

psv

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

WRIT PETITION NO.9355 OF 2019

Saiprasad S/o. Chandrakant Shettiwar ..Petitioner
Vs.
State of Maharashtra through Secretary & Ors. ..Respondents

Mr.M.A. Golegaonkar for Petitioner.

Mr.A.A. Kumbhakoni, Advocate General with Mr.P.P. Kakade,
Government Pleader with Mr.Shailendra Kanetkar, Counsel 'A' Panel for
State.

**CORAM : NITIN W. SAMBRE AND
G.S. KULKARNI, JJ.**

DATE : 26th AUGUST, 2019

P.C.:

By an order impugned dated 9 August 2019 the claim of the petitioner as belonging to Scheduled Tribe "Mannervarlu" is negated.

2. The learned Counsel for the petitioner has invited attention of this Court to the Vigilance Cell Report, which was supplied to the petitioner. According to him, the vigilance cell inquiry carried out in the matter of Dattatray, son of Chandrakant who is granted validity, is relied upon by the respondent-committee without carrying out any independent vigilance cell inquiry in the case of the petitioner.

3. While countering the aforesaid submission, the learned Counsel for the respondent-Committee submits that the validity holder Dattatray and the present petitioner Saiprasad are having father by common name "Chandrakant", though they are not in close blood relation. According

to him, even if vigilance cell enquiry report in the case of Dattatray is relied upon for analyzing claim of the petitioner, however there is independent documentary evidence on record to the adverse interest of the petitioner. As such, according to him, there is no substance in the submission of the petitioner. As such, the petition is liable to be rejected.

4. Having considered submissions, what is noticed is Dattatray, son of Chandrakant, whose grandfather was Yadav, was granted validity based on the vigilance cell report carried out in the said case. The said Dattatray is though not directly related (grandfather of Dattatray is Yadav, whereas great grandfather of the Petitioner is Bhumanna from whom two sons Laxman and Pandhari were born), was granted validity. By relying upon the same vigilance cell report, without carrying out any independent vigilance cell inquiry in the case of the petitioner, the Committee has invalidated the claim.

5. Apart from above, perusal of the order impugned reflects that the evidence which is brought on record by the petitioner in support of the tribe claim is not discussed or dealt with, which also reflects non application of mind.

6. As such, it can be noticed that the vigilance cell report in the matter of Dattatray is relied upon for grant of validity in favour of Dattatray whereas the same is relied upon for negating the claim for grant of validity to the petitioner.

7. The consideration in the matter of Dattatray for grant of validity prima-facie appears to be similar to that of the one in the matter of rejection of validity in the case of the petitioner. The aforesaid illegality prima-facie persuaded this Court to form an opinion that the order

impugned is not sustainable. As such, the same is hereby quashed and set aside.

8. The Committee is granted liberty to carry out fresh vigilance cell inquiry in the matter of the petitioner, independent of the vigilance cell inquiry in the matter of Dattatray. Upon service of such report on the petitioner, within a period of 12 weeks from today, the petitioner will be at liberty to submit a detailed explanation to the vigilance cell report. We expect the Committee to pass a final order within a period of 7 months from today, without being influenced by the findings recorded in the order impugned.

[G.S. KULKARNI, J.]

[NITIN W. SAMBRE, J.]