

UNREPORTED

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.3133 OF 2018

1. Sameer Vasant Kalambkar
Age 14 years, Occ.Student,
R/o Kalambar Khurd, Taluka
Loha, Dist.Nanded.

2. Vinaya S/o Vasant Kalambkar,
Age 16 years, Occ.Student.

Both are Minors, under
Guardianship of father
Vasant S/o Ganpati Kalambkar,
Age 42 years, Occ.Service,
R/o Kalambar Khurd,
Taluka Loha, Dist.Nanded. ... Petitioners.

Versus

1. The State of Maharashtra,
through Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.

2. Scrutiny Committee for
verifying claims of Schedule
Tribes, Aurangabad.

3. Competent Authority,
Sub-Divisional Officer,
Kandhar. ... Respondents.

...

Mr.S.M.Kulkarni, advocate for the petitioners.
Mrs.Vaishali Patil Jadhav, A.G.P. for the State.
...

**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

Date : 26.03.2018.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Rule. Rule returnable forthwith.
2. Learned A.G.P. waives service of Rule for Respondents.
3. With the consent of the learned counsel for parties, the petition is taken up for final hearing.
4. The appeal filed by the petitioner against the order passed by the SD0, rejecting the application for issuance of tribe certificate is rejected on the ground that it is barred by limitation.
5. Mr.Kulkarni, learned counsel submits that the SD0 passed an order rejecting the

application of the petitioner for issuance of tribe certificate on 7.12.2017. The petitioner was served with the copy of the order on 22.12.2017. The appeal was filed by the petitioners before the Committee on 16.1.2018 within the prescribed period of limitation. The same is erroneously rejected.

6. Section 5 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 reads thus :

"5(1) Any person aggrieved by an order of rejection of application passed by the Competent Authority under sub-section (1) of section 4 may, within 30 days from the date of receipt of order, appeal to the Appellate Authority specified by the Government by notification in the Official Gazette."

7. Rule 8 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 reads thus :

"8(1) If the application for grant of Scheduled Tribe Certificate is rejected by the Competent Authority, the applicant may prefer an appeal against the order of rejection to the respective Appellate Authority within a period of thirty days from the date of the rejection order."

8. Perusal of Section 5 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, it is manifest that an appeal can be filed by an aggrieved person against the order of rejection of application passed by the competent authority under sub-section (1) of Section 4 within thirty days from

the date of the receipt of the order. Whereas, Rule 8(1) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, requires appeal to be filed against the order rejecting the application by the competent authority within a period of 30 days from the date of rejection order. Section mandates filing appeal within thirty days from the date of receipt of the order, whereas Rule 8(1) does not prescribe the time spent in receiving the copy of the order. There is apparent conflict between Section 5 of the Act of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and Rule 8(1) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003.

9. It is trite that whenever there is a conflict between the Act and the Rules, the Act would prevail. The Rule is a part of subordinate

Legislation and the Rule can not subplant the provision in the Statute. It at the most would supplement the provision of the Statute.

10. In the present case as the appeal is filed within 30 days from the date of the receipt of order, the same would be construed to be within limitation.

11. In light of the above, the impugned order is quashed and set aside. The petitioner is relegated before the Committee. The Committee shall decide the appeal filed by the petitioner within three months from the date of appearance of the petitioner. The petitioner shall appear before the Committee on 3.4.2018.

12. The Writ Petition is disposed of. No costs.

Sd/-

(A.M.DHAVAL, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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