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

WRIT PETITION NO. 12216 OF 2019

Neha Khursheed Alam Shaikh
aged 24 years, residing at
96-5/8, Ramji Bhawanji Chawl,
Ittehad Chowk, Andheri Plot,
Jogeshwari (E), Mumbai-60.

.. Petitioner

V/s.

1. State of Maharashtra,
through its Secretary, Social Justice
& Special Assistance Dept.
Mantralaya, Mumbai -32.
 2. District Caste Certificate Scrutiny
Committee, Mumbai Suburban -
through its Member Secretary, its
Office at 5th floor, Administrative
Bldg., Near Chetna College, Bandra, Mumbai.
 3. Additional Deputy Collector,
Mumbai Suburban District,
Bandra, Mumbai Suburban.
 4. Naiyabanu Abdul Hafiz Ansari,
Aged Adult, r/a. House No. 154
Hamida Chawl, Jawahar Arbi School,
Andheri Plot, Jogeshwari, Mumbai-60
 5. Abdul Jabbar Abubkar Sofi,
Aged Adult, r/a. House No. 154
Hamida Chawl, Near Andheri Plot,
Jogeshwari (E), Mumbai-69.
- ... Respondents

Mr. C. K. Bhangoji, Advocate i/by R. K. Mendadkar for the
Petitioner.

Mr. Uday Warunjikar, Advocate a/with Ms. Puja J. Acharekar,
Advocate for Respondent Nos. 4 & 5.

Mrs. R.M. Shinde, AGP for the State.

Ms. Sarika Shetye, Advocate i/by Mr. S.B. Shetye for
Respondent - Sate Election Commissioner.

Mr. Om Suryavanshi for the Respondent -MCGM.

CORAM : A.A.SAYED & S.G.DIGE, JJ.
DATED : 24 FEBRUARY 2022
(THROUGH V.C.)

JUDGMENT : (Per S. G. DIGE, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of all parties.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner has challenged the order passed by the District Caste Certificate Scrutiny Committee, Mumbai Suburban, (Hereinafter referred to as "Scrutiny Committee") dated 26th June, 2019, thereby invalidating the Caste Certificate of the Petitioner as belonging to "Mansuri Caste" which is notified as Other Backward Class.

3. The case of the Petitioner, in brief, is as under :

(a) The Petitioner was granted caste certificate as belonging to "Mansuri" by the Additional Deputy Collector, Mumbai Suburban District, Bandra, (Respondent No.3) on 11th October, 2011. She moved Scrutiny Committee (Respondent No. 2) for verification of her caste certificate as she intended to contest election of Mumbai Municipal Corporation (hereinafter referred as "said Corporation"). Thereafter, she filed her Nomination Form for contesting general election of the said Corporation. The elections were conducted on 21st February, 2019 and results were declared on 23rd February, 2019, in which Respondent No. 4 Naiyabanu Abdul Hafiz Ansari was declared as elected candidate; whereas the Petitioner had secured second highest votes. Aggrieved thereby the Petitioner filed Election Petition before the Small Causes Court, Mumbai,

challenging the election of Respondent No. 4 on several grounds.

(b) Respondent Nos. 4 and 5 filed the complaints and opposed the grant of caste validity certificate to Petitioner before Respondent No 2 Committee. Respondent No. 2 Committee ordered the Vigilance Cell enquiry in respect of the caste certificate of the Petitioner. After getting the Vigilance Cell Report, the Petitioner has not filed her say as the Vigilance Cell Report was in her favour. Respondent No. 2 Committee had not issued a show cause notice as contemplated under the Maharashtra Scheduled Caste, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Social Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as the Rules of 2012) to the Petitioner. Respondent No. 2 Committee passed the impugned order, invalidating the caste claim of the Petitioner. Hence, this Petition.

4. Thus, the basic contention raised on behalf of the Petitioner by the learned Counsel is that even though the Vigilance Report was in favour of the Petitioner, the Respondent No.2-Committee invalidated the caste claim of the Petitioner, without issuing show cause notice to the Petitioner in Form-25 as contemplated under Rule 17(11) of the 2012 Rules. Learned Counsel for the Petitioner relied upon the Judgment dated 19th November, 2015 of the Division Bench of this Court in Writ Petition 8788 of 2013 in the case of **Saraswati R. Mayekar Vs. State of Maharashtra & Ors.** and the judgment dated 5th March 2008 of the Division Bench of this Court in WP No. 4165 of 2007 in the case of **Shri Narayan Janu Pawar vs. The Caste Certificate Scrutiny Committee, Navi Mumbai & Ors.**

5 It is the contention of the Learned Counsel for the Respondent Nos. 4 and 5 and learned AGP that the Roznama of the hearing before the Scrutiny Committee shows that the Petitioner was aware about the Vigilance Report. Hence, issuance of the show cause notice was not necessary.

6 Having heard the rival submissions of the parties and having gone through the record of the case, we find that in the present case, the issue revolves around the issuance of show cause notice in form 25 in terms of Rule 17(11)(i) of the Rules of 2012. Rule 17(11)(i) is reproduced hereunder :

"17(11)(i) In case of those cases which are referred to Vigilance Cell, upon considering the report of Vigilance Cell, if the Scrutiny Committee is not satisfied about the claim of the applicant, it shall call upon the applicant to prove his Caste Claim, by discharging his burden, as contemplated under section 8 of the Act, by issuing a notice in Form 25 coupled with copy of report of Vigilance Inquiry;"

Form 25 reads as under:

NOTICE OF HEARING
(Notice by Post, Email, FAX)

To,

.....

.....

Sub: Inquiry into Caste/Tribe Claim.

Ref: Your application/claim....., dated....

SPB/-

Whereas, this Committee had considered your application / proposal, Affidavits and accompanying annexures. Committee had also considered the report of Vigilance Cell, which is annexed herewith.

Following are the findings of the committee.

- (a)
- (b)
- (c)

Till this stage this Committee is not satisfied about your Caste/Claim, therefore, you are hereby informed accordingly.

As per section 8 of Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. XXIII of 2011), it is your responsibility to prove your caste claim.

If you desire, present your case personally or through Legal Representative. You are at liberty to produce documents/evidence in support of your Caste/Tribe Claim, in accordance with Law.

Next date of hearing is scheduled at the Office of this Scrutiny Committee, on Date: at,.... . A.M. /P.M.

Failing to appear, matter will be finally decided on the basis of material available on record.

Hence this "Notice" of hearing, on the address provided by you.

Signature

Encl: Report of Vigilance
Cell-Page No.

Member Secretary and
Research Officer,
Caste Certificate Scrutiny
Committee..... No.

8 In the present case, admittedly the Scrutiny Committee was not satisfied about the caste claim of the Petitioner upon consideration of the vigilance report and did not issue show-cause notice as per Form-25. The issue is no more res integra and is covered by the judgment of the Division Bench of this Court in **Saraswati Rajnikant Mayekar vs State of Maharashtra & Ors.** cited supra, which in turn relies upon the judgment of another Division Bench of this Court in **Sapremsing Madhavrao Patil vs State of Maharashtra & Ors.**, 2015(5) All MR 563. The Division Bench also relied upon the judgment of Division Bench of this Court dated 11th February, 2015 in **Lawrence Salvador D'Souza vs the State of Maharashtra** (Writ Petition No. 475 of 2015). The Division Bench held-

6. Another Division Bench of this Court (Coram:- Smt Vasanti A. Naik & Shri C. B. Bhadang, JJ) in **Lawrence Salvador D'souza Vs The State of Maharashtra** (Writ Petition No. 475 of 2015) date 11 February 2015, while dealing with the same Rule and respecting the mandate, allowed the Petitioner in following terms.

"For the reasons aforesaid, the writ petition is partly allowed. The impugned orders dated 29.12.2014 and 30.12.2014 are hereby quashed and set aside. The matter is remanded to the respondent no. 2-scrutiny committee for deciding the caste claim of the petitioner and the application filed by the respondent no. 5 in accordance with law. It is needless to state that the scrutiny committee would be required to grant an opportunity to the petitioner to cross-examine the principal and the clerk of the concerned school if the petitioners, so desires and also issue a show-cause notice to the

petitioners in FORM-25 as per Rule 17(11) of the Rules of 2012, if the scrutiny committee is not satisfied with the claim. We direct the scrutiny committee to decide the matter as expeditiously as possible and positively within a period of three months from the date of appearance of the parties before the scrutiny committee. The Petitioner undertakes to appear before the scrutiny committee on 27.02.2015 so that issuance of notice to the petitioner could be dispensed with. Since the order of the scrutiny committee is set aside, the consequential order of the corporation, disqualifying the petitioner would not survive and the same is set aside. Rule is made absolute in terms with no order as to costs.

We may also extract the relevant portion of the judgment in **Shri Narayan Janu Pawar (supra)**-

7. In the case of Kumari Madhuri Patil (supra), the Supreme Court has laid down the procedure as required to be followed by the Scrutiny Committee. The Apex Court directed the Scrutiny Committee to refer the caste claim to the Vigilance Cell which is required to tender its report. The Apex Court has further laid down that if a favourable report is given by the Police Inspector, Vigilance Squad, then the Scrutiny Committee has to issue a caste certificate in favour of the applicant. However, if the Scrutiny Committee deferred with the view taken by the Vigilance Cell, then alongwith copy of the report of the Vigilance Cell, a Show Cause Notice was to be issued to the applicant asking him to tender his explanation. In the Show Cause Notice, the Scrutiny Committee was to specifically inform the applicant that it deferred with the view taken by the Vigilance Committee on A,B,C, ground and it intended to take a different view. The Apex Court in the case of Kumar Madhuri Patil (supra) in sub-paras 5, 6, 7 and 8 of

paragraph 13 has observed as under :-

"5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the caste or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer, if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such

representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponet and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to be parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates."

8. On perusal of the said observations of the Apex Court, it is clear that the Caste Scrutiny Committee was under obligation to issue a Show Cause Notice to the applicant further giving him an opportunity to offer his explanation, otherwise it was not sufficient for the Scrutiny Committee to merely tender a copy of the report of the Vigilance Cell to the applicant but a separate Show Cause Notice had to be issued. Admittedly, this procedure has not been followed by the Caste Scrutiny Committee.

9. The learned Counsel appearing for the respondent no.4 invited my attention to the report i.e. the order passed by the Scrutiny Committee, more particularly, wherein it was recorded that though the

applicant was asked to tender documentary evidence in respect of the period prior to 1961 and inspite of that, the said information was not tendered by the applicant. She submitted that copy of the Vigilance Committee report was given to the applicant and he had tendered his say on 27th April, 2007 and therefore, there was sufficient compliance of the ratio laid down by the Apex Court in Kumari Madhuri Patil. She further submitted that the applicant had tendered a false document viz. the School Leaving Certificate and therefore, on that very ground, the validity certificate was liable to be quashed and set aside. It is submitted that therefore, there was no reason to interfere with the order passed by the Caste Scrutiny Committee.

10. We are unable to accept the submission made by the learned Counsel appearing for the respondent no.5. In the present case, the record clearly indicates that no Show Cause Notice was issued to the applicant though the Vigilance Cell had given the report in favour of the petitioner and therefore, the procedure which was required to be followed by the Caste Scrutiny Committee was not followed and on that ground alone, the impugned judgment and order is liable to be quashed and set aside.

11. The impugned order dated 4th May, 2007 is quashed and set aside. Matter is remanded back to the Caste Scrutiny Committee. The Caste Scrutiny Committee shall issue a Show Cause Notice to the petitioner. If it intends to defer from the report which was tendered by the Vigilance Cell in favour of the petitioner for the Show Cause Notice, the Scrutiny Committee should mention why it would like to take a different view than the view taken by the Vigilance Cell and give reasonable opportunity to the petitioner to tender his explanation and after the explanation is received, the Caste Scrutiny Committee shall then decide the application after hearing both the sides.

Though the aforesaid case was prior to the coming into force of the Rules of 2012, Rule 17(11)(i) clearly

maintains the same procedural requirement. When vigilance report is in favour of the petitioner and if Scrutiny Committee intended to take different view then show cause notice ought to have been given to the petitioner to put-forth her side. In present case, opportunity is not given to the petitioner.

9 In light of the above, we allow the Petition and proceed to pass the following order :

ORDER

(i) Impugned judgment and Order dated 26th June, 2019 passed by the Respondent No. 2- Scrutiny Committee, is hereby quashed and set aside.

(ii) The matter is remanded to the Respondent No. 2 Caste Scrutiny Committee for deciding the caste claim of the Petitioner afresh in accordance with law by issuing a Show Cause Notice in Form 25 and giving opportunity of hearing to the Petitioner and all concerned, as early as possible, preferably within twelve weeks from the date of the receipt of the copy of this judgment and order.

(iii) Rule is made absolute in the above terms. There shall be no order as to costs.

(S.G.DIGE, J)

(A.A.SAYED, J)