

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11518 OF 2012

Shri. Nitin Raghunath Khairnar ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents.

WITH
WRIT PETITION NO. 11740 OF 2012

Shri. Rupchand Devchand Khairnar ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

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Mr. N. V. Bandiwadkar a/w Mr. M.G. Bagkar for the Petitioner in both the Petitions.

Mr. P.G. Sawant, AGP for Respondent Nos. 1 and 2 in both the Petitions.

Mr. C.M. Lokesh i/b. G.S. Hedge & Associates for Respondent No.3 in WP/11518/2012.

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**CORAM : S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE : JANUARY 20, 2017.

P.C. :

1. We have heard both sides. We have perused the memo of the Petition with all its annexures, so also the original record.
2. Rule. Rule returnable forthwith. By consent, the matter is taken up for final hearing at the admission stage itself.

3. On 5th January, 2017, in both these matters, we had directed production of the original record.

4. This direction was issued in the following circumstances:-

5. The Petitioner in Writ Petition No. 11518 of 2012 is aggrieved and dissatisfied with the order of respondent no.2-Caste Scrutiny Committee dated 16th October 2012 (Annexure "E" to the Writ Petition).

6. The Committee held that the petitioner does not belong to Mahadeo Koli, Scheduled Tribe, and therefore, the claim as belonging to that tribe is invalidated.

7. The impugned order of the Scrutiny Committee is fairly detailed and containing several reasons. The Committee had before it this claim of the present petitioner. The Committee, in paragraph 3(f) of the order, states that the tribe claim of the applicant's cousins namely Gokul Dhudku Khairnar, Bhushan Vithhalrao Khairnar, Nayana Keval Khairnar and Pravin Vasant Khairnar had been validated by the Scrutiny Committee on the dates mentioned therein.

8. Thereafter, the research officers of the Vigilance Cell made certain recommendations, and particularly in relation to the instant claim. The report of that Vigilance Cell was stated to be served on the present petitioner and he was asked to furnish his

explanation. Both the written communications in this behalf are referred to in paragraph 5. Thereafter, in paragraph 6, it is stated that the petitioner/applicant was called for personal hearing before the Scrutiny Committee on 17th April 2012, 19th May 2012 and 28th July 2012. The applicant/petitioner was absent on all these dates. Therefore, the hearing was scheduled to 18th September 2012. The order recites that on that date, the petitioner appeared and he was heard fully.

9. In challenging this order of the Scrutiny Committee invalidating the caste claim of the Writ Petitioner, in paragraphs 5, 6 and 7 of the Petition, he has specifically averred that the hearing scheduled on 18th September 2012 was a complete farce and an empty formality. He pointed out as to how he was present on 18th September 2012 at 11.00 a.m. in the office of the Scrutiny Committee. On that date, the Committee had invited several claimants for similar hearing and scrutiny. There were students and persons seeking admission to Educational Institutions and employment present in the office of the Committee. Some of the claimants claimed that they belong to Thakur Scheduled Tribe. The others claimed that they belong to Hindu Mahadeo Koli, Scheduled Tribe. The respondent No. 2 commenced the hearing and firstly, took up the claims of those candidates/persons who were stated to be belonging to Thakur Scheduled Tribe. The order that was followed is, first, the students were told to elaborate their claim and substantiate it. Thereafter, the persons seeking employment against a reserved seat, and which could be claimed

by a Scheduled Tribe candidate, were heard. This was the order followed in relation to the Thakur Scheduled Tribe and Hindu Mahadeo Koli, Scheduled Tribe. The petitioner states that his turn came at 8 p.m. on 18th September 2012. He appeared before the three members Scrutiny Committee. However, on 18th September 2012, when he reported for hearing in the morning session, he was handed over a prescribed form. The form contained several columns and the details against which had to be filled in by the petitioner. Thus, the petitioner was directed to fill in the blanks with requisite details and keep the duly filled in form ready with him. When the petitioner was summoned for hearing at 8.00 p.m., he submitted the duly filled in form. Thereafter, he was told to sign the Rozanama to mark his presence in the hearing. Accordingly, the petitioner does not deny that he placed his signature on the Roznama. However, he asserted that he sought leave of the Committee members to make oral submissions. He also contended orally that he wishes to file a detailed reply to the report of the Vigilance Cell. He also stated that he desires to place additional documents in respect of his caste claim. Thus, the petitioner did not rest his case with such form being handed in, but sought opportunity to make a detailed submission and even to place a written reply on record. In paragraph 7 of the Writ Petition, it is averred that the Committee members did not allow the petitioner to canvass oral submissions. They also refused to grant him further time to file written reply to the report of the Vigilance Cell and to produce any additional documents. The Committee members orally informed him that the hearing is concluded and the

petitioner would receive the order passed by the committee. Thus, the petitioner was not afforded and granted any opportunity of personal hearing. The hearing was concluded in two or three minutes. That is how he labeled it as a complete farce.

10. The averments made in paragraphs 5, 6 and 7 are purported to be dealt with in the affidavit-in-reply filed by the Research Officer of the Scheduled Tribe Certificate Scrutiny Committee, Nasik. At running page 87 of the paper book, in paragraph 5, the deponent purports to deal with the allegation in paragraph 5 of the Writ Petition and says he offers no comments. Then, at running page 88 of the paper book, the deponent purports to deal with paragraphs 6, 7 and 8 of the Writ Petition and states that the Committee fully heard the petitioner on 18th September 2012. He signed the Rozanama. The petitioner had not given any application to the Scrutiny Committee that he wants to file a detailed reply to the report of the Vigilance Cell. The reply admits of an interview sheet being given to the petitioner that was submitted by the petitioner duly filled in. Hence, all these allegations are incorrect, baseless and an after-thought. Then it stated that while deciding the tribe claim, the Scrutiny committee had considered each and every document produced and passed a well reasoned order. Thus, the answer is that, having signed the Rozanama, these allegations are without any substance. Therefore, they cannot form the basis of the allegation that the principles of natural justice have not been complied with.

11. We are sorry to say that this is no explanation to the allegations contained in the material paragraphs of the Writ Petition. How the hearing is a complete farce is demonstrated by the petitioner. He has made very serious allegations. It was not expected of the Committee to hold a mass hearing and in the manner alleged by the petitioner. The hearing may be brief but it must allow the petitioner individual to substantiate and prove his claim. By calling them to attend a hearing, the Committee cannot, in all cases just hand over and collect a form and conclude the exercise. That allegation is not denied. Secondly, that the petitioner was made to wait from 11.00 a.m. till 8.00 p.m. in the night, is not denied. Particularly, when his turn came, all that was inquired was, whether he has filled in the details in the prescribed form. When he handed over that form duly filled in, the hearing was concluded. The petitioner was then handed over the Rozanama to record his presence. That also was signed by him. However, the petitioner made a request to grant time to file a detailed reply to the report of the Vigilance Cell. That allegation is denied by stating that he did not give any application requesting that he wants to file a detailed reply to the report of the Vigilance Cell. He did not seek any adjournment or time, is the response from this statutory Committee. We do not see how such serious allegations, as are made against the Committee, are dealt with in such a casual and light hearted manner. The principles of natural justice mean nothing to such Committees and this is one more example of an empty formality completed by it. We do not see how, in the teeth of such serious allegations of breach of principles

of natural justice, can we sustain the impugned order. It is unfortunate that it has taken nearly four years for the petitioner to obtain justice from this Court. None of the Division Benches, and when confronted by the petitioner with these allegations, found it fit and appropriate to summon the original record. Now that we summoned it, it is stated fairly by Mr. Sawant that the record does not indicate that the petitioner was indeed satisfied with the hearing and did not complain at all that every possible opportunity and available to him in law was granted to him. Thus, the original record does not reflect anything which would belie the contents of paragraphs 5 to 7 of the Writ Petition. That does not contain anything which would support the stand of the Committee and prove that all the above averments are an after-thought. In these circumstances, we do not feel that we should sustain the impugned order. It is quashed and set aside on the sole ground of breach of principles of natural justice.

12. In the light of the above conclusion, we do not deem it fit and proper to express any opinion on the merits of the controversy.

13. The second Writ Petition No. 11740 of 2012 contains a similar request and with similar allegations. Both sides fairly state that our order passed in Writ Petition No. 11518 of 2012 shall govern the outcome of this petition as well.

14. Both petitions, therefore, partly succeed. The orders of the Scrutiny Committee impugned therein are quashed and set aside.

The claims of the petitioners as belonging to Hindu Mahadeo Koli, Scheduled Tribe shall be scrutinized afresh and in accordance with law, after giving complete opportunity to them to meet the contents of the report of the Vigilance Cell and to place a written response on record. Fresh reasoned orders shall be passed as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order.

15. The ad-interim protection granted earlier by this Court, so as not to visit the petitioners with any consequences flowing from invalidation of their caste claim, to continue for a period of three months but without prejudice to the rights and contentions of all parties.

16. Rule is made absolute in the above terms.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)