

Diksha Rane

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

**WRIT PETITION NO. 517 OF 2008
WITH
INTERIM APPLICATION NO. 607 OF 2022**

Vaishali Baban Dhumal ..Petitioner
VS.
State of Maharashtra & ors. ..Respondents

Dr. Uday P. Warunjikar a/w. Ms. Vaishnavi M. Gujarathi for
petitioner.
Mr. P. P. Kakade, GP a/w. Mr. B. V. Samant, AGP for State.

**CORAM : DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.**

HEARD ON : JUNE 14, 2022.

JUDGMENT ON : AUGUST 22, 2022.

JUDGMENT (PER M. S. KARNIK, J.) :

1. Invoking the jurisdiction under Article 226 of the Constitution of India, the petitioner has approached this Court, *inter alia*, praying for the following substantive reliefs: -

- (a) This Hon'ble Court be pleased to quash and set aside the impugned judgment and order dated 23.02.2007 passed by the Respondent No.2-Scrutiny Committee;
- (b) This Hon'ble Court be pleased to hold and declare that the caste certificate dated 31.3.1990 issued by the Competent Authority of jurisdiction in

favour of Petitioner as belonging to Hindu Mahadeo Koli-Scheduled Tribe is valid, legal and subsisting;

(c) This Hon'ble Court be pleased to direct Respondent No.2-Scrutiny Committee to issue caste validity certificate in respect of the caste certificate dated 31.03.1990 issued by the Competent Authority of jurisdiction in favour of Petitioner as belonging to Hindu Mahadeo Koli-Scheduled Tribe;

(d) This Hon'ble Court be pleased to direct the Respondent Nos. 1 & 4 to appoint Petitioner on the post of Deputy Superintendent of Police / Assistant Commissioner of Police, Class I;

(e) This Hon'ble Court be pleased to direct the Respondent No.1 i.e. the State of Maharashtra to frame the Rules regarding affinity, sociology, anthropology, ethnology, ancestry, anthropological mooring, ethological kinship, genetic trait, peculiar tribal customs, ingrained tribal traits, endemic characteristics etc. for determining the caste / tribe claim;

(f) This petition be allowed in terms of prayer clause "a", "b", "c", "d" & "e" above, and for that purpose appropriate writ, order and/or directions be issued.

2. The facts are briefly set out. The petitioner - Vaishali Baban Dhumal (hereafter 'Vaishali' for short) claims to belong to the "Hindu Mahadev Koli" which is recognized as Scheduled Tribe in the State of Maharashtra. The caste certificate dated March 31, 1990 issued by the Competent Authority in favour of Vaishali as belonging to Hindu Mahadev Koli-Scheduled Tribe was scrutinized by the

respondent no. 2- Scheduled Tribe Certificate Scrutiny Committee, Pune Region, Pune (hereafter 'the Scrutiny Committee' for short) as per the procedure laid down under the Maharashtra Scheduled Caste, Scheduled Tribes, Denotified Tribe (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereafter 'the Act' for short) and the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (hereafter 'the Rules' for short).

3. By the impugned order dated February 23, 2007, the Scrutiny Committee invalidated the tribe claim of Vaishali for the reasons recorded in such order.

4. Dr. Uday Warunjikar, learned advocate for Vaishali, assailed the impugned order on various grounds. According to him, the per-constitutional documents on record of close relatives of Vaishali from the paternal side, which have a great probative value are not considered in the proper perspective by the Scrutiny Committee. Dr. Warunjikar submitted that the home enquiry conducted by the Vigilance Cell under the Rules resulted in the Vigilance Cell issuing a favourable report dated May 16, 2005 (hereafter 'the first report' for short) supporting Vaishali's tribe claim. The Scrutiny Committee, not satisfied with the first report, called for another report from the Vigilance Cell. According to him, even the subsequent report dated July 18, 2005

(hereafter 'the second report' for short) of the Vigilance Cell was favourable to Vaishali. The Scrutiny Committee again called upon the Vigilance Cell to re-inquire into the matter and submit a fresh report. It is this report dated November 28, 2005 (hereafter 'the third report' for short) that is not in favour of Vaishali's tribe claim. Learned advocate submits that the Scrutiny Committee is not empowered to direct the Vigilance Cell to re-inquire into the matter once a report has been submitted upon proper enquiry. It is urged that the Scrutiny Committee cannot keep on referring the matter to the Vigilance Cell till such time it gets the report which it expects. According to learned advocate, the Scrutiny Committee must act impartially and calling upon the Vigilance Cell to re-inquire into the matter time and again not only demonstrates a pre-determined mind to obtain an adverse report against Vaishali, but also indicates the Scrutiny Committee's lack of confidence in its own machinery. Such a course adopted by the Scrutiny Committee is against the principles of fair play and justice. Learned advocate submits that the copies of the favourable reports (first and second report) were never furnished to Vaishali. Learned advocate submitted that the procedure followed by the Scrutiny Committee is completely in breach of the principles of natural justice. Learned advocate submitted that the Vigilance Cell procured documents behind the back of Vaishali while submitting the third report. These documents were never supplied to her.

Documents not supplied to Vaishali are relied upon by the Scrutiny Committee to reject her claim. Learned advocate submitted that, during the pendency of this writ petition, her close relatives have been granted caste validity certificate and on this ground also the impugned order deserves to be set aside.

5. It is then pointed out by Dr. Warunjikar that the petitioner filed Interim Application No. 607 of 2022 during the pendency of the writ petition, as Vaishali wanted to rely on some documents in support of her claim which could not be produced earlier. The reasons why Vaishali could not produce the documents earlier are stated. It is submitted that Vaishali's father expired before her birth and her mother also expired soon after Vaishali was born. As no one was ready to take Vaishali's responsibility, she was forced to leave her parental home at Baramati, whereafter she stayed with her distant paternal uncle in Phaltan, Satara. Vaishali relied upon a pre-independence document which records that her grandfather was born in the month of December 1917 indicating that he belonged to Mahadev Koli tribe. Then some more documents are sought to be brought on record which according to Vaishali are sufficient to prove her tribe claim. Along with these documents, the copies of the first and second Vigilance Cell reports are produced.

6. In support of his submissions, learned advocate relied upon the following decisions:-

(i) Kumari Madhuri Patil and anr. v/s. Addl. Commissioner, Tribal Development and ors.¹

(ii) L. Chandrakumar v/s. Union of India and others.²

(iii) S. P. Sampath Kumar v/s. Union of India³

(iv) State of Maharashtra and others v/s. Ravi Prakash Babulalsing Parmar and another.⁴

(v) M. B. Majumdar v/s. Union of India.⁵

(vi) Dayaram v/s. Sudhir Batham and others.⁶

(vii) Director of Tribal Welfare, Government of A. P. v/s. Laveti Giri and another.⁷

(viii) Benedict Denis Kinny v/s. Tulip Brian Miranda and others.⁸

7. Learned AGP, on the other hand, supported the impugned order. He invited our attention to the findings recorded by the Scrutiny Committee to submit that all the documents produced on record in support of the tribe claim of Vaishali are duly considered. It is after recording cogent reasons, the Scrutiny Committee invalidated the tribe claim of Vaishali. Learned AGP submitted that it is not open for this Court in the exercise of its writ jurisdiction under Article 226 of the Constitution of India to re-appreciate the evidence on record. Learned AGP further submitted that the

¹ [(1994) 6 SCC 241]

² [(1997) 3 SCC 261]

³ [(1987) 1 SCC 124]

⁴ [(2007) 1 SCC 80]

⁵ [(1990) 4 SCC 501]

⁶ [(2012) 1 SCC 333]

⁷ [(1995) 4 SCC 32]

⁸ [2020 SCC OnLine SC 802]

home enquiry conducted by the Vigilance Cell resulting in the first and second report was without following the proper procedure laid down in the Rules. Having regard to the unsatisfactory manner in which the enquiry was conducted, the Scrutiny Committee directed a re-enquiry. Such a course is not prohibited. In these circumstances, re-enquiry ordered by the Scrutiny Committee cannot be faulted. According to learned AGP, under the Act and the Rules, the Scrutiny Committee had to be satisfied with the tribe claim of Vaishali, and to this end, if it is found that the home enquiry is defective, ordering a re-enquiry does not defeat but advances the purpose of the enactment as undeserving claimants cannot be allowed to walk away with the benefits meant for the deprived sections of the society. Learned AGP submitted that the Scrutiny Committee has given Vaishali sufficient opportunity to submit documentary evidence in support of her claim. According to learned AGP, Vaishali is guilty of material suppression as she has purposely taken a position before the Scrutiny Committee that she has no close relatives. He submitted that in the home enquiry, the Vigilance Cell obtained a number of documents pertaining to Vaishali's relatives from the paternal side. Further, in his submission, the caste of Vaishali's father in the school register is recorded as "Hindu Koli" but she avoided to produce this document. Learned AGP relied upon the decision of the coordinate Bench of this Court in the case of **Bharat Gulabsing Thakur v/s. State of Maharashtra**

and others⁹ in support of his submissions.

8. We have perused the memo of the writ petition, the annexures, the affidavit-in-reply filed on behalf of the Scrutiny Committee, the Interim Application and the materials on record. We had also called for the original record and with the assistance of learned advocate and learned AGP perused the record.

9. Heard learned counsel.

10. From the record it is seen that there are three home enquiry reports of the Vigilance Cell. The first and second reports are in support of Vaishali's tribe claim. The third report dated November 28, 2005 at page 84 of the paper-book is against Vaishali's claim. After considering the third report submitted by the Vigilance Cell, for the reasons recorded in the impugned order, the Scrutiny Committee invalidated the tribe claim of Vaishali. The third report was served on Vaishali.

11. The questions for consideration are

- (a) Whether the failure on the part of the Scrutiny Committee to supply the first and second reports of the Vigilance Cell to Vaishali before taking a decision to invalidate the tribe claim, is against the principles of natural justice and fair play;
- (b) Whether the Scrutiny Committee under the Rules has a power to direct a re-enquiry once the Vigilance

⁹ 2010(4) Mh.L.J. 458

Cell report has been submitted under sub-rule (6) of Rule 12;

(c) If the Scrutiny Committee is empowered to direct a re-enquiry by the Vigilance Cell, under what circumstances can it direct such a re-enquiry;

(d) Whether it is necessary to furnish the materials and the brief reasons for directing such a re-enquiry along with the show cause notice under sub-rule (8) of Rule 12 in the event these materials are to form the basis for invalidating the tribe claim of the claimant.

12. It is necessary to refer to the relevant provisions of the Act and the Rules to answer the aforesaid questions. The Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribe (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 was enacted on May 23, 2001 to provide for the regulation of the issuance and verification of the Caste Certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward classes and Special Backward Category and for matters connected therewith or incidental thereto. The Act was enforced on October 18, 2001. In exercise of the powers conferred by sub-section (1) of section 18 of the Act, and of all other powers

enabling it in that behalf, the Government of Maharashtra made 'the Rules' for regulating the issuance and verification of Scheduled Tribes Certificates to the persons belonging to the Scheduled Tribes.

13. Sub-section (a) of section 2 of the Act defines "Caste Certificate" to mean the certificate issued by the Competent Authority to an applicant indicating therein the Scheduled Caste, Scheduled Tribe, De-notified Tribe (Vimukta Jatis), Nomadic Tribe, Other Backward Class or Special Backward Category, as the case may be, to which such applicant belongs. "Competent Authority" is defined by sub-section (b) of Section 2 of the Act. Sub-rule (c) of Rule 2(1) defines "Applicant" as meaning a person who makes an application for obtaining a Scheduled Tribes Certificate or for verification of such Certificate. "Relative", defined by sub-rule (f) of Rule 2(1), means a blood relative from the paternal side of the applicant. Sub-rule (g) of Rule 2(1) defines "Scheduled Tribe Certificate". Sub-rule (h) of Rule 2(1) defines "Validity Certificate" as a Certificate issued by the Scheduled Tribe Certificate Scrutiny Committee validating the Scheduled Tribe Certificate issued by the Competent Authority.

14. It is also pertinent to note sub-rule (2) of Rule 2 of the Rules which provides that the words and expressions used in the Rules but not defined shall have the same meaning respectively assigned to them in the Act. We have referred to sub-rule (2) of Rule 2 in the context of the locus of a

private complainant opposing issuance of Scheduled Tribe certificate to an applicant. We find it necessary to deal with this aspect as it is one of the objection of learned advocate for Vaishali that based on the letter of the Secretary, Adivasi Samaj Kruti Samiti, that the third report was obtained. It is the contention of learned advocate that the third report is vitiated also on the ground that an extraneous material (Secretary's letter) has been relied upon while directing a re-enquiry resulting in the third report, which is adverse to Vaishali's claim. According to learned advocate, the Secretary is not at all concerned, nor has a locus to intervene in the present matter.

15. The term "Complainant" is not defined either under the Act or the Rules framed thereunder. Learned advocate for Vaishali submitted that issue of caste validity certificate is a matter purely between the applicant and the Scrutiny Committee as per the provisions of the Act and the Rules framed thereunder. According to learned advocate, the trigger for directing re-enquiry leading to the third report was the letter of the Secretary, Adivasi Samaj Kruti Samiti. Learned advocate submitted that the Vigilance Cell has, thus, taken into consideration irrelevant materials and instead of forming its opinion based on its subjective satisfaction, was influenced by the letter of the Secretary, Adivasi Samaj Kruti Samiti. It is therefore submitted that invalidating the caste claim on the basis of such a letter by the Secretary, Adivasi Samaj Kruti Samiti vitiates the third

report and consequently the decision of the Scrutiny Committee. Learned advocate urged that if the opinion/complaint is an extraneous consideration, based on which the third report was obtained, then a re-enquiry on the basis of such an opinion/complaint would stand vitiated.

16. The procedure for obtaining Scheduled Tribe Certificate from the Competent Authority is prescribed by Rule 3. Rule 4 provides a procedure to be followed by the Competent Authority for grant of certificate or rejection of application for Scheduled Tribe Certificate. In the present matter, we are not concerned with Rule 4 and 5, as the tribe certificate issued by the Competent Authority is not a subject matter of challenge. Rule 7 provides for a procedure to be followed by the Scrutiny Committee or enquiry thereto in any complaint or allegation that a person to whom a Scheduled Tribe Certificate has been issued, is not belonging to that tribe. Rule 7 reads thus: -

“7. Complaints.

(1) Any Complaint or all complaint or allegation that a person to whom a Scheduled Tribe Certificate has been issued, is not belonging to that tribe shall be enquired into by the concerned Scrutiny Committee.

(2) The concerned Scrutiny Committee shall decide all such complaints within a period of six months from the date of receipt of the complaint. The decision of the Scrutiny Committee shall be communicated to the Competent Authority who has issued the said Scheduled Tribe Certificate for taking suitable action

against the applicant.

(3) The Scrutiny Committee shall also communicate the decision of the Committee to the Divisional Commissioner about the wrongful issuance of the Scheduled Tribe Certificate for initiating necessary action against the issuing officer under the relevant disciplinary rules.”

17. A bare reading of Rule 7 reveals that the Scrutiny Committee has to enquire into any complaint made into the allegation that the certificate has been issued to a person not belonging to the tribe. The object is obviously to ensure that the benefits of the tribe claim enure to genuine claimants. The term ‘complainant’ is not defined. In ordinary parlance, anyone who makes the complaint or the allegation that a person is not belonging to that tribe, has to be regarded as the complainant. The language of Rule 7 indicates that the Scrutiny Committee has to enquire into the complaint in respect of a Scheduled Tribe certificate issued by the competent authority. Though there is no such provision of entertaining a complaint when the Scheduled Tribe certificate is to be verified under Rule 11, it would be prudent for the Scrutiny Committee to apply its mind to the allegations made in the complaint, for it has to be mindful that undeserving claimants do not take the benefits meant for the Scheduled Tribe before issuing the Tribe Validity Certificate. If Rule 7 ordains an enquiry by the Scrutiny Committee upon a complaint or allegation being made that a Scheduled Tribe Certificate is issued to a person not

belonging to that tribe, there is no reason why the spirit and intent of Rule 7 should not govern complaints made in the course of verification of the Scheduled Tribe Certificate under Rule 11. It is of course for the Scrutiny Committee to determine as to whether and to what extent the complaint should be enquired into depending on the nature of allegations made. In case such complaint is enquired into, then the complaint has to be served on the applicant along with the show cause notice under sub-rule 8 of Rule 12.

18. Let us now deal with Rule 9. Rule 9 provides for meetings and quorum of Scrutiny Committee. Rule 9 reads thus: -

“9. Meetings and Quorum of Scrutiny Committee.

(1) The quorum of Scheduled Tribe Certificate Scrutiny Committee for any hearing or sitting for decisions shall be of the following three members out of the total five members: -

- (1) Chairman or Vice Chairman.
- (2) Member Secretary.
- (3) any other Member.

(2) If in a particular sitting, four members are present and two different opinions are formed by equal number of members, the matter may be placed before the full Committee for decision.

(3) A majority decision shall be the judgment of the Committee.

(4) The Scrutiny Committee shall meet at least once in a month.”

19. Rule 10 provides for “Constitution of Vigilance Cell”. Rule 10 reads thus: -

“10. Constitution of Vigilance Cell.-

The State Government shall constitute a vigilance cell to assist each Scheduled Tribe Certificate Scrutiny Committee for conducting enquiry which shall consist of,-

- (i) A Senior Deputy Superintendent of Police;
- (ii) Police Inspector (number of Inspectors depending upon the number of cases);
- (iii) Police Constables to assist the Police Inspector;
- (iv) Research Officer.

The police personnel shall investigate into the social status claims by conducting school and home inquiries and other enquiry as per the reference made by the Scrutiny Committee under sub-rule (2) of rule 12.”

20. Rule 11 provides for verification of Scheduled Tribe Certificate by the Scrutiny Committee. Rule 11 reads thus: -

“11. Verification of Scheduled Tribe Certificate by Scrutiny Committee.

(1) After obtaining the Scheduled Tribe Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Tribes for the purposes mentioned in section 3 of the Act shall make an application well in advance in Form E to the concerned Scrutiny Committee for the verification of such Certificate and issue of validity certificate.

(2) The applicant shall submit the following documents with his application for verification of his

Scheduled Tribe Certificate: -

- (a) Original documents. -
 - (i) the original Scheduled Tribe Certificate of the applicant alongwith one attested copy;
 - (ii) an affidavit in Form F;

- (b) Documents of which, only attested copies are to be submitted in respect of applicant-
 - (I) Primary School leaving certificate.
 - (ii) An extract of school admission register.
 - (iii) An extract of birth register.

- (c) Documents in respect of father, -
 - (i) An extract of birth register.
 - (ii) Primary school leaving certificate.
 - (iii) Extract of school admission register.
 - (iv) Scheduled Tribe Certificate.
 - (v) If a father is in service, the extract of the pages of the service record (book) which contain religion and tribe entry.
 - (vi) If a father is illiterate, the primary school leaving certificate of the real elderly blood relatives of the paternal side of the applicant and extract of school admission register.

- (d) Other documents,-
 - (i) Revenue record like, birth register, extract of 7/12, Sale Deed etc.
 - (ii) Any other relevant documents in support of his Scheduled Tribe claim.
 - (iii) Affidavits of the near relatives whose Validity Certificates are submitted in support of the Scheduled Tribe Claim of the applicant.

- (3) The applicant shall submit original certificates and documents for verification whenever required by the Scrutiny Committee.

21. Rule 12 prescribes the procedure to be followed by the

Scrutiny Committee for verification of Scheduled Tribe Certificate. The provisions of Rule 12 are as under:

12. Procedure to be followed by Scrutiny Committee.

(1) On receipt of the application, the Scrutiny Committee or a person authorised by it shall scrutinise the application, verify the information and documents furnished by the applicant, and shall acknowledge the receipt of the application. The member Secretary shall register the application, received for verification, in the register prescribed by the Chairman.

(2) If the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry.

(3) The Vigilance Officer shall go to the local place of residence and original place from which the applicant hails and usually resides, or in case of migration, to the town or city or place from which he originally hailed from.

(4) The Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or the guardian, as the case may be.

(5) The Vigilance Cell shall also examine the parents or guardian or the applicant for the purpose of verification of their Tribe, of the applicant.

(6) After completion of the enquiry, the Vigilance Cell shall submit its report to the Scrutiny Committee who will in turn scrutinise the report submitted by the Vigilance Cell.

(7) In case the report of Vigilance Cell is in favour of the applicant, and if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and

true, the Scrutiny Committee may issue the validity certificate. The validity certificate shall be issued in Form G.

(8) If the Scrutiny Committee, on the basis of the Vigilance Cell report and other documents available, is not satisfied about the claim of the applicant, the Committee shall issue a show cause notice to the applicant and also serve a copy of the report of the Vigilance Officer by registered post with acknowledgment due. A copy shall also be sent to the Head of the Department concerned, if necessary. The notice shall indicate that the representation or reply, if any, should be made within fifteen days from the date of receipt of the notice and in any case not more than thirty days from the date of receipt of the notice. In case the applicant requests for adjournment or extension of the time-limit, reasonable time, may be granted.

(9)(a) After personal hearing if the Scrutiny Committee is satisfied regarding the genuineness of the claim, Validity Certificate shall be issued in Form G. (b) After personal hearing, if the Scrutiny Committee is not satisfied about the genuineness of the claim and correctness of the Scheduled Tribe Certificate, it shall pass an order of cancellation and of confiscation of the Certificate and communicate the same to the Competent Authority for taking necessary entries in the register and for further necessary action. The Scheduled Tribe Certificate shall then be stamped as "cancelled and confiscated".

22. From a reading of the aforesaid provisions, it is seen that in terms of sub-rule (1) of Rule 11, after obtaining the Scheduled Tribe Certificate from the Competent Authority as

belonging to Mahadev Koli - Scheduled Tribe, Vaishali was desirous of availing the benefits or concessions provided to the Scheduled Tribes for the purposes mentioned in section 3 of the Act. Accordingly, Vaishali made an application in Form E to the Scrutiny Committee for the verification of such Scheduled Tribe certificate with a request for issuance of Tribe Validity Certificate. Vaishali submitted various documents along with her application for verification of the Scheduled Tribe Certificate. In terms of sub-rule (2) of Rule 12, as the Scrutiny Committee was not satisfied with the documentary evidence produced by Vaishali, the application along with the documents was forwarded to the Vigilance Cell for conducting the school, home and other enquiry. The Vigilance Cell, in compliance with sub-rule (3) of Rule 12 visited the local place of residence and original place where Vaishali hails from. In terms of sub-rule (4) of Rule 12 the Vigilance Officer personally verified and collected all the facts about the social status claimed by Vaishali. After complying with sub-rule (5) of Rule 12, the Vigilance Cell upon completion of the enquiry, submitted its report to the Scrutiny Committee in terms of sub-rule (6) of Rule 12. The Scrutiny Committee scrutinized the report submitted by the Vigilance Cell. This is the first report of the Vigilance Cell dated May 16, 2005.

23. The first report of the Vigilance Cell was in favour of Vaishali, but the Scrutiny Committee was not satisfied that her claim is genuine and true and hence did not proceed to

issue the validity certificate as provided by sub-rule (7) of Rule 12. According to Vaishali's advocate, the Scrutiny Committee is not empowered to direct a re-enquiry. His contention is that if the Scrutiny Committee was not satisfied with the tribe claim of Vaishali after scrutinizing the report, the Scrutiny Committee should have issued a show cause notice to Vaishali and also served the copy of the report of the Vigilance Officer asking her to submit her representation or reply. He submits that the Scrutiny Committee, however, directed a re-enquiry. We find that there are no specific provisions in the Rules as regards a re-enquiry by the Vigilance Cell in the event the Scrutiny Committee is not satisfied with the report of the Vigilance Cell.

24. In the instant case, the Scrutiny Committee expressed dissatisfaction with the first two reports of the Vigilance Cell and proceeded to consider the matter further only after the third report dated November 28, 2005 was submitted by the Vigilance Cell, which report was not in favour of Vaishali. The Scrutiny Committee, thereafter, in compliance with sub-rule (8) of Rule 12 issued notice to Vaishali and served on her the copy of the third report dated November 28, 2005. The first and second reports, favourable to Vaishali, were not served on her. Vaishali was also not informed the basis and materials which compelled the Scrutiny Committee to direct re-enquiry over and over again. Vide reply dated May 22, 2006, Vaishali raised

various objections to the Vigilance Cell report.

25. We are not impressed with the submission of learned advocate for Vaishali that the Scrutiny Committee ought not to have directed a re-enquiry and instead should have proceeded to issue a validity certificate considering that the Vigilance Cell's report is in Vaishali's favour. Having regard to the object of the enactment, and even on a bare reading of sub-rule (7) of Rule 12, the issuance of a validity certificate by the Scrutiny Committee is not just a ministerial act though a favourable report may have been submitted by the Vigilance Cell. The Scrutiny Committee has to issue a validity certificate only after satisfying itself and applying its own mind that the claim of the applicant is genuine and true after considering the report and materials on record. Such a procedure furthers the object of the Act. This would ensure that the validity certificate is issued only to a genuine claimant of the particular tribe. If the proposition that the Scrutiny Committee is bound to issue a validity certificate, the moment there is a favourable report of the Vigilance Cell, is to be accepted, the same would amount to reducing the task of the Scrutiny Committee to merely a clerical one. We are in respectful agreement with the view taken by the coordinate Bench (Aurangabad) of this Court in the case of **Santosh s/o. Vyankat Nirude vs. State of Maharashtra & ors.**¹⁰ The provisions of Rule 12 casts an onerous responsibility on the Scrutiny

¹⁰ 2007(5) ALL MR 734

Committee to issue a validity certificate only if it is satisfied that the claim of the applicant is genuine and true on the basis of the Vigilance Cell's report and the other documents available.

26. However, if the Scrutiny Committee on the basis of the Vigilance Cell's report and other documents available is not satisfied with the claim of the applicant, sub-rule (8) of Rule 12 postulates the procedure to be followed in such a case. The Scrutiny Committee has to issue a show cause notice to the applicant along with the service of the copy of the Vigilance Cell report providing for an opportunity to make a representation. Further, a personal hearing is contemplated under sub-rule (9)(a)(b) of Rule 12. The provisions clearly indicate that the Vigilance Cell report is not sacrosanct for the issuance of a validity certificate. It is one of the factors to be taken into consideration in the matter of grant or otherwise of the validity certificate. Issuance of validity certificate is essentially the function of the Scrutiny Committee. The Vigilance Cell is meant to assist the Scrutiny Committee. The function of the Vigilance Cell is to prepare a report after giving an opportunity to the applicant and upon gathering information including documents about the applicant's caste claim. The Vigilance Cell is expected to conduct a proper and a meticulous enquiry into the caste claim before submitting its report. The Vigilance Cell is a mechanism to aid the Scrutiny Committee in finding the genuineness of the claim.

27. Taking an overall view of the provisions of the Act and the procedure laid down by the Rules, it is obvious that the Scrutiny Committee has to be completely satisfied regarding the genuineness of the tribe claim. The Scrutiny Committee is not expected to function in a perfunctory or casual manner. Sufficient safeguards are provided by the rules indicating that the Scrutiny Committee takes all due care before issuing a validity certificate only in respect of genuine claims made by the applicants. Even as regards a Scheduled Tribe Certificate already issued, Rule 7 provides for a mechanism to enquire into any complaint or allegation that the person to whom such certificate has been issued is not belonging to that tribe. The purpose of the Act and the Rules obviously is that benefits meant for the deprived sections are derived by only the genuine persons belonging to a particular tribe and no one else.

28. Another reason we can think of why a re-enquiry can be directed by the Scrutiny Committee is this. A situation may arise where the applicant wants to rely on some fresh materials or additional documents in support of the tribe claim at the stage of personal hearing under Rule 9. If the Scrutiny Committee is to allow production of such materials in the interest of justice, it would necessitate verification of such documents obviously after an enquiry by the Vigilance Cell. Such a course would enure to the benefit of the applicant as well as it curtails unnecessary rounds of litigation.

29. The argument of learned advocate for Vaishali that a re-enquiry cannot be ordered once the Vigilance Cell has submitted its report does not commend us. The letter dated July 29, 2005 of the Secretary, Adivasi Samaj Kruti Samiti, was the trigger for the Scrutiny Committee to obtain the third report. The first two reports as indicated earlier, were in Vaishali's favour. Rule 10 obligates the State Government to constitute the Vigilance Cell to assist the Scrutiny Committee for conducting enquiry. It further provides that the police personnel shall investigate into the social status claims by conducting school and home inquiries and other enquiry as per the reference made by the Scrutiny Committee under sub-rule (2) of Rule 12. The assistance to be rendered by a Vigilance Cell is not an empty formality but it is expected to render meaningful and effective assistance for investigating into the social status claims by conducting school and home inquiries. What happens in a case where the school and home enquiry is conducted by the Vigilance Cell in a slipshod manner or in a given case it submits a report without effectively investigating into the social status claim. Is it that the Scrutiny Committee is to simply accept the report and proceed further merely because the rules do not contemplate a re-enquiry. We are afraid that this can never be the intent of the legislation. The Vigilance Cell is constituted to assist the Scrutiny Committee for conducting school, house and other enquiry into the social status claim. It can never be the purport of

the Rules that the Scrutiny Committee is powerless to direct the Vigilance Cell to re-enquire into the matter and submit a fresh report. The reason is not far to seek. As per the provisions of sub-rule (2) of Rule 12, the question of forwarding the claim applications to the Vigilance Cell for conducting school, home and other enquiry will arise only if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant. However, once the application is forwarded to the Vigilance Cell by the Scrutiny Committee, it is incumbent on the part of the Vigilance Cell to conduct the enquiry and submit its report in terms of the procedure contemplated by sub-rule (3) to (6) of Rule 12. The power to direct a re-enquiry is implicit in the event the enquiry report is deficient in any manner with the provisions of sub-rule (3) to (6) of Rule 12. It is incumbent upon the Scrutiny Committee under sub-rule (6) of Rule 12 to scrutinize the report. The Vigilance Cell report, though not binding on the Scrutiny Committee, assumes significance as it assists the Scrutiny Committee in finding out genuine and true claims. It is, therefore, essential that the Vigilance Cell carries out its functions meticulously in accordance with the prescribed procedure. Failure on the part of the Vigilance Cell to conduct a proper enquiry would come in the way of the Scrutiny Committee rendering an appropriate finding on true and genuine claim. It is, therefore, obvious that the Scrutiny Committee can always direct the Vigilance Cell to re-enquire and submit a proper

report. Merely because, the Rules do not in so many words provide for a re-enquiry, does not render the Scrutiny Committee powerless to direct a re-enquiry. The provisions of sub-rule (2) to (6) cast an obligation on the Vigilance Cell to conduct the enquiry in terms of the procedure laid down thereunder. If the Scrutiny Committee is satisfied that the report is non-compliant with the provisions of sub-rule (3) to (6) of Rule 12 or for any other reason, for assisting the Scrutiny Committee in arriving at a finding as to a true and genuine claim, it can always direct the Vigilance Cell to re-enquire into the matter.

30. There, however, is some substance in the contention of learned advocate for Vaishali that in a given case, the Scrutiny Committee may keep on asking the Vigilance Cell to re-enquire till it submits a report as per the expectation of the Scrutiny Committee. No doubt, the Vigilance Cell is constituted to assist the Scrutiny Committee, but at the same time the principles of fairplay forbids the Vigilance Cell from becoming an instrument of oppression in the hands of the Scrutiny Committee. We are, therefore, of the opinion that though the Scrutiny Committee may direct a re-enquiry by the Vigilance Cell even after submission of a report by the Scrutiny Committee as per sub-rule (6) of Rule 12, while doing so, the principles of natural justice and fair play will have to be read into the Rules to safeguard the interest of the applicant. This is also necessary to avoid the pitfalls of a vexatious re-enquiry. In any case, a re-enquiry

can never be on a mere *ipse-dixit* of the Scrutiny Committee. It has to be on good grounds such as the Vigilance Cell's report is non-compliant with the provisions of Rule 12 or on any other cogent ground necessitating such a re-enquiry. It is, therefore, necessary that while ordering a re-enquiry, the Scrutiny Committee must spell out the reasons for such re-enquiry. If upon the fresh report so submitted, the Scrutiny Committee is not satisfied with the claim of the applicant necessitating it to issue a show cause notice to the applicant, then the Scrutiny Committee shall along with the freshly submitted report, also serve a copy/copies of the earlier report/reports with the reasons for directing such re-enquiry to enable the applicant to make an effective representation to the show cause notice in terms of sub-rule (8) of Rule 12. This requirement, in our opinion, is in conformity with the principles of natural justice and fairplay. It is a well settled principle of law that the procedure is a handmaiden of justice. We remind ourselves that law must be read in a manner so as to conform with the changing complexities of life. It is impossible for the rules to comprehend all possible situations that may arise once enacted. What is material is that rules must comply with the principles of natural justice and fairplay and should be read in a manner which would advance the object of the legislation.

31. In the instant case, the first and second reports in favour of Vaishali were not furnished to her. Even the

reasons necessitating the Scrutiny Committee to order a re-enquiry are not supplied. The letter of the Secretary, which formed the basis of obtaining a third report, was also not supplied. In such circumstances, the impugned order deserves to be set aside on the ground that the same is passed in breach of the principles of natural justice and fairplay as the materials which formed the basis of the impugned order were not supplied to Vaishali.

32. Now that the copies of the first two reports are furnished to Vaishali under the provisions of the Right to Information Act, the Scrutiny Committee shall forward the reasons for ordering a re-enquiry along with the materials referred hereinabove to enable Vaishali to make a representation on such grounds as may be permissible in accordance with law. The Scrutiny Committee shall thereupon proceed with the enquiry.

33. The writ petition was filed in the year 2007. Learned advocate for Vaishali submitted that during this period, the relatives of Vaishali have been issued with Tribe Validity Certificates. Considering this distance of time from filing of the writ petition, an opportunity needs to be granted to Vaishali to produce such materials on record in support of her tribe claim. The Scrutiny Committee may decide the tribe claim of Vaishali in accordance with law.

34. The writ petition is allowed to the extent mentioned below, with no order as to costs.

35. The impugned order is quashed and set aside. The

Scrutiny Committee to decide the tribe claim afresh.

36. Vaishali to remain present before the Scrutiny Committee on August 29, 2022, along with any additional evidence in support of her tribe claim.

37. Vaishali to cooperate with the Scrutiny Committee in the expeditious disposal of the tribe claim and shall not seek unnecessary adjournments. The Scrutiny Committee shall endeavour to dispose of the tribe claim at the earliest and in any event within a period of three (3) months from the date of the receipt of copy of this order.

38. All contentions including those in the interim application are kept open and Vaishali shall be entitled to explore her remedy in accordance with law if her tribe claim is validated.

39. In view of the disposal of the writ petition, nothing survives for consideration in the interim application. The same is disposed of accordingly.

40. The original records and proceedings be returned to the learned Government Pleader.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)