

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

WRIT PETITION NO. 6798/2016

(MANGALA DINKAR ZALTE @ MANGALA GUNWANT PIWATE **VERSUS** THE STATE OF
 MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

 Shri M.V. Bute, counsel for the petitioner.
 Shri I.J. Damle, counsel for the R-1, 2 & 4.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : DECEMBER 16, 2016.

By this writ petition, the petitioner has challenged the order of the scrutiny committee, dated 29.07.2016 invalidating the claim of the petitioner of belonging to Koli Mahadeo Scheduled Tribe. The petitioner has also sought the protection of her membership in the Gram Panchayat.

Inter alia, it is stated on behalf of the petitioner that the impugned order of the scrutiny committee invalidating the claim of the petitioner is liable to be set aside as the scrutiny committee did not conduct the vigilance enquiry and the affinity test in the tribe claim of the petitioner. It is stated that the matter may be remanded to the scrutiny committee for a fresh decision in accordance with law. It is submitted that the membership of the petitioner in the Gram Panchayat should be protected till her caste claim is decided.

Shri Damle, the learned Assistant Government Pleader for the respondent nos.1, 2 and 4, fairly admits that

the scrutiny committee did not conduct the vigilance enquiry and the affinity test while deciding the tribe claim of the petitioner. It is stated that the matter could be remanded to the scrutiny committee for deciding it in accordance with law. It is stated that the petitioner's membership in the Gram Panchayat cannot be protected in view of the Full Bench judgment in the case of *Anant Hanumant Ulahalkar & Another Versus Chief Election Commissioner & Others*, reported in **2016 Law Suit (Bom.) 2136**, wherein this Court has held that the provisions requiring the production of the caste validity certificate within six months from the date of the election are mandatory.

In the circumstances of the case, the impugned order is liable to be set aside and the matter is liable to be remanded to the scrutiny committee for a fresh decision on merits. Admittedly, the scrutiny committee has not conducted the vigilance enquiry and affinity test though the petitioner claims to belong to a scheduled tribe. Merely on the basis of a couple of documents, the caste claim of the petitioner was rejected.

Though the order of the scrutiny committee is liable to be set aside and the matter is liable to be remanded to the scrutiny committee for a fresh decision, the membership of the petitioner in the Gram Panchayat cannot be protected in view of the Full Bench judgment in the case of *Anant Hanumant Ulahalkar & Another Versus Chief Election Commissioner & Others*, reported in **2016 Law Suit (Bom.) 2136** as the petitioner has failed to produce the caste validity certificate within six months.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded to the scrutiny committee for a fresh decision on merits. The scrutiny committee may decide the caste claim as early as possible and positively within one year.

Order accordingly. No costs.

JUDGE

JUDGE

APTE