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

WRIT PETITION NO. 5685 OF 2016

Santosh Balasaheb Gaikwad

Age : 38 years, Occ. Councilor

R/o – 1869, B-Ward, Vare Vasahat,

Mangalwar Peth, Kolhapur,

District : Kolhapur

.. Petitioner

Vs.

1. State of Maharashtra
Urban Development Department,
Mantralaya, Mumbai.
2. Divisional Caste Certificate
Scrutiny Committee No. 2,
Dr.Babasaheb Ambedkar
2nd floor, Vichare Mal,
District : Kolhapur.
3. Haridas Ramchandra Sonavane
Age – Major, Occupation: Business,
R/o. 672, C-Ward, Raviwar Peth, Kolhapur.
4. Kolhapur Municipal Corporation.
KMC Building,
'C' Ward, Bhausingji Road,
Kolhapur – 416001.]
5. State Election Commission,
Maharashtra State, New Administrative
Building, Opp: Mantralaya, Mumbai. ...Respondents

Mr. Rahul P. Walvekar, Advocate for the Petitioner
Mr.A.B.Vagyani, Government Pleader a/w Ms. M.P. Thakur, AGP
a/w Ms.Tintina Hazarika, AGP for Respondents No. 1 & 2
Mr.A.M. Adgule, for Respondent No.4
Ms. Shriya Gadhav i/b. Mr. S.B. Shetye, Advocate for
Respondent No.5

**CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.
RESERVED ON : 4th AUGUST, 2016
PRONOUNCED ON : 2nd SEPTEMBER, 2016**

ORDER: (PER M.S. KARNIK, J.)

1. The Petitioner is challenging the order dated 3rd May, 2016 passed by Respondent No.2 Divisional Caste Scrutiny Committee No.2, Kolhapur whereby the caste certificate bearing No. MAG-SR.3274/95 mentioning caste of the Petitioner as “Mang” which is recognized scheduled caste was invalidated.
2. In the General Elections of the Respondent No.4 Kolhapur Municipal Corporation held in October / November, 2015, Ward No.58 was reserved for Scheduled Caste. The Petitioner was elected in the said Election as Councilor,

whereas the Respondent No.3 stood second.

3. The Petitioner's caste certificate was referred to the Respondent No.2 Committee for verification of his caste claim. The Respondent No.2 Committee sent the documents submitted by the Petitioner to the Vigilance Cell for conducting a local inquiry. The Vigilance Cell conducted the local inquiry and also recorded the statements of senior citizens who are acquainted with the Petitioner's family. The Vigilance Cell report favoured the Petitioner. The Respondent No.2 Committee was not in agreement with the findings of the Vigilance Cell Report and therefore, called upon the Petitioner to submit say on the said objection raised by the Respondent No.2.

4. After hearing the Petitioner and also the Respondent No.3 Objector the Respondent No.2 Committee was pleased to invalidate the caste claim of the Petitioner by the impugned order dated 3rd May, 2016.

5. We have heard the learned Counsel for the Petitioner as well as learned Counsels for the Respondents at length. Learned Counsel for the Petitioner has invited our attention to the Vigilance Cell Report, which is at **Exhibit-B** and also taken us through the impugned order dated 3rd May, 2016. According to the learned Counsel for the Petitioner the Respondent No.2 Committee has not at all adverted to the Vigilance Cell Report and disagreed with the same without giving any reasons. It is further submitted that there was nothing incriminating found against the Petitioner during the local inquiry and even the statements of the senior citizens from the Petitioner's native village were recorded, wherein it is categorically stated that the Petitioner belongs to the "Mang" caste.

6. According to the learned Counsel for the Petitioner the documents submitted by the Respondent No.3 Objector ought not to have been relied upon as the same were taken into consideration without even calling for a report of the

Vigilance Cell of these documents. The Committee was further in error in raising the objection about residency of the Petitioner in as much as the Vigilance Cell never raised this objection while conducting the local inquiry and that the Petitioner was not given any opportunity to prove his residence prior to the deemed date. According to the Petitioner he is not in possession of old documents as the Petitioner's father was admitted to the Hostel at a very young age due to financial constraints and further at that time due to poverty nobody from his family could study and for these reasons also there are no documents to show his residence in his village.

7. On the other hand, the Respondents supported the findings and the order passed by the Respondent No.2 Committee. According to the learned Counsel for the Respondents the order passed by the Respondent No.2 Committee is a well reasoned order based upon consideration of the entire material on record. The Petitioner has not produced any old documents on record to establish his caste

claim. According to the Respondents the Vigilance Cell inquiry is meant only for internal assistance of the Scrutiny Committee and adjudication of caste status is the exclusive domain of the Scrutiny Committee. Further, a finding recorded by the Vigilance Cell is not binding on the Scrutiny Committee as Vigilance Cell inquiry is meant for internal assistance to the Scrutiny Committee nor can it be used as evidence in support of the claim.

8. Having considered the rival submissions, one of the issue raised in the present Petition is squarely covered by a decision of this Court in Writ Petition No. 5699 of 2016. The provisions of sub-Rule 7 of Rule 17 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 (hereinafter referred to as 'Rules of 212' for short) casts a duty on the Scrutiny Committee to record its reasons for discarding the report of Vigilance Cell.

9. In the impugned order the Respondent No.2 Committee except for stating that it is not in agreement with the Vigilance Cell Report for the reason that the Petitioner's father's caste certificate in the service record is shown as “Maratha”, has not given any reason to discard the said report of the Vigilance Cell.

10. We find that the Respondent No.2 Committee has not at all adverted to the report of the Vigilance Cell. We, therefore, quash and set aside the impugned order and remand the matter back to Respondent No.2 – Committee for a fresh consideration of the caste claim. The Committee may pass a fresh order on its own merits after complying with the provisions of the Sub-Rule 7 of Rule 17 of the said Rules of 2012. We may not be understood to have expressed any opinion on the merits of the order passed by respondent No. 2 as we are setting aside the impugned order only on the ground of non compliance of the provision of Sub-Rule 17 of Rule 17 before discarding the report of the Vigilance Cell.

The Committee will decide the matter afresh on its own merits in accordance with law without being influenced by any observations made in this order.

ORDER

1. The impugned order dated 3rd May, 2016 passed by respondent No.2 is quashed and set aside.
2. The matter is remanded back to respondent No.2 for passing a fresh order in accordance with law and after hearing the petitioner within a period of 6 weeks from today.
3. No order as to costs.
4. Writ Petition is accordingly disposed of.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)