

hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6001 OF 2014

Pinky Murli Udasi ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

ALONG WITH

WRIT PETITION NO. 6015 OF 2014

Kiran Murli Udasi ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

Mr. S.G. Deshmukh i/by Mr. Dilip B. Shinde for the petitioners.

Mr. R.K. Mendadkar for R. No. 4.

Ms. A.D. Vhatkar, AGP for R. Nos. 1 to 3 State.

Mr. yuogesh V. Patil i/by Mr. Vijay D. Patil for R. No. 5.

**CORAM : SHANTANU KEMKAR &
PRAKASH D. NAIK, JJ.**

DATED : FEBRUARY 02, 2017.

P.C.

Parties through their counsel.

2. Feeling aggrieved by the order dated 25.4.2014 Exh."A" passed by the Divisional Caste Scrutiny Committee, Belapur, Navi Mumbai by which petitioner's caste validity claims have been rejected, Petitioners

have filed these petitions. The only point urged during the course of the hearing by the learned counsel for the petitioners is that though the Scrutiny Committee was not satisfied with the vigilance cell report, has passed the impugned order in contravention of 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 (hereinafter referred to as "the said Rules") and related Form No. 25. According to him, in view of the aforesaid provisions, the Scrutiny Committee, if was not satisfied about the claim of the applicant, was required to issue notice in Form No. 25. In support of his contention, the learned counsel for the petitioners has placed reliance on the judgment passed by the Division Bench of this Court in the case of Saraswati Rajnikant Mayekar Versus State of Maharashtra and Ors. in WP No. 8788 of 2013 decided on 19th November, 2015. In the said judgment, in paragraphs 5 and 7, the Division Bench has observed thus:

"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. (2015(5) All MR 563) 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 1 2015(5) ALL MR 563 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. 10570/2014Harshaling 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.”

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."

3. Learned AGP, on instructions, has not disputed the fact that the notice as required under rule 17(11)(i) of the said Rules was not given to the petitioners. In the circumstances, in our considered view, the question involved in these petitions is squarely covered by the said judgment in the case of *Saraswati Mayekar (supra)*.

4. As a result, for the reasons stated in the said judgment and keeping in view the fact that there is no compliance of Rule 17(11)(i) of the said Rules, we set aside the impugned order passed by the Caste Scrutiny Committee and remand the matter back to the Committee. We have been appraised by the learned AGP that the matter will not go to Caste Scrutiny Committee, Belapur but it will be heard and decided by the District Caste Scrutiny Committee, Thane. In the circumstances, we remand the matter back to the District Caste Scrutiny Committee, Thane for deciding the petitioner's caste claims afresh by giving opportunity of hearing to all the parties and with liberty to the Committee to issue fresh show cause notice in terms of Rule 17(11)(i) of the said Rules. Needless to say, in view of the setting aside of the impugned order, the order of disqualification dated

17.5.2013 also does not survive. The Committee to decide the matter within four months from the date of receipt of copy of this order.

5. With the aforesaid directions, both the petitions are disposed of.

6. Parties to act on authenticated copy of this order.

(PRAKASH D. NAIK, J.)

(SHANTANU KEMKAR, J.)