

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

WRIT PETITION NO. 1780 OF 2016

Lawrence Salvador D'Souza, age 49 years]
R/o. Ausustin Villa, Majiwada Village,]
Thane 400 601. Maharashtra] ... Petitioner

Versus

1. The State of Maharashtra, Through its]
Secretary, Social Department, Mantralaya]
Mumbai - 400 032.]
2. Divisional Caste Certificate Scrutiny]
Committee No.1, Mumbai Division -]
Through its Member Secretary, having]
office at 5th floor, Konkan Bhavan, CBD]
Belapur, Navi Mumbai 400 614.]
3. Sub-Division Officer, Than, Sub-Divisional]
District Thane (Maharashtra)]
4. Thane Municipal Corporation, Through its]
Commissioner, having its office at]
Pachpakhadi, Thane (Maharashtra)]
5. Devram Laxman Bhoir, r/o. Janki Niwas,]
near Jai Jalaram Bappa Temple,]
BNalium Pada No.3, Thane 400 608]
(Maharashtra)]
6. The Chief Election Commissioner,]
Maharashtra State Election Commission]
1st Floor, Administrative Building,]
Hutatma Rajguru Chowk, Madam Cama]
Road, Mumbai - 400 032.] ... Respondents

Mr. Girish S. Godbole, with Mr. Sandesh Patil i/b Mr. Prakash Mahadik for the Petitioner.

Mr. P.P.Kakade, AGP, for the Respondent Nos.1, 2 and 3.

Mr. Ajit R. Pitale for the Respondent No.4.

Mr. P.K. Dhakephalkar, senior counsel with Mr. R.K. Mendadkar for the Respondent No.5.

Mr. Sachindra B. Shetye with Mr.Shriya Jadhav for the Respondent No.6.

**CORAM : S.C. DHARMADHIKARI &
A.A. SAYED, JJ.**

FRIDAY, 11TH MARCH, 2016

ORAL JUDGMENT : [Per S.C. Dharmadhikari, J.]

1 By this petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by the Caste Scrutiny Committee (Respondent No.2) dated 1st January, 2016. This petition was placed before a Bench presided over by Hon'ble Mr. Justice V.M. Kanade, but the Bench expressed its inability to take it up.

2 Thereafter, on a submission of the Registry, the Hon'ble The Chief Justice was pleased to direct that the Writ

Petition be placed before a Bench presided over by one of us (S.C. Dharmadhikari, J.).

3 Hence Rule. Respondents waive service. By consent, Rule made returnable forthwith.

4 The petitioner, a citizen of India, born on 6th October, 1966, in Majiwada Village, Taluka and District Thane, claims that he belongs to the East Indian Christian / East Indian Catholic community recognized as Other Backward Class (OBC) vide Sr. No.341 of the List of Other Backward Classes which has been drawn up by the State of Maharashtra.

5 The petitioner states that his father was a farmer and not only his father but grandfather were involved in agricultural operations much prior to 1950. He was baptized on 30th October, 1966, at St. John Baptist Church, Thane. The petitioner states that there is no dispute that he professes and practices Christianity. However, the Baptism Certificate issued on 30th October, 1966, would not carry the remark “East Indian Christian” for that community was not notified as OBC in 1966,

but much later. The petitioner relies upon Annexure-C to the petition which is a photocopy of the original Baptism Certificate. The petitioner joined St. John Baptist High School, Thane, and upon passing S.S.C. Examination, he was admitted to the St. John Baptist Junior College, Thane. He left the said college on 31st May, 1986. Against the caste column in the School Leaving Certificate it is recorded that the petitioner is Christian. The photocopy of the School Leaving Certificate is dated 1st August, 1987.

6 The claim of the petitioner is that there is a Trust and which is registered and established way back in 1887 titled as “The Bombay East Indian Association”. The name of the Trust is suggestive of the representation of the East Indian community by it. Particularly, East Indian Christians and 3500 in number are its members. After the Bombay Public Trust Act, 1950, was enacted, this Trust was duly registered thereunder. It is deemed to be a society under the Societies Registration Act, 1860, as well. The petitioner became a member of this Association on 5th September, 2007, and a certificate to this effect was issued in his favour on 5th November, 2007, copy of which is at Annexure-E.

7 The petitioner relies upon a communication by the State with the President of this Association dated 11th October, 2007, informing him that the certificate issued by the said Society / Trust would be one of the documents based on which a Caste Certificate can be issued. This communication was addressed by the State upon a query by the President of The Bombay East Indian Association. Annexure-F is a copy of this communication.

8 Prior thereto, on 1st March, 2006, the Government of Maharashtra issued a Notification which included East Indian Christians and East Indian Catholics as Other Backward Classes and for the first time. This resulted in number of applications being filed before the competent authority for grant of a Caste Certificate carrying this nomenclature. Majority of the applicants produced a Baptism Certificate and, therefore, a query was raised whether the said remark would suffice for the purpose of issuance of a Caste Certificate. That is how the Sub-Divisional Officer, Thane, corresponded with the Department of Social Justice, Government of Maharashtra and sought its guidance

whether a Caste Certificate can be issued on the basis of the Baptism Certificate. The State, through this Department, on 30th January, 2009, informed the Sub-Divisional Officer, Thane, that the Baptism Certificate can be considered along with other documents for the purpose of grant of a Caste Certificate.

9 It is in these circumstances that the petitioner states that various Churches in Thane and Mumbai District started moving applications for incorporation and insertion in the Baptism Certificate, particularly the words “East Indian Christian”. On the order of the Archbishop, the Chancellor issued a letter stating that such a remark can be added if the Church record shows that the person is East Indian or if the Parish Priest knows for sure that the person is an East Indian or if person obtains a certificate from Mool East Indian Sangathana. It was further stated that the Parish Priest has to apply to the Archbishop House for permission and thereafter on permission of the Archbishop, the remark column can contain the insertion of “East Indian”. The copy of the Chancellor's letter is Annexure-I dated 20th June, 2009.

10 Then reliance is placed upon a Resolution of the Government of Maharashtra dated 27th September, 2012, amending the earlier Resolutions and laying down requirements for grant of Caste Certificate. The documents stipulated and required were - Baptism Certificate of registered Church, or Birth / Death Certificate or Marriage Certificate or affidavit stating that the applicants were original residents of the State of Maharashtra. In addition Revenue records were required to be submitted alongwith application for grant of Caste Certificate. Annexure-J is a copy of this Government Resolution. The petitioner states that having been assured of the status and confident that he was eligible for the benefits in terms of the Government Resolution dated 1st March, 2006, moved in the matter for insertion in the remark column of the Baptism Register that the petitioner is an East Indian Christian. The petitioner relies upon the endorsement by the Parish Priest that the petitioner is an old resident of the Thane District and born in traditional East Indian family. Annexure-A is a copy of the letter of the Parish Priest dated 5th April, 2011. The petitioner then relies upon a permission accorded by the Episcopal Vicar by his

letter dated 13th April, 2011, addressed to the Reverend Father Milton Gonsalves, St. John The Baptist Church. Accordingly, the Baptism Certificate of the petitioner was duly corrected to show that he is an East Indian Christian. The fresh Baptism Certificate dated 19th April, 2011, copy of which is at Annexure-L was issued in favour of the petitioner.

11 It is armed with these certificates that the petitioner made an application to the competent authority, namely, the Sub Divisional Officer, District Thane, for grant of a Caste Certificate certifying him as an East Indian Christian. He also annexed the relevant documents with his application. These included domicile certificate issued by the Executive Magistrate, Thane, dated 25th April, 2011. Based on this application, a Caste Certificate was issued to the petitioner on 30th May, 2011, copy of which is at Annexure-M. Then the petitioner applied for verification of the Caste Certificate and hence approached the Caste Scrutiny Committee, Thane, on 2nd September, 2011, which application was received by the Committee on 5th September, 2011. The petitioner relies upon the application, its accompaniments and to urge that the Caste Scrutiny Committee appointed a Vigilance

Officer to verify the genuineness of the documents submitted by the petitioner. The Vigilance Officer addressed a letter dated 5th December, 2011, to the Principal, St. John The Baptist High School, Thane, seeking to enquire about the genuineness of the School Leaving Certificate dated 1st August, 1987. It is the claim of the petitioner that the Vigilance Officer visited the School and collected from the Principal, a revised School Leaving Certificate dated 7th December, 2011, which records the petitioner as belonging to East Indian Christian community / class.

12 The petitioner relies upon a letter dated 13th December, 2011, of the Principal of this High School addressed to the Vigilance Officer but according to the petitioner this inadvertently states that no correction has been made in the General Register. The extract of the General Register was enclosed with the letter dated 13th December, 2011, which reveals that a correction has been made by the School authorities on the request of the petitioner. The extract from the Register was forwarded to the Vigilance Officer and a photocopy thereof is Annexure-R collectively. The petitioner claims that the Vigilance Officer verified the authenticity and genuineness of the

documents from the High School and was thus of the opinion that there is substance in the claim of the petitioner that he belongs to East Indian Christian – OBC. The enquiry made by him is relied upon.

13 Thus, on the strength of this report dated 26th December, 2011, the petitioner appeared before the Scrutiny Committee in January, 2012, but the Committee was not fully satisfied with the report of the Vigilance Officer. It called upon the petitioner to produce Revenue records and other documents in support of his caste claim. The petitioner, therefore, relied on certain works and produced extracts from the book “TRACE” and “THE EAST INDIANS”. These books traced the history of this community, their traditions, customs, traits, marriage / death ceremonies etc. The petitioner also produced birth certificate of his grand-father and uncles and other records which, according to him, establish and prove that unless and until the petitioner is an East Indian Christian he would not be familiar and acquainted with the same. It is thus the petitioner's assertion that the Committee passed an order on 11th January, 2012, validating his caste claim based on all these materials.

14 The petitioner, therefore, says that there is no question of any interpolation or insertion, much less forgery and fraud for the petitioner cannot be possessing a document certifying him as East Indian Christian particularly his School records and the Baptism Certificate. Those being issued much prior to 1st March, 2006, but the other record revealing that there is substance in the petitioner's claim that the order passed by the Scrutiny Committee validating the caste certificate is supported by the petitioner.

15 It is on the strength of these documents that the petitioner decided to contest the election of the Thane Municipal Corporation, particularly from the reserved Constituency / Ward No.19-A. The reservation was for OBC. The elections were held on 16th February, 2012, at which the petitioner and respondent No.5 (original complainant) were, *inter alia*, the contesting candidates. The petitioner was declared elected.

16 We are really concerned with the developments and events subsequent to this election inasmuch as the respondent

No.5 firstly approached the Civil Judge, Senior Division, Thane, by filing Election Petition No.9 of 2012. He also instituted Writ Petition No. 2473 of 2012, challenging the order of the Scrutiny Committee dated 11th January, 2012, validating the caste claim of the petitioner.

17 The petitioner then points out as to how this Writ Petition was contested by also the Committee. The pendency of the Writ Petition apart, the fifth respondent filed a complaint under section 7(1) of The Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2001, alleging that the petitioner obtained a Caste Validity Certificate by perpetrating a fraud. There is also a criminal complaint filed and since the Police did not register an FIR, the respondent No.5 approached this Court in a Criminal Writ Petition No. 2247 of 2012. That Writ Petition came to be dismissed by a Division Bench of this Court by an order dated 22nd / 31st August, 2012. A Special Leave Petition against this order was also dismissed by the Hon'ble Supreme Court.

18 The respondent No.5 then pressed Writ Petition No. 2473 of 2012 raising a substantial challenge, namely, to the order of the Caste Scrutiny Committee. Eventually that was withdrawn on 4th December, 2012, with liberty to raise all contentions before the Caste Scrutiny Committee. The respondent No. 5 thus invoked the Caste Scrutiny Committee's powers to invalidate the caste claim on the ground of forgery and fraud and the Committee being seized of such an application / proceeding passed an order on 4th March, 2013, dismissing the complaint of the respondent No.5 dated 22nd May, 2012.

19 Annexure-CC is a copy of the order passed by the Committee.

20 Then commenced another round of litigation in this Court, namely, institution of Writ Petition No.3089 of 2013. There as well, the Committee's order came to be justified, not just by the Committee but by the present petitioner as well. However, on 13th June, 2014, a detailed order was passed by the Division Bench of this Court (Annexure-FF) remanding the case / matter

to the Scrutiny Committee for a decision afresh in accordance with the relevant rules, guidelines and material on record by granting opportunity to both sides.

21 The Supreme Court of India was approached by the petitioner against this order, but on 22nd August, 2014, the Special Leave Petition came to be disposed of without any interference by the Hon'ble Supreme Court of India in the order of the Division Bench and by assigning brief reasons. Then, the petitioner and the respondent No.5 appeared before the Committee. The Committee thought it fit to call for a fresh report of vigilance and that is how the Vigilance Officer, according to the petitioner, visited the area, interviewed several persons and arrived at a conclusion that none of the documents submitted by the petitioner can be claimed to be bogus or forged or fabricated. The report was thus, according to the petitioner, in his favour.

22 Thereafter, the Committee issued a communication to the petitioner and after his appearance before it and though seized of an application dated 2nd December, 2014, the invalidation order was passed. According to the petitioner, this

order was passed on 29th / 30th December, 2014. However, the petitioner relies upon the events preceding this order and particularly of the Vigilance Officer acting on the directions of the Committee to verify the School record of the petitioner. The petitioner relies upon the report of the Vigilance Officer showing that the changes or insertions as reflected in the certificates are pursuant to applications made by the petitioner. Thus, the school records was not the basis of a grant of Caste Certificate but they were corrected commensurate with the Principal's corrections. That is how the petitioner states that though there was no fault found in the certificates or the entries therein, this Vigilance Officer failed to carry out an affinity test. Upon receipt of such a report, the petitioner approached the Committee on 9th December, 2014, with a detailed application, copy of which is Annexure-NN. The petitioner submitted that instead of taking up the application the Committee decided to hear arguments on the main matter and reserved its order. The petitioner found that not only the Committee rejected his application on 29th December, 2014, but thereafter invalidated the Caste Certificate itself on 30th December, 2014, as above. Annexures-OO and Annexure-PP are copies of these orders aggrieved by which the petitioner

approached this Court by filing Writ Petition No.475 of 2015.

23 That Writ Petition was allowed and a remand order passed by a Division Bench of this Court on 11th February, 2015, copy of which is at Annexure-QQ.

24 Pursuant to the directions of the Division Bench the petitioner appeared before the Caste Scrutiny Committee on 27th February, 2015. The hearing, however, was adjourned to 10th March, 2015. The petitioner gave an application on 10th March, 2015, reiterating his request that the documents be forwarded for investigation through Vigilance Cell. That order was passed on 10th March, 2015. Pursuant to the order of the Committee, the Vigilance Cell submitted a report on 18th May, 2015, copy of which is Annexure-TT, but the Committee issued a show cause notice possibly disagreeing with the recommendations in this report and on receipt of this show cause notice, the petitioner again gave his submissions in writing as well. The petitioner's detailed reply and written notes of arguments and oral arguments so also one more application dated 28th October, 2015, calling for the record and proceedings from the Collector, Thane,

with regard to the corrections. The exercise pursuant to the remand resulted, not in anything in favour of the petitioner, but against him and that is how the petitioner impugns the order passed on 1st January, 2016 before us.

25 We do not advert but simply refer to an affidavit filed on 10th March, 2016, by the petitioner. In that he relies upon a validity certificate issued to his niece Ms. Senorita Rocky D'Souza. The petitioner asserts and reiterates his claim that he is an East Indian Christian.

26 Mr. Godbole, learned counsel appearing on behalf of the petitioner contended before us that the order of the Scrutiny Committee is contrary to law and the voluminous record. He submits that the entire order is based only on the conduct of the Petitioner and not on merits of his claim. Those have not been considered at all. Mr. Godbole has taken us through the Resolution dated 1st March, 2006, the Baptism Certificate, the School Leaving Certificate and the Caste Certificate at page 77 of the paper-book which, according to Mr. Godbole, would indicate as to how the St. John The Baptist High School, Thane and The

Bombay East Indian Association were all satisfied that the petitioner is a East Indian Catholic. The petitioner resides in Thane District and particularly in an area known as Salsette, Vasai. This community, according to Mr. Godbole, hails from this area and predominantly engages itself in agricultural operations. Mr. Godbole would submit that if the allegations of fraud and forgery were held to be without substance, then, it was incumbent upon the Committee to have enquired and satisfied itself as to whether the petitioner belongs to East Indian Catholic - OBC. Mr. Godbole would submit that the Committee has miserably failed in its duty and has thus not applied its mind to the historical and anthropological material. Mr. Godbole relies upon the order passed by this Court in a Criminal Writ Petition and its confirmation by the Hon'ble Supreme Court of India. Mr. Godbole submits that it was not the case of the petitioner throughout that reliance should be placed only on the Caste Certificate. Rather, by a detailed application containing the prayers (a), (b), (c) and (d), and filed on 9th December, 2014, the petitioner requested the Committee to cause an investigation into the peculiar anthropological and ethnological traits, rituals and customs prevailing in the community through a Vigilance Officer. Mr.

Godbole emphasizes prayers (b) and (c) appearing at page 240 of the paper-book and submits that it is only when the Committee thinks it fit and necessary to read these documents as evidence, then, and alternatively alone the petitioner be allowed to cross-examine the Principal of St. John The Baptist School and Junior College, Thane, in the interest of justice. Mr. Godbole would submit it was never the case of the petitioner that the certificates, namely, the duplicate School Leaving Certificate dated 7th December, 2011, and the communications addressed by the Principal of the School and Junior College should be treated as documents for validating the caste claim. Meaning thereby, it should not be considered as a piece of evidence and alone or by itself. Thus, when the petitioner was willing to face an inquiry and investigation into his caste claim, then, the Committee should have in terms of his application passed an order. It should have called for a detailed investigation. Mr. Godbole then invites our attention to the extract of the report of the Vigilance Cell at page 216 of the paper-book to submit that this extract would reveal as to how several independent witnesses have claimed to be acquainted and knowing the petitioner and his family. The petitioner and his family have established their residence in

Majiwada village. Their agricultural operations are proved by the Revenue record, copies of which were produced.

27 Mr. Godbole further submits that the Committee had before it material in the form of a report dated 18th May, 2015, copy of which is Annexure-TT. It contains the statement that the petitioner made before the Vigilance Officer. The petitioner asserted as to how he is engaged in the traditional occupation of agriculture. His family follows the traits and traditions of Christianity but peculiar to the East Indian community. The language in which these community members speak is Marathi. The community celebrates Christmas and Easter Sunday. They also observe Good Friday not as a day to celebrate but to fast and to pray. They also worship Mother Mary. The traditional occupation, the festivals, the eating habits as also the dresses worn by the men and women of the community are all the details provided by the petitioner. The petitioner thus had complete knowledge of the characteristics, traits, rituals, customs, practices, traditional occupation etc. of the community. The Committee conveniently overlooks this, but invalidates the caste claim on the ground that the petitioner perpetrated some sort of

fraud on the public.

28 Mr. Godbole then relies upon the complaint that was made against the petitioner by respondent No.5, copy of which is at page 128 of the paper-book and the prior application made by the petitioner, copy of which is at page 88 of the paper-book. Mr. Godbole would also invite our attention to the show cause notice, copy of which is at page 317 of the paper-book. Mr. Godbole submits that by this show cause notice it is evident that the Committee was of the view that the East Indian Catholics are residents of Thane District. That is how the petitioner was called upon to produce proof of the petitioner's real and cousin grandfather's, grand-father's, cousins', aunts etc. as belonging to East Indian Catholics. The argument of Mr. Godbole is that even if the show cause notice is issued on the alleged dissatisfaction and disagreement expressed by the Committee with the contents of the Vigilance report, still it is not as if the petitioner avoided any scrutiny and verification of his claim by producing or relying on anthropological and historical data. The Committee has completely misdirected itself by proceeding on these lines and, therefore, Mr. Godbole would submit that even the other notice,

copy of which is at page 332 of the paper-book, would indicate that in the garb of affording some opportunity to the petitioner to establish and prove his claim, the Committee rather denied it.

29 Once the petitioner has not interpolated any record nor it is done at his instance, then, all the more according to Mr. Godbole the Committee's findings cannot be sustained. Its conclusions are thus perverse and vitiated by an error of law apparent on the face of the record. The same should be set aside. Alternatively, a remand with a specific direction be ordered so that the Committee is obliged to consider the merits of the claim. Else, there will be failure of justice.

30 Mr. Kakade, learned AGP appeared on behalf of the State of Maharashtra and we enquired from him only two things. Firstly, whether 1st March, 2006, and which is taken to be the date on which the community was included in the List as OBC, were there any rules in place. Mr. Kakade was fair to state that the Committee was not guided by any rules or regulations of the Government until 27th September, 2012. He also fairly states that prior thereto, on 31st August, 2012, a Notification was

published in the Maharashtra Gazette dated 3rd December, 2012, notifying The Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012. Mr. Kakade states that the communication from the State is guiding the Committee while scrutinizing and verifying the claim of persons claiming to be East Indian Christians / Catholics should be carried out in accordance with both these Rules and the Government Resolution dated 27th September, 2012.

31 The contesting respondent is respondent No.5 who was, as above, a candidate opposing the petitioner in the elections but lost thereat. He is represented by Mr. Dhakephalkar, learned senior counsel. Mr. Dhakephalkar would support the order passed by the Scrutiny Committee and impugned in this petition. He strongly and strenuously opposed the request of Mr. Godbole in the alternative for a remand of the matter to the Committee for considering the anthropological data and to enable the petitioner to furnish proof of his claim. Mr. Dhakephalkar submits that in multiple rounds before this Court, the petitioner has been

afforded all the opportunities. These are all delaying tactics and for avoiding the inevitable. The inevitable being on the invalidation of the caste claim, the petitioner's seat as a Corporator must be taken to be vacant. The vacant seat shall now be filled in and the process is underway. At this juncture, another desperate attempt is made by the petitioner. Mr. Dhakephalkar heavily relied upon the observations of the Division Bench of this Court which have been made in the order passed in Writ Petition No. 2473 of 2012. He submits that the Division Bench was not at all convinced by whatever materials the Committee had relied upon in the initial round. Therefore, it directed consideration of the petitioner's claim afresh. The petitioner cannot rely or fall back on some extracts or contents of the Vigilance Report inasmuch as if Rule 17(11) of the Rules enables the Committee to discard the Vigilance Report for it cannot be said to be binding at all, then, the Scrutiny Committee can call upon the petitioner-applicant to independently prove his caste claim. Mr. Dhakephalkar was at pains to rely on section 8 of the Maharashtra Act No. XXIII of 2001 to submit that the burden was always on the petitioner to prove his claim. That burden can be discharged upon the Committee being satisfied

that there is proof independent of the report of the Vigilance Cell, of the claimant belonging to that particular class or caste. Mr. Dhakephalkar would rely upon the contents of the show cause notice to submit that it was not just the alleged interpolation or the acts of omission and commission on the part of the petitioner which weighed with the Committee while invalidating his claim, but the absence of proof or cogent and satisfactory material in support of the claim as well. Thus, the Committee was rightly satisfied that the petitioner has failed to discharge the burden cast on him by law. Mr. Dhakephalkar reiterates that it is on the eve of the elections and petitioner desiring to contest the same from a reserved seat that the manipulation started. Mr. Dhakephalkar has taken us through the applications and requests made by the petitioner in writing, copies of which are at pages 98 and 99 of the paper-book. Equally our attention is invited to pages 105 and 106 of the paper-book by Mr. Dhakephalkar which, according to him, would evidence as to how the Vigilance Officer communicated with the Collector. There was thus always a doubt and genuine and *bona fide* about the petitioner's assertions. If those were not cleared by the petitioner by producing reliable material, then, he can hardly complain. Mr.

Dhakephalkar submits that this is not a court of further appeal and if the Committee's view is supported by the materials produced, then, this Court should not interfere in its writ jurisdiction merely because another view is possible. Thus, far from remand, the petition itself deserves to be dismissed.

32 It is on the above material that we have to consider the rival contentions.

33 The Maharashtra Act No. XXIII of 2001 has been enacted with an avowed and clear social objective. It is an Act to provide for the regulation of the issuance and verification of the caste certificates to the persons belonging to the categories mentioned in the preamble thereto and for matters connected therewith or incidental thereto. It was noticed by the State that genuine and *bona fide* claims suffer when everybody seeks to obtain benefit of the privileges and concessions meant for socially and educationally backward classes of citizens or for the Scheduled Castes and Tribes. These have been historically ill treated and at the hands of the majority. That is how when the caste certificates issued in their favour are being utilized for

either obtaining admissions to educational institutions, particularly institutions of higher learning, Government jobs and electoral offices that the State decided to provide a complete mechanism and in the form of a statute. That is how we find that this Act has been enacted and it contains certain vital definitions. Section 2 is the Definition section and containing the definition of the terms “Caste Certificate”, “Competent Authority” and “Other Backward Classes”. Section 2(h) defines the term “Other Backward Classes” as under :

“2. Definitions.-In this Act, unless the context otherwise requires,-

(a)

(h) “Other Backward Classes” means any Socially and Educationally Backward Classes of citizens as declared by the Government and includes other Backward Classes declared by Government of India in relation to the State of Maharashtra;”

34 Then, the word “Prescribed” has been defined in section 2(i) to mean prescribed by rules made by the Government under the Act. The Scrutiny Committee is a Committee set up under the Act and to perform the duties and functions which have been enlisted in section 6.

34A Prior thereto, a person can approach a competent authority by an application for issuance of a caste certificate. The caste certificate or any endorsement therein cannot be held to be binding and conclusive when it comes to the benefits thereof being utilized or availing of the concessions. Equally, there is a mandate when the Central or the State Governments appoint such persons and on the strength of their caste certificates on posts meant for the reserved category, their caste certificates have to be sent for verification and scrutiny by the Committee. That is how sections 4, 5, 6 and 7 would read. Section 7 confers power of confiscation and cancellation of false caste certificate and which would thereafter deny not only the person concerned, but his children from any benefits and concessions. The order of the Scrutiny Committee within the meaning of section 7 is not subjected to any appeal but only scrutiny by this Court under Article 226 of the Constitution of India. Section 8 very clearly states that whether for issuance of the caste certificate or during the course of the enquiry by the Scrutiny Committee, the burden of proof shall always be on the persons claiming to be belonging to the particular caste, class or tribe. The Committee has the power

on par with the Civil Court and for matters enumerated in section 9. The consequences of the false certificates are set out in section 10 and they are indeed drastic.

35 We are concerned here with an elected office. By sub-section (4) of section 10 it is stated that a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, cooperative society or any statutory body on the reserved seat on such false caste certificate and that being cancelled, the benefits obtained by him shall be deemed to have been terminated.

36 It is in the light of these drastic consequences that we have carefully perused the petition and the annexures thereto. We have set down each and every contention of the petitioner and respondent No.5 for the impact of sub-section (4) of section 10 is not only on the person like a petitioner, but on a constituency or a ward as a whole. The result would be deprivation of any representation to the residents on the statutory body, namely, the Thane Municipal Corporation. It is a unit of local self Government within the meaning of Article 243Z of the

Constitution of India. That is why we have found from the annexures to the petition that the petitioner relies upon the Government Resolution dated 1st March, 2006. That at running page 54 inserts Entry No. 341 in the List of Other Backward Classes. The List has been amended or additions thereto have been made on the recommendations of the Maharashtra State Other Backward Classes Commission. That is how the East Indians, East Indian Christians, East Indian Catholics are termed as Other Backward Classes.

37 This being the position from 1st March, 2006, there is no hesitation in agreeing with the petitioner that any prior documents would not contain an insertion or an entry with regard to this community or this description.

38 However, the petitioner made an application to the Tahsildar, Thane, firstly for issuance of Revenue records from 1950. That application was dealt with on 1st August, 2014, and it was informed that the said Revenue record or entries therein are in very bad and torn state. Yet, they came to be supplied. Heavy reliance is placed upon them to urge that the petitioner and his

forefathers / ancestors were indeed residents of Majiwada village in Thane District. Then reliance is placed upon the Baptism Certificate, copy of which is at pages 74 and 75 of the paper-book. It is the remark therein that the petitioner is an East Indian Christian which is the triggering point. It is stated that the petitioner was anxious to obtain caste certificate but could not have so obtained it unless he had documentary proof of his claim. No caste certificate is also issued unless there is *prima facie* satisfaction and that is why it is urged that the petitioner made the requisite application.

39 True it is that we find that on 11th October, 2007, even the Social Justice and Special Assistance Department, Government of Maharashtra, addressed a communication to the President of Bombay East Indian Association. By this communication, copy of which is at page 79 dated 11th October, 2007, the State disposed of the representation of this President dated 22nd August, 2007, and directed that those registered Trusts and Societies who have issued a certificate in favour of their members as belonging to a particular caste or tribe that could be taken as one of the documents / proof of the claim.

40 Then we find that there is a communication of October, 2008. That communication expressed the difficulties faced by the persons who are East Indian Christians, but being notified as OBC only in March, 2006, they are unable to produce clinching proof or evidence of their claim. That is why the Baptism Certificate and from the Church could be produced or otherwise and then the State clarified by another communication, copy of which is at page 80, that the certificates issued by the Trusts and Associations of such communities and duly certifying the persons named therein as belonging to that particular community would be acceptable and not otherwise.

41 We find that the Archbishop House also clarified that it is only when the Parish Priest knows for sure that a person is an East Indian or if a person gets a certificate from the Mool East Indian Sangathana that he/she is an East Indian that the procedure would apply with regard to addition in the remark column of the Baptism Register. On 27th September, 2012, the Government issued guidelines which are at page 82 of the paper-book and by which it was directed that a registered Church

issuing a Baptism Certificate, the birth / death certificate, the marriage certificate and the residence proof are the documents based on which the caste certificate can be issued. Thus, these guidelines indicate broadly the documents, but it was clarified that only on the strength of the same these certificates cannot be obtained.

42 Thus the Act and the Rules can never be said to be displaced by any such communication. Though the St. John The Baptist Church has been approached to make the requisite entry or insertion what we find is that the caste certificate has been issued on 30th May, 2011. On 5th May, 2011, the petitioner approached the Scrutiny Committee and forwarded to it his request for verification and scrutiny of the caste certificate as the petitioner was desirous of contesting the elections. The petitioner gave this detailed application and upon this detailed application he also indicated the documents which he has in his possession. The petitioner then made an application on 5th December, 2011, for issuance of duplicate Leaving Certificate. The petitioner states in this application that he is an ex-student of the St. John Baptist High School and Junior College and the Principal should

include his caste in the duplicate Leaving Certificate. Upon this application dated 5th December, 2011, what one finds is that the petitioner promptly moved the vigilance machinery. The vigilance machinery may have come into picture because of the Rules of 2012, but what we find is that the Vigilance Committee through its Police Inspector Mr. V.M. Gopale addressed a letter to the Principal of the School on 5th December, 2011. On 7th December, 2011, the St. John The Baptist High School issued the School Leaving Certificate and in the corrected form. That is how it carried the entry and remark in the Religion / Caste column as East Indian Christian. The Police Inspector, Divisional Caste Verification Office, in response to his letter dated 13th December, 2011, came to be informed by the Principal that the School Leaving Certificate Nos.10551 and 1261 are in accordance with the General Register No.1666. The certificate issued by the High School is correct. There is no correction made in the General Register. The xerox copy of the General Register is attached herewith. Pertinently, this letter is dated 13th December, 2011, but what we find from the extract, copy of which is at page 103 of the paper-book, is that there was indeed an insertion / addition therein. As against the name of the petitioner and his caste / sub-

caste, place of birth, earlier the entry was “Christian”, “Thane”. Later on “East Indian” has been added by hand. That is how on 26th December, 2011, the Collector, Thane, was approached and his attention was invited to this insertion by the Research Officer of the Caste Scrutiny Committee No.1, Mumbai Division. In this communication which was forwarded to the Vigilance Cell and the Police Vigilance Cell Office at Konkan Bhavan, New Mumbai, what has been endorsed is that the petitioner claims that he belongs to East Indian Christian - OBC. He relies upon the Baptism Certificate dated 30th October, 1966, and asserts that his father's name is Salvador John D'Souza, his uncle's name is Augustine John D'Souza and his cousin uncle is Francis Miguel D'Souza. However, the Corporation School General Register carries an erroneous entry of his father as Salan John Souz and uncle's as Gustin Joao Souz and his cousin uncle as Farshya Mingel Souz. However, on a stamp paper, the petitioner has asserted that this is an error and their correct names are as above. At the same time from the Thane Municipal Corporation School, the Principal thereof forwarded the extracts of the School General Register and claimed that there has been no insertion or addition or alteration therein. The only entry therein is Christian. The Vigilance Officer

very clearly stated in this connection that on enquiries being made at the home of the petitioner and with the neighbours it is revealed that the petitioner is a Christian and there is a Cross which has been placed on the home / entrance and the family goes to offer prayers at the Church. That is how the records were sought to be verified and with the intervention of the Collector. Now what we find is that on 5th January, 2012 the Scrutiny Committee proposed to hold an enquiry on 11th January 2012. On 11th January, 2012, the Committee made a very brief order and referring to the above records but at the same time stating that the Government has notified this community as OBC since 1st March, 2006. The Committee enquired about the traits, customs and practices of this community and the petitioner gave satisfactory answers and that is why it unanimously decided to validate the certificate. This is the observation to be found in an order dated 11th January, 2012. Pertinently, when Writ Petition No. 2473 of 2012 was filed in this Court, the Research Officer of this Committee filed an affidavit-in-reply on behalf of the State and the Committee and it states that on 3rd December, 2012, the first hearing was held in the office of respondent No.2 and during the hearing, the Committee found that there was no sufficient

evidence submitted by the petitioner. He, therefore, asked for further time to furnish more evidence in support of his caste claim. At the same time, the Committee seeks to justify that the caste being newly added in the year 2006, no one ever asked for validation of the caste certificate. When the documents were produced and verified it was revealed that there is no procedure followed by these people to write their caste as 'East Indian Catholic' anywhere on the documents. There was no such documentation found where such caste is written specifically. In these circumstances, the Committee decided to turn to the customs, traits and traditions of these people and referred to the book known as "TRACE" and also searched for the information on the internet. After gathering all the information, the Vigilance Officer verified the information from the area or place the petitioner belongs to and gathered information about the customs, traits and traditions so as to match it with the particulars furnished by the petitioner. The affidavit states that the Vigilance Officer took statements of people from various places and that he himself verified all the documents. He took statements of the relatives of the respondent No.6 - petitioner before us and that is how he submitted the report. The

Committee on this occasion verified the report and arrived at a conclusion that even if there is no documentary record of the petitioner belonging to the East Indian Catholic - OBC but the caste / community being included first time in 2006, most of its members being unaware of the inclusion as OBC and they never entered their caste in any document or committee, that the Committee proceeded to hold that it is genuine and passed the initial order.

43 From this affidavit it is apparent that the Committee did not apply its mind even in January, 2012, and verify or scrutinize the claim in accordance with the Maharashtra Act No. XXIII of 2001. That was very much in place and holding the field. There is no question of higher religious authorities certifying anybody as East Indian Catholic for the Committee had to follow the mandate of the Act.

44 It is in these circumstances that we find is that a detailed order was passed by this Court on that Writ Petition. Under this order the claim was to be verified and scrutinized by the Committee. Thus, the first of the Writ Petition No.2473 of

2012 was disposed of as withdrawn by an order dated 4th December, 2012. Thereafter, we do not find that any benefit can be derived from the order passed in the Criminal Writ Petition. That was in connection with refusal to register an F.I.R. or complaint of respondent No.5 before us. It may be said that the said Writ Petition did not succeed. We are not on any body's political ambitions or conflicts as these are rivals in the field. We are concerned with the sanctity of the Act and its mandate. We are concerned more with those representing the deprived and backward sections of the community claiming to be one amongst them but later on found to be not a genuine or *bona fide* representative. It is that community which will suffer. It is those serving that community and public who ought to be getting all the benefits and concessions. No usurper must continue in the field is our anxiety. That is how on 4th December, 2012, when this Court disposed of the petition it permitted the parties to raise all issues before the Committee and the Committee too disposed off the matter by a fresh order.

45 The Committee then passed an order on 4th March, 2013, copy of which is at page 140 of the paper-book and we find

that when that order was passed there was also a complaint of the respondent No.5 before us. In what can be termed as a lengthy order the Committee has merely referred to the documents produced. It also perused the original Baptism Register and all entries concerning the petitioner therein. That time one finds that the petitioner informed the Committee that barring Exhibits 1, 2, 3 and 4 other documents cannot be considered as evidence without taking into consideration the affidavit of Father Michael Pinto, the documentary evidence as above be considered only after cross examination is taken. Those four documents are at page 143 of the paper-book. They are the Baptism Certificate of Lawrence D'Souza dated 19th April, 2011, extract from the General Register issued by the Headmaster, St. John The Baptist School and Junior College, Thane, letter dated 13th December, 2011, written by St. John The Baptist School and Junior College, Jambali Naka, Thane, to the Police Inspector of the Vigilance Cell and the letter dated 16th March, 2012, of that Headmaster to the Deputy Education Officer (Secondary), Zilla Parishad, Thane. The Committee accepted this stand and the cross-examination was concluded. Thereafter the written arguments and the reasoning of the Committee is that it is clearly

seen that the petitioner belongs to East Indian Catholic caste. It is a fact that there was and even today no practice of recording caste while admitting in the school or elsewhere in the Muslim and Christian religions. In such circumstances, insisting on furnishing documentary evidence in that regard is illogical and unjustified. East Indian Catholics were mainly local Catholics in the North Konkan. It relies upon the extract from the Encyclopedia "TRACE" which is reproduced at pages 153 and 154 of the paper-book. Thus, the paragraph which is extracted reveals that the Committee found that to show their distinctiveness from the Christians migrated from outside, the local Christians used to call themselves as East Indians. This event is not of late but of the year 1887. East Indian Christians are Marathi speaking people and are Maharashtrians residing in Mumbai City and surrounding areas, that is, in some part of Thane District. The adoption of the name as East Indian despite being from Western India is an aspect referred to and thereafter what the Committee feels is that the people of East India caste settled in North Konkan, i.e. in the North area of Bandra in Mumbai City, Thane, Mira Bhayandar, Vasai-Virar, Kashimira in Thane District are known as East Indian Christians. The

petitioner is originally from North Konkan and a Catholic Christian and is residing here since his forefathers. Not only that in this region traditional agricultural land is held. That is why he is undoubtedly an East Indian Christian according to the Committee. The Committee referred to certain information gathered and from the petitioner only. In this detailed order which was passed by the Committee and which was justified in the second round, namely, in Writ Petition No.3089 of 2013, this Court was not convinced. This Court passed an order, copy of which is Annexure-FF on Writ Petition No.3089 of 2013. This order was passed on 13th June, 2014. It does not uphold the above referred conclusions of the Committee. This order, to our mind, does not endorse this approach of the Committee. It makes extensive reference to the impact of issuance of a caste certificate and its validity on the future generations. It outlines this importance and then states that it is for the claimant and who applies for caste certificate to support his claim. The burden is on him to prove his caste claim. Normally, there is no private opponent to oppose such certificate. The authorities, the vigilance committee are officers who initiate inquiry / investigation. They follow a prescribed procedure. They collect

evidence / material and in most of the situations, unilaterally. The Committee, after verification of the report so submitted calls upon the claimant to justify or support his case. The candidate gets the opportunity to lead evidence and/or bring on record material to justify the claim. The Committee must take note of the pleadings and all other materials, including judgments of this Court. The settled principles of law would bind even though the Civil Procedure Code and Evidence Act may not be strictly applicable. If the Committee is thus bound by substantive and procedural law, then, it cannot take a lighthearted or casual approach. This Court found that the Committee has overlooked serious aspects raised by the respondent No.5 and its order is unsustainable. The Scrutiny Committee ought to have adopted a proper approach and given full opportunity to all parties. The procedure adopted by retaining or confirming the original order and rejecting the complaint is nothing but an attempt to justify the earlier unreasoned order. This Court, in paragraphs 18, 19 and 20 of this order made the following pertinent observations :

“18. Another factor in the matter is that prior to year 2006 the caste in question was not in the Constitutional list. Therefore, the concerned person used to mention the caste "Christian". Only after the recognition is given to "East Indian Christian" as OBC,

most of such endorsements /certificates/ school record have been surfacing. The parties/persons accordingly moved and started taking steps to obtain such caste certificate for all Constitutional benefits. Therefore, all Christians belonging to "East Indian Christian" or not, definitely requires detail hearing, material and scrutiny and exhaustive inquiry by the Vigilance Cell Authority itself. The submission, therefore, the words "East Indian" has been added unauthorisedly as in the original the same was never endorsed and/or mentioned and what was mentioned was only "Christian", just cannot be overlooked. The Respondent/Scrutiny Committee, while granting caste validity certificate failed to record the above reasons. Subsequent justifications, merely because the complaint was lodged, in our view, no way sufficient to maintain the earlier order passed by the Scrutiny Committee in such fashion, only by referring to those documents but without discussing its contents as contended in the unreasoned order. We are also concerned with the contents of those documents. The reason now so given, therefore, without noting the contents earlier, after the objection so raised by the Petitioner, itself shows that the first order to validate the caste certificate was in breach of law.

19. All issues/objections so raised need to be decided by a composite order specifically when substantial question of law and the facts are raised with supporting material placed on record by the Petitioner and specifically when such caste claim of "East Indian Christian" (OBC) in view of 2006 entry, required new and supporting material. All Christians cannot be treated as East Indian Christians. The Scrutiny Committee, however, failed to consider all these aspects in detail.

20 The caste claim once decided has its own impact not only upon the generation, but the future generation also, the decision therefore, cannot be taken lightly specifically when material are placed on record to justify the case of misrepresentation/fabrication of record. In the present case, though the

Scrutiny Committee by the decision dated 4 March 2013, referred to its earlier order granting caste validity certificate, mentioned that the school records are manipulated, but decided the caste claim in favour of Respondent No.4, and thereby justified its earlier unreasoned order. The case falls within the ambit of the doctrine of "suppressio veri" and "suggestio falsi". The reasons so given by the Scrutiny Committee in various orders are self-contradictory and self destructive and, therefore, unsustainable in law."

46 It is in such circumstances that this Court emphasized that the petitioner contested an election to a reserved seat. He was elected and he has been enjoying the post. The Committee was, therefore, after setting aside its order dated 11th January, 2012 / 4th March, 2013, directed to decide the matter afresh. Reconsideration of all issues was directed and ordered by this Court.

47 This order was not interfered with by the Hon'ble Supreme Court of India when it assigned the brief reasons at pages 208 and 209 of the paper-book. We, therefore, feel that in the present case it was clearly incumbent upon the Committee and to have gone into not only the allegations in the complaint of respondent No.5 before us, but the claim as a whole. Pertinently, we find that the Committee has by its two communications,

namely, a show cause notice and a further letter addressed to the petitioner categorically stated that it is not satisfied with the claim of the petitioner. The show cause notice very clearly states that the petitioner's application dated 5th November, 2011, was considered together with the documents produced. The Committee also considered the Vigilance Report. The Committee found that there are no documents and which could be said to be denoting the real and cousin grand-fathers or grand-father, cousins, aunts as East Indian Catholics. We have already found above that there is an error in the surnames of the petitioner's father, uncle etc. and which is not disputed by him. He will have to offer an explanation for the same. In any event, the Committee found that when there is an addition or insertion in the General Register against an entry "Christian" to the effect "East Indian Christian", then, by section 8 of Act XXIII of 2001, it is clearly the duty of the petitioner to establish and prove his claim. By the further communication and which refers to the written submissions and tendered by the complainant (respondent No.1 herein), the Committee sent another letter on 21st August, 2015. That, because the complainant's advocate in his application dated 19th August, 2015, requested the Committee to recall the show

cause notice dated 30th May, 2015, and issue a show cause notice as prescribed in Form No.25.

48 We find that the Committee has clearly adverted to Rule 17(10) and 17(11) of the Rules, which read as under :

“17. Procedure of Scrutiny Committee.- (1)

... ..

(10) In case of those cases which are referred to Vigilance Cell, upon considering the report submitted by Vigilance Cell, if the Scrutiny Committee is satisfied about the genuineness of Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category claim of claimant / applicant, it shall be lawful to decide the matter finally by its written decision, and forward the copy of decision and Validity Certificate in FORM-24, to the concerned parties or authority, by preserving its scanned copy (in electronic form)

(11) (i) In case of those cases which are referred to Vigilance Cell upon considering the 'Report of Vigilance Cell', if the Scrutiny Committee is not satisfied about the claim of the applicant, it shall call upon the applicant to prove his Caste claim, by discharging his burden, as contemplated under section 8 of the Act, by issuing a notice in FORM-25 coupled with copy of 'Report of Vigilance Inquiry';

(ii) After issuance of notice / intimation, if applicant requests by way of written application, for copies of vigilance inquiry report or any other document or prays for adjournment, reasonable time for final hearing or for submitting written submission, it may be granted.

(iii) After affording an opportunity of hearing,

Scrutiny Committee shall,-

(a) on being satisfied regarding the genuineness of the Caste claim, decide the matter finally, upon appreciation of evidence, by its reasoned decision, i.e. decision of committee and issue Certificate of Validity , in FORM-24; and forward the same to concerned authorities within 30 days, by preserving its scanned copy (in electronic form);

(b) on being not satisfied about the genuineness of the claim and veracity of the Caste Certificate, it shall pass its decision, thereby cancelling and confiscating the original Caste Certificate and invalidating the Caste or Tribe Claim of the applicant / claimant;

(c) upon invalidation of Caste or Tribe claim, the Caste Certificate under inquiry shall be stamped as "cancelled and confiscated", and forward the same along with copy of decision, to the Competent Authority and concerned parties, by preserving its scanned copy (in electronic form);

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

(e) in case of difference of opinion amongst the members of Committee on the main order of majority the dissenting member shall write the 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."

49 The show cause notice was issued because the Committee was aware that the findings recorded by the Vigilance Cell are not binding on it. However, it has to record reasons for

disagreeing with the report of the Cell. It has assigned its brief reasons again on 21st August, 2015. It reiterated that it is not satisfied with the petitioner's claim. The petitioner was called upon to discharge the burden.

50 When the petitioner received this show cause notice and further intimation, he filed a reply. The petitioner throughout complained that he has supplied adequate material and relied on the report of the Vigilance Cell. It is apparent that the Committee was not satisfied with this report. Then the petitioner stated that his father was born and brought up in 1935 and since then he was residing at Majiwade village of Thane. He has relied upon the survey in respect of East Indian Christians carried out by the Special District Social Welfare Officer, Raigad, and District Social Welfare Officer, Thane. He has relied on its report dated 10th February, 2005. These reports according to him, are important and they have to be looked into by the Committee as based on them, the recommendations have been made by the Maharashtra State Commission for Backward Classes.

51 We are of the view that the documents based on which the said Commission made its recommendations and that is how the community was notified as OBC cannot be of much assistance to the petitioner. The petitioner independent of that must establish and prove as to how he is one amongst those surveyed or that his ancestors and forefathers are the persons residing together with members of this community in the concerned Districts. Then he relies upon an application made to the Tahsildar, Thane, on 20th April, 2011, and states that because the information was not available with the Tahsildar none disputes the fact that the father of the petitioner Salvador D'Souza was born and brought up at Majiwada village, married in the year 1961 at St. John The Baptist Church and held land alongwith his two brothers. The extract of the Enquiry Register was that prior to 1967 the applicant's father and uncles were holding agricultural land and residing at Majiwada village. In other words, the ancestors of the applicants are native Christians and not migrated ones. That is how he is entitled to claim the benefit as East Indian Christian – OBC which aspect has already been considered by the Committee in other cases and extended the same on the basis of identical material. The certificates of the

father, uncle and paternal uncle are forming part of the record and production of school leaving certificates of grandfather, great grandfather who did not go to school is next to impossible. Then he says Point No.1 of the communication should be considered from the contents of paragraph 11 of his reply.

52 Then as far as the second point is concerned, he admits that the caste and sub-caste was not mentioned in the School Leaving Certificate. However, on what basis the insertions came to be made in the General Register has not been clarified at all.

53 On this reply of the petitioner to the show cause notice, the Committee heard both sides and took the say of the respondent No.5 on record. It passed a brief order and indicated two reasons that the recommendations of the Committee based on which a particular caste or class is notified or added as OBC cannot be of assistance. It will not have evidentiary value. Independent of such conclusions and findings in the Commission's recommendatory report, the petitioner will have to discharge the burden. This order has been passed on 14th September, 2015,

and pertinently we do not find any argument on the same. Thus the petitioner was called upon to discharge the burden independent of any such materials as we have adverted above.

54 We find that when such was the obligation and duty on the part of the petitioner, all that he would rely upon is some residence proof, agricultural operations and all of which indicate that members of the Christian religion / community did reside in the areas referred by us above. They were carrying on agricultural operations. However, by that alone it is impossible for the Committee to record any conclusive finding. In the impugned order when the Committee holds that it had absolutely no material before it and the burden has not been discharged by the petitioner, then, such a finding of the Committee is based on lack of details and proof.

55 It is the petitioner's assertion and claim which was tested. It was not enough to prove that the petitioner is Christian or Catholic. All Christians, as the Division Bench of this Court holds, cannot be termed as East Indians. The historical and anthropological data apart, the petitioner must convince the

Committee by legal evidence that he is not only aware of this data but he and his ancestors have led a life consistent with the characteristics and traits of the community/class to which he claims to be belonging. He must establish and prove his affinity by producing proof of solemnisation of Marriages in the customary manner by his family, the celebration of festivals, following of all rituals, practices and customs of the community/class by him and his family. Familiarity with the traits and characteristics as historically compiled is not enough. Proof of consistence performance of the same by him and his family is rightly insisted in such cases. The evidence has to be produced and which is not impossible. Mere Acquaintance with the elders in the community cannot be adequate and sufficient. The family tree with proof of relationship and producing material of celebration of festivals, customary rituals at births and deaths in the family etc. to prove oneness and identity with the community or class claimed is rightfully insisted upon and in this case also because the Petitioner avers and asserts that he possesses it. If that is how the whole issue is considered, then, we cannot fault the manner in which the Petitioner's claim is enquired and eventually turned down in the absence of relevant

and germane material. If all the documents and materials furnished by the petitioner have been scrutinized, their contents verified and reasons have been assigned for discarding the report of the Vigilance Officer and rejecting the stand of the petitioner, then, such an order of the Committee in our opinion cannot be termed as perverse. It cannot be said to be an order based on no material or no evidence. It is a finding recorded on a consideration of the available materials in an overall manner. It is a finding and conclusion recorded consistent with the mandate of the Act and the adherence that is required with the procedural rules. In such circumstances, when the petitioner was unable to substantiate his claim, then, we do not see any scope for entertaining the request of the petitioner for a remand. We also do not see any substance in the contentions of Mr. Godbole that the Committee has only taken into consideration the complaint of respondent No.5, but has not allowed any opportunity to the petitioner to rely on anthropological and historical data to substantiate and prove his claim. The Committee has not only adverted to the contents of the complaint, but all the materials that the petitioner produced. It has applied its mind independent to what the petitioner produced and termed as an anthropological

data. It found that beyond extracting some passages and paragraphs from the recommendations of the Other Backward Classes Commission, independent proof and materials have not been furnished and submitted by the petitioner. It is in these circumstances that the Committee invalidated the claim of the petitioner.

56 We are of the opinion that sufficient opportunities were given to the petitioner, not only by the Committee but by this Court from time to time. Even when it entertained a Writ Petition at the instance of the petitioner to challenge an order passed by the Committee on 29th December / 30th December, 2014, in its order it categorically recorded the petitioner's complaint of lack of opportunity. It provided him that opportunity as well. In such circumstances, we do not think that the request of the petitioner as made above and of remand should be granted. The Committee has not based its conclusion only on the conduct of the Petitioner as complained, but on merits of the claim as well. It gave enough time and opportunity to the Petitioner and the Petitioner cannot complain on that score. In three rounds the Petitioner cannot convince this court or the

Committee, then, he must blame himself alone. Equally we are satisfied that the Committee's order does not suffer from any serious legal infirmity or perversity warranting interference in writ jurisdiction.

57 As a result of the above detailed discussion, the writ petition fails. Rule is discharged. There shall be no order as to costs.

58 At this stage, the petitioner prays that though the election process as such may not have begun, but the preparatory steps are initiated and to hold the elections, a Notification is likely to be issued but not issued.

59 The request is that such Notification notifying the dates and various stages be not issued for a period of two weeks so as to enable the petitioner to challenge this order in a higher court. This request is opposed by Mr. Mendadkar as also by the Thane Municipal Corporation. After having held that the petitioner was not entitled to contest the election as an OBC candidate against a reserved seat meant for members of that

community and bearing in mind not only his conduct, but his failure to discharge the burden cast on him by law his request is rejected.

A.A. SAYED, J.

S.C. DHARMADHIKARI, J.