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

WRIT PETITION NO. 8509 OF 2015

Smt. Vijayanti Subhash Patil

...Petitioner

Vs.

State of Maharashtra & Ors.

...Respondent

Mr. Mayuresh Dilip Modgi, Advocate for the Petitioner

Ms. M.P. Thakur, AGP for State, Respondent Nos. 1 to 5

Mr. Sandesh Patil a/w. Mr. Asif memon

i/b. Shruti Kelji, Advocate for Respondent No.6

Mrs. Nutan Dilip Thorve, Respondent No.6 present in Court

CORAM : SHANTANU S. KEMKAR &

M.S. KARNIK, JJ.

DATED : 8TH AUGUST, 2016

P.C. :

Parties through their Counsel. With consent the matter is heard finally.

2. Through this Petition the Petitioner has challenged the order dated 9th October, 2014 passed by the Respondent No.2 the Divisional Caste Certificate Scrutiny Committee No.1, Mumbai (herein after referred as the Committee for short) by which the Petitioner's caste certificate has been invalidated. The grievance of the Petitioner is that in the process the Committee did not call for the Vigilance Cell Report. In view

of this learned Counsel for the Petitioner submits that the impugned order deserved to be set aside and the matter needs to be remanded back to the Respondent No.2 the Committee for deciding the matter afresh after calling the Vigilance Cell Report.

3. Learned Counsel appearing for Respondent No.6 on instructions of Respondent No.6 who is present in person fairly stated that as the Respondent No.2 Committee did not call for the Vigilance Report and therefore, the matter may be remanded back to the Respondent No.2 the Committee to reconsider the matter afresh after calling Vigilance Cell Report.

4. Learned Additional Government Pleader on the other hand has supported the impugned order. She submits that in view of the fact that there was no dispute in regard to the documents submitted by the Respondent No.6 the Respondent No.2 Committee has not erred in not calling for Vigilante Cell Report and has rightly decided on the basis of the documents produced by the Respondent No.6.

5. However, in view of the judgment of the Division Bench of this Court in **Mangesh Nivrutti Kashid & Ors. Vs. District Collector & Ors. 2012(3) Bom. Cr. 716** we are of the view that Vigilance Cell Report is integral and core of the

verification process and if validity certificate is to be issued to a candidate, then the requirement of calling for the Vigilance Cell report is must. Any deviation from this position will result in contravening the dictum of the Supreme Court in the **Madhuri Patil's** case and **Dayaram's** case. According the Division bench of this Court Rule 12 does not dispense with calling for report from the Vigilance Cell. Rule 12 will have to be read in consonance with the judgments of the Supreme Court in **Madhuri Patil's** case and **Dayaram's** case, and it cannot be interpreted in the manner contrary to the aforesaid judgments of the Supreme Court. Thus the caste validity certificates which are issued without calling for the Vigilance Cell report cannot be considered as valid in the eyes of law, and suffer from jurisdictional error which goes to the root.

6. As a result we are not inclined to accept the contention made by the learned Additional Government Pleader. As a result the Petition is allowed in part by setting aside the impugned order passed by the Respondent No.2 Committee and directing the Respondent No.2 Committee to pass a fresh order in accordance with law after getting the Vigilance Cell Report.

7. Needless to say that setting aside of the impugned order will not be construed to have setting aside of the caste certificate.

8. Respondent No.2 Committee is expected to decide the matter in accordance with law within a period of 3 months from the date of receipt of this order.

9. The Petition is allowed to the extent indicated above.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)