

(2018) 07 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition no. 145, 146, 147, 181 2018

Sudha Shambhunath Singh

APPELLANT

Vs

State Of Maharashtra And Ors.

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Scheduled Caste Scheduled Tribe (denotified Tribes) Act, 2000 — Section 6, 18
Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of)Caste Certificate Rules, 2012 — Rule 11, 12, 13, 13(1), 17

Citation : (2018) 07 BOM CK 0062

Hon'ble Judges : R. M. SAVANT, J;REVATI MOHITE DERE,J

Bench : Division Bench

Advocate : Y.S.Jahagirdar, P.N. Patil, Geeta Shastri, H. S. Venegonkar, R.K. Mendadkar, C.K. Bhangoji, Komal Gaikwad, Tanaji Jadhav,A.V. Anturkar, R.K.Mendadkar

Final Decision : Dismissed

Judgement

PER R. M. SAVANT J),,,

1 Rule, in all the Petitions, having regard to the challenge raised made returnable forthwith and heard.",,

2 The above Writ Petition and the companion Petitions have been filed by the Petitioners challenging the orders of the Caste Scrutiny Committees by,,

which the caste certificates of the Petitioners have been invalidated. In view of the fact that a common issue is raised in the above Petitions, the",,,

Petitions are being heard together. The Petitioners in each of the above Petitions would be compendiously referred to hereinafter as the Petitioners,",,

the Caste Scrutiny Committee as the Caste Scrutiny Committees, the Vigilance Cell as the Vigilance Cells and the Deputy Superintendent of Police as",,,

the Deputy Superintendents of Police.,,,

FACTUAL MATRIX,,,

3 The Petitioners herein contested the elections to the Mumbai Municipal Corporation from different wards in the seats meant for the reserved,,

category. The Petitioners at the time of filling up the nomination form submitted their caste certificates which they claimed were issued by the,,

Competent Authority. The Petitioners had submitted the said caste certificates for verification to the concerned Caste Scrutiny Committees. The,,

Petitioners contested the elections to the Mumbai Municipal Corporation and were declared as elected from different wards, which results were",,,

declared on 22nd 2017. It seems that some of the Petitioners had submitted their caste certificates for verification and since no decision was,,

communicated by the concerned Scrutiny Committees, the Petitioners have filed the above Writ Petitions in this Court claiming the relief that no",,,

coercive action be taken against the Petitioners on the ground that the caste validity certificates were not produced by the Petitioners. It seems that it,,

is during the hearing of the Petitions that the Learned Counsel for the Complainants had produced the copy of the order passed by the Scrutiny,,

Committees, upon which leave to amend the Petitions was granted so as to challenge the order passed by the Scrutiny Committees and ad^{interim}",,,

relief was also granted that no coercive steps be taken against the Petitioners on the basis of the order of the Caste Scrutiny Committees. The,,

Petitioners accordingly amended their Petitions and have now laid a challenge to the orders passed by the Caste Scrutiny Committees on such grounds,,

as are available to them. One of the grounds of challenge is the ground that the reports of the Vigilance Cells which have been submitted have not,,

been submitted with the endorsement of the Deputy Superintendents of Police of having accepted the said reports and therefore the reports of the,,

Vigilance Cells could not have been taken into consideration by the Caste Scrutiny Committees and having done so by the Caste Scrutiny Committees",,,

the orders passed by the Caste Scrutiny Committees in each of the above Petitions are vitiated on the said ground. There are other grounds on which,,

the orders passed by the Caste Scrutiny Committees are under challenge.

However, all the Learned Counsel were adÂaidem that the issue that is",,,
required to be addressed at the outset is the issue arising out of the ground
adverted to hereinabove. We therefore proceeded to address the said,,
issue.,,,

4 In so far as the said ground of challenge is concerned, an Affidavit in Reply has
been filed by the State Government as well as the Respondent No.5",,,

i.e. the Complainant. In the reply filed on behalf of the State Government by Smt
Mamta S. Shere, Research Officer, District Caste Certificate and",,,

Scrutiny Committee Mumbai City. It is stated that pursuant to the decision of the
Division Bench of this Court sitting at Nagpur in PIL No.91 of 2016",,,

the post of Deputy Superintendent of Police attached to the Vigilance Cell was
reinstated and by Government Resolution dated 11Â11Â2016 the,,

Vigilance Cell was reconstituted as per Rule 12 and the Vigilance Cell now
consists of Deputy Superintendent of Police, Police Inspector and Police",,,

Constable. It is further stated that by office order dated 4Â2Â2017 of the
Directorate General of Police additional charge of the Deputy,,

Superintendent of Police for respective committees is given to the persons whose
names are mentioned in the said order dated 4Â2Â2017 till the,,

regular appointments of the Deputy Superintendent of Police are made. It is
stated that in so far as Mumbai city is concerned, Shri B. S. Indulkar was",,,

given additional charge as Deputy Superintendent of Police, Vigilance Cell. It is
further stated that the said officer was transferred on the regular",,,

course by transfer order dated 29Â?42017 and was relieved from his charge on
5Â?5Â?2017. It is further stated that the Vigilance Cell after carrying out,,

inquiry and verifications submitted the Vigilance Report on 28Â?6Â?2017, under
the signature of the Inspector of Police.",,,

It is further stated that the Vigilance Cell Report is not binding on the Caste
Scrutiny Committee as per Rule 17(7) of the 2012 Rules. It is further,,

stated that the Caste Scrutiny Committee is empowered to issue validity
certificate without calling for the Vigilance Cell Report if prima facie material,,

produced and documents are found to be genuine. It is further stated that as per
Rule 12(3) the Vigilance Cell works under the control and supervision,,

of the concerned Caste Scrutiny Committee. It is lastly stated that the Petitioner
has not taken any objection to the Vigilance Report at the time of,,

hearing which took place before the Caste Scrutiny Committee. It is also stated

that neither in the Act nor in the Rules there is any provision for the,,
report being required to be approved by the Deputy Superintendent of Police and/
or is required to be signed by the Deputy Superintendent of Police.,,,

5 In the reply filed on behalf of the Respondent No.5 who was the Complainant,
apart from questioning the manner in which the Petitioner has",,,
obtained the caste certificate as belonging to Koyari Caste and the Petitioner's
entitlement to a certificate belonging to the other backward class. It is,,
stated that the Petitioner having never objected to the Vigilance Cell Report
before the Caste Scrutiny Committee is now estopped from challenging,,
the said report in view of her acquiescence waiver. It is further stated that since
the Respondent No.4 committee was not agreeable to the report, it",,,
issued a show cause notice dated 23Â6Â2017 to the Petitioner to which show
cause notice the Petitioner filed a reply and contended that the report is,,
in favour of the Petitioner. It is lastly stated that the decision making process of
the committee is based upon the material on record, it has recorded",,,
pure findings of fact and therefore interference of this Court is not warranted.,,,

6 The Learned Counsel for the parties i.e. the Learned Senior Counsel appearing
for the Petitioner Mr. Y. S. Jahagirdar, the Learned Senior Counsel",,,
appearing for the Respondent No.5 Mr. A. V. Anturkar, the Learned Counsel
appearing for the Respondent No.8 Mr. R. K. Mendarkar, the Learned",,,
Counsel appearing for the Petitioner Mr. Suresh Shah in Writ Petition No.2269 of
2017 and the Learned Counsel appearing for the Respondent No.6,,
Mr. Chintnamani Bhangoji, and the Respondent No.8 in Writ Petition (L) No.2269
of 2017 in person Mr. Rajesh Kanojia, were heard on the said issue,",,
which has been adverted to hereinabove.,,,

7 Submissions of the Learned Senior Counsel Mr. Y. S. Jahagirdar appearing for
the Petitioner in Writ Petition No.145 of 2018 :(i) That the,,
constitution of the Vigilance Cell consisting of Deputy Superintendent of Police
and other police personnels has its genesis in the judgment of the Apex,,
Court in the matter of Kumari Madhuri Patil Vs. Addl. Commissioner Tribal
Development & Ors. and therefore the said requirement of there being a,,
Deputy Superintendent of Police associated with the Vigilance Cell cannot be
done away with.,,,

(ii) That the proceedings for verification of caste certificates is now codified by
the Maharashtra Scheduled Caste Scheduled Tribe (denotified Tribes),,,

Act 2000 and the Rules of 2012 framed thereunder. Rule 12 postulates the constitution of the Vigilance Cell which is to assist the Scrutiny Committee,,
in conducting the field inquiry under Rule 17. The said Rule contemplates the Deputy Superintendent of Police being part of the Scrutiny Committee,,
apart from Police Inspectors and Police Constables to assist the Police Inspector.,,
Hence after codification of the proceedings the post of the Deputy Superintendent of Police in so far as the Vigilance Cell is concerned is intact and,,
therefore if the Deputy Superintendent of Police has not endorsed the Vigilance Cell Report then the orders stand vitiated on the said ground.,,

(iii) That the attempt of the State Government to do away all the post of the Deputy Superintendent of Police in so far as the Vigilance Cell by issuing,,

a Government Resolution in that regard, has been struck down by the Division Bench of this Court sitting at Nagpur in PIL No.91/2016 and the",,,

Division Bench has directed that the post of Deputy Superintendent of Police be reinstated. Hence the association of the Deputy Superintendent of,,

Police in the Vigilance Cell is mandatory and therefore it was necessary for the Deputy Superintendent of Police to endorse upon the report of the,,

(a),"Divisional Commissioner or Additional Divisional

Commissioner Revenue or Collector or Additional Collector (IAS) or

Additional Collector (Selection Grade) or Joint Secretary of State

Government",Chairman

(b),"Deputy Commissioner (Social Welfare) or Regional

Deputy Commissioner (Social Welfare) or Divisional Social Welfare

Officer",Member

(c),"Research Officer or Assistant Commissioner (Social Welfare) or Specia

District Social Welfare Officer",IMember Secretary

(v) That the appointments of the Deputy Superintendents of Police as members of the Vigilance Cells can be seen from the office order dated 4Â?,,,

22017 issued by the Directorate General of Police in the aftermath of the judgment dated 25Â8Â2016 of the Nagpur Bench of this Court in PIL,,

No.91 of 2016, as also the further order dated 29Â?4Â?2017 of the Directorate General of",,,

Police giving additional charge of the Vigilance Cells to the Deputy Superintendents of Police mentioned in the said order until regular appointments,,

are made.,,

(vi) That in the instant case Mr. B. S. Indulkar and Mr. Ravindra Patil were given additional charge of the Deputy Superintendents of Police in so far,,

as the Vigilance Cells attached to the Caste Scrutiny Committees of Mumbai and Mumbai Suburban District are concerned and therefore merely,,

because the reports have not been endorsed by the said Deputy Superintendents of Police, the orders passed by the Caste Scrutiny Committees",,,

cannot be said to be vitiated on the said ground.,,

CONSIDERATION,,

14 The issue which we are dealing with namely whether on account of the Deputy Superintendents of Police not having endorsed the Vigilance Cell,,

Reports the orders of the Scrutiny Committees stand vitiated, has to be addressed by looking at the historical background of the Vigilance Cells, the",,,

statutory regime which has come into force for regulating the issuance and verification of the caste certificates and the conduct of the Petitioners.,,

In so far as the Vigilance Cells are concerned prior to the statutory regime coming into force the Apex Court in Madhuri Patil's case (Supra) laid,,

down the guide lines to streamline the procedure for issuance of the caste / tribes certificate.,,

In so far as the Vigilance Cells are concerned paragraphs 5 and 6 of the said guide lines are material and are reproduced hereinunder:,,

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of,,

Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the,,

candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer",,,

should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should",,,

also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or",,,

such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars,,

as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals,",,

customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.",,,

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be ""not genuine"" or 'doubtful' or",,,

spurious or falsely or wrongly claimed, the Director concerned should issue showÂcause notice supplying a copy of the report of the vigilance officer",,,

to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is,,

studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt",,,

of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an",,,

opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the",,,

committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all,,

evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any,,

person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or",,,

through counsel, the Committee may make such inquiry as it deems expedient and consider the claims visÂavis the objections raised by the candidate",,,

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

Hence the Apex Court in Madhuri Patil's case (supra) directed that each Directorate should constitute a vigilance cell consisting of Senior Deputy,,

Superintendent of Police in overÂall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go,,

to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the",,,

place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the,,

candidate or the parent or guardian, as the case may be. Hence the Deputy Superintendent of Police was to be in over all charge of the Vigilance",,,

Cell.,,,

In so far as the guideline No.6 is concerned, on receipt of the report from the

vigilance officer if he found the claim for social status to be "not",,,
genuine"" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report",,,
of the vigilance officer to the candidate by a registered post. However, the field is now occupied by the statutory regime in the form of the Act and",,,
Rules of 2012 which we would presently refer to hereinunder.,,,
15 In so far as the statutory regime is concerned, the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic",,,
Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act came into force",,,
in the year 2001. The object of the Act is to provide for regulation of the issuance and verification of the caste certificate to the persons belonging to,,
the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward",,,
Category and for matters connected therewith or incidental thereto. Section 6 of the Act which provides for verification of the caste certificate by the,,
Scrutiny Committee is germane in the context of the present Petitions. The said Section 6 is reproduced hereinunder :,,
6. Verification of Caste Certificate by Scrutiny Committee. Â (1) The Government shall constitute by notification in the Official Gazette, one or more",,,
Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-Âsection (1) of section 4 specifying in the,,
said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.,,,
(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the",,,
Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for",,,
the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned",,,
Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.,,,
(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Cooperative",,,
Societies or any other Government aided institutions shall, make an application

in such form and in such manner as may be prescribed by the Scrutiny",,,
Committees for the verification of the Caste Certificate and issue of a validity
certificate, in case a person selected for an appointment with the",,,
Government, local authority, public sector undertakings, educational institutions,
coÂoperative societies or any other Government aided institutions who",,,
has not obtain such certificate.,,

(4) The Scrutiny Committee shall follow such procedure for verification of the
Caste Certificate and adhere to the time limit for verification and grant,,
of validity certificate, as prescribed.",,,

Section 18 of the Act confers powers on the State Government to frame Rules
subject to the previous publication. Accordingly the State Government,,
framed Rules which are known as the Maharashtra Scheduled Castes, Scheduled
Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other",,,
Backward Classes and Special Backward Category (Regulation of Issuance and
Verification of)Caste Certificate Rules, 2012. The Rules have been",,,
framed in furtherance of the objects of the Act, which we have adverted to
hereinabove. In the context of the present Petitions Rules 11, 12 and 13",,,
are material and are reproduced hereinunder:,,

11. Constitution of Scrutiny Committee:Â? The Scrutiny Committee shall consist
of the following members :,,

- (a) Divisional Commissioner or Additional Divisional Commissioner Revenue or
Collector or Additional Collector (IAS) or Additional Collector,,
(Selection Grade) or Joint Secretary of State Government Chairman,,
- (b) Deputy Commissioner (Social Welfare) or Regional Deputy Commissioner
(Social Welfare) or Divisional Social Welfare Officer Member,,
- (c) Research Officer or Assistant Commissioner (Social Welfare) or Special
District Social Welfare Officer Member Secretary,,

12. Constitution of Vigilance Cell:Â? (1) There shall be Vigilance Cell to assist each
Scrutiny Committee in conducting the field inquiry under rule 17.,,
the Vigilance Cell shall consist of:Â?,,

- (i) Deputy Superintendent of Police or equivalent,,
- (ii) Police Inspectors,,
- (iii) Police constables to assist the Police Inspectors,,

(2) Jurisdiction of the Vigilance Cell shall be subject to geographical jurisdiction

of concerned Scrutiny Committee, for all purposes including domestic",,,
inquiry and verification of authenticity of documents.,,,

Provided that, in appropriate case, if Scrutiny Committee feels, it may solicit a report of Vigilance Inquiry, from any other concerned Scrutiny",,,

Committee.,,,

(3) Vigilance Cell shall work under the control and supervision of concerned Caste Scrutiny Committee.,,,

13. Report of Vigilance Cell and Issues to be dealt with:Â (1) Vigilance Cell Officer(s) shall submit report upon investigating into the Scheduled Caste,,

converts to Buddhism, Denotified Tribes (Vimukta Jatis) Nomadic",,,

Tribes, Other Backward Classes or Special Backward Category claim, referred to it,Â?",,,

(a) by visiting permanent place of residence and conducting domestic inquiry or / and,,

(b) by recording statements of respected and responsible persons from concerned area, including representatives of Local Self Government, Police",,,

Patil etc; or,,

(c) by collecting information, as part of recording statement(s), as regards to name, age, educational qualification, occupation, existing place of",,,

residence and information regarding properties (existing and disposed of) of family members of applicant or Claimant or,,

(d) by collecting information including the sociological anthropological and ethnological (anthropological moorings and ethnological kinship), genetical",,,

traits of the Schedule Caste, Scheduled Caste converts to Buddhism, Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes or",,,

Special Backward Category, if any, or",,,

(e) by personally visiting officer(s) of Competent Authority or revenue or school or other offices.,,,

(2) Notwithstanding anything contained in any provision of these rules:Â?",,,

(a) The vigilance Cell shall not record concluding remark or opinion, since vigilance inquiry is meant for internal assistance to the Scrutiny Committee",,,

and adjudication of Scheduled Caste, Scheduled Caste converts to Buddhism, Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward",,,

Classes or Special Backward Category status is exclusive domain of the Scrutiny

Committee.,,

(b) finding recorded and opinion expressed if any, by the Vigilance Officer shall not be binding on Scrutiny Committee nor could be used as evidence",,,

in support of Scheduled Caste, Scheduled Caste converts to Buddhism, Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes",,,

or Special Backward Category claim.Â,,

Hence Rule 11 provides for constitution of the Scrutiny Committee.,,

Rule 12 provides for constitution of the Vigilance Cell to assist the Scrutiny Committee in conducting the field inquiry under Rule 17. It is postulated,,

that the Vigilance Cell shall consists of i) Deputy Superintendent of Police or equivalent; ii) Police Inspectors; iii) Police constables to assist the Police,,

Inspectors. The Vigilance Cell has to work under the control and provision of the concerned Caste Scrutiny Committee as stated in subÂrule 3 of,,

Rule 12 .,,

Rule 13 contemplates the report to be submitted by the Vigilance Cell Officer / Officers upon investigating into the Scheduled Caste converts to,,

Buddhism, Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes or Special Backward Category claim. SubÂrule 2 is a non",,,

obstinate clause. SubÂrule 2(a) thereof mandates that the the Vigilance Cell shall not record concluding remark or opinion as the Vigilance inquiry is,,

internal aid to the Scrutiny Committee and subÂrule 2(b) declares that the finding recorded and opinion expressed, if any, by the Vigilance Officer",,,

shall not be binding on the Scrutiny Committee.Â Â,,

16 Hence a reading of the statutory regime as above which covers the aspect of the verification of a caste / tribe claim contemplates the Vigilance,,

Cell to comprise of a Deputy Superintendent of Police, Police Inspector and Police Constables. Neither in the Act nor in the Rules it is contemplated",,,

that the report has to be signed by the Deputy Superintendent of Police or that the Deputy Superintendent of Police has to submit the report. In fact in,,

terms of Rule 13(1) any Vigilance Cell Officer can submit the report after investigating into a caste or tribe claim which is referred to it, is carried out.",,,

Hence we do not find any statutory backing to the contentions raised on behalf of the Petitioners that since the reports have not been signed or,,

endorsed by the Deputy Superintendents of Police, the said reports are no reports in the eyes of law and therefore the orders passed by the Caste",,,

Scrutiny Committees are vitiated on the said ground.Â,,

17 In our view, the order passed by the Division Bench of this Court sitting at Nagpur in PIL No.91 of 2016 would not further the case of the",,,

Petitioners to contend that since the reports have not been signed or endorsed by the Deputy Superintendents of Police the orders passed by the Caste,,

Scrutiny Committees stand vitiated. In so far as the said PIL is concerned, as indicated above the challenge in the said PIL was to the Government",,,

Resolution dated 1Â6Â2016 by which the post of Deputy Superintendent of Police in the Vigilance Cell was abolished by the State Government. It is,,

in the teeth of the statutory requirement i.e. by Rule 12 that the Division Bench set aside the Government Resolution on the ground that by an,,

executive action what is provided by the Rules cannot be done away with. It is not the case of the Petitioners in any of the above Petitions that there,,

were no Deputy Superintendents of Police attached to the Vigilance Cells which in the instant case is in respect of the Caste Scrutiny Committees,,

exercising jurisdiction for Mumbai and Mumbai Suburban District. The State Government has placed on record the office order dated 4Â2Â2017,,

issued by the office of the Director General of Police by which order the Deputy Superintendents of Police, whose names are appearing in the said",,,

order have been given additional charge of the post of Deputy Superintendents of Police of the respective Vigilance Cells. The said order is followed,,

by a further order dated 29Â4Â2017 by which transfers have been made of the Deputy Superintendents of Police attached to the Vigilance Cells and,,

the additional charge has been given subject to regular appointments being made to the post of Deputy Superintendent of Police, Vigilance Cell. Hence",,,

it is not as if there was no Deputy Superintendent of Police attached to the concerned Vigilance Cell at the relevant time i.e. June / July 2017. In our,,

view therefore merely because the reports are not endorsed by the Deputy Superintendents of Police in the instant cases, would not impinge upon the",,,

legality of such reports.,,,

The observation of the Division Bench of this Court in the order dated 15Â3Â2018 in Writ Petition No.144 of 2018 in Pankaj Shobhnath Yadav's case,,

would also be of no assistance to the Petitioners as the Division Bench has specifically observed in the said order that it has not gone into the said,,

aspect viz whether the report of the Vigilance Cell is required to be endorsed by

the Deputy Superintendent of Police attached to the Vigilance Cell,,

18 The matter has to be looked at from one more perspective. It is required to be noted that in the above Petitions the reports were submitted by the,,

Vigilance Cells. The Caste Scrutiny Committees i.e. for Mumbai City and Mumbai Suburban District, did not agree with the Vigilance Cell Reports",,,

and therefore show cause notices came to be issued to the Petitioners on the points raised by the Vigilance Cells in their reports. To one such show,,

cause notices the Petitioners in Writ Petition No.145 of 2018 filed a reply and in so far as the said Writ Petition No.145 of 2018 is concerned relevant,,

excerpt from paragraph 7 of the said reply as also paragraph 6 of the Written Submissions are material and are reproduced hereinunder:,,

Excerpt from paragraph 7,,

â??The details of home and school inquiry are reflected in the Vigilance Report, which clearly establish the claim of â??Hindu Koyriâ?? (OBC).â??",,,

Paragraph 6 of the Written Submissions,,

6. The Ld. Vigilance officer has submitted vigilance report on 15/6/2017, wherein, there is no adverse of contra material against Applicant. All",,,

documents submitted by Applicant's are duly verified and proves it contains. The home and school enquiry is also held in favour of the Applicant and,,

there is no adverse remarks or any evidence brought on record by the Vigilance officer, therefore the Applicant has established her case by both",,,

count documentary evidence as well as home and school enquiry, which established affinity towards applicant's cast Hindu Koyri, which is recognized",,,

OBC in the Sate of Maharashtra. The other Petitioners in the other Petitions have also stood by the Vigilance Cell Reports in their respective cases,,

either in their replies to the show cause notices issued by the Scrutiny Committees, or in their written arguments / submissions filed before the",,,

concerned Scrutiny Committees.,,,

19 Hence the Petitioner in Writ Petition No.145 of 2018 and the other Petitioners in other Petitions accepted the said reports and in fact it was their,,

case that the said reports should be accepted by the Caste Scrutiny Committees. The Petitioners never questioned the said reports of the Vigilance,,

Cells before the Caste Scrutiny Committees and in fact participated in the hearing before the Caste Scrutiny Committees without demur and it is only,,

when the Caste Scrutiny Committees passed the impugned orders that the

reports are sought to be challenged on the ground that the reports are,,
suffering from an infirmity as they have not been signed or endorsed by the
Deputy Superintendents of Police, Vigilance Cells. In our view the",,,
reliance placed by the Learned Senior Counsel Mr. Anturkar for the Respondent
No.5 on the Division Bench Judgments of this Court in Surayya,,
Shaheen Gous Mohiuddin (supra), Ajaykumar Y. Nikhar Vs. State of Maharashtra
& Ors., is apposite. In Ajay Kumar Nikhar's case (supra) it has",,,
been held by the Division Bench of this Court that the objection to the
constitution of the committee has to be taken at the earliest opportunity and if,,
not taken then the doctrine of defacto would be attracted. It is held in Surayya's
case by another Division Bench of this Court that it is not necessary,,
for all members of the Vigilance Cell to visit the claimants / Petitioners and to
make inquiry in respect of the social status claim of the Petitioner. A,,
reference could also be made to the Judgment of the Division Bench in Avinash T.
Limje's case (Supra) wherein the Division Bench held that unless,,
prejudice is shown to be caused to the Petitioners by the Vigilance Cell not
having a Deputy Superintendent of Police the report of the Vigilance Cell,,
cannot be said to be vitiated. In our view therefore the Petitioners by their
conduct have acquiesced in the reports of the Vigilance Cells and are now,,
estopped from challenging the same on the ground of the Deputy
Superintendents of Police not having endorsed the reports. Â,,
20 We have noticed hereinabove that there is no statutory requirement for the
reports of the Vigilance Cells to be endorsed by the Deputy,,
Superintendents of Police. Even in respect of the violation of a mandatory
provision, it is trite that the person alleging violation has to show the",,,
prejudice that has been caused to him. In the said context a useful reference
could be made to the Judgment of the Apex Court in Aligarh Muslim,,
University's case (supra) wherein the Apex Court has held that where no
prejudice is caused to the person concerned the interference under Article,,
226 is not necessary. It is held in State Bank of Patiala & Ors that even a
mandatory requirement can be waived by the person concerned if such,,
requirement is in his interest and not in public interest. In the instant cases as
indicated above there is no statutory requirement that the reports of the,,
Vigilance Cells are required to be endorsed by the Deputy Superintendents of
Police. The Petitioners are calling in question the said reports after,,

accepting the said reports and in fact in their replies to the show cause notices issued by the Caste Scrutiny Committees or written submissions,,

defended the said reports and prayed that the Caste Scrutiny Committees accept the said reports. It is only after the Caste Scrutiny Committees,,

rejected their caste claims that the Petitioners have now found it fit to challenge the Vigilance Cell Reports on the ground that the same have not been,,

endorsed by the Deputy Superintendents of Police. Hence the Petitioners by their conduct have themselves shown that no prejudice was caused to,,

them by the said reports and also they have by their conduct acquiesced in the said reports by participating in the proceedings before the Caste,,

Scrutiny Committees without taking any objection to the said reports.,,

21 We are unable to accept the contention of the Learned Senior Counsel for the Petitioners that the Deputy Superintendents of Police are required to,,

endorse the reports and as such a practice was being followed by the Vigilance Cells. In our view merely because in some cases in the past the,,

Deputy Superintendents of Police have endorsed on the reports of the Vigilance Cells, the said practice cannot assume the status of a requirement",,

which is required to be followed. The practice even if followed by the Vigilance Cell in some cases cannot be elevated to the status of a statutory,,

requirement, violation of which would vitiate the report of the Vigilance Cell, when statutorily there is no such requirement.",,

22 Hence to put the matter in perspective, the non-endorsement of the Vigilance Cell Reports by the Deputy Superintendents of Police would not",,

vitiate the reports of the Vigilance Cells in the instant cases, having regard to the historical background, the statutory regime which is applicable and",,

the conduct of the Petitioners. The challenge of the Petitioners to the orders passed by the Caste Scrutiny Committees on the said ground would,,

accordingly stand rejected.,,

23 The above Writ Petitions would now have to be heard on merits as regards the caste / tribe claim of each of the Petitioners.Â Â,,

After pronouncement,,

Date: 17th July 2018,,

Place the above Petitions for being heard on merits on 31Â7Â2018, to be taken up at 3.00 p.m. AdÂinterim relief which is in operation would continue",,

to operate till 1Â8Â2018. Â,,