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

WRIT PETITION NO.6942 OF 2017

Bharat Maruti Harpude

...Petitioner

Vs.

The State of Maharashtra & Ors.

...Respondents

Mr. V.A. Thorat, Senior Advocate a/w. Mr. S.S. Shah and
Mr. Pramod Kathane i/b. Mr. Pramod G. Kathane, Advocates
for the Petitioner

Mr. A.A. Garge, Advocate for Respondent No.4

Mr. A.A. Alaspurkar, AGP for Respondent Nos. 1 to 3

CORAM : B.R.GAVAI &

M.S. KARNIK, JJ.

DATED: 1ST SEPTEMBER, 2017

ORDER [PER M.S. KARNIK, J.]:

1. Rule. Rule made returnable forthwith by consent of parties.
2. The challenge in this Petition is to an order dated 9th June 2017 passed by the District Caste Scrutiny Committee, Pune thereby invalidating the caste claim of the Petitioner as belonging to Hindu Kunbi caste which is recognized as Other

Backward Class.

3. The facts of the present case in a nutshell are as under:

The Petitioner was issued with the caste certificate dated 14th September, 2015 as belonging to the Hindu Kunbi caste which is recognized as Other Backward Class by the Competent Authority. The said caste certificate was sent for verification to the Respondent No.2 Scrutiny Committee. This was pursuant to the Petitioner contesting election of the Lonavala Municipal Council which was held on 14th December, 2016 in which election the Petitioner came to be declared as elected from Ward No.10. During the course of the enquiry before the Respondent No.2 – Caste Scrutiny Committee the documents relied upon by the Petitioner were sent for verification and further enquiry to the Vigilance Cell as is the requirement under the provisions of Rule 13 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 as “Rules of 2012” for short). Two reports were submitted by the Vigilance Cell. The first report is dated 1st March 2017 and the second report submitted by the Vigilance Cell is dated 18th May, 2017. Admittedly copy of the first Vigilance Cell report was given to the Petitioner and the show-cause notice as required by the Rules was given to the Petitioner. There is no dispute that both the Vigilance Cell reports are in favour of the Petitioner. It is not disputed that the show-cause notice in respect of the second Vigilance Cell report was not given to the Petitioner.

4. Learned Senior Counsel for the Petitioner submits that upon considering the Vigilance Cell report if the Scrutiny Committee is not satisfied about the claim of the Applicant, and the Vigilance Cell report is to be discarded then it is necessary that to prove his caste claim a notice in Form 25 coupled with the copy of the Report is to be supplied to the Petitioner. In the instant case the copy of the second

Vigilance Cell Report was not supplied to the Petitioner and no notice in Form 25 calling upon him to prove his caste claim was given to the Petitioner. Learned Senior Counsel contends that this would be in breach of Rule 17 (11)(i) of the said Rules. No doubt the findings recorded and opinions expressed by the Vigilance Cell are not binding on the Committee. However Rule 11(7) requires the Committee to record its reasons for discarding the report of the Vigilance Cell.

5. Learned Senior Counsel also contended that most of the documents in support of the Petitioner's claim indicate that he belongs to the Hindu Kunbi caste. He further submits that there is only one document in the form of the School Leaving Certificate of the Petitioner's father which indicate the caste as Maratha. In his submission when most of the documents on which the Petitioner based his claim clearly indicate that the Petitioner belongs to the Kunbi Caste, which have great evidentiary value, the Scrutiny Committee was not justified in

just relying upon one document ie., school leaving certificate of the Petitioner's father to discard the caste claim of the Petitioner.

6. Learned AGP appearing on behalf of the contesting Respondents supported the order passed by the Scrutiny Committee. In his submission the Scrutiny Committee has recorded findings of the facts and passed a reasoned order on the materials on record and has come to the conclusion that the Petitioner does not belong to the Kunbi Caste. In his submission the Scrutiny Committee has rightly invalidated the caste claim of the Petitioner.

7. We have considered the submissions advanced on behalf of the learned Counsel. Admittedly we find that copy of the second Vigilance Cell Report dated 18th May 2017 was not given to the Petitioner and /or no show-cause notice to the 2nd Vigilance Cell report calling upon the Petitioner to prove his caste claim was served upon him. It is settled position

that when the Vigilance Cell Report is in favour of the Petitioner and the same is to be discarded by the Committee, a notice is to be given to the Petitioner in the prescribed form and before discarding the said Vigilance Cell Report the Scrutiny Committee has to give reasons. We find that this exercise is not carried out by the Scrutiny Committee. This being the position the matter needs to be remitted back to the Scrutiny Committee for deciding the issue afresh after giving to the Petitioner a notice as regards the second Vigilance Cell Report along with the copy thereof. Needless to mention that the Scrutiny Committee would follow the procedure which has been laid down in the Act and the Rules before passing an order on merits.

8. Hence the following order:

1. The order dated 9th June, 2017 passed by the Respondent No.2 Committee is quashed and set aside.
The consequential orders are also set aside.

2. The matter is remitted back to the Scrutiny Committee for deciding the matter afresh on its own merits in accordance with law within a period of three months from today.
3. The Petitioner and the Complainant may be given an opportunity of being heard before a final order is passed by the Scrutiny Committee.
4. Rule made absolute on the above terms with no order as to costs.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)