

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

923 WRIT PETITION NO.14823 OF 2021

**NILESH DEVIDAS BAVISKAR AND ANOTHER
VERSUS
THE SCHEDULED TRIBE CERTIFICATE SCRUTINY COMMITTEE
THROUGH ITS MEMBER SECRETARY AND ANOTHER**

...

Mr. M.S. Deshmukh, holding for Mr. Bhausahab S. Deshmukh, Advocate
for Petitioners

Mr. P.K. Lakhotiya, AGP for Respondent Nos.1 -State

...

**CORAM : A.S. GADKARI
AND
S.G. MEHARE, JJ.**

DATE : 04th JANUARY 2022

P.C.

1. Mr. Deshmukh learned Advocate appearing for petitioners pointed out that, the impugned order dated 26.11.2021 passed by respondent No.1, is an *ex parte* order. He submitted that the petitioners' right of being heard before passing impugned order has been affected due to it. He submitted that respondent No.1 has not followed the principles of natural justice and failed to give an opportunity of being heard to the petitioners and therefore, the present matter may be remanded to respondent No.1 for affording an opportunity of being heard to them.

2. Mr. Lakhotiya, learned AGP submitted that, a bare perusal of para No.2 of the impugned order would make it abundantly clear that, since 22.09.2015, the petitioners and/or their Advocate had attended the proceedings before Respondent No.1. However, on two consecutive dates

i.e. on 28.10.2021 and 12.11.2021, they remained absent and therefore, the respondent No.1 Committee was constrained to proceed *exparte* against the petitioners. He submitted that the petitioners cannot expect that, the respondent No.1 Committee to wait till the petitioners appear before them as per their own convenience. He submitted that, no interference in the impugned order is therefore necessary.

3. As we are convinced about the fact that, the principles of natural justice i.e. an opportunity of being heard to the petitioners before passing the impugned order was not afforded to them, the present matter requires remand before respondent No.1.

However, we cannot overlook the fact that, on an earlier occasion the petitioners had preferred Writ Petition No.9311/2011 and this Court by its Order dated 02.02.2012 had directed that, the case of petitioner No.1 be decided in four weeks and since then their application was pending before respondent No.1 for adjudication of their caste claim. The petitioners had appointed an Advocate to represent them, who on certain occasions appeared before respondent No.1. However the petitioners or their Advocate did not appear before respondent No.1 on two consecutive occasions, as noted above.

4. After taking into consideration over all view of the matter, while remanding it to respondent No.1, we are of the view that the petitioners be imposed with exemplary costs of Rs.1 lakh for procrastinating litigation before the respondent No.1 for more than eight years. Mr.

Deshmukh, learned Counsel for the petitioners on instructions submitted that, the petitioners will pay the said cost to the Chairman, Library Committee, Advocates Association of High Court of Bombay, Bench at Aurangabad (A/c No.62004320651 – IFSC Code SBIN0020997) within a period of four (04) weeks from today. The said statement is accepted on behalf of the petitioners as their undertaking to this Court.

5. In view of the above, impugned order dated 26.11.2021 is set aside and the case of the petitioners i.e. case Nos. (1) JAG/EDN/117/07 and (2) JAG/EDN/118/07 are remanded to respondent No.1 for hearing it afresh by affording an opportunity of being heard to the petitioners.

6. Petition is allowed in the aforesaid terms.

7. List the petition on admission board on 01.02.2022 under the caption for "reporting compliance".

(S.G. MEHARE, J.)

(A.S. GADKARI, J.)

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