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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.547 OF 2019

Ku.Aishwarya d/o Uddhav Parate,
Aged about 22 years, occupation : student,
R/o Palandur (Chau.) - 441 811.
Tahsil Lakhni, district Bhandara. **Petitioner.**

:: V E R S U S ::

1. The State of Maharashtra,
Through the Collector, Bhandara.

~~2. Joint Commissioner and Deputy Chairman,
Caste Validity Scrutiny Committee,
Vidharbha Vikas Mandal, B-23/1,
South Ambazari Road, Nagpur - 440 022.~~

*Amended as per order dated 05/03/2019
passed by the Hon'ble High Court.*

2. Joint Commissioner and Deputy Chairman,
Caste Validity Scrutiny Committee,
Adiwasi Vikas Bhavan,
Giripeth, Nagpur - 440 010.

3. Sub Divisional Officer,
Sakoli Sub Division, Sakoli,
District Bhandara. **Respondents.**

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Shri N.H.Shams, Counsel for the Petitioner.
Shri D.P.Thakare, Additional Government Pleader for Respondents.
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CORAM : **A.S.CHANDURKAR & URMILA JOSHI-PHALKE, JJ.**
DATE : **14/09/2022**

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard Shri N.H.Shams, learned counsel for the
petitioner and Shri D.P.Thakare, learned Additional Government

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Pleader for respondents. **Rule.** Rule made returnable forthwith and heard finally.

2. By this petition, the petitioner has challenged order dated 19.3.2018 passed by respondent No.2 – Joint Commissioner and Deputy Chairman, Caste Validity Scrutiny Committee (hereinafter referred to as, **"the Scrutiny Committee"** for the sake brevity) whereby tribe claim of the petitioner as 'Halba' has been rejected.

3. The petitioner, who is a student and pursuing her further education, claims to be 'Halba' Scheduled Tribe. She was granted tribe certificate as belonging to 'Halba' Scheduled Tribe by respondent No.3 – Sub Divisional Officer, Sakoli Sub Division, Sakoli, district Bhandara. On 3.8.2012, her caste certificate was forwarded for its verification. On 27.8.2012, the Scrutiny Committee referred the same for Vigilance Enquiry. As per contention of the petitioner, though Vigilance Enquiry was completed, her caste claim was not decided and, therefore, she had issued various request letters from 30.10.2013 to 20.12.2016 requesting the Scrutiny Committee for deciding her caste claim. The Scrutiny Committee received Vigilance Report on 31.1.2014. After receipt of the First Vigilance Report, as the Scrutiny Committee was not satisfied, again in the year 2016 Vigilance

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Enquiry was conducted. The Vigilance Committee had submitted second report. After receipt of the Second Vigilance Report, show cause notices were issued to the petitioner on 30.10.2017 and 13.11.2017. On 20.11.2017, the petitioner sent a communication to the Scrutiny Committee seeking particulars and documents on the basis of which the Vigilance Committee submitted its second report. On 27.11.2017, the petitioner had submitted her reply to show cause notices. On 19.3.2018, the Scrutiny Committee invalidated the tribe claim of the petitioner by its order which is impugned in this present petition.

4. It is contention of the petitioner that though she had made several representations, seeking particulars and documents on the basis of which the Vigilance Committee submitted its second report, the Scrutiny Committee did not provide the same to her. She further contended that while submitting her caste claim, she had submitted her family tree. As per the said family tree, Atmaram is her great-great-grandfather having a son Raoji. Raoji had two daughters and a son namely Gangabai, Wacchalabai and Chintaman. Said Chintaman had three sons namely Uddhav, Nago and Pandurang. Said Uddhav is her father. She further stated that her great-great-grandfather Atmaram and great-grandfather Raoji and grandfather Chintaman, father Uddhav, uncles Nago and Pandurang all have recorded tribe as 'Halba'. She had also

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submitted school records of her great-great-grandfather, great-grandfather and grandfather to show that they were recorded as 'Halba'. But the Scrutiny Committee had not considered the pre-independence documents and invalidated the claim of the petitioner illegally. She further made a grievance that a copy of the First Vigilance Report was not served to her and no opportunity was given to her to submit her reply to the First Vigilance Report. She submitted that the order impugned in the present writ petition passed by the Scrutiny Committee is arbitrary, illegal and liable to be set aside.

5. In response to notice issued by this Court on 22.1.2019, respondents filed their reply and denied contentions of the petitioner. It is contention of respondents that on being verified all documents of the petitioner, the Scrutiny Committee found documents having adverse entries and, therefore, the claim of the petitioner was invalidated. The order impugned in the petition passed by the Scrutiny Committee is justified and no interference is called for.

6. Shri N.H.Shams, learned counsel for the petitioner, submitted that on 3.8.2012 the caste claim of the petitioner was forwarded for its verification. On 27.8.2012, the Scrutiny Committee referred the same to the Vigilance Committee. On

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31.1.2014, the Vigilance Committee had submitted its first report. As per the First Vigilance Report, the petitioner's great-grandfather Raoji Atmaram, grandfather Chintaman, father Uddhav and the petitioner were shown as 'Halba'. Whereas, her great-great-grandfather Atmaram was shown as 'Koshti'. The Vigilance Report further shows that the great-great-grandfather Atmaram was resident of Palandur, taluka Lakhani, district Bhandara. During enquiry it revealed that said Atmaram was owner of an agricultural land. The extracts of the agricultural land and the house property show that said Atmaram was recorded as 'Koshti'. During consolidation, fragmentation and implementation scheme, the said property was transferred in the name of Chintaman Duma. It is submitted by learned counsel for the petitioner that person Chintaman Duma shown in the Vigilance Report is not from the family of the present petitioner and due to the similarity in the name he was shown as a family member of the petitioner. The said entry which is in the name of Atmaram recorded as 'Koshti' is not in respect of the 'great-great-grandfather of the petitioner. Moreover, copy of the said Vigilance Report was not forwarded to the petitioner and no opportunity was given to her to explain the said circumstance. It is submitted that after the First Vigilance Report, it was not required to refer the matter for second vigilance, but without assigning any reason the second vigilance was conducted.

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Though the petitioner sent a communication to the Scrutiny Committee seeking particulars and documents on the basis of which the Vigilance Committee submitted its second report, the Scrutiny Committee had not supplied the same to her. Thus, the order impugned in the petition passed by the Scrutiny Committee is arbitrary, illegal and liable to be set aside.

7. On the other hand, Shri D.P.Thakare, learned Additional Government Pleader for respondents, supported the order impugned in the petition. He submitted that since during vigilance some adverse entries showing forefathers of the petitioner were recorded as 'Koshti', second vigilance was conducted. During the second vigilance also, some relatives appear to be recorded as 'Koshti'. Thus, there were adverse entries and, therefore, the order passed by the Scrutiny Committee is justified and as such no interference in the order is called for.

8. Having heard learned counsel for parties *extensively*, it is evident that the petitioner was a student at the relevant time. Her caste claim was referred for its verification on 3.8.2012. Roznama recorded by the Scrutiny Committee shows that on 30.8.2012 the claim of the petitioner was forwarded for Vigilance Enquiry. The First Vigilance Report was received by the Scrutiny Committee on 31.1.2014. After receipt of the First Vigilance Report, as per the

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Roznama, it appears that it was again forwarded for re-enquiry. The reason mentioned in the Roznama shows that re-enquiry was directed to be conducted by the Vigilance Committee to ascertain whether persons belonging to 'Halba' / 'Halbi' resides in Palandur, taluka Lakhani, district Bhandara. Accordingly, second vigilance was also conducted and Second Vigilance Report was submitted on 24.1.2017. It is evident that, along with the claim, the petitioner had filed her affidavit showing that Atmaram is her great-great-grandfather having a son Raoji. Said Raoji had two daughters and a son namely Gangabai, Wacchalabai and Chintaman. Said Chintaman had three sons namely Uddhav, Nago and Pandurang. Said Uddhav is her father. She also submitted a chart mentioning details about family members. The said chart shows that her grandfather Chintaman Raoji Parate is owner of house No.292 at Palandur, district Bhandara and was born on 10.12.1929 and studied in Zilla Parishad Primary School at Palandur for the period from 1.2.1938 to 1.2.1942. Her uncles Nago Chintaman Parate and Pandurang Chintaman Parate were also recorded as residents of Palandur, district Bhandara and were born on 5.7.1963 and on 7.8.1970 respectively and studied in Zilla Parishad Primary School at Palandur, district Bhandara from the period of 1.6.1976 to 2.5.1980. Her father Uddhav was born on 14.8.1963 and studied in Govind Primary School at Palandur, district Bhandara for the period

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from 2.6.1968 to 30.4.1973. The petitioner relied upon extracts of Dakhala Kharij and School Leaving Certificates to show that her forefathers were recorded as 'Halba'.

9. The petitioner filed on record her school admission register extract which shows that she was admitted in school on 21.5.2001 in 1st Std. and recorded as 'Halba'. Her Birth Certificate was also filed before the Scrutiny Committee to show her date of birth as 15.3.1996 and recorded as 'Halba'. The School Leaving Certificate issued by Govind Primary School at Palandur shows that Uddhav, the father of the petitioner, studied in the said school from 2.6.1968 to 30.4.1973 and his date of birth is 14.8.1963. The extract of Dakhala Kharij Register of Govind Primary School at Palandur also shows that her father was admitted and studied in the said school from 2.6.1968 to 30.4.1973 and his date of birth is 14.8.1963 and his caste recorded as 'Halba'. The petitioner had also filed on record before the Scrutiny Committee the School Leaving Certificate of her grandfather Chintaman which shows that said Chintaman was admitted in Zilla Parishad School at Palandur on 1.2.1938 and studied till 1.2.1942 and his date of birth was recorded as 10.12.1929 and caste was recorded as 'Halba'. The petitioner had also filed on record before the Scrutiny Committee School Leaving Certificate of her great-grandfather Raoji showing he was admitted in Zilla Parishad Central Primary School at Palandur

on 1.6.1914, studied till 31.1.1920, his date of birth is recorded as 1.3.1909 and caste was recorded as 'Halba'. The Vigilance Report dated 31.1.2014 also shows that the petitioner's great-great-grandfather Atmaram, great-grandfather Raoji, grandfather Chintaman and father Uddhav were recorded as 'Halba' and supported by record of 1914, 1938 and 1969 etc.. In the First Vigilance Report, the Vigilance Committee had referred agricultural documents and house extracts of one Atmaram who was recorded as 'Koshti'. As per the Vigilance Report, after consolidation, fragmentation and implementation scheme, the said agricultural property of Atmaram was recorded in the name of Chintaman. Admittedly, said Chintaman was not shown in the family tree of the petitioner. The name of grandfather of the petitioner is Chintaman Raoji and not Chintaman Duma. The extract of Dakhala Kharij Register collected by the Vigilance Committee during Vigilance Report also shows that the petitioner's great-grandfather Raoji Atmaram and grandfather Chintaman Raoji were recorded as 'Halba' and their dates of birth are 1.3.1909 and 10.12.1929 that is pre-independence era. Their schools' admission periods are of 1.6.1914 to 31.1.1920 and 1.2.1938 to 1.2.1942 that is pre-independence era.

10. The extract of Dakhala Kharij Register issued by Primary School at Palandur shows names of the father of the

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petitioner and the petitioner who were also recorded as 'Halba'. During the Second Vigilance Report, the Vigilance Committee had collected the house assessment and agricultural assessment record showing that the agricultural property was owned by Poonamchand Malgujar and cultivated by Atmaram, Kisan and Janardan who are recorded as 'Koshti'. It is evident that these persons are not part of family tree on which the petitioner has relied upon. During the Second Vigilance Report, the Vigilance Committee had shown Harichand Pandu, Atmaram Koshti, Pandu Koshti, Atmaram, Kisan and Janardan as members of the family of the petitioner. The said persons are not shown in the family tree. The Vigilance Committee had also collected the extract of Dakhala Kharij Register of one Atyaram Koshti showing that said Atyaram Koshti having a daughter and the date of birth of the said daughter is 11.6.1920. As per the contention of the petitioner, her great-great-grandfather's name was Atmaram and not Atyaram. The 7/12 Extract, on which the Vigilance Committee relied upon to show that one Atmaram belongs to Koshti and his property, after consolidation, fragmentation and implementation scheme, recorded in the name of Chintaman Duma. The said Chintaman Duma is not part of the family tree of the petitioner. The Vigilance Committee has also collected one tax assessment extract for the year 1.4.1952 to 31.3.1953 wherein the petitioner's great-grandfather Raoji Atmaram was shown as 'Koshti'.

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It is evident that the school record of the petitioner's great-grandfather Raoji Atmaram is as of pre-independence era which is showing as 'Halba' and not as 'Koshti'. It is well settled that documents which are of pre-independence era has probative value.

11. The entry showing Raoji, who is great-grandfather of the petitioner, belonging to 'Koshti' is in the year 1952 that is after independence. Admittedly, in the Second Vigilance Report, persons by Harichand Pandu, Narayan Janardan, and Atmaram Koshti were shown to be relatives of the petitioner. However, the relations with Harichand is not mentioned in the said Vigilance Report. The Vigilance Committee relied upon the birth register extract to show that the petitioner's great-great-grandfather Atmaram was recorded as 'Koshti'. Perusal of the said document dated 11.6.1920 shows the name as Atyaram Koshti and not Atmaram Koshti. Perusal of the said extract shows that Atyaram Koshti's name was recorded in the said birth extract as a father of one female child. Thus, the material on record collected by the Scrutiny Committee appears to be contrary. It is submitted by the petitioner that name of her great-great-grandfather is Atmaram and not Atyaram. It is evident from the extract that in the birth register extract the name of father of one female child was recorded as Atyaram and not as Atmaram. Whereas, a document on which the petitioner relied upon that is School Leaving Certificate of her great-grandfather Raoji shows

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name as Raoji Atmaram and not Raoji Atyaram. Thus, from all the material on record, it is evident that the Vigilance Committee relied upon the documents which are having similar names. The pre-independence documents shows that the petitioner's great-grandfather Raoji, grandfather Chintaman and her father Uddhav were recorded as 'Halba'. There are continuous entries with their names as 'Halba' which are not considered by the Scrutiny Committee. It is also evident from the Roznama maintained by the Scrutiny Committee that after receipt of the First Vigilance Report, no notice was issued to the petitioner and copy of the First Vigilance Report was not served to her to afford her an opportunity to explain above circumstances. The Scrutiny Committee had not considered the documents which are of pre-independence era and have probative value. Without giving importance to the pre-independence documents, the Scrutiny Committee relied upon one single entry in the name of Raoji Atmaram which is of the year 1952 showing him as Koshti. The Scrutiny Committee has also not considered persons whose names are referred in the Second Vigilance Report by the Vigilance Committee who were not shown as part of family tree of the petitioner.

12. The petitioner had not only filed on record family tree in her application but also had filed on record a separate chart showing names of her family members. The name as Atyaram

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Govinda who has recorded as 'Koshti' is not part of her family tree. As per the First Vigilance Report, said Atmaram Govinda shown to be her great-great-grandfather and owner of agricultural land. However, the 7/12 extract of he said agricultural land shows that after consolidation, fragmentation and implementation scheme, the said property was transferred in the name of Chintaman Duma who is not part of the family tree of the petitioner. The name of her grandfather is not Chintaman Duma, but Chintaman Raoji. Thus, it is evident that due to similarity in names the Vigilance Committee came to conclusion that Atmaram who was recorded as 'Koshti' is member of family of the petitioner. In fact, person who is recorded as 'Koshti' in birth extract is as Atyaram and not Atmaram.

13. The Vigilance Committee has not assigned any reason on the basis of which document it came to conclusion that said Atyaram who is recorded as 'Koshti' is part of the family tree. Moreover, the Vigilance Committee has also not assigned any reason on which document it relied upon. It is pertinent to note that the First Vigilance Report was not forwarded to the petitioner and no opportunity was given to her to explain the circumstances.

14. The procedure to be followed by the Scrutiny Committee is discussed and guidelines are laid down by the Honourable Apex Court in the case of Kumari Madhuri Patil and

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another vs. Addl.Commissioner, Tribal Development and others, reported at AIR 1995 (Vol. 82) 94. As per guidelines laid down by the Honourable Apex Court in the case cited *supra*, all the State Governments shall constitute a Committee of three officers, namely, (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (11) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities. 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

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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 castes or tribes or tribal communities concerned etc. 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 acknowledgement 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

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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 opponent and pass an appropriate order with brief reasons in support thereof.

15. In the light of the above guidelines by the Honourable Apex Court, in the present case admittedly after the First Vigilance Report, no notice along with copy of Vigilance Report is supplied to the petitioner and no opportunity is given to her to explain said circumstances. The material available on record shows that the petitioner had issued various request letters from 30.10.2013 to 20.12.2016 requesting the Scrutiny Committee for deciding her caste claim. The Scrutiny Committee, having received the Second Vigilance Report, issued show cause notices to the petitioner and the petitioner issued a communication to the Scrutiny Committee seeking particulars and documents on the basis of which the Vigilance Committee submitted its second report. Even so, the Scrutiny Committee had not forwarded such particulars and

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documents sought by the petitioner and invalidated the tribe claim of the petitioner.

16. In that view of the matter, we find it apparent that no proper and reasonable opportunity was granted to the petitioner. The petitioner ought to have been granted an opportunity, putting her stand up, and her caste claim ought to have been taken into consideration by the Scrutiny Committee. Hence, on this count, the order invalidating the tribe claim of the petitioner is liable to be set aside and the proceedings are required to be re-adjudicated by the Scrutiny Committee in accordance with law. While re-adjudicating the claim of the petitioner, the Scrutiny Committee to consider several documents of pre-independence era relied upon by the petitioner. Also, the Scrutiny Committee to consider whether subsequent entries which are collected by the Vigilance Committee are connected with the family members of the petitioner. In view of the aforesaid, following order is passed:

ORDER

(1) The writ petition is allowed.

(2) The order passed by the Scrutiny Committee on 19.3.2018 is quashed and set aside. The proceedings are remitted to the Scrutiny Committee for fresh adjudication. The Scrutiny Committee

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shall serve copies of the Vigilance Cell Reports dated 31.1.2014 as well as 3.2.2017 on the petitioner who shall thereafter file her response to the same. The Scrutiny Committee shall decide the said proceedings afresh and within a period of six months from the first date of appearance of the petitioner which shall be 27.9.2022. The proceedings shall be decided afresh in accordance with law and after giving due opportunity to the petitioner.

The writ petition is disposed of in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

!! BrWankhede !!

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