

**(2018) 07 BOM CK 0065**

**In the Bombay High Court**

**Case No :** Writ Petition No. 3588, 3587, 3627, 3628, 3700, 3701, 3817

Suresh S/O Sukhdeo Wankhede

APPELLANT

Vs

District Caste Certificate Scrutiny Committee No. 2, Akola  
Thr. Its Member/Secretary And Others

RESPONDENT

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**Date of Decision :** 16-07-2018

**Acts Referred:**

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 Certificates Act, 2000 — Section 8

**Citation :** (2018) 07 BOM CK 0065

**Hon'ble Judges :** B.P. DHARMADHIKARI, J; Z.A. HAQ, J

**Bench :** Division Bench

**Advocate :** S.D. Chopde, N.R. Patil, N.P. Mehta

**Final Decision :** Partly Allowed

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## **Judgement**

B.P. DHARMADHIKARI, J.

1. We have heard learned respective Counsel for petitioners and learned A.G.Ps., for respondent nos. 1 to 3. Though in few matters, Gram Panchayat

concerned has been added as respondent no.4/5, either it is still not served or then though served there is no appearance for it. It is not a necessary

party to the present petitions.

2. Considering the nature of controversy and short point involved, which at this stage arises for consideration, with the consent of the parties, we have

taken up the matters for final hearing. Rule accordingly issued is made returnable forthwith.

3. It is not in dispute that in all these matters, caste claims need to be verified by adopting the procedure stipulated in 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 Certificates Rules, 2012 (hereinafter referred to as "the 2012 Rules" for short).

4. Though in some Writ Petitions, there are individual contentions and various grounds have been urged before us, common ground in all these matters

is about violation of procedure stipulated in Rule 17 of the 2012 Rules. Petitioners have relied upon Division Bench judgments reported in 2016 [3] All

MR 717 (Lawrence Salvador D'Souza .vrs. The State of Maharashtra and others) and 2015 [5] All MR 563 (Sapremsing Madhavrao Patil .vrs. State

of Maharashtra and others), to buttress their submissions. They contend that petitioners were not served with copy of Vigilance Cell Report and none

of them has received notice in Form No.25.

5. Learned A.G.Ps., appearing on behalf of respondent State, are relying upon the impugned orders to urge that petitioners were called for hearing and

documents available were shown to them. Submission is, thus, in accordance with the principles of natural justice, fairly the decision has been taken.

They also submit that there no malafides urged against any Member or the Committee by any of the petitioners.

6. Perusal of the procedure stipulated in Rule 17, shows that as per SubRule [6], if after receipt of claim, along with an affidavit, the Committee is

satisfied with the genuineness thereof, it has to forthwith issue validity certificate in Form No.20, without any inquiry by the Vigilance Cell. SubRule

[7], applies when the Scrutiny Committee is not so satisfied. In that event, the caste claim is to be referred to Vigilance Cell for carrying out suitable

enquiry as deemed fit. The proviso to subRule [7], mandates that findings recorded by the Vigilance Cell is not binding on the Scrutiny Committee at

all and the Vigilance inquiry is a sort of internal assistance extended to the Scrutiny Committee in adjudication of the caste claim. SubRule [10],

then enables the Committee to issue validity certificate in Form No.24, if it is satisfied with the genuineness of the claim, after receipt of the Vigilance

Cell report. When it is not so satisfied, it has to proceed further as stipulated in subRule [11]. SubRule [11][i], lays down that the Committee has to

call upon claimant to discharge the burden cast upon it by Section 8 of 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

Certificates Act, 2000. (Maharashtra Act No. 23 of 2001) (hereinafter referred to as "Act No.23 of 2001" for short). This is to be done by

issuing notice in Form No.25. Form no.25 in turn is important, because the Committee in that Form is required to record its findings on caste claim.

Thus, with the findings of the Committee after receipt of Vigilance Cell, when a notice goes to claimant, due to adverse findings of the Committee,

the claimant is informed why the Committee is not satisfied with his caste claim, and thereafter, burden shifts to him under Section 8 of the Act No.23

of 2001.

7. None of the orders impugned before us show that this procedure has been followed by the Scrutiny Committee, Akola.

8. In some matters, petitioners claim that Vigilance Cell has not carried out home enquiry at all and petitioners were called to the office of the Scrutiny

Committee where the Vigilance Cell Authorities generally put some questions to them. We need not to go into the disputed question of facts at this

stage. Apart from above two judgments, this scheme and importance of Rule 17 and Form No.25 is also looked into by this Court in a judgment

reported at 2014 [3] Mh.L.J. 73 (Nahidabano Ferozkhan Pathan .vrs. Divisional Commissioner and others) . One of us, B.P. Dharmadhikari, J is party

to it.

9. Respective learned A.G.Ps., during arguments invited our attention to the state of affairs. According to them, petitioners were expected to lend

assistance to the Scrutiny Committee by giving complete family tree. Very cryptic information has been given and on that basis, the Committee has

adjudicated upon the claim. We find substance in this submission, because before us there is an effort by some of the petitioners to add to family tree

to demonstrate how the finding of relationship is bad in law.

10. It appears that when petitioners approached for verification of caste claim, in printed format of affidavit, there is a space for mentioning Family

Tree, and everybody has given bare minimum details or then person who has obtained the affidavit, has collected only such details. This tree therefore,

shows only one line of the descent from grandfather to father to petitioner.

11. Petitioners before this Court have only caste certificate and as per law have

been permitted to contest elections. They have been elected. Law also permitted them to submit validity within 6 months and accordingly their caste claim have been verified. A concession therefore, has been shown to petitioners by enabling them to contest the election only on the basis of caste certificate, after submitting an undertaking. In such litigation or rounds of litigations, petitioners would continue to discharge obligations of their office. If ultimately their caste claim is invalidated, it may constitute a fraud on democracy itself.

12. In this situation, as we find the approach of the Scrutiny Committee in all these matters laconic, in breach of 2012 Rules, and unsustainable, we quash and set aside the impugned orders passed by the Scrutiny Committee on 27.02.2018, 21.03.2018, 20.02.2018, 22.03.2018, 17.02.2018, 21.02.2018, 01.06.2018 and 23.05.2018. The matters are placed back before the Scrutiny Committee, Akola for taking fresh decision as per law.

13. We direct petitioners to appear before the Scrutiny Committee on 8th August, 2018 during working hours. On that day, petitioners shall file an affidavit about complete family tree and also disclose validities or invalidities in the family. If any caste claims are already pending before the Scrutiny Committee, or then in further challenge before any Court of law, details thereof shall also be furnished in that affidavit.

14. On that date, the Scrutiny Committee shall hand over copy of the vigilance cell report along with notice in Form No.25 to the respective petitioner.

The Scrutiny Committee shall also give petitioners next date of appearance and hearing, if it finds further vigilance enquiry into his matter unnecessary. Otherwise, it shall proceed further as per Rule 17 again.

15. Effort shall be made by the Scrutiny Committee to complete the verification as per the provisions contained in Act No.23 of 2001 read with 2012 Rules, within a period of next 6 months.

16. It is made clear that if the directions given to petitioner [supra], are not complied with on the date of his appearance, stipulated above, he/she shall not be permitted to exercise the right to vote in the meetings of the Gram Panchayat and shall not draw any allowance.

17. With above directions and observations, Writ Petitions are partly allowed and disposed of. Rule is made absolute in the aforesaid terms with no order as to costs.