

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

WRIT PETITION NO.8513 OF 2018

Sunil S/o Hiranman Thakur,
Age : 37 years, Occu. Service,
R/o Adawad, Tq. Chopda, Dist. Jalgaon,
At present, Dindayalnagar, Jamner Road,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon

...PETITIONER

VERSUS

1. State of Maharashtra,
Through Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32
2. Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar,
Through its Member Secretary and
Dy. Director (Research), Near R.T.O. office,
Sakri Road,
Nandurbar – 425 412
3. Sub-Divisional Officer,
Amalner Division Amalner,
Dist. Jalgaon
4. Education Officer (Secondary),
Zilla Parishad, Jalgaon
5. President,
Kalamsare Vidya Prasarak Sanstha,
Kalamsare, Tq. Amalner,
Dist. Jalgaon
6. Head Master
Sharda Madhyamik School,
Kalamsare, Tq. Amalner,
Dist. Jalgaon

...RESPONDENTS

Mr K.T. Shirurkar, Advocate for the petitioner;
Mrs Geeta Deshpande, A.G.P. for respondent Nos.1 to 4;
Mr M.G. Kochar, Advocate holding for Mr B.R. Warma, Advocate for
respondent Nos.5 and 6

**CORAM : UJJAL BHUYAN
AND
M.G. SEWLIKAR, JJ.**

DATE : 22-03-2021

ORAL JUDGMENT (Per Ujjal Bhuyan, J.)

Heard Mr Shirurkar, learned Counsel for the petitioner; Mrs Geeta Deshpande, learned A.G.P. for respondent nos.1 to 4; and Mr Kochar, learned Counsel holding for Mr Warma, learned Counsel for respondent nos.5 and 6.

2. Rule. Rule made returnable forthwith. Heard learned Counsel appearing for the parties finally by consent.

3. By filing this petition under Article 226 of the Constitution of India petitioner seeks quashing of order dated 12-04-2018 passed by the Scheduled Tribe Certificates Scrutiny Committee, Nandurbar i.e., respondent no.2 and further seeks a direction to respondent no.2 to issue validity certificate to the petitioner as belonging to "Thakur" Scheduled Tribe community. An additional prayer has been made for a direction to the respondents not to take any adverse action against the petitioner on the basis of the impugned order dated 12-04-2018.

4. From the above it is evident that the subject-matter of the writ petition is invalidation of the Scheduled Tribe certificate of the petitioner by respondent no.2.

5. Essential facts relevant for adjudication of the *lis* may be briefly set out at the outset.

6. According to the petitioner, he belongs to the “Thakur” Scheduled Tribe community and in this connection Scheduled Tribe certificate was issued to the petitioner on 24-08-2000 by the Sub-Divisional Officer, Amalner Division, Amalner. It was certified that Sunil, son of Hiranman Thakur, resident of Adawad village in the District of Jalgaon belongs to the “Thakur” tribe which is recognized as Scheduled Tribe under Sr. No.44 of the Constitution (Scheduled Tribes) Order, 1950.

7. It is stated that petitioner was appointed as Shikshan Sevak in Sharada Madhyamik School, Kalamsare, Taluka Amalner i.e., respondent no.6 vide order dated 25-07-2004. However, his services were terminated on 09-08-2005 for non submission of validity certificate.

8. Be it stated that the petitioner had applied for verification of his tribe claim as belonging to “Thakur” Scheduled Tribe community through the

President, Kalamsare Vidya Prasarak Sanstha i.e., respondent no.5 on 06-12-2004. As noticed above, because of non issuance of validity certificate, services of the petitioner in respondent no.6 was terminated on and from 09-08-2005. Subsequently, respondent no.2 invalidated the Scheduled Tribe certificate of the petitioner on 12-06-2006.

9. Being aggrieved by such order, petitioner filed Writ Petition No.5445 of 2006 before this Court. This Court by the order dated 01-04-2014 referred to the decision of the Supreme Court in **Anand vs. Committee for Scrutiny and Verification of Tribe Claims, (2012) 1 SCC 113**, more particularly to paragraph 22 of the said judgment and observed that it was incumbent upon respondent no.2 to consider documentary evidence and use affinity test to corroborate the documentary evidence. Affinity test should not be the sole criteria to reject the claim. This Court noticed that there was no discussion in the decision of respondent no.2 about each of the documents placed on record by the petitioner and by general observation respondent no.2 neither rejected the documents nor accepted the same. It was merely observed that petitioner was not successful in the affinity test. On that basis claim of the petitioner was rejected. This Court noted that petitioner had submitted as many as 22 documents before respondent no.2, out of which some of the documents were of pre-independence era. Taking the view that approach of respondent no.2 was not justified, decision of respondent no.2 was set aside and quashed.

Respondent no.2 was directed to consider the claim of the petitioner afresh in accordance with law and following the judgment of the Supreme Court in the case of Anand (supra). Respondent no.2 was directed to decide the claim of the petitioner within one year with the further direction that till such decision was taken, no adverse action should be taken against the petitioner on the ground of non-submission of Scheduled Tribe validity certificate.

10. Though this Court had directed respondent no.2 to decide the tribe claim of the petitioner afresh within one year, respondent no.2 took the fresh decision on 12-04-2018, more than three years after the prescribed period of one year as per this Court's order.

11. A perusal of the order dated 12-04-2018 which has been impugned in the present proceeding would go to show that respondent no.2 has tried to explain the delay in taking the impugned decision because of pendency of cases which to a certain extent has been triggered by directions passed by the High Court, shortage of staff and infrastructural deficiencies. From the impugned order it is seen that petitioner had submitted as many as 25 documents in support of his claim. Though there was a vigilance inquiry report dated 18-12-2006 already on record, respondent no.2 called for a fresh vigilance report from the police vigilance cell, which was submitted on 09-11-2017. Since the vigilance report was against the petitioner, show

cause notice was issued to the petitioner on 17-11-2017 calling upon the petitioner to submit his written say. Accordingly, petitioner submitted his say on 28-11-2017. Thereafter a personal hearing was given which was attended by Shri Shivdas Namdeo Thakur, cousin grand-father of the petitioner along with other relatives. Respondent no.2 framed 4 issues as under :-

- (1) Whether the Scheduled Tribe claim of the petitioner was proved by way of documentary evidence ?*
- (2) Whether the Scheduled Tribe claim of the petitioner could be sustained by way of socio cultural affinity test ?*
- (3) Whether the Scheduled Tribe claim of the petitioner could be sustained in view of the current legal position ?*
- (4) What order could be passed ?*

11.1. After recording negative findings on the first three issues, respondent no.2 passed the final order as under :-

“[A] After considering all the documents, facts & in exercise of the power vested vide Maharashtra Act No.XXIII of 2001, the Caste Scrutiny Committee has come to the conclusion that, applicant namely Sunil S/o Hiranman Thakur does not belong to the Thakur, Scheduled Tribe & hence, his claim towards the same is held Invalid.

[B] The Caste Certificate of the applicant namely Sunil S/o Hiranman Thakur bearing No.MAG/SR/302/2000, dated 24/08/2000, issued by the Sub Divisional Officer, Amalner Division, Amalner, Dist. Jalgaon is hereby cancelled and confiscated.

[C] If applicant taken any benefit of reservation as Scheduled Tribe, then it is directed to such authority who given such benefits that to take action against the applicant according to Section 10 (1) read with Section 10 (2) of the Maharashtra Act No.XXIII of 2001."

12. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

13. Notice in this case was issued on 26-07-2018 further directing learned A.G.P. to produce the record. Thereafter the matter was heard on 16-03-2021 with the learned A.G.P. making submissions from the record.

14. On a query by the Court learned A.G.P. submitted that in such cases ordinarily no reply affidavit is filed by the State since it is a matter of record. Therefore, submissions are made on the basis of the record.

15. While Mr Shirurkar, learned Counsel for the petitioner has assailed the impugned findings of respondent no.2 as being contrary to the

materials on record and judgments of the Court, learned A.G.P. however has supported the findings arrived at by respondent no.2 and seeks dismissal of the writ petition.

16. Submissions made by learned Counsel for the parties have been duly considered.

17. A careful perusal of the impugned order dated 12-04-2018 would go to show that petitioner had submitted as many as 25 documents in support of the proposal for validating his Scheduled Tribe certificate as belonging to "Thakur" Scheduled Tribe community. In addition to various documents of the petitioner and that of his father we find that the petitioner had submitted the following documents :-

- i) Attested copy of tribe certificate in respect of the petitioner's father Hiranman Adhar Thakur, issued by Executive Magistrate, Chopda on 03-01-1977 where the caste of the petitioner was mentioned as "Thakur" Scheduled Tribe;
- ii) Attested copy of caste certificate in respect of petitioner's father Hiranman Adhar Thakur, dated 29-07-2000 issued by the Sarpanch, Grampanchayat, Adawad where the caste was mentioned as "Hindu Thakur";
- iii) Attested copy of service book in respect of petitioner's father Hiranman Adhar Thakur wherein his caste was mentioned as "Hindu Thakur" (Scheduled Tribe);

- iv) Attested copy of caste certificate in respect of petitioner's uncle Subhash Adhar Thakur, issued by Executive Magistrate, Chopda on 01-01-1977 wherein the caste was mentioned as "Thakur" Scheduled Tribe;
- v) Original copy of caste certificate of the petitioner dated 24-08-2000 , issued by the Sub-Divisional Officer, Amalner wherein the caste of the petitioner was mentioned as "Thakur", Scheduled Tribe at Sr. No.44;
- vi) Attested copy of validity certificate in respect of petitioner's cousin uncle Pramod Namdeo Thakur issued by the Scheduled Tribe Certificates Scrutiny Committee, Nashik on 02-11-2002;
- vii) Original copy of affidavit sworn by petitioner's cousin uncle Pramod Namdeo Thakur, dated 11-01-2005.

17.1. It appears that during the hearing before respondent no.2, petitioner submitted validity certificate in respect of Rupali Chandrakant Thakur cousin sister of the petitioner whose "Thakur" Scheduled Tribe certificate was validated by the scrutiny committee.

18. Though there was already a vigilance enquiry report dated 18-12-2006, the same was found to be very cryptic and not in accordance with

the guidelines. Accordingly, a fresh vigilance enquiry report was called for from the police vigilance cell. It is stated that the vigilance cell had conducted enquiry and had submitted report to respondent no.2 on 09-11-2017. As per report of the vigilance cell caste status of 15 persons having relationship with the petitioner was mentioned. Insofar the relation at Sr. no.2, he is Aadhar Goba Thakur being the paternal grand-father of the petitioner. As per school admission register dated 14-12-1923 his caste was recorded as "Thakur". Paternal cousin grand-father of the petitioner Shivdas Namdev Thakur at Sr. no.3 was recorded as "Hindu Thakur" as per school admission register; his date of birth being 05-01-1934 as per school record. Paternal cousin grand-father Bhaurao Namdev Thakur was also found to be a "Hindu Thakur" as per school admission register dated 14-06-1937. Subhash Aadhar Thakur, paternal uncle was recorded as "Hindu Thakur" as per school record. Devram Namdev Thakur, paternal cousin grand-father was also a "Hindu Thakur", his date of birth being 15-12-1925 as per school admission register. Paternal cousin brother Chandrakant Bhaurao Thakur was a "Hindu Thakur", his date of birth being 16-08-1955 as per school admission register. Father of the petitioner Hiranman Adhar Thakur was marked as "Hindu Thakur" with date of birth on 10-06-1956 as per school admission register. Likewise, Dilip Bhaurao Thakur, paternal cousin brother of the petitioner was found to be a "Hindu Thakur" as per school admission register. Real (own) brother of the petitioner Dipak Hiranman Thakur was recorded as "Hindu Thakur"

Scheduled Tribe as per school admission register. Paternal brother of the petitioner Anil Hiranman Thakur was similarly recorded as "Hindu Thakur" Scheduled Tribe, so also Yogita Dilip Thakur, paternal cousin niece of the petitioner. That apart, petitioner was also marked as "Hindu Thakur" Scheduled Tribe as per school admission register.

19. Respondent no.2 took the view that simply on the basis of caste entry as "Thakur" would not lead to any conclusion that the certificate holder belongs to "Thakur" Scheduled Tribe since the surname Thakur covers other communities as well besides Scheduled Tribe. Taking the view that genuine Scheduled Tribe Thakurs do not have old documentary evidence, the certificates relied upon by the petitioner were discarded. Insofar the certificates in respect of petitioner's father, himself, uncle, etc. were concerned, those were merely brushed aside by observing that those were not proved to be genuine. Insofar the recording of the petitioner's father in the service book as belonging to "Hindu Thakur" Scheduled Tribe community, respondent no.2 observed that the said document had not come before it for scrutiny. Some of the relatives by marriage have been found to have the surnames "Bhat" and "Brahmabhat". Respondent no.2, therefore, took the view that "Thakur" is not Scheduled Tribe and documentary entries as "Thakur" do not speak about one's social status as a tribe or a caste. While holding so, respondent no.2 has made a totally uncalled for remark that when

petitioner's family as claimed is Scheduled Tribe Thakur, then their clan relatives and marriage relatives should not have caste entries as "Bhat" or "Brahmabhat" community. Because there is such marital relationship, no conclusion can be drawn about the tribe status of the petitioner.

19.1. Insofar Raver, Yawal and Chopda Talukas of Jalgaon District is concerned, it is stated that in the said area Scheduled Tribes such as Pawara and Tadvli reside. In the said area, there is no existence of any "Thakur" Scheduled Tribe. On that basis respondent no.2 concluded that "Thakur" Scheduled Tribes never reside and are not found in Jalgaon District.

19.2 Further, respondent no.2 observed that an open category Thakur caste is totally different from Thakur Scheduled Tribe which is declared to be a Scheduled Tribe in the State of Maharashtra at Sr. No.44 in the Scheduled Tribes List. Persons belonging to non-tribal Thakur community have grabbed the benefits of "Thakur" Scheduled Tribe community only on the basis of old documents which are not relevant.

20. Reverting to the place of residence of the petitioner at Adawad, Taluka Chopda, District Jalgaon, respondent no.2 stated that Jalgaon District is not an area of habitation of "Thakur" Scheduled Tribe community but people belonging to non-tribal Thakur community reside there.

21. Insofar the tribe validity certificate of the petitioner's paternal cousin uncle Pramod Namdev Thakur is concerned, respondent no.2 in a very casual and loose manner stated that his name was fraudulently added in the affidavit submitted by the petitioner to trace the genealogy. Since it is a case of fraud, the same would vitiate the entire proceeding. Therefore, the benefit of Pramod Namdev Thakur having tribe validity certificate could not be extended to the petitioner. This despite the fact that validity certificate was issued to Pramod Namdev Thakur by the scrutiny committee on the basis of High Court directions. The said validity certificate was simply brushed aside by holding that no reasons were given and without testing socio-cultural affinity by the scrutiny committee.

22. On the basis of the above discussion, respondent no.3 answered all the three substantive issues against the petitioner and thereafter ordered that the petitioner does not belong to the "Thakur" Scheduled Tribe community. The certificate issued to him on 24-08-2000 by the Sub-Divisional Officer, Amalner Division was cancelled and confiscated. Besides, it has been ordered that if the petitioner was given benefit of reservation as a Scheduled Tribe candidate then the authority which had conferred such benefit should take action against the petitioner.

23. In Anand (supra) the question which fell for consideration before the Supreme Court was what parameters were to be applied in determining whether an applicant belongs to a notified Scheduled Tribe? Supreme Court referred to the provisions of Article 342 of the Constitution of India and the Constitution (Scheduled Tribes) Order, 1950 as amended in 1956 and in 1976. Supreme Court further took note of its earlier decisions in **Madhuri Patil vs. Commissioner, Tribal Development, (1994) 6 SCC 241** and **Director of Tribal Welfare, Government of A.P. vs. Laveti Giri, (1995) 4 SCC 32** following which State of Maharashtra enacted the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (briefly the “Act” hereinafter) providing for verification and scrutiny of caste claims. In exercise of the rule making power under the Act, State of Maharashtra has framed and notified the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (briefly the “Rules” hereinafter).

24. After referring to the observations of the Supreme Court in Madhuri Patil (supra), it was held that genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test which would include anthropological and ethnological traits of the applicant. Holding

"22. * * * * *

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt

new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

25. After saying so, Supreme Court added that the burden of proving the caste claim is upon the applicant. It is he who has to produce all the requisite documents in support of his claim. The caste scrutiny committee merely performs the role of verification of the claim and, therefore, can only scrutinize the documents and material produced by the applicant. In case the material produced by the applicant does not prove his claim, committee cannot gather evidence on its own to prove or disprove his claim (emphasis is ours). In the facts of that case Supreme Court noticed that the claim of the appellant was not properly examined and that the documentary evidence produced were lightly brushed aside.

26. In exercise of powers conferred by sub-section (1) of section 18 of the Act, Government of Maharashtra has framed the Rules for regulating issuance and verification of Scheduled Tribe certificates to persons belonging to the Scheduled Tribes. As per rule 2 (1) (f) "relative" has been defined to mean a blood relative from the paternal side of the applicant. While the competent authority has been empowered to grant or reject a Scheduled Tribe certificate under rule 4, a person who is aggrieved by rejection of such claim can prefer appeal before the appellate authority under rule 8. Rule 9 deals with meetings and quorum of Scheduled Tribe Certificates Scrutiny Committee (also referred to as the "scrutiny committee"). Rule 10 talks about constitution of vigilance cell comprising of the following officers :-

- (i) *A Senior Deputy Superintendent of Police;*
- (ii) *Police Inspector (number of Inspectors depending upon the number of cases);*
- (iii) *Police Constables to assist the Police Inspector;*
- (iv) *Research Officer.*

The procedure for verification of Scheduled Tribe certificate by the scrutiny committee is laid down in Rules 11 and 12.

27. In **Jaywant Dilip Pawar vs. State of Maharashtra, Civil Appeal No.2336 of 2011**, decided on 08-03-2017, Supreme Court held that

decision of the scrutiny committee negating the claim of the appellant on the ground that relatives of the appellant were not residents of the areas mentioned in the Presidential Order, 1956 and not being able to give any details of customs and traditions of the “Thakur” Scheduled Tribe community was not only not justified but was also wholly irrelevant. Appellant has only to establish that he belongs to the community mentioned at Sr. No.44 of Part IX of Second Schedule to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. As per the said Act the area restriction of Scheduled Tribes in the State of Maharashtra for the Thakur community was deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar community are treated to be Scheduled Tribes.

28. A Division Bench of this Court in **Rajshree Dilip Thakur vs. State of Maharashtra, Writ Petition No.11177 of 2017**, decided on 17-04-2018, also dealt with rejection of a claim as belonging to “Thakur” Scheduled Tribe. In that judgment this Court noted that petitioner was in possession of a document of the year 1925 wherein the caste of his grand-father Sakharam Thakur was marked as “Thakur”. The said document was discarded by the scrutiny committee on the ground that the word “Thakur” was not suffixed by the words “Scheduled Tribe”. Such an approach was held to be perverse by this Court. In the year 1925 there could not have been any occasion of writing “Scheduled Tribe” in a

document. Referring to the decision of the Supreme Court in Anand (supra) this Court held that if a candidate possesses a pre-constitution document then more weightage has to be given to such pre-constitution document. Relevant portion of the decision in Rajshree Dilip Thakur is extracted hereunder :-

*“5] The perusal of the material placed on record would reveal that the Petitioner is in possession of a document of the year 1925, wherein the caste of his grandfather namely Sakharam Thakur has been found to be Thakur. The said document has been verified by the vigilance cell on two occasions and found to be genuine. The genealogy has also been proved. However, the said document has been discarded by the committee by observing that it does not mention “Scheduled Tribe”. We find that the approach of the committee is totally without application of mind and to say least is perverse. The Government Resolution notifying the Scheduled Caste and Scheduled Tribe was published for the first time in the year 1950. As such, there could not have been occasion as writing Scheduled Tribe in the year 1925. Another ground for rejection is that the Petitioner has failed affinity test. The Apex Court in the case of **Anand V/s. Committee for Scrutiny of Tribe Claims and others** reported in **(2012) 1 SCC 113** has held that if a candidate possesses a pre-constitutional document, then more weightage has to be given to such pre-constitutional document.*

6] In that view of the matter, we find that the impugned order is not at all sustainable in law. The same is liable to be

quashed and set aside. Rule is therefore made absolute in terms of prayer clause (a).

7] The Caste Validity Certificate be issued to the Petitioner within a period of two weeks from today.”

29. This decision in *Rajshree Dilip Thakur (supra)* was followed by this Court in **Pritesh Subhash Thakur vs. State of Maharashtra, Writ Petition No.3869 of 2015**, decided on 18-04-2018. This Court held that no doubt affinity test is to be considered as an important indication for determining the claim of a person as belonging to a tribe but held that affinity test is not the sole test to determine whether a person belongs to a particular caste or tribe and it will only act as a corroboration. In such circumstances scrutiny committee will have to fall back on the documents which have been placed on record. In a case where there are pre-constitutional documents, it is imperative on the part of the scrutiny committee to attach due weightage to such documents. This Court also sounded a note of caution that it is not for the scrutiny committee to draw any conclusion that though the petitioner belongs to “Thakur” community he does not belong to “Thakur” Scheduled Tribe. Scrutiny committee is duty bound to read the entry as it is. It is not permissible to dissect the said entry and thereafter conclude that the Thakur caste is distinct from “Thakur” Scheduled Tribe. Relevant portion of the said decision is extracted hereunder :-

“10. Thus, the affinity test is not the sole test to determine whether a person belongs to particular caste or tribe and it will only act as a corroboration. In such circumstances, the committee will have to fall back on the documents which have been placed on record. In a case where there are pre-constitutional documents, it is imperative on the part of the committee to attach due weightage to the said documents, since at the time of issuance of these documents, the forefathers of the claimant did not contemplate that their caste/tribe would be included in the scheduled list and which would benefit their future generation. In this backdrop, the committee is duty bound to take into consideration such documents which have great probative value and specifically when the affinity test cannot be considered as the sole determining factor to determine a tribe claim. If valid and genuine documents have been placed on record, there is no reason to doubt the said documents only on the ground that the petitioner do not satisfy the affinity test. The committee expresses doubts about the two documents which have been placed on record by the petitioner which are undisputedly oldest documents in possession of the petitioner clearly reflecting the caste of grandfather and great grandfather to be “Thakur”.

11. It is no doubt true that the caste “Thakur” finds place in Category No.44 of the Scheduled Tribe Order 1950 and it is not for the committee to derive the conclusion that though the petitioner belongs to caste Thakur he do not belong to “Thakur”, Scheduled Tribe. The committee is duty bond to read the entry as and it is not permissible to dissect the said

entry and observe that there is Thakur caste which is in existence and which is distinct from Thakur, Scheduled Tribe. As far as the noting made in some of the documents produced by the petitioner reflecting (Magas Vargiya Bhatke), it is observed that at some point of time "Thakur" was enlisted as Nomadic Tribe. However, subsequently the said entry came to be deleted and the only entry which stands today where caste Thakur is recognized at entry No.44 of the Scheduled Tribe Order 1950."

30. This Court in **Prakash vs. Scheduled Tribe Certificate Scrutiny Committee, Writ Petition No.2363 of 2013**, decided on 22-02-2019, referred to the decision of the Supreme Court in the case of **Palghat Jilla Thandan Samudhaya Samrakshna Samithi vs. State of Kerala, 1994 SCC (1) 359**, where it was held as under :-

"5. In the Presidential Order, Thakur tribe has been categorised as Scheduled Tribe at Serial No.44. It would, thus, not be open to either the State Government or to the Court to hold that Thakur does not belong to Scheduled Tribe. In the instant case, petitioner has been found to belong to Thakur Community but has been held to belong to a non-tribal group. This is specifically prohibited under the aforesaid judgment of the Supreme Court."

30.1. Referring to a Division Bench judgment of this Court in **Apoorva Nichale vs. Divisional Caste Certificates Scrutiny Committee, 2010 (6) Mh.L.J. 401** it was reiterated that once the blood relatives of a candidate

are declared to be Scheduled Tribes then the other blood relatives cannot be denied the said claim. While interfering with the decision of the scrutiny committee this Court took judicial note of the fact that the scrutiny committees have a tendency of rejecting the claims in spite of various documents being placed on record and in spite of the clear cut legal position. It was held as under :-

“17. A judicial note can be taken of the fact that the scrutiny committees have a tendency of rejecting the claims in spite of various genuine documents being placed on record and in spite of the legal position explicitly clarified by the earlier judgments of the Hon’ble Apex Court as well as the Division Benches of this Court.”

31. Viewed from the above perspective, it is quite clear that respondent no.2 had erred in law as well as on facts in passing the impugned order dated 12-04-2018. It has not followed the decisions of the Supreme Court in Anand (supra) and in Jayant Dilip Pawar (supra) as well as decisions of this Court as alluded to herein-above. Instead it has introduced a subjective element into the decision making process giving a go-bye to an objective analysis thereby vitiating the same. It would be wholly incongruous if petitioner’s father, own brother, paternal cousin uncle Pramod Namdev Thakur and petitioner’s cousin sister Rupali Chandrakant Thakur continue to remain “Thakur” Scheduled Tribe, whereas such claim of the petitioner is negated. We also note that validity

certificate of Rupali Chandrakant Thakur as well as that of Pramod Namdev Thakur were issued as per directions of this Court. Such certificates were simply discarded by holding that those were issued without any reasons and without testing socio-cultural affinity by the scrutiny committee, just on the basis of High Court directions. We are afraid such an approach on the part of respondent no.2 is not only erroneous going behind the orders of the High Court but is also contumacious. That apart, respondent No.2 has very loosely alleged fraud against the petitioner alleging insertion of the name of Pramod Namdev Thakur in the affidavit of genealogy. It is trite that fraud has a definite meaning in law and the party against whom fraud is alleged must be put on notice and heard. Fraud must be proved following inquiry and tendering of evidence. Mere allegation of fraud or drawing an inference of fraud will not suffice.

32. Thus, on an over all reading of the impugned order of respondent no.2 dated 12-04-2018 we cannot but express our displeasure at the manner in which such decision making was carried out by respondent no.2. Consequently, we are of the view that the impugned order dated 12-04-2018 cannot be sustained. It is accordingly set aside and quashed. Scheduled Tribe validity certificate shall now be issued to the petitioner within a period of two weeks from the date of receipt of a copy of this order. Needless to say, all consequences upon issue of validity certificate to the petitioner shall follow.

33. Writ Petition is accordingly allowed. However, there shall be no order as to costs. Rule is made absolute in above terms.

(M.G. SEWLIKAR)
JUDGE

(UJJAL BHUYAN)
JUDGE

amj