
(2017) 03 BOM CK 0111
In the Bombay High Court
Case No : Writ Petition No. 538 of 2016

Sanjay Bhaskar Raimulkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

Citation : (2017) 3 AIRBomR 316 : (2017) 3 BCR 754 : (2017) 3 MhLJ 557

Hon'ble Judges : B.P. Dharmadhikari and Mrs. Swapna Joshi, JJ.

Bench : Division Bench

Advocate : Mr. C.S. Kaptan, Senior Counsel with Mr. A.M. Ghare, Advocate, for the Petitioner; Mrs. B.H. Dangre, Govt. Pleader with Mr. A.A. Madiwale, A.G.P, for the Respondents Nos. 1, 2 and 4; Mr. P.S. Wathore, Advocate, for the Respondent No. 5; Mr. S.R. Narnaware, Advocate, for the Respondents Nos. 6, 7 and 11

Final Decision : Disposed Off

Judgement

Mrs. Swapna Joshi, J.—By this petition, the petitioner has challenged the order passed by respondent No. 2 Scrutiny Committee, Akola, Amravati Division, dated 19.01.2016, invalidating caste claim of petitioner as belonging to "Balai"(Scheduled Caste). In fact, the petitioner as well as the respondents based their arguments upon the order which stipulates the date as 31.12.2015.

2. The Competent Authority issued the caste certificate of the petitioner in the year 2006 as "Balai" (Scheduled Caste). Mehkar (Dist. Buldana) Legislative Constituency seat was served for Scheduled Caste category. The petitioner was elected to Maharashtra Legislative Assembly from Mehkar constituency in the year 2009. In the year 2014, he again contested the election of Member of Legislative Assembly against the seat reserved for S.C.candidate and was elected. The respondent No. 5 filed a complaint with the Scrutiny Committee about the caste of the petitioner. On the basis of the said complaint, verification process of the caste was initiated. On 31.12.2015 out of three members, two members of the Scrutiny Committee invalidated the caste claim of the petitioner; whereas the third member of the Committee proceeded to pass a separate

dissenting order, validating caste claim of the petitioner as "Balai" (Scheduled Caste). The order passed by the majority members of the Scrutiny Committee is impugned in the present petition.

3. As far as rival contentions of the learned counsel for the respective parties are concerned, it would be advantageous to make a brief reference to it. Learned senior counsel Mr.C.S. Kaptan with Mr.Ghare for petitioner, vehemently argued that prior to deciding the caste claim of the petitioner, the Scrutiny Committee, the petitioner was elected in October/November, 2009. The Scrutiny Committee called for the old records of pre-Constitutional era from 1912 onwards from the Revenue Department, which reflected the caste of forefathers of petitioner as "Sutar Balai". The new documents which were post Constitutional era reveals the caste as "Sutar" (OBC). Learned senior counsel contended that pre-Constitutional documents are of greater probative value while determining the caste claim of the candidate. He submitted that since the forefathers of the petitioner were conducting the business of carpentry, the word "Sutar" appears in the entries of old registers. According to him, the Scrutiny Committee has ignored the pre-Constitutional record, although these entries established the fact that caste of the petitioner was Balai and suspicious entries are taken for corroboration to discard the petitioner's caste claim. Mr. Kaptan stated that the petitioner is unable to explain the erasers in old entries and so also it is nobody's case that those documents are fraudulent entries and there is an interpolation thereof. Those entries are examined by Handwriting Expert and the authenticity of those entries has been established. He urged that the report of Vigilance Cell cannot be the basis for finding of the Scrutiny Committee. The Scrutiny Committee has to apply its mind to the material on record and not to rely upon the opinion of Vigilance Cell. It is submitted that it was not necessary to use the word "false" in the "concluding" part of the order of the Scrutiny Committee, although the Committee has not given a finding on that line.

4. On the point of constitution of Committee, the contention of learned senior counsel was that out of three members of the Committee, one member was not possessing Masters Degree (i.e. M.A.) in Sociology and Anthropology and as such, was not competent or qualified to decide the caste claim of the petitioner. According to Mr.Kaptan, the order of the Scrutiny Committee is found to be illegal on that ground itself. Mr. Kaptan pointed out that one of the members of the Committee i.e. Mr K.M. Bhoyar was not in officiating capacity at the time of passing of the order. He further submitted that the Committee has even discarded the validity of his brother Arun Raimulkar and his daughter Pallavi Arun Raimulkar.

5. In support of his contentions, Mr. Kaptan placed reliance upon the judgment in the case of S. Parthasarathi v. State of Andhra Pradesh, reported in (1974) 3 SCC 459, wherein it was held by the Hon"ble Apex Court:

19. even assuming that as Director-in-charge Manvi was authorised to conduct the enquiry, that authority came to in end when he ceased to be the

Director-in-charge and became the Deputy Director. Beyond framing the charges, Manvi had taken no steps in the enquiry before he ceased to be the Director-in-charge. All the witnesses were examined by Manvi after he ceased to be the Director-in-charge and after his reversion as Deputy Director."

6. In that case, the Director Incharge conducted enquiry after he ceased to be the Director Incharge and after his reversion as Deputy Director. It was held that he was not authorised to conduct the enquiry after he ceased to be the Director Incharge whereas, in the instant case, Mr. K.M.Bhoyar who was one of the members of the Committee is in continuous service and he did not cease to be a member of the Scrutiny Committee because of completion of 11 months period and did not loose the post of Assistant Commissioner, Social Welfare. He was possessing the requisite educational qualifications and was promoted on the post of Social Welfare Officer and given charge of Research Officer of Scrutiny Committee. Mr.Bhoyar was thus, entitled to conduct the enquiry of the petitioner. Moreover, this controversy may not be of much importance in view of final order herein.

7. Learned senior counsel further placed reliance upon the judgment in the case of Central Bank of India v. C. Bernard, reported in (1991) 1 SCC 319, wherein the enquiry was conducted by the Inquiry Officer after his retirement from service. In the present case, there was no such situation, the services of Mr. Bhoyar were continued on same post.

8. Learned senior counsel placed reliance upon the judgment in the case of Sayanna v. State of Maharashtra and others, reported in (2009) 10 SCC 268. It is held that the Police Inspector of the Vigilance Cell had merely stated as a matter of fact that the word "lu" was subsequently added while recording the caste of the appellant as Mannerwarlu in the school register. The Police Inspector has not stated that the word "lu" was interpolated by the appellant. Hon"ble Supreme Court took note of possibility that the word "lu" was not mentioned at the time of recording of the caste of the appellant and on being pointed out the correct spelling of caste, the word "lu" was added. Addition of word "lu" subsequently would not lead to an irresistible conclusion that the said word was added by the appellant or at his behest.

9. The Hon"ble Apex Court found that the approach of the Scrutiny Committee overlooking four old documents due to its findings that addition of word "lu" after the word "Mannerwar" was tampered. It was further held that it was not indicating any interpolation. The facts in the case in hand are altogether different. Here, it is the case of the petitioner that since, the forefathers of the petitioner had adopted the profession of carpentry, the word "Sutar" is noticed in the old documents along with caste "Balai" whereas, according to the respondents, there is interpolation of the entries in the register with regard to taking the entry of month January in between February and March. So also cellotape is unnecessarily affixed on those entries. Few blank pages are left in the register prior to the entries relied upon by the petitioner.

10. Learned senior counsel placed reliance upon the judgment in the case of Chandrashekhar Danial Gaikwad v. State of Maharashtra and others, reported in 2016 (1) Mh.L.J. 94, and submitted that in that case a question before the Court was whether the petitioner and his family belonged to "Mahar" caste as petitioner's name was Danial and during his childhood his father used to visit Church. In that case, this Court was of the opinion that only because the petitioner and his father used to go to Church for paying obeisance, that itself, cannot be a ground to hold that the petitioner and his father have converted to Christianity. This Court, in paragraph No. 12, concluded thus,

"12. Therefore, the Committee ought to have considered the documentary evidence and should have placed greater reliance on the pre-Independence documents which would furnish a higher degree of probative value to the declaration of status of a case, as compared to post-Independence documents. In the aforementioned judgment, the Supreme Court observed that the affinity test may not be regarded as a litmus test for establishing the link of the applicant with Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that in his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.".....

11. In the instant case, learned senior counsel submitted that since the petitioner and his forefathers in the family had adopted the profession of Sutar (i.e. carpentry), the caste is mentioned as "Sutar Balai", in the pre-independence documents, relied upon by the petitioner.

12. Mr.Kaptan, further, relied upon the judgment in Writ Petition No. 6925/2016 with Civil Application No. 2158/2016 dated 16.12.2016 delivered by this Court. In that case, the Court opined that the documents relied upon by the petitioner were old documents having great probative value and document more than 30years old, attracts presumption under section 90 of the Evidence Act, 1872 and therefore, the Committee before discarding these documents must adopt a cautious approach.

13. Learned senior counsel contended that although the point as regards dishonesty of the Scrutiny Committee with regard to the date of decision is raised directly at the time of arguments, it is pure question of law arising from records and, therefore, it can certainly be considered at the stage of hearing. He took assistance of the judgment in the case of State of Uttar Pradesh and others v. Dr.Anupam Gupta and others, reported at 1993 Supp (1) SCC 594. Relevant portion of Paragraph 10 reads thus:

"10. We find no force in the contention of the State. Though it was never raised, nor argued, since it is a pure question of law arises from record, it can be

gone into. But on careful consideration of the record, we find no force in the Doctor's contention."

14. In that case, for the first time, at the stage of arguments, it was submitted that denial of admission in medical college for non-securing 50% cut off in the entrance examination is illegal. On this, it was objected that the said contention was not raised in the High Court and for the first time it could not be raised. It was held that though this contention was never raised nor argued being a pure question of law arising from record, it can be gone into. In the instant case, therefore, we are of the opinion that we can certainly consider the question whether any order was passed by the Scrutiny Committee on 31.12.2015, if the Roznama (proceeding sheet) cannot be viewed as trustworthy document and what is the effect of such order.

15. So far as the contention of Mr. Kaptan with regard to the Roznama is concerned, it would be discussed in later part of this judgment.

16. Learned senior counsel took us through various provisions contemplated in 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 "Rules of 2012") and submitted that there should be deliberations amongst the members of the Committee prior to the decision, which is lacking while taking decision on caste claim of the petitioner. Finally, Mr. Kaptan urged that the impugned order is liable to be quashed and set aside, it being dishonest and contrary to law.

17. Per contra, learned counsel for respondent nos. 6, 7 and 11 Mr. Narnaware countered that as per the provisions under Rule 18 of the Rules of 2012, the view of two assenting members of the Scrutiny Committee here is to be accepted as it is the order passed by the majority of the Committee members. He submitted that the doctrine of "de facto" applies as the petitioner has accepted the composition of the Committee and allowed to pass the order. Therefore it should not lie in the mouth of the petitioner that Mr. K. M. Bhoyar was incompetent and therefore, the enquiry vitiates. According to Mr. Narnaware all the documents showing entries in the register regarding the caste claim of the forefathers of the petitioner, are revenue documents which have no probative value. The school records which are post Constitutional documents prevail over the revenue documents which show the caste of the near relatives of the petitioner as "Sutar Balai".

18. Learned counsel Mr. Narnaware sought assistance from the judgment of the Hon'ble Apex Court, in the case of Ku. Madhuri Patil v. Addl. Commissioner, Tribal Development and others reported in AIR 1995 SC 94, more particularly para 10 thereof.

"10.The caste of the person, as stated earlier, is determined on the basis of the caste of their parents, basically for the reasons that the caste is acquired by

birth. When the school record of the candidate's father shows his caste as Koli, the documents which the candidates have produced (documents quoted at Serial Nos. 3, 5 to 8, 11, 13 to 16) showing their caste as Mahadeo Koli cannot be relied upon. All these documents furnished by the candidates are those manipulated and fabricated with to knock of the seats in educational institutions defrauding the true Scheduled Tribes to their detriment and deprivation. As the school record of the candidate's father shows his caste as "Koli", the caste certificates which have been issued to the appellants and their relatives by the Executive Magistrate, Greater Bombay (documents at Serial Nos. 9, 10, 12, 17 to 19) are without proper enquiry and investigation, besides being without jurisdiction. Its reiteration in service record would not carry any credibility or a ground to accept the caste as Scheduled Tribe."

19. Mr.Narnaware submitted that information given by the educational institution is that uncle and father of the petitioner are "Sutar". He invited our attention to the fact that brother of the petitioner, Arun was issued the certificate as"Sutar"(OBC) on 10.1.2005 and, therefore, now the petitioner cannot claim his caste as "Balai" (SC). Finally, Mr Narnaware submitted that the certificate issued by the Scrutiny Committee in respect of brother of the petitioner, namely, Arun and his daughter Pallavi are without any vigilance enquiry. He submitted that the directions in the case of Madhuri Patil are not followed by the Scrutiny Committee.

20. Mr. Narnaware placed reliance upon the judgment in the case of Mangesh Kashid v. District Collector, Satara, reported in 2012 (5) Mh.L.J. 473. Paragraph 50 thereof reads thus,

"50. The vigilance cell report is the integral and core of the verification process and if a validity certificate is to be issued to a candidate, then the requirement of calling for the vigilance cell report is must. Any deviation from this position will result in contravening the dicta of the Apex Court in the Madhuri Patil's case and Dayaram's case. According to us, Rule 12 does not dispense with calling for report from the vigilance cell. Rule 12 will have to be read in consonance with the judgments of the Apex Court in Madhuri Patil's case and Dayaram's case, and it cannot be interpreted in the manner contrary to the aforesaid judgments of the Apex Court. Thus the caste validity certificates which are issued without calling for the vigilance cell report cannot be considered as valid in the eyes of law, and suffer from jurisdictional error which goes to the root."

21. According to Mr. Narnaware, the vigilance cell report is the integral part of the verification process and in the present case, the validity certificate of the brother of petitioner Arun and his daughter Pallavi was without any vigilance enquiry, hence the said validity certificate is bad in law and not trustworthy.

22. Mr. Narnaware further placed reliance upon the judgment in the case of Apoorva Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee, reported in 2010(6) Mh.L.J.401. In that case, a submission was made by learned

amicus that Committee must in all cases issue notice to the blood relatives who have wrongly or fraudulently obtained the caste certificate or obtained the certificate without jurisdiction in the Committee to grant it and initiate proceedings to cancel that certificate. Mr. Narnaware contended that once the caste certificate of "Sutar" caste was issued to the brother of the petitioner and his daughter, there is no question of issuing certificate of another caste i.e. "Balai" to the petitioner.

23. Learned counsel for respondent No. 5, Mr.Wathore, submitted that the certificate of brother of the petitioner, namely, Arun dated 10.1.2015 indicates that he is "Sutar" (OBC) caste. He submitted that since the petitioner was to contest the election from Mehkar (District Buldana) constituency, in the year 2006, he obtained certificate of Scheduled Caste.

24. Mr. Wathore pointed out that there is no caste as "Sutar Balai" in the list of Scheduled Tribes mentioned in the Presidential Notification. Mr.Wathore invited our attention to various entries in the revenue register regarding caste of the petitioner dated 27.01.1912, +.12.1919 etc. wherein the entry dated 27.1.1912 is inserted in between 26.02.1912 and 28.03.1912 with different ink and cellotape is affixed in said entry, whereas entry dated +.12.1919 wherein the caste of the great grandfather of the petitioner, namely, Bhagu Sutar Balai is shown as "Sutar Balai" and that he gave birth to one daughter. On the said entry, cellotape is affixed. The entry dated +.08.1936 is the only entry with cellotape. The entry dated 16.02.1966 appears to be in different ink. According to Mr Wathore, all these entries are not reliable and as such, no caste certificate as "Balai" can be issued on the basis of these documents. Mr. Wathore urged that petitioner is benefitted by these entries and still no explanation comes forward with regard to the said interpolation.

25. Learned Government Pleader Mrs. Bharati Dangre for respondent nos.1, 2 and 4 contended that Shri K.M.Bhoyar, who is one of the members of the Scrutiny Committee has fulfilled the criteria of promotion and he was possessing the degree of B.A. Sociology and hence he was promoted to the post of Social Welfare Officer and granted charge of Research Officer. Thus, he is qualified for the said post. Mrs. Dangre submitted that as per the directions of the Committee headed by Additional Chief Secretary (Home), temporary promotion of 11 months was granted to Mr. Bhoyar. One day's technical break was given to Mr. Bhoyar on 30.09.2016 and his services are continued on promotional post. According to her, Mr.Bhoyar was on promotional post and did not cease to be member of the Scrutiny Committee because of completion of 11 months period. On the point of order passed by the Scrutiny Committee, Mrs.Dangre did not seriously dispute that the Roznama dated 31.12.2015 gives an impression that the arguments were heard by the Scrutiny Committee on 31.12.2015 and decision was delivered on the same day.

26. Mrs. Dangre invited our attention to various registers which indicated that cellotape was affixed at the detriment of beneficial person and on document

"Balai" word was overwritten. Mrs. Dangre stated that the certificate of Arun and his daughter Pallavi were issued in the year 2009 without vigilance enquiry. However, only because the other members of family were granted certificates without enquiry, those certificates need not be relied upon, which show the caste as "Balai".

27. Mrs. Dangre placed reliance on the common order of this Court in PIL Nos. 102/2013 and 11/2016 dated 15.04.2016, to contend that if a candidate possesses pre-Constitutional documents showing him to be belonging to a particular tribe, then such documents would have more probative value and the candidate would be entitled to grant of validity certificate. However, all these must precede the Vigilance Cell and home enquiry. If, in the Vigilance Cell and home enquiry, any contra material is found, then the Committee can always take the same into consideration.

28. On considering the rival contentions of the parties before embarking the merits of the controversy, it would be advantageous to delve deep into Roznamas, with regard to the order passed by the Scrutiny Committee.

29. On careful scrutiny of the order passed by the Scrutiny Committee, it is apparent that the date of decision is mentioned as 31.12.2015. On the top of the order, it is mentioned as "Per se: M.G. Gautam, Additional Collector (Lower Grade) and President". It is signed by three Committee members at the bottom of the decision i.e. (i) K.M. Bhoyar, Research Officer and Member Secretary, (ii) Sahebrao Laxmanrao Jadhav, Deputy Commissioner and Member, (iii) S.G. Gautam, Deputy Collector (Lower Grade and Chairman), all of Scrutiny Committee No. 2, Akola. Below the signature of Deputy Commissioner, Jadhav, it is mentioned that separate order has been passed. It means that all these three members of the Committee had passed the orders on 31.12.2015. Two of them signed on the said order as they were in agreement and one of them passed the dissenting order on the same day, separately. The separate order does not depict date.

30. Now coming to the Roznama dated 30.12.2015, it speaks: "Heard arguments of complainant". It stipulates that the arguments of the complainant were heard on that day and the matter was adjourned to 31.12.2015. Significantly, the said Roznama simply bears the signature of one of the Committee members. The Roznama dated 31.12.2015 speaks: "Heard the arguments of nonapplicant. Closed for order." It figures that the arguments were heard and the matter was closed for order. All three members of the Committee signed on the order sheet. One Advocate too signed on it. It is mentioned below the signature of Chairman as "Asahamat" (disagreed). It is also mentioned on the ordersheet that the order is passed without any pressure and again the Committee members signed below it and result is mentioned as "Awaidh" (void). Below the said sentence the signatures were made there and less space was left at the bottom of the paper. On plain reading of Roznama 31.12.2015, it is surfaced that on 31.12.2015 the matter was heard and on the same day two separate orders were passed ? one

passed by two members and other passed by the third member of the Committee who took a different view from other two members of the Committee. It is also depicted on the ordersheet that the orders were passed without getting pressurised by anyone.

31. Surprisingly enough, on the next page at reverse side, there is Roznama dated 04.01.2016 which demonstrates that as the period granted by the High Court is completing on 7th and as there is possibility of requirement of more time to pass the order, a letter for grant of more time of 1520 days to pass the order, is presented before the High Court. The said Roznama was signed by S.L. Jadhav.

32. Thus, the fact that impugned order was not ready on 31.12.2015 first comes before this Court when Civil Application No. 24/2016 in Writ Petition No. 1800/2014 was filed seeking extension of time. That application is duly sworn by one Member supposed to decide the caste claim on 7.1.2016. He states that little more time would be required to decide it. Along with this C.A, ordersheet or Roznama of dates 30.12.2015, 31.12.2015 and 4.1.2016 is also annexed to show to this Court that final arguments were already heard on 30.12.2015 and 31.12.2015, and the matter was closed for final orders on 31.12.2015. Ordersheet dated 4.1.2016 reveals need of more time felt by the Committee to pass the orders. Obviously, the final order was not ready then. It was not ready when the application was listed before this Court on 16.1.2016. But application was not pressed on 27.1.2016 indicating thereby the order became ready between 16th to 27th January, 2016. Still as order was not ready by 31.12.2015, extension was essential. Application was not pressed obviously as the order was antedated. Order communicated to the petitioner is dated 31.12.2015. In copy of the ordersheet supplied to this Court as part of C.A., after ordersheet dated 31.12.2015 recording closing of the matter for final order appears on the last butone page of the ordersheets side. On reverse thereof, ordersheet dated 4.1.2016 has been recorded which justifies demand for extension of time and need of moving C.A. in High Court. Ordersheets side of the record now shows one more ordersheet of 31.12.2015 date only added below the ordersheet dated 31.12.2015 noting event of passing of final order on that date only. Thus, now one gets two separate ordersheets for the date 31.12.2015. This later addition or the other ordersheet dated 31.12.2015 is written in remaining space left below at the bottom of the last butone page of the ordersheet supplied with C.A. On reverse of this page, the ordersheet dated 4.1.2016 was/is already written and hence, small space at the bottom of said page between the earlier ordersheet dated 31.12.2015 and ordersheet on next page has been utilized to create a show that final order was ready on 31.12.2015 itself. This introduced ordersheet shows the space constraint experienced by the manipulators and words "cancelled" are added over their signature again later on by the members in majority. Dissenting member in minority has overwritten his dissent on the text of this later ordersheet and mentioned that a separate order was passed by him. Below his note, he has placed his sign. This remark of dissent again reaffirms the space constraint. In any case, if the order was ready on 31.12.2015 itself, the

ordersheet dated 4.1.2016 was not required to be written at all. Apparent inconsistency in the second ordersheet dated 31.12.2015 and ordersheet dated 4.1.2016 reveals fabrication and tampering with original records by the members of the Scrutiny itself.

33. Order dated 31.12.2015 shows at its opening the words "per S.G.Gautam" while below that the text of order passed by the majority appears. Shri Gautam has passed the minority order. This material or then error also casts cloud on procedure of Scrutiny Committee.

34. Antedating the order itself raises few vital questions. Ordersheet dated 4.1.2016 does not reveal either unanimity or any difference of opinion amongst the members of the Scrutiny Committee. It does not bring on record any premeditation or the consultation by the Committee Members with each other. If the deliberations were already held on 31.12.2015 itself and exercise of passing of two final orders had become unavoidable, that would have been the best reason to seek an extension from this Court and would have definitely surfaced in the ordersheet dated 4.1.2016. Ordersheet dated 4.1.2016 establishes falsehood in the stand of the Scrutiny Committee that its final orders, of majority as also the dissenting one, were ready on 31.12.2015.

35. This discussion rules out any meeting of minds of the three Committee members and effort by them to use their collective wisdom to resolve the controversy. On the contrary, it proves that there was no previous deliberation amongst them. Not following the mandate of Rule 17 of the Rules of 2012 and not mentioning the name of member to whom the task of writing the majority view was assigned becomes significant in this backdrop. When the date of impugned order itself becomes doubtful and the members go to the extent of fabricating the ordersheets, it is evident that the three Scrutiny Committee members never sat together to ponder over the caste claim. Two members on same side agreed to a order which did not get any supporter. We, therefore, find it not necessary to dilate more on this fact. Facts at hand unequivocally demonstrate that in this matter, there was no effort whatsoever to apply mind together and to reconcile, which elements are the soul of joint adjudication process.

36. Fabrication of the ordersheet or then act of antedating the final order all show an attempt to interfere with the sanctity of the records of a quasi judicial authority. The tampering has been used while not pressing the application for extension of time moved in disposed of Writ Petition by the Scrutiny Committee. The same is also put to use before us to show that said order was ready on 31.12.2015. Marathi word "Amanya" (not agreed) added above their signatures by the two Members constituting the majority and Marathi word "Asahamat"(dissent) with remark that a separate order in support of dissenting view was passed added by the third member, all tend to paint a false picture. Tampering with records by the members of the Scrutiny Committee and need therefor, itself pose a serious doubt on the functioning and independence of the

Committee. Rules of 2012 contain an elaborate procedure to infuse transparency in the verification process but these members have killed that object and purpose. Serious cognizance of the entire affair therefore, needs to be taken.

37. From the above said Roznamas and the records of the W.P.No. 1800/2014 and more particularly, the Roznama dated 31.12.2015 the entire proceedings before the Scrutiny Committee with regard to the passing of order while deciding caste claim of the petitioner, appear to be without application of mind and meetings of minds of all three members of the Scrutiny Committee. The Roznama dated 31.12.2015 demonstrates the dishonesty on the part of the Committee Members who signed the Roznama at a later stage. After passing the order, later on and pretending as if the order was passed on 31.12.2015 the order passed by the Scrutiny Committee does not inspire confidence.

38. At this stage, it would be appropriate to go through the Rules of 2012. Rule 17 postulates the procedure of the Scrutiny Committee prior to issuing of the caste validity certificate. Sub rule(5) of Rule 17 contemplates that the Roznama of the Scrutiny Committee shall be self evident as to what transpired on a particular day and it shall be signed by all the members of the Scrutiny Committee.

39. It is evident that the Roznama dated 30.12.2015 is signed by only one member of the Committee contrary to the above said sub rule (5) Rule 17.

Rule 17 subrules (11), (d), (e). (f) of the Rules of 2012 read as under :

"(d) after conclusion of the hearing of the case, the work of writing of the decision shall be assigned to one of its member by the Scrutiny Committee;

(e) in case of difference of opinion amongst the members of the Committee, on the main order of majority, the dissenting member shall write his separate order;

(f) The name of member of Committee to whom work of writing final order was assigned, shall be mentioned in the roznama. Moreover, front page of final order shall disclose the date of the order."

40. From the Roznama dated 31.12.2015, it is not clear as to which member of the Committee, the work of writing decision was assigned. The abovequoted rule reveals that in case of difference of opinion amongst the members of the Committee on the majority decision, the dissenting member should write his separate order. It means that there has to be a consultation and discussion of all three members of the Committee and there has to be meeting of minds for coming to a conclusion.

41. As discussed above, Roznama dated 30.12.2015 reveals only one signature which indicates that on that day, the matter was heard by only one member of the Committee. It is doubtful whether the meeting of minds of members of the Scrutiny Committee and consultation amongst them as desired by the legislature while framing the Rules, took place. From the Roznama dated 31.12.2015 it is

vividly visible that there was no discussion amongst the members of the Scrutiny Committee on the subject and directly the dissenting member showed his disagreement, without passing the order by the majority members. Thus, Clause 17 sub rule (11), (d), (e) and (f) and provisions mentioned therein are not complied with.

42. Further, Roznama dated 4.1.2016 clarifies that no order was passed by the Scrutiny Committee on 31.12.2015. It was not proper on the part of the dissenting member of the Committee to write his disagreement as "Asahamat" on the order sheet, without there being judgment of the majority of members of the Committee on 31.12.2015.

43. On the point of object of deliberation or consulting each other, a useful reference can be made of the judgment of the Hon"ble Supreme Court in the case of State of Gujarat v. Justice R.A. Mehta (Retd) and others, reported in (2012) 3 SCC 1. Para Nos. 25, 26 and 32 of the said judgment it has been held :

"25.The object of consultation is to render its process meaningful that it may serve its intended purpose. Consultation requires the meeting of mind between the parties that are involved in the consultative process on the basis of material facts and points in order to arrive at a correct or at least a satisfactory solution. If a certain power can be exercised only after consultation such consultation must be conscious, effective, meaningful and purposeful. To ensure this, each party must disclose to the other all relevant facts for due deliberation. The consultee must express his opinion after complete consideration of the matter on the basis of all the relevant facts and quintessence.

26.Consultation or deliberation can neither be complete nor effective before the parties thereto make their respective points of view known to be other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other, who has a counterproposal in mind which is not communicated to the proposer, a direction issued to give effect to the counter proposal without any further discussion with respect to such counterproposal with the proposer cannot be said to have been issued after consultation.

32. ...The meaning of "consultation" varies from case to case, depending upon its fact situation and the context of the statute as well as the object it seeks to achieve. Thus, no straitjacket formula can be laid down in this regard. Ordinarily, consultation means a free and fair discussion on a particular subject, revealing all material that the parties possess in relation to each other and then arriving at a decision."

44. In this context, reference can be made to the judgment of the Hon"ble Apex Court in the case of Indian Administrative Service v. Union of India and others : 1993 Supp (1) SCC 730:

"26. (1) Consultation is a process which requires meeting of minds between the parties involved to evolve a correct or at least satisfactory solution. There should

be meeting of mind between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action effects fundamental rights or to effectuate built in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken, be put to notice of the authority or the persons to be consulted; have the views or objections, taken them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstance it amounts to an action "after consultation".

(6) No hard and fast rules could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation" "was in fact consulted" or was it a "sufficient consultation".

45. In present case, after conclusion of hearing, three Committee::: members should have in a meeting, exchanged and shared their views. They ought to have discussed their thoughts together to find out whether they were all together. They should have attempted to iron out their differences and to reach a unilateral verdict. Being responsible Officers on a quasi judicial body undertaking caste adjudication, a mature approach was must. The documents presented before us as order of majority dated 31.12.2015 or as dissenting order dated 31.12.2015, do not qualify as "orders" of the Scrutiny Committee. The entire exercise of three-members of Committee, after closing the caste claim for orders on 31.12.2015, amounts to a fraud on adjudication and is unsustainable. We, accordingly, quash and set aside the so called impugned order dated 31.12.2015 and restore proceedings back to the file of respondent No. 2.

46. This Court will be failing in its duty if action under Section 195 with Section 340 Criminal Procedure Code, is not taken against the three-members who have

signed the order dated 31.12.2015. Prima facie, an offence u/ss. sections 192 and 193 Indian Penal Code committed by them, is demonstrated on records.

47. Issue notice to these members to show cause, returnable on 24.04.2017. Respondent nos.1 and 2 to complete service of notice upon them despite fact whether they are continuing as or have ceased to be such members or have retired.

48. After hearing the rival contentions of both the sides, we are convinced that there was no meeting of minds of the members of the Scrutiny Committee prior to passing of the order while deciding the caste claim of the petitioner. So also, there is violation of Rules contemplated in Rules of 2012 while adopting the procedure and passing the order by the Scrutiny Committee, while deciding the caste claim of the petitioner. Hence, the Scrutiny Committee should consider all the rival contentions raised by the learned counsel and apply its mind on consultation with each other and decide the caste claim of the petitioner on the above lines. Thus, without observing anything more on merits of the controversy and keeping all rival contentions open, we pass the following order :

ORDER

(i) The impugned order dated 19.01.2016 passed by the Respondent No. 2 Scrutiny Committee is quashed and set aside.

(ii) The caste claim of the petitioner is remanded to the respondent No. 2 Committee for a fresh consideration of material on record on merits and in accordance with law.

(iii) The Committee shall give an opportunity of hearing to the petitioner as well as respondents and pass a reasoned order within a period of six months from date of communication of this order.

(iv) The parties to appear before the respondent No. 2 Scrutiny Committee on 10th April, 2017 (v) Civil Application Nos. 1227/2016, 1564/2016 and 1779/2016 do not survive. They are also disposed of.

(vi) Notice to show cause issued to the three Committee members who have signed the second order sheet dated 31.12.2015 and the impugned order, is made returnable on 24.04.2017.

(vii) Registry to register separate proceedings in that respect.

(viii) Records of present petition, records of Writ Petition No. 1800/2014 with Civil Application No. 24/2016 therein, shall be preserved for use in Section 195/ Sec.340 Cr.P.C. proceedings.

(ix) Rule made absolute in the aforesaid terms. However there shall be no order as to costs.