

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.3350 OF 2002

Balaji S/o Tulshiram Kone ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.U.R.Awate, advocate holding for S.B.Talekar
for the petitioner.
Mrs. Vaishali Patil Jadhav, A.G.P. for the State.
...

**CORAM : S.V.GANGAPURWALA AND
ARUN M. DHAVAL, JJ.**

Date : 19.01.2018.

PER COURT :

1. We have heard Mr.Awate, learned counsel
for the petitioner and Mrs.Vaishali Patil Jadhav,
learned A.G.P. for the State.

2. We have also perused the judgment
delivered by the Committee.

3. It is submitted by the learned counsel

for the petitioner that the parents and the fore-fathers of the petitioner were illiterate. The petitioner is first generation literate. As such there is no School record of his father and fore-father. The learned counsel submits that no contra evidence is also on record.

4. Upon perusal of the judgment of the Committee, it is manifest that the Committee has not conducted affinity test as is required in case of tribals. In case of tribals, the Committee has to conduct the affinity test more scrupulously, more particularly, when the documentary evidence is scanty and so also there is no other contra evidence. Though the Committee has referred to the judgment of the Apex Court in the case of **"Kumari Madhuri Patil and another Vs. Addl. Commr. Tribal Development, Thane and others"** reported in **(1997) 5 Supreme Court Cases 437**, however, it has failed to conduct the affinity test. The Full Bench of this Court in the case of **"Shilpa Vishnu Thakur Vs. State of Maharashtra and others"** reported in **2009 (3) Bom. C.R. 497**, has held that affinity

test is required to be conducted.

5. In view of the fact that the Committee has failed to conduct the affinity test as is required, we have no option but to set aside the impugned judgment and order and remit the matter back to the Committee.

6. The impugned judgment and order is set aside. The matter is relegated before the Committee for decision afresh. The parties shall appear before the Committee on 5.2.2018. The Committee shall conduct affinity test and decide the validation proceedings afresh in accordance with law expeditiously, preferably within a period of six months from the date of appearance. The petitioner may file additional documents before the Committee. The Committee if it so desires may refer it to the Vigilance as per its prudence.

7. Rule accordingly disposed of. No costs.

(ARUN M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

asp/office/wp3350.02

