a perusal of the document dated 15.04.1924 that was tendered by the petitioner himself before the scrutiny committee on the said date that there was interpolation in the said document. The learned Assistant Government Pleader has produced the Kotwal Book bearing the entry in respect of the birth of the real grandfather of the petitioner to state that there is interpolation in the entry dated 15.04.1924 and the word "Sonar" is overwritten as "Otari" with different ink in an altogether different handwriting. It is stated by taking this Court through the original Kotwal Register bearing the entry dated 15.04.1924 that there is interpolation in the said entry and certain words are changed to record the word "Otari". It is stated that the petitioner has not approached this Court with clean hands and has claimed the benefits meant for the "Otari" Nomadic Tribe on the basis of an interpolated document and this Court may not show any indulgence in the matter, though there is no acknowledgment of the receipt of the notice issued to the petitioner along with the vigilance report in the Record & Proceedings.

On hearing the learned counsel for the parties and on a perusal of the impugned order, as also the original Record & Proceedings, it appears that though the scrutiny committee had dispatched the notice to the petitioner to show cause to the vigilance report which seems to have been sent along with the notice, there is nothing on record to show that the said notice was actually received by the petitioner. The acknowledgment of the receipt of the notice is not on record. The submission made on behalf of the petitioner that the vigilance report was not supplied to the petitioner and the petitioner was not asked to show cause against the vigilance report will have to be upheld in the backdrop of the aforesaid facts. Since there is no acknowledgment of the receipt of the notice and the vigilance report by the petitioner in the Record & Proceedings, it would be necessary to hold that the petitioner was not served with the vigilance report.

Since the petitioner was not served with the vigilance report, it would be necessary for the scrutiny committee to take a fresh decision in the caste claim of the petitioner after granting an opportunity to the petitioner. However, we wish to record at this stage, as we have perused the original Kotwal Book which bears the entry in respect of the real grandfather of the petitioner dated 15.04.1924 that the observation of the vigilance cell in the report that the Kotwal Book is fully in rags and tatters and, therefore, it was not possible for the vigilance cell to verify the entry in respect of the grandfather of the petitioner, is incorrect. No doubt, the Kotwal Book is more than ninety years old and is in a bad shape. However, all the pages of the Kotwal book and the writings in the entries are fully intact. Anybody can easily read the entries in the Kotwal Book. We have perused various pages of the Kotwal Book. All the entries in the pages before the page on which the entry dated 15.04.1924 is recorded in respect of the grandfather of the petitioner and the subsequent pages are written in a very different handwriting which has a calligraphic style. Only,

the entry dated 15.04.1924 in respect of the grandfather of the petitioner is in a different ink and in an absolutely different handwriting which does not match with all the other entries on the same page and the previous and the next page of the Kotwal Book. We are, therefore, of the clear view that the vigilance cell has not done its job properly and had not verified the Kotwal Book at all and had wrongly recorded in its report that the Kotwal Book is in rags and, therefore, it is not possible to consider and verify the entry dated 15.04.1924 in respect of the real grandfather of the petitioner. We *prima-facie* find that the scrutiny committee was justified in observing that there was interpolation in the extract of Kotwal Book in respect of the entry dated 15.04.1924. Be that as it may, we expect the scrutiny committee and the vigilance cell to also verify the entry before the claim is redecided.

Be that as it may, since we have reached a finding that the petitioner was not granted an opportunity to show cause to the vigilance cell report and was also not served with a vigilance cell report, we partly allow the writ petition by quashing and setting aside the impugned order. The matter is remanded to the scrutiny committee for a decision in accordance with law. The scrutiny committee may direct the vigilance cell to conduct a fresh vigilance enquiry, if necessary, and/or the scrutiny committee may peruse the original Kotwal Book which bears the entry dated 15.04.1924. The services of the petitioner are protected till the scrutiny committee decides the tribe claim of the petitioner. The scrutiny committee is directed to decide the tribe claim as early as possible and positively within a period of six months.

Order accordingly. No costs.

JUDGE

JUDGE