

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

WRIT PETITION NO. 6431 OF 2017

Pandurang Krishna Aarekar

...Petitioner

Versus

The State Of Maharashtra And Ors.

...Respondents

Mr.Ramchandra Kanu Mendadkar for the Petitioner.

Mr.A.A. Alaspurkar, AGP for the Respondent-State.

CORAM : A.S. OKA &

SMT.VIBHA KANKANWADI, JJ.

DATE : 03rd JULY 2017

P.C.

1. Heard the learned counsel appearing for the petitioner and the learned AGP for the Respondents.

2. Rule. Learned AGP waives service. Forthwith taken up for final disposal.

3. The challenge in this petition under Article 226 of the Constitution of India is to the order dated 03rd June 2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane by which the caste certificate issued to the petitioner that he belongs to Koli Mahadev, a Scheduled Tribe was

ordered to be canceled.

4. The first submission of the learned counsel appearing for the petitioner was that the impugned order has been signed only by two members of the Scrutiny Committee out of the three and therefore, it is not valid. The second submission is based on Caste validity certificate issued to one Ramchandra Krishna Aarekar who is stated to be the real brother of the petitioner. The submission is that in paragraph No.7 of the impugned order, the caste scrutiny committee has relied upon the documents produced in the case of petitioner's brother and has come to the conclusion that the petitioners brother does not belong to Koli Mahadev, a Scheduled Tribe.

5. We have heard the learned AGP appearing for the respondents who supported the impugned order.

6. We have also perused the record of the case. We find that on the date of impugned order, the roznamma is signed by all the three members even though original judgment has not been signed by all three members.

7. The petitioner was relying upon the caste validity certificate granted to his brother. The said certificate has been dealt with by the Scrutiny Committee in paragraph No.7 wherein various documents which have produced in the case of petitioner's brother were considered and it was held that the petitioner's brother has not proved his caste claim.

8. The learned AGP on instructions and on perusal of the file stated that copies of the documents produced by the petitioner's brother which have been considered by the Caste Scrutiny Committee in paragraph No.7, were not provided to the petitioner. The learned AGP on instructions states that the file of the case of the petitioner's brother is before the Caste Scrutiny Committee.

9. Hence, while passing the impugned order, the Committee has considered the documents the copies of which were not supplied to the petitioner. Therefore, there is a breach of the principles of natural justice. Only on this ground, the impugned order deserves to be set aside.

10. Accordingly, we pass following order :-

ORDER

- (i) Impugned order dated 03rd June 2017 is hereby quashed and set aside;
- (ii) The case of the petitioner is remanded back to the Scheduled Tribe Certificate Scrutiny Committee for fresh adjudication in accordance with law;
- (iii) The petitioner shall appear before the Caste Scrutiny Committee on 28th July 2017 at 11.00 am and shall produce an authenticated copy of this order;
- (iv) The Caste Scrutiny Committee shall either provide a copy of the documents mentioned in paragraph No.7 to the petitioner or give inspection to the petitioner of the file of the case of his brother;
- (v) The caste claim of the petitioner shall be decided as expeditiously as possible and in any case within a period of six months from date which the petitioner appears;
- (vi) Till the date of the communication of the fresh order passed by the Scrutiny Committee to the petitioner, ad-interim relief granted on 15th June 2017 shall continue to operate. If the order be adverse to the petitioner, the said ad-interim relief shall continue to operate for a further period of one month from the date on which the communication of the order is served to the petitioner.
- (vii) All contentions on merits are kept open.

[SMT.VIBHA KANKANWADI, J.]

[A.S. OKA, J.]