

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

WRIT PETITION NO.3469 OF 2021

Dr.Jaysiddheshwar Shivacharya Mahaswamiji

.... Petitioner

Versus

The State of Maharashtra and Ors.

.... Respondents

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Mr.A.V. Thorat, Senior Advocate a/w. Mr.Mahesh Deshmukh, Mr.Mahesh Swami, Mr.Anoop Patil, Mr.Anil Mangrule, Mr.Laxmikant Patil and Mr.Shashank Shubham Advocate for the Petitioner.

Mr.PP. Kakade, GP a/w. Mr.S.C. Babar, AGP for Respondent Nos.1 and 3 – State.

Mr.Hemant Ghadigaonkar and Mr.Sandesh More, Advocate for Respondent No.4.

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**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.**

DATED : 05th JULY 2023

P.C. :

1 Heard finally by consent of learned counsel present in Court.
Rule made returnable forthwith.

2 Upon hearing both sides, we find that the procedure as prescribed under the The Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as, “The SC Rules 2012”, for short) has not been followed by the Scrutiny Committee in passing the impugned orders thereby cancelling the caste certificate issued in favour of the Petitioner. In particular, we find that even though it was the requirement

of Rule 17(7) of the SC Rules 2012, to record satisfaction that the statements of the Applicant and the documents submitted by the Applicant are not sufficient to prove the claim of the Applicant as Applicant belonging to a scheduled caste, and, therefore, it is necessary to refer to the vigilance cell for carrying out suitable inquiry, no such satisfaction has been recorded. We further find that even though adverse report of the vigilance officer has been relied upon by the scrutiny committee, the scrutiny committee did not give any opportunity to the Petitioner to controvert the opinion of the vigilance officer who had relied upon statements of some witnesses. In fact, the Petitioner had made an application seeking permission of the scrutiny committee to cross-examine the vigilance officer, and, also the concerned witnesses, but, the application was rejected by the scrutiny committee on the ground that there was no provision made in that regard anywhere in the Maharashtra Scheduled Castes, Schedule Tribes, D-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act 2000 (hereinafter referred to as, "The SC and ST Act 2000", for short) and the SC Rules 2012. The reasons so put forth by the scrutiny committee for rejecting the Application of the Applicant is patently illegal. We may state here that the principle of reasonable opportunity of hearing is inherently present in the provisions made in the SC and ST Act 2000 and also the SC Rules 2012. In this regard, a useful reference may be made to the provisions contained in Sections 7 and 8 of the SC and ST Act 2000. Section 7 of the

SC and ST Act 2000 provides for giving of opportunity of being heard to the claimant, and, Section 8 of the SC and ST Act 2000 lays down that the burden of proving that the person belongs to a particular Caste, Tribe or Class shall be on the person who claims to be so belonging to such Caste, Tribe or Class. Even in Rule 17(11)(ii) and (iii) of the SC Rules 2012, a provision has been made for offering an opportunity of hearing to the claimant. Therefore, it was essential for the scrutiny committee in the present case to have given an opportunity to the Petitioner to cross-examine the vigilance officer, and, also the witnesses who had spoken against the claim of the Petitioner. The concept of opportunity of hearing is not merely confined to hearing being granted to the affected person, but also includes affording every opportunity to such person which is necessary for him to discharge the burden that he belongs a particular Caste, Tribe or Class, and, therefore, making available an opportunity of cross-examining the vigilance officer and the concerned witnesses in the present case to the Petitioner was necessary, which was, however, denied by the scrutiny committee.

3 In the case of Maharashtra *Adhiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.*¹, while interpreting similar provisions regarding recording of requisite satisfaction by the scrutiny committee before referring the claim for inquiry to the vigilance cell, as contained in Rule 10 of SC Rules 2012, the Supreme Court held that in every case, and, as a matter of routine, the scrutiny committee cannot

1 2023 SCC OnLine SC 326

mechanically forward the application to the vigilance cell for conducting an inquiry, and, it is required to pass an order regarding brief reasons why it is not satisfied about the documents produced by the Applicant. This procedure, as stated by us earlier has not been followed in the present case by the scrutiny committee.

4 Thus, it is quite clear that the scrutiny committee has substantially bypassed the mandatory procedure prescribed in the SC and SC Act 2000 and the SC Rules 2012 in passing the impugned order, and, as such has committed a patent illegality in the matter. The impugned orders, therefore, cannot stand the scrutiny of law and they deserve to be quashed and set aside by allowing this Petition.

5 At this stage, learned counsel for Respondent No.4 also submits that the matter may be remanded back to the scrutiny committee for fresh inquiry in according with law. In view of above, the Petition is allowed.

6 The impugned orders are quashed and set aside.

7 The matter is remanded back to the Scrutiny committee for fresh consideration of complaint made by Respondent Nos.4, 5 and 6, and, decide the same by following the procedure prescribed in law, and, after giving opportunity of hearing to the Petitioner and also to the complainants, for which purpose, the scrutiny committee shall fix dates of hearing and

issue appropriate notices to the Petitioner and Respondent Nos.4, 5 and 6, for their appearance before the scrutiny committee. We further direct that the scrutiny committee shall take appropriate decision in accordance with law within a reasonable period of time, preferably within six months from the date of appearance of the parties before it.

8 Rule is made absolute in the above terms. No costs.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)