

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5699 OF 2016

Smt. Ashvini Ramchandra Bhogam
Alias Mrs.Ashvini Amer Ramane
Age : 23 years, Occ.Social Service,
R/o – 790/40 (B), Raigad Colony,
Kolhapur
District : Kolhapur

.. Petitioner

Vs.

1. State of Maharashtra
[Summons to be served on the
Learned Government Pleader appearing
for State of Maharashtra
under Order XXVII, Rule 4, of the
Code of Civil Procedure, 1908]

2. Divisional Caste Certificate
Scrutiny Committee No. 2,
Dr.Babasaheb Ambedkar
Social Justice Bhavan,
2nd floor, Vichare Mal,
District : Kolhapur.

3. Kolhapur Municipal Corporation.
Through the Commissioner,
[Summons to be served on the
Municipal Commissioner,
Kolhapur Municipal Corporation,
'C' Ward, Bhausingji Road,
Kolhapur – 416001.]

4. The Sub Divisional Officer,
Tal – Karveer, Dist. - Kolhapur,
[Summons to be served on the
Learned Government Pleader appearing for
State of Maharashtra under
Order XXVII, Rule 4, of the
Code of Civil Procedure, 1908] .. Respondents

Mr.A.V.Anturkar, Senior Advocate a/w Mr.Abhay Anturkar,
Mr.Prathamesh Bargude, Mr.A. Vadne a/w Mr.Tanaji Mhatugade,
for the Petitioner.

Mr.A.B.Vagyani, Government Pleader a/w Ms.M.P. Thakur, AGP
a/w Ms.Tintina Hazarika, AGP for Respondents No. 1, 2 & 4.
Mr.A.M. Adgule, for Respondent No.3.

**CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.**

**RESERVED ON : 28th JULY , 2016
PRONOUNCED ON : 05th AUGUST, 2016**

P.C. : (per M.S.Karnik, J.)

. By this Petition, the petitioner has challenged the
order dated 09/05/2016 passed by the Divisional Caste
Certificate Scrutiny Committee No.2., Kolhapur i.e. respondent
No.2 herein thereby invalidating the caste certificate of the
petitioner bearing No. 1282 of 2015 dated 24/08/2005.
Respondent No. 2 also directed the confiscation of the caste

certificate. The petitioner is also aggrieved by the consequential order of disqualification dated 09/05/2016 of the petitioner passed by the Municipal Commissioner, Kolhapur viz. respondent No.3 herein.

2. The petitioner was elected as a Councilor in the year 2015 from ward No. 77 which was reserved for woman of other backward class. The petitioner is also a Mayor of the Kolhapur Municipal Corporation.

3. The petitioner claims to belong to “Hindu Kunbi” caste which is recognised as other backward class ('OBC' for short) in the State of Maharashtra. The said caste certificate was issued by the Sub-Divisional Officer, Karveer bearing serial No. 1282 of 2015 on 24/08/2015.

4. The petitioner's caste certificate was referred to the respondent No.2 – Committee for the purpose of validation. The petitioner relied upon a family genealogy to establish her claim

that she belongs to “Hindu Kunbi” caste. During the course of inquiry, the Vigilance Cell Officer submitted the vigilance report on 09/02/2016. The Vigilance Cell found that the certificate relied upon by the petitioner stating that the Great Great Great Grandfather of the petitioner belongs to 'Kunbi' caste is correct. The cousin Great Great Great Grandfather of the petitioner also belongs to 'Kunbi' caste. The cousin of grandfather of the petitioner also belongs to 'Kunbi caste' which is found to be correct during the course of the inquiry. In the report, the Vigilance Cell recorded the statement of witnesses/residents of the village who were residing for long number of years. During the local inquiry, it is transpired that forefathers of the petitioner were agriculturist by profession and the Vigilance Cell also went through the revenue records. The Vigilance Cell, therefore, reported that the documents as produced by the petitioner of his ancestors indicated that they are of 'Kunbi' caste. In the local inquiry made by the Vigilance Cell, the residents of the village from where the petitioner's ancestors hail stated that the petitioner belongs to the 'Kunbi' caste. The Vigilance Cell,

therefore, reported in favour of the petitioner.

5. By the impugned order, respondent No.2 – Committee, upon considering the documents and material on record, has come to the conclusion that the petitioner does not belong to the 'Kunbi' caste. Learned Senior Counsel for the petitioner has assailed the order passed by respondent No.2 – Committee on various counts. According to the learned Senior Counsel for the petitioner, the Committee has not taken into consideration the revenue records in its correct perspective. According to him, the report of the Vigilance inquiry was completely in favour of the petitioner and the Scrutiny Committee having not recorded its reasons for discarding the report of the Vigilance Cell, the impugned order is vitiated on this count alone.

6. Learned Senior Counsel for the petitioner contended that the genealogy produced along with relevant revenue extracts is sufficient to establish that the petitioner is well

connected with his ancestors who belonged to the 'Kunbi' caste. According to him, respondent No.2 being a fact finding authority has completely failed in appreciating the material on record and therefore also the impugned order is vitiated.

7. On the other hand, learned Government Pleader supported the impugned order. He took us through the impugned order and contended that the conclusion recorded in the impugned order is upon proper appreciation of the material on record and the entire material has been considered. The order passed by respondent No.2 is a well reasoned order and cannot be said to be perverse so as to warrant interference. Learned Government Pleader contended that provisions of Rule 13(2)(a) and (b) of the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as 'Rules of 2012' for short) clearly provide that the vigilance inquiry is meant only for internal assistance to the

Scrutiny Committee and adjudication of the caste status is exclusive domain of the Scrutiny Committee. Further, the finding recorded and opinion expressed, if any, by the Vigilance Officer shall not be binding on the Scrutiny Committee nor could be used as evidence, in support of the caste claim. According to learned Government Pleader, therefore, merely because Vigilance Cell report is in favour of the petitioner, that by itself does not obligate respondent No.2 to accept the said findings of the Vigilance Cell as conclusive. According to learned Government Pleader, respondent No.2 was well justified in disagreeing with the report of the Vigilance Cell.

8. Upon hearing the contentions of the respective parties, we have given our anxious consideration to the rival submissions. It is necessary to consider the relevant provisions of the Rules of 2012 and various decisions of the Apex Court and this Court relied upon by the respective parties in support of their submissions. In exercise of powers conferred under sub-Section 1 of Section 18 of the Maharashtra 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, 2000 (hereinafter referred to as 'said Act' for short), the Government of Maharashtra made Rules of 2012. Rule 4 provides the procedure for obtaining caste certificate from the Competent Authority. Rule 8 provides for duties of the Competent Authority while issuing caste certificate and Rule 11 provides for constitution of Scrutiny Committee.

9. The relevant provisions of the said Rules of 2012 regarding the constitution of Vigilance Cell and manner in which the report of the Vigilance Cell and issues to be dealt with by it read thus :

Rule 12. Constitution of Vigilance Cell:- (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 -

- (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 purpose, 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.

Rule 13: Report of Vigilance Cell and Issues to be dealt with – (1) Vigilance Cell Officer(s) shall submit report upon investigating into the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category claim, referred to it,-

(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 of Claimant; or

(d) by collecting information including the sociological, anthropological and ethnological (anthropological moorings and ethnological kinship), genetical traits of the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category , if any; or

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

(2) Notwithstanding anything contained in any provision of these rules ,-

(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, De-notified 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, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category claim;

Rule 17: Procedure, of Scrutiny Committee – (1) On receipt of application, the Scrutiny Committee shall ensure that the application and the information supplied therewith is complete in all respects and to carry out close scrutiny of the application.

(2) Notwithstanding anything contained in these rules, the claimant or applicant or complainant shall be personally responsible for removal of objections raised by Scrutiny Committee, if any, within two weeks or within such extended period, which shall not be more than six weeks, failing which the claim or application or complaint shall be disposed of, by appreciating available records and such decision may be communicated to the applicant by the Scrutiny Committee.

(3) The incomplete application may be rejected by recording reasons.

(4) Notwithstanding anything contained in these rules, it will be the sole responsibility of the claimant or applicant to attend on the dates of hearing, either personally or through duty authorised representatives.

(5) The Roznama of the Scrutiny Committee shall be self evident as to what transpired on a particular day and it shall be signed by all the members of the Scrutiny Committee.

(6) If Scrutiny Committee, upon appreciating the statement of applicant or claimant submitted in the form of Affidavit filed in consonance with Order 18 of Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal 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 the Scrutiny Committee

shall forthwith issue Validity Certificate in FORM -20 without enquiry by vigilance cell.

(7) If Scrutiny Committee, upon appreciating the statement of applicant or claimant submitted in the form of Affidavit filed in consonance with Order 18 of Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal, is of the opinion that the documents do not satisfy or conclusively prove the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category claim, the Scrutiny Committee by mentioning the same in the Roznama, shall refer such case to the Vigilance Cell for carrying out suitable inquiry, as is deemed fit, by Scrutiny Committee.

Provided that, finding recorded by the Vigilance Cell shall not be binding on Scrutiny Committee, as the vigilance inquiry is meant for internal assistance to the Scrutiny Committee. The Scrutiny Committee shall record its reasons for discarding the report of the Vigilance Cell.

(8) The Vigilance Cell shall complete the inquiry within six weeks, thereby making suitable inquiry, on all the issues or as specifically directed by the Scrutiny Committee;

(9) Vigilance Inquiry shall be made for respective territorial area of jurisdiction of concerned Scrutiny Committee;

(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 documents 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 the 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 invalidating 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 member by the Scrutiny Committee;

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

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

(12) Notwithstanding anything contained in these rules, it is incumbent on the applicant to disclose all the true and correct information, including disclosure of adverse entries or material, failing which, it shall be lawful for the Scrutiny Committee to draw adverse inference.

(13) If the Scrutiny Committee finds and concludes that the report of Vigilance Cell is false or unrealistic, it shall record the reason in decision and direct appropriate action as contemplated under section 14, read with section 11 and 12 of the Act and also recommend Departmental inquiry against such Vigilance Officer:

Provided that, an opportunity of being heard be granted to the concerned Vigilance Cell Officer prior to any direction for appropriate action. This, hearing shall be independent to adjudication of Caste or Tribe Claim.”

10. The Rules of 2012, therefore, have laid down a detailed procedure as to how the report of the Vigilance Cell is to be dealt with.

11. Undoubtedly, the findings recorded by the Vigilance Cell shall not be binding on the Scrutiny Committee as the Vigilance Cell inquiry is meant for internal assistance to the Scrutiny Committee. The Rules, however, provide that the Scrutiny Committee shall record its reasons for discarding the report of the Vigilance Cell. Sub-Rule 10 of Rule 17 provides that in case of those cases which are referred to Vigilance Cell, upon considering the reports submitted by the Vigilance Cell, if the Scrutiny Committee is satisfied with the genuineness of the claim, it shall be lawful to decide the matter finally by its written

decision.

12. Sub-Rule 11(i) provides that in those cases which are referred to the Vigilance Cell upon considering the 'Report of the 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 the copy of 'Report of Vigilance Inquiry'.

13. Learned Senior Counsel for the petitioner heavily relied upon the decision of the Apex Court in the case of **Dayaram Vs. Sudhir Batham and ors. (2012) 1 Supreme Court Cases 333**. He invited our attention to paragraphs 34 & 35 which are quoted thus :

“34. Each scrutiny committee has a vigilance cell which acts as the investigating wing of the committee. The core function of the Scrutiny Committee, in verification of caste certificates, is the investigation carried on by its vigilance cell. When an application for verification of the caste certificate is received by the Scrutiny Committee, its vigilance cell investigates into the claim, collects the facts, examines the records, examines the relations or friend and persons who have knowledge about the social status of the candidate and submits a report to the committee. If the

report supports the claim for caste status, there is no hearing and the caste claim is confirmed. If the report of the vigilance cell discloses that the claim for the social status claimed by the candidate was doubtful or not genuine, a show-cause notice is issued by the committee to the candidate. After giving due opportunity to the candidate to place any material in support of his claim, and after making such enquiry as it deems expedient, the Scrutiny Committee considers the claim for caste status and the vigilance cell report, as also any objections that may be raised by any opponent to the claim of the candidate for caste status, and passes appropriate orders.

35. The Scrutiny Committee is not an adjudicating authority like a court or Tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities, the orders of the Scrutiny Committee are also open to challenge in proceedings under Article 226 of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this Court wanted to eradicate. As this Court found that a large number of seats or posts reserved for Scheduled Castes and Scheduled Tribes were being taken away by bogus candidates claiming to belong to Scheduled Castes and Scheduled Tribes, this Court directed constitution of such Scrutiny Committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding SCs/STs status. This entire scheme in *Madhuri Patil* will only continue till the legislature concerned makes an appropriate legislation in regard to verification of claims for caste status as SC/ST and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.”

14. Learned Senior Counsel, therefore, contends that if the vigilance report supports the claim for caste status, nothing

further is required to be done and the caste claim has to be confirmed. He also contends relying on paragraph 35 extracted above that the Scrutiny Committee is not an adjudicating authority like a Court or Tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Therefore, according to the learned Senior Counsel, once vigilance report is in favour of the petitioner, the Committee cannot come to a different conclusion.

15. We, however, notice that in paragraph 35 extracted above, the Apex Court has observed that the entire scheme in Madhuri Patil's case will only continue till the legislature concerned makes an appropriate legislation in regard to verification of claims for caste status as Scheduled Caste/ Scheduled Tribe and issue of caste certificates. As regards the present controversy, in view of Rules of 2012, an appropriate legislation in regard to the verification of the claims is already in place.

16. Learned Senior Counsel also relied upon the Full Bench decision of this Court in the case of **Shilpa Vishnu Thakur Vs. State of Maharashtra, 2009(3) Mh.L.J. 995** to support his contention that the affinity test is relevant and germane for determining the caste claim of a person. This aspect of affinity test is considered in paragraphs 7, 8, 9, 10, 24 & 25 which are quoted thus :

“7. The question as to whether sociological and anthropological traits are relevant in the determination of whether an applicant belongs to a Scheduled Caste or Tribe has been dealt with in the Judgment of the Supreme Court in Madhuri Patil. The Supreme Court held that sociology, anthropology and ethnology are valid elements that would go into the determination as to whether a particular applicant in fact belongs to a Scheduled Tribe. One of the arguments which was pressed in aid was that social mobility and the process of modernization obviate the need to fulfill the affinity test. This, held the Supreme Court, was only a “convenient plea to get over the crux of the question” (para 5, page 248). The Supreme Court held thus:

“Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may have modernized and progressed but they would not be oblivious to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe.” (emphasis supplied).

8. Several passages in the Judgment in Madhuri Patil's case emphasize that kinship and affinity to a tribe are

vital in determining as to whether an applicant truly belongs to a tribe which has been designated as a Scheduled Tribe. This is evident from the following observations of the Supreme Court:

“The anthropological moorings and ethnological kinship affinity gets genetically ingrained in the blood and no one would shake off from past, in particular, when one is conscious of the need of preserving its relevance to seek the status of Scheduled Tribe or Scheduled Caste recognized by the Constitution for their upliftment in the society. The ingrained tribal traits peculiar to each tribe and anthropological features all the more become relevant when the social status is in acute controversy and needs a decision. The correct projectives furnished in pro forma and the material would lend credence and give an assurance to properly consider the claims of the social status and the officer or authority concerned would get an opportunity to test the claim for social status of particular caste or tribe or tribal community or group or part of such caste, tribe or tribal community. It or he would reach a satisfactory conclusion on the claimed social status. The father of the appellant has failed to satisfy the crucial affinity test which is relevant and germane one.” (emphasis supplied)

The Supreme Court was of the view that the Scrutiny Committee was justified in considering the entire material together with sociological, anthropological and ethnological perspectives:

“The finding recorded by the Committee is based on consideration of the entire material together with sociological, anthropological and ethnological perspectives which Mahadeo Kolis enjoy and of the OBC castes and subcaste of the Kolis. The Additional Commissioner as well, has minutely gone into all the material details and found that when a section of the society have started asserting themselves as tribes and try to earn the concession and facilities reserved for the Scheduled Tribes, the tricks are common and that, therefore, must be judged on legal and ethnological basis. Spurious tribes have become a threat to the genuine tribals and the present case is a typical example of reservation of benefits given to the genuine claimants being snatched away by spurious tribes. In Subhash Ganpatrao Kabade case, the approach of the Division Bench of the High Court appears

to be legalistic in the traditional mould totally oblivious of the anthropological and ethnological perspectives (emphasis supplied)

9. The Supreme Court issued directions in Madhuri Patil's case, laying down the procedure that must be followed for the issuance of caste certificates for their scrutiny and approval. The procedure involves the filing of an affidavit by the parents, guardian or the candidate, as the case may be, furnishing particulars of the caste and sub-caste, tribe, tribal community or part thereof, of the place from which the candidate originally hails and other particulars as may be prescribed by the Directorate. The Supreme Court directed the constitution of a committee manned by experts and directed that the Research Officer must have an intimate knowledge in identifying tribes and tribal communities. The directions of the Supreme Court provide for the constitution of a Vigilance Cell. The vigilance inquiry entails a visit by the Inspector of Police attached to the Cell to the original place from which the candidate hails for the collection of all relevant data. The nature of the inquiry is made clear from the following directions of the Supreme Court:

“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 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. (emphasis supplied).

These directions clearly establish that the nature of the inquiry in regard to the claim of a candidate to belong to a Scheduled Tribe is not merely to be confined to an examination of the birth and the school records and of documentary evidence but would involve an investigation of the affinity of the candidate with a tribe, or as the case may be, tribal community. Thus, the process of verification of caste claims which came to be governed by

the Judgment of the Supreme Court in Madhuri Patil involved an inquiry not merely into the documentary materials on the basis of which the caste claim is founded but equally a verification of the claim with reference to the affinity of the candidate with a designated Scheduled Tribe. The inquiry would comprehend within its purview anthropological and ethnological traits. The Committee would be entitled to inquire into the question as to whether the applicant has established an affinity with the tribe. The yardstick for determining such affinity includes the rituals of the tribe and its customs, worship, ceremonies associated with birth, marriage and death and the conventions followed for the disposal of dead bodies.

10. Right through the ages, in the evolution of the human race, birth, marriage and death have been considered to be milestones around which customs and rituals of communities have grown. Worship is an integral aspect of the life of a community and tribal communities are identifiable with reference to specific modes of worship. The affinity test which comprehends all these aspects is, therefore, not extraneous to the process of identifying whether the applicant is a genuine member of a tribe or is an impostor fraudulently claiming the benefits of a reservation to which he is not entitled.

24. As a matter of first principle, it would be impermissible for the Court to stultify the scope of the inquiry that is contemplated for the issuance of a caste certificate in the first instance and a caste validity certificate thereafter. The object of the legislation is to ensure that only genuine persons obtain the benefit of reservations and that false and fraudulent claims are excluded. To confine an inquiry only to the verification of documentary material would defeat the very object and purpose of the inquiry. Judicial notice can be taken of the fact that documents can lie. Merely because a person produces a document reflecting his own surname as that of a community for which reservation has been made may not necessarily establish that the person belongs to that designated tribe. It is in that context that the process of verification has to be broad-based.

25. Ever since the Judgment in Madhuri Patil's case, an inquiry into kinship and affinity was held to be permissible. The State Legislature while enacting the legislation has taken due note of the law laid down by the Supreme Court in Madhuri Patil and gave legislative form to the directions that were issued by the Supreme Court. In significant areas such as withdrawing the benefits obtained on the basis of a false caste certificate and creating offences and penalties, the Legislature has in its robust wisdom given teeth to the legislation. Imposition of deterrent penalties is intended to ward off fraudulent attempts. Experience shows that persons who come forth with fraudulent claims obtain employment or, as the case may be, educational qualifications on the strength of false caste certificates. Once employed or admitted to an educational programme, candidates adopt all kinds of dilatory tactics to prolong the inquiry and set up a plea of equity even if it was ultimately found that the claim to belong to a Scheduled Caste or Scheduled Tribe was false. The Legislature has now stepped in by enacting deterrent legislation that does not brook sympathy for acts of dishonesty. In this legislative background, and particularly having regard to the rules which give effect to the provisions of the Act, it is impossible to hold that the application of the affinity test is alien to the purposes of the State legislation. On the contrary, we are of the view that both the Competent Authority while issuing a caste certificate and the Scrutiny Committee while issuing a caste validity certificate are duty bound to investigate into all aspects of a claim to belong to a reserved community by appreciating documentary material information and evidence which encompasses an enquiry into whether a candidate has established affinity with a scheduled tribe.”

17. Learned Senior Counsel, therefore, has relied upon the decision of **Shilpa Thakur** (*supra*) to contend that respondent No.2 has not applied the crucial affinity test though the report of the Vigilance Cell in this regard was in favour of

the petitioner.

18. Learned Government Pleader also relied upon the decision in the case of **Shilpa Thakur** (*supra*) to contend that affinity test is not sole and crucial test for deciding caste claim and it is respondent No.2 – Committee which has to independently arrive at its findings which it has correctly arrived in the present case by rejecting the caste claim of the petitioner upon appreciating the documents on record. According to him, it has rightly discarded the Vigilance Cell report as the petitioner has failed to establish his case on the basis of the documentary evidence produced.

19. Though the learned Government Pleader has taken us through the impugned order, we do not find the mention of any reason why the Scrutiny Committee has discarded the report of the Vigilance Cell. We find that the Committee has only upon appreciating the documentary evidence arrived at a finding that the petitioner has not been able to establish her caste claim.

20. As indicated earlier, undoubtedly, the findings recorded by the Vigilance Cell are not binding on the Scrutiny Committee as Vigilance Cell inquiry is meant for internal assistance to the Scrutiny Committee nor can it be used as evidence in support of the claim, but the provisions of Rule (17) (7) casts a duty on the Scrutiny Committee to record its reasons for discarding the report of Vigilance Cell.

21. The Full Bench of this Court, therefore, clearly has held that the Scrutiny Committee must have regard to the entire body of the evidence including on the question as to whether the applicant has satisfied the affinity test. The claim has to be scrutinized by the authority concerned on the basis of all the material available including the affinity established by the applicant to a Tribe. The Competent Authority or as the case may be, the Scrutiny Committee shall apply established norms in the evaluation of the evidence. Whether the burden of establishing his or her caste claim has been discharged or not is for the Competent Authority/ Scrutiny Committee to decide on

the facts of each case. It is further held that where a person has some documents in his or her favour and/or partially satisfies the crucial affinity test, the question as to whether certification should be granted would depend upon the over all view of the Competent Authority in the first instance and by the Scrutiny Committee subsequently on the preponderating weight of the evidence. The nature of the documents that have been produced, the genuineness and authenticity of the documentary evidence and the weight to be ascribed to the documents produced are matters which must be decided by the authority concerned. If a candidate has satisfied the crucial affinity test in part, it is for the Competent Authority and the Scrutiny Committee to determine in each case as to whether, on considering the entire material on the record, the caste claim is correct and genuine. An answer in the abstract cannot be furnished. It is for the quasi- judicial authority in each case to arrive at its finding on the basis of the material on record.

22. Rules 12, 13 & 17 as indicated earlier, provide for a

detailed procedure to be followed by the Vigilance Cell while submitting its report. The Full Bench of this Court in the case of **Shilpa Thakur** (*supra*) in the context of the provisions of the said Act and the then prevailing The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 has held that if a candidate satisfies the crucial affinity test in part, it is for the Competent Authority and the Scrutiny Committee to determine in each case as to whether, on considering entire material on record, the claim is correct and genuine. It is only after visiting the permanent place of residence and conducting domestic inquiry; by recording statements of respected and responsible persons from concerned area, including representatives of Local Self Government, Police Patil etc; or by collecting information, as part of recording statement, as regards to name, age, educational qualification, occupation, existing place of residence and information regarding properties (existing and disposed) of family members of applicant or claimant; or by collecting information including the sociological, anthropological and ethnological

(anthropological moorings and ethnological kinship), that the report of the Vigilance Cell is submitted. These materials have not at all been adverted to by respondent No.2 – Committee. Respondent No.2 has only proceeded on the basis of documentary evidence and discarded the Vigilance Cell report without considering the same and recording any reasons. The impugned order, in our opinion, therefore, falls foul of the provisions of sub-Rule 7 of the Rule 17.

23. The detailed procedure provided by the Rules clearly demonstrate that the Vigilance Cell inquiry is not a mere formality but is meant to effectively assist the Committee in determining the caste claim. This is further substantiated by the requirement of the Rules for the Committee to give reasons before discarding the Vigilance Cell report.

24. Except for the respondent No.2 mentioning in its order that it is not in agreement with the Vigilance Cell report, there is nothing in the impugned order to suggest that

respondent No.2 has given reasons for discarding the report of the Vigilance Cell.

25. We, therefore, quash and set aside the impugned order and remand the matter back to respondent No.2 – Committee for a fresh consideration of the caste claim. The Committee may pass a fresh order on its own merits after complying with the provisions of the sub-Rule 7 of Rule 17 of the said Rules of 2012. We may not be understood to have expressed any opinion on the merits of the order passed by respondent No. 2 as we are setting aside the impugned order only on the ground of non compliance of the provision of sub-Rule 7 of Rule 17 before discarding the report of the Vigilance Cell. The Committee will decide the matter afresh on its own merits in accordance with law without being influenced by any observations made in this order.

ORDER

1. The impugned order dated 09/05/2016 passed by respondent No.2 is quashed and set aside.

2. The matter is remanded back to respondent No.2 for passing a fresh order in accordance with law and after hearing the petitioner within a period of 6 weeks from today.
3. The consequential order of disqualification is set aside.
4. No order as to costs.
5. Writ Petition is accordingly disposed of.

(M.S.KARNIK, J.)

(SHANTANU.S.KEMKAR, J.)