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

WRIT PETITION NO.4101 OF 2019

1. Harshal s/o Mukund Nikam,
Age: 20 years, Occ: Student,
 2. Gayatri d/o Mukund Nikam,
Age: 25 years, Occ: Student,
Both R/o. Near Datta Mandir,
Navapur, Tq. Navapur,
District Nandurbar
- ..PETITIONERS

VERSUS

1. The State of Maharashtra
Through Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32
 2. The Scheduled Tribe Caste
Certificate Scrutiny Committee
Nandurbar Division, Nandurbar,
Through its Member Secretary
 3. The Sub Divisional Officer,
Nandurbar Division, Nandurbar
Tq. & Dist. Nandurbar
- ..RESPONDENTS

Mr Sushant C. Yeramwar, Advocate for petitioners;
Mrs A.V. Gondhalekar, A.G.P. for respondents

**CORAM : PRASANNA B. VARALE
AND
SUNIL K. KOTWAL, JJ.**

DATE : 29th MARCH, 2019

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ORAL ORDER :

Heard learned Counsel appearing for the petitioners.

2. Considering the challenge raised to the order passed by the Scrutiny Committee dated 15th January, 2019 on the backdrop of earlier orders of this Court and order passed by the Hon'ble the Apex Court, the petition is taken up for final disposal at admission stage.

3. Issue notice to the respondents, returnable forthwith. Learned A.G.P. waives service of notice for all respondents.

4. The petitioners are students prosecuting their respective academic career. The petitioners were in need of tribe certificates that they belong to 'Thakur, schedule tribe', as such, the applications were submitted to Sub Divisional Officer, Nandurbar along with necessary documents. The Sub Divisional Officer, Nandurbar by order

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dated 21st November, 2015 rejected the applications finding no favour with the petitioners and then also observed that the petitioners can avail remedy of appeal before the Scrutiny Committee.

5. Perusal of the order of the Sub Divisional Officer, Nandurbar dated 21st November, 2015 shows that as many as 22 documents were submitted before him in support of claim of the petitioners. These were school leaving certificates, tribe certificates issued in favour of the close relatives of the petitioners. The Sub Divisional Officer, Nandurbar rejected the applications on the ground of area restriction and by assigning reason that the names of relatives referred to in the documents and it ought to have been abbreviations of the names. The Sub Divisional Officer also assigned the reason that merely because a certificate is issued in favour of one of the family members by itself is no reason to accept the claim of the petitioners. Being aggrieved by the order of Sub Divisional Officer, Nandurbar, the

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petitioners preferred appeals before the Scrutiny Committee. The Scrutiny Committee though referred to the documents submitted before it, by assigning only reason of area restriction, dismissed the appeals by affirming the order of Sub Divisional Officer.

6. Learned Counsel appearing for the petitioners was justified in submitting before us that neither the order of Sub Divisional Officer is sustainable nor the order of the Scrutiny Committee is sustainable on more than one grounds. Firstly, the reasons assigned by the Sub Divisional Officer are only on surmises and conjunctures in respect of names of relatives of the petitioners and secondly, in view of the Apex Court judgment, the authority should not have raised rider of area restriction so as to reject the application.

7. Learned Counsel for the petitioners then submitted that the Scrutiny Committee, on mechanical appreciation of the documents without

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assigning any reasons showing that the committee undertook exercise of assessment of material dismissed the appeals on the ground of area restriction. Learned Counsel also invited our attention to the order passed by the Hon'ble the Apex Court. Copy of the same is placed on record at Exhibit-I. It would be useful for our purposes to refer to the relevant observations of the Apex Court, which reads thus :

"The Scrutiny Committee has negated the claim of the appellants on the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential order, 1956 and further they were not able to give any details of customs and traditions being observed by the said authority.

In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to the community mentioned at Serial No. 44 of Part IX of Second schedule of Act No. 108 of 1976."

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8. Learned Counsel for the petitioners was also justified in submitting before us that the Division Bench of this Court in clear and unambiguous terms observed in number of petitions that while issuing tribe certificate, the Sub Divisional Officer or Scrutiny Committee, as the case may be, expected to conduct in depth probe of the documents or material but it is only *prima facie* satisfaction of the authority on the basis of material so as to issue tribe certificate. This Court had observed that tribe certificate is always subjected to verification at the hands of the Scrutiny Committee and in exercise of verification of the claim, the Scrutiny Committee is at liberty to undertake exercise as per modalities set out under the Act, wherein various stages are provided, such as, report from the vigilance cell etc. Learned Counsel also invited our attention to the order of this Court dated 26th February, 2019 in Writ Petition No.197 of 2019 in support of his submission.

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9. On perusal of the order impugned in the petition, we find considerable merit in the submissions of learned Counsel for the petitioners and only conclusion which can be drawn is, the petition needs to be allowed. Resultantly, the writ petition is allowed in terms of prayer clause (B).

(**SUNIL K. KOTWAL**)
JUDGE

(**PRASANNA B. VARALE**)
JUDGE

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