

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

WRIT PETITION NO. 8459 OF 2016

Chandrakant Devba Dhaygude ... Petitioner.

Versus

State of Maharashtra
and others. ... Respondents.

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Mr. Chintamai K. Bhangoji for the Petitioner.
Mr. Atul Vanarase, AGP for Respondent Nos. 1 and 2.
Mr. L.S. Deshmukh for Respondent No.3..

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***CORAM : Smt.Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 3rd October, 2017.

ORAL JUDGMENT (Per : Smt. Vasanti A Naik, J.)

Rule. Rule made returnable forthwith. The Writ Petition is heard finally at the stage of admission with the consent of the learned Counsel for the parties.

By this Writ Petition, the petitioner challenges the order of the scheduled tribe certificate scrutiny committee, Pune dated 28.07.2015 validating the claim of the respondent No.3 of belonging to 'Fasepardhi' scheduled tribe.

Inter alia, it is submitted on behalf of the petitioner who had contested the election against the Respondent No.3 that, the impugned order is liable to be set aside as a vigilance enquiry is not conducted in the matter of the caste claim of the respondent No.3 before the caste validity certificate is granted to her. It is submitted that, the vigilance

enquiry was necessary, more so when the respondent No.3 had claimed to belong to the scheduled tribe. It is submitted that when a claim is made that a candidate belongs to a scheduled tribe, the vigilance enquiry is necessary.

The learned Assistant Government Pleader appearing for the respondent Nos. 1 and 2 states that it appears that from the impugned order dated 28.07.2015 that, the vigilance enquiry is dispensed with, as the scrutiny committee was satisfied with the genuineness of the documents tendered by the respondent No.3 in support of her tribe claim. It is fairly admitted that the vigilance enquiry was not conducted before deciding the caste claim of the respondent No.3.

The learned Counsel appearing for the Respondent No.3 submitted that, since the scrutiny committee was satisfied about the genuineness of the documents tendered by the respondent No.3 as also the fact that certain relatives of the respondent No.3 were granted caste validity certificates, it was not necessary to conduct the vigilance enquiry.

It is well settled that, before deciding the caste claim of a candidate, it would be necessary for the scrutiny committee to conduct the vigilance enquiry. If the vigilance enquiry is conducted, the vigilance cell is required to record the statements of the relatives and friends of the candidate and also consider whether the documents on which the candidate has relied on, are true and genuine. Merely because, the caste claim of the some of the relatives of the respondent No.3 was validated, the scrutiny committee could not have dispensed with the vigilance cell enquiry. It is observed by the Hon'ble Supreme Court that it would be necessary for the scrutiny committee to verify

each individual claim separately, specially when a caste validity certificate is issued to a relative without conducting the vigilance enquiry. In the instant case, since the vigilance enquiry was wrongly dispensed with, the impugned order cannot be sustained.

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 the caste claim of the petitioner, in accordance with law. The scrutiny committee is directed to decide the caste claim of the petitioner within six months from the date of appearance of the respondent No.3 before the scrutiny committee. The respondent No.3 undertakes to appear before the scrutiny committee on 28.11.2017, so that the service of notice on the respondent No.3 could be dispensed with.

Since the judgment in the case of *Anant Ulahalkar* is stayed by the Hon'ble Supreme Court and since we have remanded the matter to the scrutiny committee for afresh decision in the caste claim of the respondent No.3, the electoral office of the respondent No.3 is protected till her caste claim is decided and/or till the Hon'ble Supreme Court decides the matter in the cast of *Anant Ulahalkar*.

Rule is made absolute in the aforesaid terms with no order as to costs.

(Riyaz I. Chagla J.)

(Smt.Vasanti A Naik, J.)