
(2013) 10 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 5955 of 2013

Nahidabano

APPELLANT

Vs

Divisional Commissioner, Aurangabad Division and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 6 ABR 487 : (2014) 2 ALLMR 69 : (2013) 6 BomCR 458 : (2014) 3 MhLj 73

Hon'ble Judges : Ravindra V. Ghuge, J; B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : N.P. Patil Jamalpurkar, for the Appellant; S.V. Kurundkar, Govt. Pleader, U.B. Bondar, S.T. Shelke and S.S. Thombre, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—The challenge in present writ petition is to order dated 19.7.2013 passed by the Divisional Caste Certificate Scrutiny Committee, Aurangabad (Respondent 2 herein) invalidating caste claim of Petitioner & cancelling her caste certificate as belonging to caste Momin recognized as OBC vide government resolution dated 13.10.1967 & at serial number 191 therein. The exercise to determine the correctness of the caste claim has been undertaken by the Respondent 2 Committee under the provisions of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000 (Act No. 23 of 2001 hereafter) & Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Rules, 2012 (2012 Rules hereafter) framed on 31.8.2012 thereunder. Caste certificate has been used by the Petitioner to contest the elections of Respondent 3 Zilla Parishad, Aurangabad & on its strength, she became the President of the Zilla Parishad. This certificate was earlier validated by the District Scrutiny Committee

on 17.1.2012 & that validity has been set aside by this Court at the instance of her rival candidate i.e. present Respondent 5 in WP 3914 of 2013 on 7.1.2013. Matter was placed before the respondent 2 Divisional Scrutiny Committee for fresh evaluation. Hon. Apex Court has on 18.3.2013 passed orders in CA 2597 of 2013 & allowed the Petitioner to continue as President during pendency of the said verification proceedings. After the impugned invalidation dated 19.7.2013, present writ petition was heard first on 25.7.2013 when notices were issued & made returnable on 7.8.2013. Though this Court refused to pass interim orders, however as per request of earlier Counsel representing the Petitioner, reasons for such refusal were not recorded. On 30.7.2013, by changing the Counsel, effort was again made to seek interim orders & this Court has recorded all these developments in its order dated 30.7.2013 deprecating the conduct of Petitioner. Matter then came on 29.8.2013 before this Bench & it permitted fresh election for the post of President to be held but stayed its outcome. It needs to be noted that orders of this Court dated 25.7.2013 do not record rejection of interim prayers & CA 9261/2013 was filed by Petitioner on 29.7.2013 pointing out order of the Divisional Commissioner declaring disqualification & prohibiting the Petitioner from continuing as President. It appears that the orders dated 30.7.2013 are on said application but the application is shown to be still pending. CA 10660 of 2013 was then moved seeking stay of election to fill in vacancy & and this Bench has passed the orders stated supra on 29.8.2013. That CA is also pending. Orders of this Court dated 30.7.2013 were assailed before the Hon'ble Apex Court in SLP 25567-25568/2013 and on 23.8.2013, it was disposed of by requesting this Court to decide the writ petition within two months. It is in this background that we have heard the respective Counsel finally with consent by issuing the Rule & making it returnable forthwith.

2. Adv. Shri Jamalpurkar Patil has placed on record the notes of argument & additional notes of argument. His basic contentions are:--

(A). Violations of principles of natural justice on account of bias on part of members of the Committee. He has given few precedents and subdivided written notes under various heads as per those precedents. In additional notes submitted later on, very same facet has been dealt with again with the help of two precedents.

(B). Failure to follow the procedure as prescribed by Act 23 of 2001 on part of the Scrutiny Committee. It is elaborated with the help of precedents.

(C). Non-appreciation of validity given to real uncle of the Petitioner by name Akramkhan.

(D). Faulty appreciation of evidence by the Scrutiny Committee.

(E). Non consideration of the findings in vigilance cell report.

3. To demonstrate the bias on part of the members of the Scrutiny Committee, Adv. Patil submits that vigilance cell report supporting the claim of the Petitioner

was received by the Scrutiny Committee on 11.5.2013 & then on 29.5.2013, Ganesh Chopade-husband of the Respondent 5 made a complaint to Anti-corruption Bureau (ACB) levelling baseless & wild allegation of accepting bribe of Rs. 20 Lacs by Shri Rathod & Shri Bacchav, the two Scrutiny Committee members from Petitioner to favour her in verification proceeding. The Committee on 6.6.2013 decided to solicit opinion of the State Government about further course of action and after recording the same in roznama (order sheet), adjourned the matter to 17.6.2013. Shri Ganesh Chopade then withdrew his complaint to ACB on 10.6.2013 submitting that it was due to here-say information. Petitioner states that it was only an attempt to pressurize the Committee members and this development left its impact on the mind of Committee members who thereafter were always under influence & threat of that complaint. Hence, they were tempted to lean in favour of Respondent 5 to avoid further controversy & were never free or impartial thereafter. This biased mindset has vitiated the entire consideration by the Scrutiny Committee & impugned order is liable to be quashed and set aside on that ground only. Learned counsel has relied upon various judgments. We find it convenient to refer to the same at appropriate juncture.

4. Our attention is invited to Rules 17(10) & (11) of the 2012 Rules to urge that the Scrutiny committee is competent to issue validity certificate in case it is satisfied with vigilance cell report. Hence, holding of further proceeding by it was then not warranted. However, if it does not find the report satisfactory, then only further opportunity to petitioner is necessary & for that purpose, it has to issue a notice in Form 25 as prescribed in the 2012 Rules mentioning the grounds of its dissatisfaction. The claimant like Petitioner then is to be given opportunity to rebut or clear those doubts or objections. The Scrutiny committee, though served a copy of the vigilance cell report upon Petitioner, it did not issue any notice in form 25 & has thus denied to him an effective opportunity. Issuance of such notice being mandatory, violation of Rule 17(11) is fatal & order dated 19.7.2013 invalidating caste claim is unsustainable.

5. It is also contended that as per order of this Court in WP 6296/2009, the roznama of the Scrutiny Committee must mention the name of the member to whom the case is made over for writing the judgment or order. As, here the roznama does not disclose name of such member & it cannot be ascertained from order as to who out of three members wrote the order, the impugned order is liable to be set aside.

6. Adv. Patil also argues that the Scrutiny Committee has also not applied the crucial affinity test at all & therefore also the order dated 19.7.2013 must fall to ground.

7. According to him, the public time & money has been lost in the matter unnecessarily as the validity given to real paternal uncle Akram Khan already upheld by this Court in WP 6575 of 2010 on 21.12.2010 has been overlooked by the Committee.

8. In this respect, our attention has been invited to guide lines issued by the State Government on 22.7.1996 & 3.8.2010 & principles looked into in WP 2666/2003 on 25.11.2003 to add that four old documents of Nikahnama which record the caste as "Momin" are also not properly appreciated by the Committee.

9. Lastly, it is submitted that the vigilance cell report dated 11.5.2013 which properly evaluated the documentary evidence and affinity has been discarded on irrelevant grounds by ignoring the Government guidelines stipulating that a sub-caste (like momin) need not find mention in old records of Mohammedan candidates like the Petitioner. Learned counsel Shri Patil concluded by submitting that the Writ Petition & two Civil Applications seeking relief in relation to subsequent events, therefore, need to be allowed by issuing validity certificate & by restoring the Petitioner as President of Respondent 3 Zilla Parishad.

10. Adv. Thombare who appears for Respondent 5 opened the arguments on behalf of Respondents. He submits that the Wakf Board gave a letter & informed that there was no official record of nikahnama of Shahanoorkhan & Scrutiny Committee has after due appreciation of oral evidence, found that the nikahnama on record or its contents are not proved. All the nikahnama have rightly been treated as private documents. He also states that claim of Petitioner on affidavit about her father Naimkhan being illiterate is found false & he invites attention to the school records of her father. Her similar assertion about absence of old revenue records in support of caste are also found incorrect & he invites our attention to old revenue records of alleged great grandfather where the caste is recorded as "Musalman". The mention of occupation as "agriculturist" therein is also relied upon to urge that "weaving" is/was never the occupation of family. Petitioner did not supply true & correct information of her ancestors & family tree, as also about the Schools attended to by her deliberately. Findings of the Scrutiny Committee about interpolation of School Records of a Z. P. School at Satara are also pressed into service. Reliance by Petitioner on validity certificates given to Akramkhan or Ayubkhan Jabbarkhan is also found misconceived by the Scrutiny Committee for good reasons. Petitioner failed to establish her relationship with these persons & these persons had, while obtaining their validity, submitted to the Scrutiny Committee a genealogical tree in which name of the father of Petitioner never figured. Observations of the Scrutiny Committee on interpolation in School records of Akramkhan are also relied upon & it is submitted that Review Petition 33 of 2011 seeking review of order of this Court upholding the validity granted to Akramkhan in WP 6575 of 2010 on 21.12.2010 is already entertained after condoning the delay & coming up on 4.10.2013 for hearing. It is submitted that Ayubkhan Jabbarkhan is the brother of Ferozkhan i.e. husband of Petitioner & hence, his validity is not relevant at all. Learned Counsel also took us through the relevant documents to vouchsafe his assertions.

11. Adv. Thombare submits that the vigilance inquiry was found halfhearted & the officers involved therein avoided to bring on record the interpolation in school records at Satara. The provisions Rules 13(2) & 17(11) of 2012 Rules do not

empower the vigilance cell to record any conclusion or findings. Scrutiny committee is not bound by vigilance cell observations & has to reach its own findings. Petitioner was always aware of the objections raised by Respondent 5 since filing of earlier writ petition 3914/2013 by said Respondent & material to be used against her. Written arguments were already filed by the Respondent 5 before the Scrutiny Committee on 28.2.2013 & after receipt of copy of vigilance cell report dated 11.5.2013, Petitioner filed her reply on 24.5.2013. Respondent 5 then filed some documents on 30.5.2013 and the Scrutiny Committee thereafter proceeded further with the verification in this background & without any protest on part of Petitioner. The Petitioner was conscious of burden upon her & made complete effort to discharge it. Now without pointing out any "injury", the technical objection has been raised after acquiescing in the procedure & taking a chance of a favourable order. Hence, non-issuance of notice in Form 25 is an irregularity not possessing any bearing on merits of the controversy.

12. To buttress his stand that objections on the ground of bias also need similar treatment, learned Counsel for Respondent 5 states that Petitioner willingly participated without any reservation in all sittings of the Scrutiny Committee after 30.5.2013 & did not object to Committee taking up the verification proceedings after 6.6.2013 or 10.6.2013. Petitioner or her lawyers did not experience any hostility during any of these sittings till final arguments & they do not complain of denial of any opportunity by the Committee Members. Hence, the ground of bias is also misconceived & by way of afterthought.

13. Adv. Thombare concludes by submitting that Petitioner has played a fraud upon the Scrutiny Committee and hence, this Court must take its due cognizance. He prays for dismissal of writ petition. He has relied upon various judgments to substantiate his contentions. We, however find it appropriate to refer to the same little later while evaluating the rival contentions.

14. Learned AGP for Respondents 1 & 2 rely upon the records of Scrutiny Committee to seek dismissal of writ petition. According to them, the Scrutiny Committee has taken correct view which cannot be interfered with in writ jurisdiction.

15. Learned Counsel appearing respectively for Zilla Parishad & State Election Commission request the Court to pass appropriate orders as they are not directly concerned with the controversy.

16. Adv. Patil in reply submits that the Scrutiny Committee did not find the school records interpolated. The Scrutiny Committee relied upon the old nikahnama to award validity to Ayubkhan Jabbarkhan & hence, said nikahnama could not have been discarded in case of Petitioner. For the first time, he submitted that said Ayyubkhan is related to Petitioner on maternal as also paternal side. The letter dated 7.6.2013 sent by the Committee to State Government after complaint of bias by Ganesh Chopade is also relied upon as an indication of bias.

17. Looking to these arguments, we find it proper to first view the documents on which Petitioner has placed strong reliance. Those documents are nikahnama & validity certificates to Akramkhan & Ayubkhan. Relationship with Ayubkhan & his validity has been vaguely mentioned only by the Petitioner only in reply arguments after arguments of Respondent 5. The family trees which have come on record also become significant for appreciation of these documents.

18. Petitioner has relied upon the validity given to one Akramkhan claiming that he is her uncle i.e. real brother of her father. Four marriage-deeds (Nikahnama) are also pressed into service to show that the same employ word "momin" & indicate old recognition of the caste claimed by her. These Four Nikahnama are respectively of the great grandfather by name Shahanoorkhan of Petitioner, of her grandfather, father & her own. First document is dated 10 Jikhand 1343, Hizari; & 9 Amardad 1332, Fazali, 49231 & claimed as of great grandfather's marriage. Bridegroom is one Shahanoorkhan & his caste is shown as "pathan momin". Bride is one Bismilla Bee and her caste is recorded as "pathan". Thus word "momin" is not associated with her caste. Said word appears after name of her father. Same also appears along with name of father of Shahanoorkhan. This document mentions caste distinctly. Religion of both is shown as Hanafi. Occupation of bridegroom or his father is shown as agriculturist. Second document is of grandfather's marriage & it is dated 29 Shaban 1369 Hizari & 19 Amardad 1359, Fazali. It mentions name of bridegroom as Karimkhan S/o. Shahanoorkhan. Caste is recorded as Muslim pathan momin with religion as Hanafi. Nadina Bee is bride & her caste is pathan momin & religion is Hanafi. Occupation of grandfather is business while occupation of his father-in-law is agriculturist. Third document is of marriage of father Naimkhan. It is dated 21 Jamadul Akhir 1398-Hizari or 29.5.1978. It appears to be recorded at sr. No. 20135 and with seal of Marathwada Wakf Board. There again word "momin" appears after name of bridegroom. Caste is recorded as "pathan" & religion as Hanafi. Word momin does not appear in the name or elsewhere when entry of bride Sakunnisa Begum is seen. But her caste is recorded as "pathan" & religion as Hanafi. Occupation of father & his father-in-law is shown as agriculturist. Marriage document of Petitioner is dated 14.5.2000. It records her name as Nahid Bano Momin & except this, nowhere else the word "momin" appears. It also does not separately record the caste or religion. Age of Petitioner as recorded therein is 19 years. Occupation of her husband is shown as agriculturist.

19. Having noted these nikahnama documents, the three family trees placed on record by the Petitioner deserve consideration. It will be proper to begin with one given by Petitioner to understand her relationship with the bridegrooms named in above nikahnamas or with the Akramkhan or Ayyubkhan who have the validity certificates. Along with her application dated 1.11.2011 for the initial grant of caste certificate, Petitioner has given a family tree which starts with Karim Khan Shahanoorkhan as grandfather. Naimkhan Karim Khan, Akramkhan Karim Khan & Ayubkhan Jabbarkhan are mentioned as three sons of Karim Khan. Petitioner is the daughter of Naimkhan. She has employed word "real uncle" while describing

her relationship with Akramkhan Karimkhan & Ayubkhan Jabbarkhan. Caste claim of this Akramkhan & Ayyubkhan as belonging to momin OBC is validated by Scrutiny Committee. Khan Akram Karim Khan has given an affidavit in support of his caste & validity on 20.1.2010. Family tree therein reveals one Pahadkhan as great grandfather. He mentions Shahanoorkhan as first son of said Pahadkhan & his grandfather. Usmankhan & Umarkhan are mentioned to be two other sons of Pahadkhan. Shahanoorkhan gave birth to seven sons & Karimkhan is shown as his fifth issue. Khan Akram is shown as only son of Karimkhan. Uncle Usmankhan has a son by name Jabbar Khan & Ayyubkhan is stated to be son of this Jabbarkhan. Thus, this affidavit does not disclose Naimkhan as a son of Karimkhan & therefore does not support the relationship of Petitioner either with Karimkhan or Shahanoorkhan. Similarly, it contradicts affidavit of Petitioner that Ayyubkhan Jabbarkhan is son of Karimkhan & real younger brother of her father. Similar affidavit is given by Ayyubkhan Jabbarkhan on 2.2.2010. There Yasin Khan is mentioned as great grandfather. He mentions only Usmankhan & Umar Khan as two sons of Yasinkhan. Usmankhan is mentioned as grandfather while Umarkhan as cousin grandfather. He does not mention Shahanoorkhan at all as son or relative of Yasinkhan. He also does not mention Pahadkhan as great grandfather. Thus he contradicts Akramkhan on these two material relatives & disassociates Usmankhan & Umarkhan as brothers of Shahanoorkhan. According to this affidavit, his father Jabbarkhan is son of Usmankhan. Jabbarkhan has two sons viz. Ayyubkhan (deponent) & Firozkhan i.e. husband of Petitioner. It is not in dispute before us that this Ayyubkhan is the real brother of husband of Petitioner. Assertions of Respondent No. 5 on above lines in her reply affidavit dated 3.9.2013 have remained uncontroverted.

20. Thus material particulars having direct bearing on the controversy stated by the Petitioner are contradicted by Akramkhan as also Ayyubkhan. All three family trees are mutually inconsistent. If family tree disclosed by the Petitioner is presumed to be correct, it necessitates a fresh look by the Scrutiny Committee into the validities given to Akramkhan & Ayyubkhan. We cannot observe this conclusively as neither Akramkhan nor Ayyubkhan are parties before us. But then the Petitioner is also taking support of caste validity certificates issued to Akramkhan & Ayyubkhan who in turn also lend support to her claim. Thus, she ought to have brought on record cogent & convincing evidence to back her claim. Burden to substantiate her caste claim is upon the Petitioner as per S. 8 of Act No. 23 of 2001. When relationship of father of Petitioner with Karimkhan or Shahanoorkhan is itself not proved, the two old nikahnamas become irrelevant. If her claim of belonging to Momin OBC is being supported by the false documents or assertions, its due cognizance also needs to be taken.

21. At this stage, evidence noted & certain findings reached by the Scrutiny Committee assume significance. We may note that the Petitioner has not assailed this application of mind by the Scrutiny Committee to the material on record. There is no effort to demonstrate any fault in the findings recorded by it. Petitioner has in her separate affidavit also dated 1.11.2011 deposed that her

father Naimkhan is illiterate. This affidavit is specifically with title that it is in support of the fact that father Naimkhan Karimkhan is illiterate & no document of his education showing caste is with her. It also contains an assertion that there were no revenue records also to support caste, that her paternal uncle, aunt & grandfather are also illiterate. In her cross-examination at the instance of present Respondent No. 5 (complainant before the Scrutiny Committee) she accepted that in 1998 her father was a police patil. Her deposition on educational institutes attended by herself is also quite revealing. She has stated that she took education up to 5th standard at Paithan but could not tell the name of School. When admission register of Paithan school was shown to her, she admitted that she took education for one year at Paithan & then shifted to Indira Gandhi Girls School at Osmanpura in 6th standard. She also gave names of her 2 brothers & 5 sisters & accepted that she, along with them took education in school at Paithan. She could not say anything about the school records of Municipal Corporation Middle School, Bansilalnagar containing the name of her father Naimkhan & showing his education. She denied her education in that School. She denied the knowledge of documents of agricultural lands of her father or about education of Akramkhan. She admitted that in her application for grant of caste certificate, she mentioned her occupation as agriculturist. She accepted the production of school entries of Z.P.P. School, Satara to support her demand of the caste certificate. She also accepted that name of her father is Pathan since long & name Khan is from her husband's side. She could not tell whether Patel, Pathan & Khan belong to upper castes. She stated that occupation of agriculture belonged to her grandfather & prior to that, occupation of her great grandfather was cotton weaving. She did not know when Ayyubkhan, elder brother of her husband got married or his age. In re-examination, she stated that she submitted the documents from her paternal side & validity given to Akramkhan was that document.

22. Evidence of Naimkhan looked into by the Committee reveals that he could not read & write. He did not remember whether he went to School or not. He gave names of his 6 brothers & stated that occupation of his father was weaving & cloth-making. Akramkhan & Ayyubkhan are stated by him to be his brothers. Akramkhan holds validity as momin. His daughter was admitted in Z.P.P. School at Satara & at that time, caste was recorded as momin. Thereafter, as daughter (petitioner) did not want to study in marathi medium, she took admission in urdu medium school in first standard and hence, there was no occasion for taking transfer certificate from Satara school. In cross-examination, he accepted that petitioner's husband Ferozkhan Jabbarkhan has a brother Ayyubkhan Jabbarkhan. His grandfather had 3 to 4 acres of agricultural land & his father purchased about 40 acres, 50 years back. He stated that he did not take admission in Municipal Corporation School at Bansilalnagar on 9.5.1962 in first standard. Admission of Petitioner in Osmanpura school was done by his brother & he does not know the school in which she studied. In re-examination, he stated that Ayyubkhan & Ferozkhan are his distant relatives.

23. Consideration of school records of Petitioner is in para 48(A) of the order of the Scrutiny Committee. It found extract dated 19.4.2012 of records of Municipal Middle School, Bansilalnagar (Old name Municipal Corporation Middle School Osmanpura) in Urdu medium on 24.6.1992, recorded Petitioner's caste as muslim. Extract dated 16.4.2012 of Urdu Primary School at Paithan revealed that she took admission in Vth standard on 30.1.1997 & left that school in VIth standard on 25.6.1997. Her earlier school was shown as Municipal Corporation Middle School Osmanpura & her caste is recorded as muslim even in later school. Extract from Indira Gandhi Urdu Girls School, Osmanpura shows that she entered said school on 25.6.1997 in VIth standard & left school when in VIIIth standard. Name of her earlier school is recorded as Anjuman "e" Talim Urdu Primary School, Paithan.

24. Petitioner has relied upon the records of Z.P.P. School, Satara and the Scrutiny Committee perused original school register No. 2 of the said School. It contains admission Nos. 001 to 902 from 1976 to 1993. Said register carries entry of Petitioner at sr. No. 645 at the end of a page i.e. as the last entry of the page. But then next entry or first entry on next page is again sr. No. 645 with name Pathan Kim. Lilabi Dilawar and it has been renumbered as 645/I. Entry of Petitioner is found in different handwriting & different ink. Scrutiny Committee has found entry of Petitioner to be interpolated in records of Z.P.P. School, Satara. This entry is held to be inserted later on. The said school record mentions that she took admission in 1st standard on 30.7.1991. All other columns like date of leaving or reasons for leaving the School, standard in which she was studying while leaving the School, are left blank. It is found to be inconsistent with other entries in said register and held to be highly unreliable and not worthy of any credit by the Scrutiny Committee. Father of Petitioner has accepted that she was admitted in urdu medium school without obtaining transfer certificate from Z.P.P. School, Satara. Before this Court, the Petitioner has not even touched this aspect.

25. Evidence of Headmistress of Z.P.P. School, Satara shows that she issued the true copies of relevant extracts as per the original school records which she received. She accepted the placement of entry Nos. 645 & 645/I. She also accepted that all entries except sr. No. 645 were encircled in the register. She also accepted the entry at sr. Nos. 652, 653 & 653/I. This sr. No. 652 is the school entry of Khan Akram & on its strength, he got caste certificate as momin. We are adverting to this entry little later. However, the headmistress has deposed that this entry at sr. No. 653 is already cancelled. Entry No. 652 is found to be added & original entry 652 is corrected to read as 653 while entry 653 is corrected & made 653/I. Entry 645 pertaining to Petitioner's admission is dated 30.7.1991 while entry No. 652, normally, has to be of a later date.. Khan Akram has disclosed his age as 37 years on 20.1.2010 while Petitioner is 26 years old in 2013. In this register, name of Pathan Ayyubkhan Jabbarkhan appears at sr. No. 695 & he has taken admission in first standard on 18.7.1977. His date of birth as recorded therein is 1.6.1965 & records reveal that he left the school on 17.6.1980. As per said register, on 17.6.1980 he was in 7th standard. Thus the

course of 7 years duration is prima-facie completed by Ayyubkhan just in 3 years. It appears that after 2007, husband of Petitioner was sarpanch of village Satara & all entries on which Petitioner banks to substantiate her caste claim, are from said School only. Witness headmistress joined that services as assistant teacher on 6.3.1986 & was promoted as headmistress of Satara School on 2.11.2007. She was Asst. Teacher in said school even in 1999.

26. Vigilance report on the records of Z.P.P. School, Satara is equally interesting. The Scrutiny Committee has observed that vigilance cell is constituted to assist it & vigilance officer did not bother to touch the important aspect of various entries in different schools of Petitioner. He only referred to interpolated entry in record of Z.P.P. School, Satara and avoided to bring forth the mischief. This officer did not inspect the school records of father Naimkhan. Record pertaining to Khan Akram in Saint Francis High School showing interpolation in school records was also not looked into by him. It found that said officer relied upon the some instruments & material used for cotton weaving to find out affinity & observes that the same are not sufficient to conclude the caste as momin. Petitioner's father owned agricultural lands & his occupation was agriculturist & no revenue record mentions his caste as momin. Scrutiny Committee held that more in-depth & serious investigation was necessary. According to us the Scrutiny Committee ought to have come down heavily on the vigilance inquiry officers in this matter. The said officer visited the Z.P.P. School, Satara on 4.3.2013, 25.3.2013 & 13.4.2013 & verified the original school register. Surprisingly, his report then states that after inspection of school record, the vigilance officer gave a letter about those entries to Headmistress who gave a reply & attested true copies of the entries. In her reply letter, the Headmistress has stated that there were no over-writings or erasures in relation to these three persons "in entries in original register & vigilance report records that its officer personally ascertained it during visit to the school. Thus, the vigilance officer did not mention the different handwriting or ink and also changing of serial numbers as 645/I or 653/I. They have, on the contrary, devised a novel way of passive appreciation of school records in an attempt to steer clear of any controversy. These officers also mention that during visit to house of Naimkhan Karimkhan Pathan they came across old damaged apparatus used for weaving lying in store room. Upon questioning, father of Petitioner told that it was lakshmi (Hindu goddess of wealth) on strength of which their ancestors survived & hence, it was being preserved. On the basis of this material, and validity to Khan Akram, the vigilance officer remarked that claim of momin caste was being substantiated. Thus, failure to place on record the apparent interpolation in School records is nothing but deliberate abdication of its duties by concerned officer. It also shows that a wrong report was deliberately presented to the Scrutiny Committee to mislead it. It cannot be forgotten that in appropriate cases, the Committee is competent to close the verification proceedings & issue the validity certificate only on the strength of vigilance report. Here, fortunately there was a complainant in the shape of Respondent 5 to keep vigil & also earlier orders of

this Court. This is the fit case where the Scrutiny Committee ought to have ordered appropriate criminal & disciplinary proceeding against such officers by invoking Rule 17(13) of the 2012 Rules.

27. In Para 48(B) of the impugned order, Scrutiny Committee deals with the documents of Petitioner's father Naimkhan. It relied upon the extract dated 2.4.2012 of the admission register of Head Master, Municipal Corporation Central Primary School i.e. Old Municipal Corporation Middle School, Osmanpura to note that Naimkhan took admission in that School on in 2nd standard on 9.7.1962, 10.8.1953 noted therein as his date of birth & in column of caste, religion is mentioned as Islam. Para 48(C) of the impugned order deals with School record of admission of Petitioner's brother Imrankhan Naeemkhan Pathan of Municipal Corporation Primary & Middle School, Bansilalnagar showing that he took admission in first standard on 24.6.1992 & his caste is recorded as muslim. Para 48(D) of the impugned order deals with the school record of her relatives on in-law's side. In School record of Rafia Jabbarkhan-sister of Petitioner's husband, at sr. No. 1202, word momin is written in different ink in the column meant for recording the caste after the word musalman. All other entries i.e. sr. No. 1197 to 1205 on said page record the caste in single word like maratha or navaboudha or musalman & use of second word is only in entry of Rafia where word "momin" is added. At sr. No. 1203 on very same page, entry of Ferozkhan i.e. of husband of Petitioner also appears but then the Scrutiny committee has found it not trustworthy. Petitioner has not even attempted to demonstrate that these findings of the Scrutiny Committee are either erroneous or perverse. Validity certificate issued to Ayyuybkhan Jabbarkhan finds consideration in para 50 of the impugned order. Ayubkhan Jabbarkhan is stated to be her father's brother i.e. her real uncle by the Petitioner in affidavit dated 1.11.2011. This affidavit bears seal of notary Syed S. Ali (Regd. No. 4032) and is filed along with application for verification of caste claim by the Petitioner before the Committee. Scrutiny Committee however finds that said affidavit is not even signed by Petitioner. It also takes note of affidavit dated 4.1.2012 filed by Ayyubkhan Jabbarkhan in her support & of genealogy on affidavit submitted by said Ayyubkhan on 2.2.2010 for obtaining validity, wherein he mentions himself as brother of her husband. Therefore this affidavit & validity is not accepted. It is held that it is not from paternal side of Petitioner. It also found that High School records of Ayyubkhan Jabbarkhan do not record his caste as momin. We may add that the Petitioner has not pressed this validity or relationship into service in substantive arguments before us and after arguments of the Respondents, it was urged that Ayyubkhan is relative of Petitioner on paternal as also maternal side. But then the inconsistent situation emerging from family trees or then the finding that basic affidavit is not signed by the Petitioner has not been touched at all.

28. Scrutiny Committee finds that validity given to Khan Akram Kareem Khan cannot blindly followed. The Committee notices the admission register of Z.P.P. School, Satara at sr. No. 001 to 1437 between the years 1956 to 1988. It notices entry of Khan Akram at sr. No. 653 and also notices similar interpolation as in

case of Petitioner herself. His name is placed at sr. No. 653 after sr. No. 652 & next entry is sr. No. 653/1. It also notices contention of the Respondent 5 that Khan Akram took education up to 9th standard in Saint Francis High School and also notes that in school record at page No. 411 of the office file No. 0313, his caste was recorded as muslim. It therefore decided to ignore this validity. It cannot be said that validity of Khan Akram is confirmed by this Court in WP 6575 of 2010 on 21.12.2010. It only implies that challenge as posed was rejected. But then said fact has no bearing on present consideration as Petitioner failed to establish relevance of said document & relationship with him. Even otherwise, earlier Scrutiny Committee has not passed any reasoned order while giving validity to him & present Scrutiny Committee has noted material interpolation in his School records. It has also found his schooling in Saint Francis High School which contradicts the records looked into earlier while granting him the validity. Thus, important fact having material bearing was then not made available to earlier Scrutiny Committee. However, this consideration is qua the claim of present Petitioner & We make it clear that as Khan Akram is not party before us, these findings shall not be used against him, except in accordance with law. Validity of Ayyubkhan Jabbarkhan earlier pressed into service by the Petitioner before the Committee & discarded by it has not been properly pressed into service before this Court by challenging the finding in impugned order & the inconsistent family trees. Judgment of the Hon. Apex Court relied upon by the Respondent 5 in case of Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Others, permits a second look if an important piece of evidence could not be perused by the Scrutiny Committee while issuing the validity. This judgment also permits reopening when the recipient of the validity certificate had played fraud on the Committee. Petitioner has cited Division Bench judgment of this Court in case of Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medical Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences, which only concludes that Scrutiny Committee cannot re-appreciate in different manner the documents earlier appreciated in a particular way by it. This observation is after quoting the binding precedent in the matter of Raju Vasawe (supra). It does not lay down a law that on the basis of new & important piece of evidence not made available to the Scrutiny Committee on earlier occasion, it cannot arrive at a different finding. Here the earlier application of mind is found to be faulty due to this new material suppressed from it or not made available to it. In view of this, it is not necessary to dwell on the Division Bench judgments in case of Varsha Ramsing Dhanavat Vs. State of Maharashtra and Others, , unreported judgments delivered in WP 1112 of 2006 on 10.1.2007 at Nagpur or then at Aurangabad in WP 2016 of 2007 on 10.9.2009. These judgments do not help the cause of present Petitioner at all.

29. We have mentioned how the Petitioner fails to co-relate the old nikahnamas, particularly of Shahanoorkhan & Karimkhan. The Scrutiny Committee has noted

reliance by the Petitioner upon the nikahnamas of her father-in-law Jabbarkhan Osmankhan & Ayyubkhan Jabbarkhan i.e. brother of her husband. It noted that same were not of relatives on paternal side of the Petitioner. It also took note letter dated 13.10.2011 by Asst. Chief Executive Officer of the Maharashtra Wakf Board that no record of nikahnama of Jabbarkhan Osmankhan is available with it. Petitioner's nikahnama has not been accepted as witness Mohd. Yunus Abdul Rehman Kasmi stated that he neither issued copy of the nikahnama nor he performed that marriage. Nikahnama of Petitioner's father Naimkhan has not been accepted as evidence of Kazi Fazallulla Kazi Abdulla revealed that marriage was performed by his father, he knew nothing about the marriage & he was not aware who prepared its records. Kazi Mohammad Harun Tajoddin stated that he did not perform marriage of Karimkhan & hence that Nikahnama has not been relied upon. Thus, the consideration of these nikahnamas by the Scrutiny Committee does not appear to be suffering from any error warranting interference in the writ jurisdiction by this Court. Present scenario necessitated cogent & convincing evidence on relationship & also Nikah.

30. After careful evaluation of the material on record, we find that the challenges on the ground of violation of Rule 17(11)(i) of the State Rules, absence of notice in form No. 25 & the bias of the members of the Scrutiny Committee need to be considered together to avoid prolixity & reiteration. Breach of principles of natural justice is urged as the Scrutiny Committee did not issue the notice as required by Rule 17(11)(i) of the State Rules in form No. 25. Rule 17 lays down the procedure to be followed by the Scrutiny Committee. As per sub-rule (10) of Rule 17, if after perusal of vigilance cell report, the Scrutiny Committee is satisfied about the genuineness of the caste claim, by its written decision, it can allow the caste claim finally & grant validity in form 24. If it is not so satisfied, as per sub-rule (11), it has to call upon the claimant to prove his caste claim by discharging the burden put on him by S. 8 of Act 23 of 2001. The format of this notice is form 25. As per said pro forma, the Scrutiny Committee has to mention its findings on caste claim, documents produced in support by claimant & on vigilance cell report. There is a space left blank & provided therefore in the pro forma after the sentence--"Following are the findings of, the Committee". After the findings are enumerated, the next sentence reads--"Till this stage this committee is not satisfied about your caste/claim, therefore, you are hereby informed accordingly." It then invites attention to S. 8 of the Act 23 of 2001 & claimant is given option to present the case personally or through Legal representative. He is also permitted to file the documents in support of his caste/claim. Report of vigilance cell is to be forwarded with this notice. Petitioner states that she received the copy of vigilance report dated 11.5.2013 along with notice dated 18.5.2013 scheduling the hearing on 21.5.2013. This notice did not contain findings of Scrutiny Committee for not accepting the genuineness of the caste claim. Petitioner therefore, contends that the Scrutiny Committee ought to have granted validity. Not issuing the notice in form 25 is therefore argued to be fatal.

31. Petitioner has also submitted that Ganesh husband of Respondent 5 lodged a complaint on 29.5.2013 against two members of the Scrutiny Committee with anti-corruption department that they had taken bribe of Rs. 20 Lacs from Petitioner to favour her in the matter of caste verification, these two members are Shri Rathod & Shri Bacchav. In the light of this development, Petitioner states that on 6.6.2013, the Scrutiny committee sought guidance from the Government & High Court; and as recorded in the roznama (order sheet), adjourned the matter to 17.6.2013. Ganesh withdrew his complaint on 10.6.2013 explaining that it was based on here say information. Ganesh made baseless allegations only to pressurize the Scrutiny Committee members & withdrew it later after that object was achieved. Contention is due to such allegations, the Scrutiny Committee members were not able to impartially & independently judge the controversy. They developed a bias which did not leave Committee free to independently apply its mind because of backdrop of allegations of corruption. Drawing support from various precedents, it is argued that a reasonable possibility of bias is also sufficient to vitiate such proceedings.

32. Recording of evidence before the Scrutiny committee began on 25.6.2013 & its sittings or business thereafter have important bearing on alleged breach of principles of natural justice & also on bias. On that day evidence of Headmistress of Satara Z.P. School was recorded. Witness cited by Petitioner viz. Kaji Mohd. Haroon Kaji Mohd., Kaji Fazulla Kaji Ataulla, Mohd, Yunus Abdul Rehman Kasmi and Petitioner herself came to be examined. On 2.7.2013 advocate of Petitioner as also of Respondent 5 advanced their oral arguments before the Scrutiny Committee and the Scrutiny Committee then closed the proceedings for order i.e. final judgment. This order dated 19.7.2013 was then communicated as per forwarding letter dated 22.7.2013 which is impugned in this writ petition. Evidence of witnesses & Petitioner is recorded by following the usual procedure of examination in chief, cross-examination & then re-examination. Petitioner nowhere demonstrates that any answer given by anybody was not correctly recorded or any question was not allowed to be asked or any leading question was put by the any Member/s of the Committee or then, she was not permitted to place any objection to the question/procedure being followed on record. Thus there is no denial of & even no attempt to demonstrate denial of effective opportunity to the Petitioner. Respondent 5 before this Court is the complainant and her objections were well within knowledge of Petitioner. Respondent 5 lodged a representation dated 28.2.2013 pointing out education of Naimkhan, relationship with Ayubkhan, on Nikahnama, on school entries at Satara Z.P.P. School of Petitioner & Ayubkhan, on family tree, need of documents from paternal side of Petitioner and fabrication as also interpolation. Petitioner has filed her reply to this representation on 24 May, 2013 i.e. after receipt of report of vigilance cell. There, she has dealt with the issues & objections raised by Respondent 5 and also filed few documents. Respondent 5 also filed some documents on 30.5.2013. Rule 13 of the State Rules is particularly about the report of vigilance cell & issues to be dealt with in it. Rule 13(2) is a non

obstante provision & its clause (a) forbids the vigilance cell from recording any concluding remarks or opinion. Its clause (b) further emphasizes that such remarks or opinion shall not be binding on the Scrutiny Committee. The Petitioner was very much aware of this legal position. It is also clear that being aware of the nature of or details of hurdles to be cleared, she made efforts in that direction & at least, at that juncture, did not find it necessary to protest about absence of notice in form 25 or bias. Petitioner permitted the verification to progress, willingly participated or contributed therein & only after final adverse order, she has raised all these technical objections. There is no attempt to show actual prejudice suffered due to alleged interest or alleged possible inclination on part of Committee Members to anyhow dodge the controversy about complaint of corruption. Also, the Committee in impugned order has a threadbare discussion & not a single piece of evidence on which two views are possible, has been presented to it. Petitioner nowhere pleads that had she been informed in advance about a particular finding (surfacing later) of the Scrutiny Committee, she could have addressed it in a better way with more convincing material. We can not overlook the fact that it was second round of verification proceedings & Petitioner left no stone unturned to substantiate her case. She has received an able legal assistance before the Committee. The manner in which the verification proceeded reveal that the slightest perception of the hostile treatment or bias would have lead to suitable measures or retaliation. Thus, the argument of bias or of absence of Rule 17(11)(i) r/w form 25 notice are clearly misconceived & by way of afterthought. We find that no legal right of Petitioner is either defeated or violated in the matter and she has not been denied a free & fair trial.

33. In *Amar Nath Chowdhury Vs. Braithwaite and Company Ltd. and Others*, , cited by Petitioner, the challenge was in the backdrop of disciplinary authority participating in departmental inquiry & in para 6, the Hon. Apex Court observes that one of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The bias or interest may arise because of relationship with the subject-matter & it may be direct or indirect. In *The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others*, , Hon. Apex Court has held that it is an elementary rule of natural justice that a person who tries a cause should be able to deal with the matter before him objectively, fairly, and impartially. In dealing with cases of bias, it is necessary to remember that "no one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind". The reason for this clearly is that having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind without any inclination or bias towards one side or the other in dispute". Hon. Apex Court points out the *Jewitt's Dictionary of English Law*, where it is observed that "anything which tends or may be regarded as tending to cause such a person to decide a case otherwise than on evidence must be held to be biased" On not taking objection before the Minister & explanation of writ

petitioner, Hon. Apex Court observes that--"In fact, the High Court has held, and we think rightly, that if the controversy had been confined to the case of Ramakotaiah, he would have been precluded from raising the said contention in the writ proceedings. But we cannot overlook the fact that if Ramakotaiah's allegations are held proved, that would inevitably create a serious infirmity in the impugned order, because then the impugned order would naturally become invalid inasmuch as it was passed by a person who by his bias had been disqualified from trying the cause." Ultimately, the facts to support plea of bias are found to be proved in this case. It is also important to note that the said petitioner had apprehension of bias even during pendency of proceeding before the Minister. Here, the Petitioner nowhere pleads that before the impugned final adjudication by the Scrutiny Committee, she had any such feeling or apprehension. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , Hon. Apex Court explains that this is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Thus a reasonable apprehension is held sufficient to vitiate the quasi-judicial order. Decision of Hon. Apex Court at 2010(7) SC 873, in Re v. Meher Singh Saini and paragraphs 5.6,41 & 44 to 47 which deal with Art. 320 or Art. 317(2) need not be gone into more details in the light of law on bias & quasi-judicial functions already looked into by us. In G.N. Nayak Vs. Goa University and Others, , Hon. Apex Court observes in para 34 that it is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest--whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the Courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred. In M/s. Chetak Construction Ltd. Vs. Om Prakash and Others, , Hon. Apex court observes--"Even if it be assumed and we have no reason not to so assume, that there was no such connection between Respondent 3 and the learned single Judge as to influence his ultimate judgment in the appeal pending before him but when certain facts were brought to his notice, which could give rise to a reasonable and not fanciful apprehension that the trial may not be fair, the learned single Judge should have recused himself from the appeal in keeping with the highest traditions of the judiciary. Discretion, after all, is the better part of valour." We note that all these cases show a preexisting bias, either voiced or expressed later on i.e. after adverse order. The facts at hand do not demonstrate any such apprehension till the end & it is only after the final & well reasoned order that the allegation of bias has surfaced. Petitioner not even urges that she felt any such bias at any stage prior thereto. Hence, question why she could not lodge protest before the impugned order came to be passed need not be gone into.

34. Insofar as form 25 or Rule 17(11) of 2012 Rules are concerned, Petitioner has placed reliance upon the judgment at, Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , where the Constitution Bench of Hon. Apex Court in paragraph 26 explained that the reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Enquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. Said findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Thus, this judgment of Hon. Apex Court is on supply of copy of enquiry report to the delinquent to enable him to understand the findings of the Enquiry Officer which till then were being utilized against him without any knowledge to him about its contents. Here, the law requires that the vigilance cell report must be first supplied to Petitioner & he should be given the opportunity thereafter. That opportunity is given to Petitioner & she has, as per legal advice, also filed her say, lead evidence of herself & witnesses as also filed documents. She was aware of the all obstacles lying in path towards validity certificate & did her best to cross the same. The law as laid down in this judgment of Hon. Apex Court has no relevance here. Adv. Thombare has cited some judgments in an attempt to show that provisions of Rule 17(11) & notice in form 25 only are not mandatory requirements & noncompliance with it, by itself, is not sufficient to vitiate the order of the Scrutiny Committee. All these judgments are on provisions of the Bombay Village Panchayat Act, 1958 & no confidence motion against the Sarpancha or the Up-sarpancha. We do not find it necessary to delve into said aspect in view of our finding of "no prejudice" to the Petitioner in present matter.

35. In Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, , relied upon by the Petitioner, the Hon. Apex Court has observed that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it also declared that it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Thus merely on the strength of a damaged loom as found by the

Vigilance Cell, a finding of affinity in favour of Petitioner is not possible. The Scrutiny Committee has found claim of Petitioner not based on truth & also noted suppression of facts & interpolation. This judgment, therefore, does not advance her case at all. She suppressed her education in other schools, education of her father, school records or revenue records not recording momin as caste or showing agriculture as occupation. She did not sign the affidavit dated 1.11.2011 and still, placed it before the Scrutiny Committee & also gave incorrect details of her relationship. In *Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others*, , Hon. Apex Court was satisfied that the Committee had failed to consider the relevant materials placed before it and did not apply its mind to an important document "Sl. No. 9" which led the Committee ultimately to record a finding against the appellant. By a wrongful denial of the caste certificate to the genuine candidate, he/she is deprived of the privileges conferred upon him/her by the Constitution. Therefore. Hon. Apex Court stated that greater care must be taken before granting or rejecting any claim for caste certificate. It found that the High Court without appreciating the probative value of the documents placed before it dismissed the writ petition filed by the appellant by simply accepting the conclusions reached by the second respondent Committee. It also noted that in cases of this type, the burden heavily lies on the applicant who seeks such a certificate & further observed that it did not mean that the authorities had no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. In facts before it, the Hon, Apex Court held that the authorities concerned must also play a role in assisting the Committee to arrive at a correct decision. In said case, except the documents produced by the claimant, nothing was produced by the authorities concerned to arrive at a different conclusion. These observations are not applicable here where the vigilance cell submitted its report & the Respondent 5 also assisted the Scrutiny Committee which in turn has recorded the evidence & gave full opportunity to both sided as per Act No. 23 of 2001. All old documents which could have thrown light on recent entries have been fully evaluated by it.

36. Adv. Thombare has relied upon the Division Bench judgment, reported at *Deorao Umredkar Vs. State of Maharashtra and Others*, & *Shailesh Kohad Vs. The Scheduled Tribe Caste Certificate Scrutiny Committee, The Director of Medical Education and Research and The Dean, Indira Gandhi Medical College*, to show that vigilance cell need not record any conclusions & its report are not binding upon the Scrutiny Committee and to urge that burden to substantiate her caste claim was always upon the Petitioner. We find the proposition well founded. It is also well settled that a validity certificate procured by playing fraud can be set aside at any stage. We therefore do not find it necessary to burden this discussion with various judgments pointing out consequences of playing fraud & powers of Court in such matters cited by learned Counsel.

37. The Petitioner's reliance on the government communications on perspective to be adopted while evaluating caste claims of Mohammedan citizens need consideration. First government letter to which our attention is invited is dated

22.7.1996. It is sent by Addl. Secretary of Social Welfare, Cultural Affairs & Sports Department to its Director of Social Welfare at Pune on the subject of verification of claims of Muslim O.B.C. It clarifies that while verifying such claims in terms of GR dated 16.10.1985 and schedule A sr. No. 1 thereof, the Committee has to see various documents. Letter states that in case of muslims, there is remote possibility of name of caste appearing in such old records, and only word "muslim" or "musalman" may mostly appear. Hence, this fact must be born in mind while verifying such caste claims. But, fact that whether claimant belongs to that particular OBC caste must be ascertained during home-inquiry & by evaluation of other material. Division Bench of this Court at Aurangabad in WP 2666 of 2003 on 25.11.2003 had occasion to look in to this letter. It has found in para 7 of the judgment that in facts before it, the Committee had found it difficult to reach any definite opinion on the basis of documents presented & the said Division Bench itself experienced the same. In facts & circumstances before it, it found consideration of communication dated 22.7.1996 & approach in its term by the Committee necessary. Hence, it remanded the matter back. One more letter on same lines is dated 3.8.2010. It is circulated to all Collectors, Dypt. Collectors & Sub-Divisional Officers. It states that school leaving certificate, extract of death & births, marriage-deeds, revenue records, proof of trade or occupation, certificate issued by registered Societies, Public Trusts, Certificate issued by Sarpanch or Talathi & Claimant's affidavit should be verified for ascertaining the correctness of caste claim. It is obvious that these guidelines may only stipulate the documents or facts relevant in caste verification but the same cannot affect the quasi-judicial powers & will not be binding on Respondent No. 2 Scrutiny Committee which is statutorily constituted under Act 23 of 2001. It is a quasi judicial authority and hence, has to itself judge the relevance & persuasive nature of material produced before it as evidence. It has been conferred with various powers of civil court to enable to effectively discharge its obligation. Rule 17(12) of the 2012 Rules also permits it to draw an adverse inference. The quasi-judicial power cannot be eclipsed or taken away by such instructions. This was not the question in WP 2666 of 2003 & the judgment there, in no way, curtails the powers of the Committee. In present facts, we need not dwell more on this aspect as the relationship with bridegroom in old nikahnama has not been established & school records pressed into service are also not genuine. Hence, there was & is adequate material on record to negate the caste claim. In any case, the Petitioner has not signed the basic affidavit & has not approached this Court with clean hands, entertaining of a writ petition or relief in writ jurisdiction can always be denied. In such a situation, mere government circular or letter cannot come to her rescue.

38. While giving the judgment dated 10.9.2009, the Division Bench of this Court in WP 6296/2009 was not required to peruse the State Rules which have come into force in 2012. The Division Bench therefore directed mentioning of all important events in the roznama i.e. order-sheet so as to bring in transparency in the verification proceedings. The judgment specifies ten such stages to be

recorded in the order-sheet. VIIIth such stage is about procedure to be followed while passing of the final order and mention of the name of the member who has ultimately written it. The State Rules are dated 31.8.2012 & Rule 17 thereof prescribes the procedure to be followed by it. Rule 17(5) mandates maintenance of a self evident roznama by the Scrutiny Committee. Sub-rule (11) of Rule 17 is on order writing and its clauses (d) to (f) are as per these directions of the Division Bench. These are all procedural requirements and it is well settled that rules of procedure are handmaid of justice & cannot defeat the substantive justice. Mere fact that there is no roznama or the proceedings do not disclose the name of member to whom the case of Petitioner was entrusted for preparation of orders, is not sufficient to vitiate the verdict. The said omission must be mala fide & Petitioner must demonstrate prejudice caused to her because of absence of such mention in roznama. Petitioner has not taken any pains to show its adverse impact on herself or advantage to the cause of Respondent 5. Before us, it is not the case of Petitioner that order as conveyed is not passed by the Scrutiny Committee or by all members of the Committee. The petitioner could have raised the demand to note the requisite details in order-sheet immediately & contention in that regard being raised after an adverse order reveals only a roving attitude.

39. As a result of this discussion, we find no case made out warranting interference in exercise of its writ jurisdiction by this Court. Writ Petition is accordingly dismissed. Pending CA 9261/2013 & CA 10660 of 2013 are also dismissed. We direct Respondent 2 Scrutiny Committee to initiate action in terms of S. 10 & S. 11 of Act 23 of 2001 against the Petitioner; under S. 14 thereof against the Headmistress of Satara School. It shall also proceed against Vigilance Cell officer as per mandate of Rule 17(13) of the 2012 State Rules. The registry to bring these directions to the notice of Chief Executive Officer of the Aurangabad Zilla Parishad.

40. With above directions, we dismiss the writ petition with costs of Rs. 3000/- payable each to Respondent 2 Scrutiny Committee, Respondent 1 Divisional Commissioner, Respondent 3 Zilla Parishad, Respondent 4 State Election Commission & Respondent No. 5. If these costs are not paid within 8 weeks from today by the Petitioner, liberty to the respective Respondents to proceed to recover it as per law including as arrears of the land revenue as also by adopting such other suitable coercive measures, as they may find expedient. Rule discharged.

Date: 4th October 2013.

41. At this stage, Adv. Mr. Patil Jamalpurkar for the petitioner, upon instructions, seeks continuation of interim order for a period of six weeks. Request is being strongly opposed by learned GP Mr. Kurundkar for Respondent Nos. 1 and 2, and Adv. Mr. Thombre for respondent No. 5.

42. The elections to fill in vacancy have already been held and Hon''ble Apex

Court had directed disposal of Writ Petition finally within a period of two months. Accordingly, the petition has been disposed of. The new candidate elected in accordance with law, therefore, must be permitted to assume office. We, therefore, reject the request of Adv. Mr. Patil Jamalpurkar. Certified Copy expedited.