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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 2435 OF 2017

Shaikh Mohammed Rafique Mustafa Hussain ... Petitioner
Versus
District Caste Certificate Scrutiny Committee ... Respondents
and 3 Ors.

Mr. V.A. Thorat, Senior Advocate with Mr. V.A. Sugdhare i/b
Sandeep Sharma for the Petitioner.
Mr. Himanshu Takke, AGP for Respondent Nos. 1 & 4.
Mr. Dnyandeo B. Savant, for Respondent No.3.
Ms. K.H. Mastakar, for M.C.G.M.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATED: 6TH DECEMBER 2017

PC:-

Rule. Rule made returnable forthwith. Heard finally by
consent of the learned counsel for the parties.

By this writ petition, the petitioner challenges the order
passed by the respondent no.1 scrutiny committee dated 21st
August 2017 validating the claim of the respondent no.3 of
belonging to Bhandari caste which falls in the Other Backward
Classes.

The petitioner and the respondent no.3 had contested the
election to the municipal corporation on a seat earmarked for the
OBC. The respondent no.3 was elected as a corporator. The
claim of the respondent no.3 that he belongs to the Bhandari

caste was referred to the scrutiny committee for verification. The scrutiny committee had verified the caste claim of the respondent no.3 and issued the caste validity certificate in his favour. The order of the scrutiny committee is challenged by the petitioner in the instant writ petition.

Shri Thorat, the learned senior counsel for the petitioner *inter alia* submitted that the scrutiny committee was not justified in not referring and not considering the findings recorded by the vigilance cell, in respect of the affinity test. It is stated that several queries were made to the relatives and friends of the respondent no.3 about the customs, traits, rituals, ceremonies, occupation, etc. to consider whether the respondent no.3 could prove his affinity to Bhandari caste which falls in the OBC. It is submitted that the vigilance cell had recorded the statements made by the respondent no.3, his father and the said relatives. It is stated that though the respondent no.3 could not prove his affinity to Bhandari caste on the basis of the replies to the queries made by the vigilance cell, the scrutiny committee did not consider the vigilance report pertaining to the affinity test. It is stated that it was all the more necessary for the scrutiny committee to have adverted its mind to the affinity test when the scrutiny committee as well as the vigilance cell had found that there was some overwriting and interpolation in some of the documents on which the respondent no.3 had relied on for proving his caste claim.

The learned Assistant Government Pleader has supported the impugned order. It is submitted that in view of Rule 17 of the Maharashtra Scheduled Castes, De-notified Tribes (VikumktaJati),

Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulations of Issuance and Verification of) Caste Certificates Rules, 2002, it would not be mandatory for the scrutiny committee to conduct the vigilance enquiry. Reliance is placed on sub Rule 7 of Rule 17 to submit that if the scrutiny committee is satisfied on the basis of the documents that the claimant has conclusively proved his claim, the vigilance inquiry would not be necessary. It is however fairly admitted that though a vigilance inquiry was conducted and certain queries were made to the relatives of the respondent no.3 for conducting the affinity test, the vigilance report pertaining to the affinity test is not specifically referred to by the scrutiny committee in the impugned order.

The learned counsel for the respondent no.3 also fairly admitted that though the affinity test was conducted in the matter of the caste claim of the respondent no.3, the scrutiny committee has not considered the findings in the vigilance report pertaining to the affinity test. The learned counsel has relied on the judgment of Hon'ble Supreme Court the Supreme Court, reported in **2012 (1) SCC Pg.133** to canvass that there cannot be an absolute rule by which by a caste claim could be verified. It is submitted that as per the parameters laid down in paragraph 22 of the said judgment, it would not be mandatory for the scrutiny committee to apply the affinity test. It is stated that the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim.

On hearing the learned counsel for the parties, and on a

reading of the impugned order, it appears that though the vigilance cell had conducted the affinity test and had recorded some findings in respect thereof, the scrutiny committee has not referred to the same much less considered the same. According to the provisions of Rule 17 (7) of the Rules it may not be necessary in a given case to conduct a vigilance inquiry if the old documents tendered by the claimant could conclusively prove the caste claim of the claimant. Rule 17 (7) would however not apply to this case as the scrutiny committee had decided to conduct a vigilance inquiry in the matter of the caste claim of the respondent no.3. If the vigilance inquiry was conducted on three occasions and if the vigilance report was made available to the scrutiny committee, it was necessary to the scrutiny committee to have applied its mind to the findings in the vigilance report in respect of the affinity test. In the instant case, it was necessary for the scrutiny committee to consider the findings recorded by the vigilance cell in respect of affinity test as the scrutiny committee as also the vigilance cell had recorded a finding that there was interpolation and overwriting in some documents on which the respondent no.3 had relied on for proving his caste claim. Since the scrutiny committee had not adverted its mind to the affinity test though the same was conducted on the respondent no.3, the impugned order is liable to be set aside. The judgment reported in **2012 (1) SCC Pg.133** and relied on by the counsel for respondent no.3 cannot be made applicable to the case in hand. It is observed by the Hon'ble Supreme Court in paragraph 22 of the said judgment that it is manifest from the observations made by the Hon'ble Supreme Court in the case of **Madhuri Patil** that the genuineness of a caste claim has to be considered not only on a thorough examination of

the documents submitted in support of the claim but also on the affinity test which would include anthropological traits etc of the applicant. Since in this case, the affinity test was conducted on the respondent no.3, the scrutiny committee was bound to consider the findings in the vigilance report in that regard.

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 respondent no.1 – scrutiny committee for a fresh decision in the caste claim of the respondent no.3 in accordance with law. The parties undertake to appear before the scrutiny committee on 15th January 2018, so that the issuance of notice to the parties could be dispensed with. Since the judgment in the case of **Anant Ulahalkar** is stayed by the Hon'ble Supreme Court, the office of the respondent no.3 as a corporator would be protected till his caste claim is decided. We direct the scrutiny committee to decide the caste claim of the respondent no.3 within six months from the appearance of the parties before the scrutiny committee.

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

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)