

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

87 WRIT PETITION NO.8114 OF 2020

LIMBAJI POSHETTI KAYPALWAD AND OTHERS
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Petitioners : Mr. Thorat Chandrakant R.

AGP for Respondents State: Mr. A. B. Chate

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 14th December, 2020

ORDER:

1. Mr. Thorat, the learned counsel for the petitioners submits that vigilance had submitted the report and pursuant to the report submitted by the Vigilance, show cause notice is issued to the petitioners by the Scrutiny Committee. The scrutiny committee, in the show cause notice, referred to three persons namely 1) Dhondu S Sambhaji Kaypalwad, 2) Vijay Sambhaji Kayupalwad, 3) Anandrao Sambhaji Kaypalwad as cousin grandfather of the petitioner. These persons are not even remotely related to the petitioner.

2. To disprove the fact that these persons are not relatives of the petitioner, the petitioner has filed an application to cross examine the said persons. The application is rejected without assigning any reason.

3. Mr. Tiwari, the learned AGP submits that the petitioner does not have right to cross examine before the Scrutiny Committee. Reliance is placed on the judgment of the Division Bench of this Court at Nagpur Bench, dated 23.04.2007 in Writ Petition No. 903/2007 with connected writ petitions.

4. Upon perusal of the judgment delivered at Nagpur Bench in Writ Petition No. 903/2007, it is manifest that the same would not apply in the present case. In the said case, the petitioner therein sought to cross examine vigilance officer and the research officer. In the present case, the petitioner seeks to examine the persons whom the committee claims to be related to the petitioner.

5. Unless the Committee proves the relationship of those persons with the petitioner, the burden would never shift on the petitioner to disprove the same. It is only if the fact is proved, the same has to be disproved.

6. The petitioner has opportunity to file say to the show cause notice. Inter alia also contest the relationship as sought to be contended by the Committee in the show cause notice. There can never be a negative burden of proof.

7. In light of above, Mr. Thorat, the learned counsel submits that the petitioner would file detail say to the show cause notice disputing the relationship with the alleged persons. The petitioner certainly is at liberty to file his detail say, which naturally will have to be permitted by the Committee.

8. Writ petition is disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S. V. GANGAPURWALA, J.)