

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk/kvm/ppn

WRIT PETITION NO. 2230 OF 2013

Smt. Jayshree d/o Subhash Suryawanshi)
@ Smt. Jayshree w/o Nitin Thakur,)
Age-32 years, Occ. Asstt. Teacher (Primary),)
At present – R/o. “Radhakrishna Apartment”,)
C-Wing, Room No. 109, Dongarpada Road,)
Virar (West), Tq. Vasai, Dist.- Thane.) .. Petitioner

Vs.

1. The State of Maharashtra)
Department of Tribal Development,)
Mantralaya, Mumbai-32)
Through its Secretary)
2. The Scheduled Tribe Certificate)
Scrutiny Committee, Konkan Division,)
Vedant Sankul, Opp : Kores Company,)
Thane through its Member Secretary)
3. The Sub Divisional Officer (Rev),)
Dahanu Division, Dahanu,)
Dist.-Thane)
4. The Chief Executive Officer)
Zilla Parishad, Thane)
5. The Education Officer (Primary))
Zilla Parishad, Thane.)
6. The Block Education Officer,)
Panchayat Samiti, Palghar) .. Respondents

Mr. Madhav Golegaonkar a/w. Mr. A. S. Golegaonkar for the Petitioner.
Mr. A. I. Patel, Addl. G. P. a/w. Mr. K. S. Thorat, AGP and Ms. Geeta
Sonawane, AGP for the Respondent-State.

**CORAM : R. D. DHANUKA &
MADHAV J. JAMDAR, JJ.**

Judgment reserved on :15th December 2020
Judgment pronounced on :8th January 2021

JUDGMENT (Per R. D. Dhanuka, J.)

1. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has impugned the decision and order of the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane-Respondent No.2 herein invalidating the claim of the Petitioner and seeks declaration that the Petitioner belongs to “Thakur-Scheduled Tribe” (Reserved Category) by issuing appropriate writ, order and direction as the case may be. Some of the relevant facts for the purpose of deciding this Writ Petition are as under:

2. On or about 21.03.2000 the Petitioner was appointed as an Assistant Teacher by Respondent No.4. She joined her services on 10.04.2000 in Panchayat Samiti School, Palghar. She was posted in Zilla Parishad School, Dharatpada, Taluka-Palghar on 28.06.2000. Her appointment was against the Scheduled Tribe Reserved Category. Her tribe claim in the prescribed format was referred to Respondent No.2-Committee through Block Education Officer, Panchayat Samiti, Palghar vide letter dated 21.01.2011. The Petitioner submitted 38 documents before Respondent No.2-Committee in support of her Tribe Claim.

3. It is the case of the Petitioner that the Petitioner had submitted School Leaving Certificate issued by the Principal, Savitribai Fule Adhyapak Vidyalaya, Kinhwali showing her caste recorded as “Thakur”. The Petitioner also submitted Government Gazette dated 04.11.1999 showing

the change in the name of the Petitioner from Jayshree Subhash Suryawanshi to Jayshree Nitin Thakur after her marriage. The Petitioner submitted School Leaving Certificate in respect of her father Subhash Pitambar Suryawanshi issued by Head Master, Zilla Parishad School, Hol, Taluka Sindkheda where he had completed his Primary School education. His caste was recorded as Thakur on 22.06.1965. Father of the Petitioner had completed his High School education from Vikas Vidyalaya, Nardhane, Dist.- Dhule wherein his caste was recorded as “Thakur” on 16.06.1972. The said Certificate also submitted by the Petitioner before Respondent No.2-Committee.

4. The Petitioner had submitted Caste Certificate as well as 1st page of extract of Service Book of her father, who was in Government service at Manor, recording caste of her father as “Thakur-Scheduled Tribe”. The Petitioner also submitted the school record of her real paternal uncles i.e. School Leaving Certificates issued by the Head Master, Zilla Parishad Marathi School, Hol, Taluka Sindkheda in respect of Motilal Pitambar Suryawanshi and Shantilal Pitambar Thakur who were admitted in the said school on 19.06.1967 and 17.06.1971 respectively. It is the case of the Petitioner that both these uncles had been issued Caste Certificates as belonging to “Thakur-Scheduled Tribe” by the Tahsildar and Executive Magistrate, Sindkheda.

5. The Petitioner submitted the School Leaving Certificate of her grandfather Pitambar Vedu Thakur who was admitted in Zilla Parishad Marathi School, Hol, Taluka-Sindkheda on 19.07.1941 wherein his caste was recorded as “Thakur”. The mother of the Petitioner i.e. Meena Handu Thakur had been issued Caste Certificate by the Executive Magistrate,

Dhule belonging to “Thakur-Scheduled Tribe”. The name of the mother of the Petitioner was changed from Ku. Meena Handu Thakur to Sou. Meena Subhash Suryawanshi after her marriage and was notified vide Government Gazette dated 27.05.1982. The said Caste Certificate was also submitted by the Petitioner before Respondent No.2-Committee. The Petitioner also submitted the Caste Validity Certificate issued to Jamsing Handusing Bhamare who is the maternal uncle i.e. brother of Petitioner’s mother issued by Scheduled Tribe Certificate Scrutiny Committee, Nashik on 16.02.2000 accepting the Tribe Claim of the said uncle of the Petitioner. Along with said Caste Validity Certificate the Petitioner also submitted an affidavit of the said Jamsing Handusing Bhamare showing genealogy and relationship with the Petitioner.

6. The Petitioner submitted detailed affidavit mentioning the details of documents as well as letter dated 10.04.2006 issued by the Information Officer and Desk Officer, Adiwasi Sanshodhan Va Prashikshan Sanstha, Maharashtra State, Pune in favour of Raju Madhukar Ingle mentioning therein that as per revised order of 1976, there is no area restriction in case of “Thakur-Scheduled Tribe”. The Petitioner also submitted Maharashtra State Gazettee of Jalgaon district published by Department of Cultural Affairs, Maharashtra State of the year 1994 showing the population of “Thakur” Caste in Khandesh district since long. The Petitioner also submitted in detail the special characteristic of her community.

7. It is the case of the Petitioner that since Respondent Nos.4 to 6 were insisting the Petitioner to submit Caste Validity Certificate and had stopped payment of her salary from February, 2011, the Petitioner filed a Writ Petition bearing No. 8375 of 2011 in this Court. The said Writ Petition was

admitted on 30.11.2011. This Court directed the Caste Scrutiny Committee to decide the Tribe Claim of the Petitioner on or before 31.03.2012 and directed the Respondents not to take any coercive action against the Petitioner till next date.

8. The matter of the Petitioner was thereafter referred to Vigilance Cell for Home and School for inquiry wherein the Police Inspector of Vigilance Cell Shri A. S. Pawar from Nandurbar Committee visited original place of residence of the Petitioner and submitted his report to the Committee at Nandurbar on 20.01.2012. The Vigilance Cell thereafter submitted a report to the Committee on 30.01.2012. The Research Officer however offered his negative remarks on the Vigilance Cell Report on 08.02.2012. On 09.02.2012 the said Vigilance Report was served on the Petitioner by Respondent No.2-Committee with a direction to reply to the said report within 15 days from the date of receipt of the said report.

9. On 25.02.2012 the Petitioner submitted her detailed reply to the Vigilance Cell Report to the Committee on each and every point raised by the Research Officer and objected to the remarks of the Research Officer. The Petitioner was called for personal hearing on 31.03.2012 which was attended by her along with her father. The Petitioner and her father were asked to explain the characteristics of their community in respect of marriage system, traditional dress, surnames of relatives which were disclosed by the Petitioner and her father.

10. By an order dated 31.03.2012 Respondent No.2-Committee invalidated the claim of the Petitioner on the ground that the Petitioner had failed to prove her claim on the count of entire evidence on record, prevailing legal position, area restriction, Validity Certificate issued in

favour of maternal uncle and Affinity Test. The Petitioner impugned the said decision of the Scrutiny Committee dated 31.03.2012 by filing a Writ Petition bearing No. 4854 of 2012 before this Court. This Court passed an order in the said Writ Petition on 14.12.2012 thereby quashing and setting aside the said decision of the Scrutiny Committee and directing the Scrutiny Committee to consider the claim of the Petitioner afresh on the ground that there was no serious consideration of the issue of Affinity Test as there was no analysis with regard to Affinity Test in the said impugned decision of the Committee. This Court kept all the questions raised in the said Writ Petition by the Petitioner as open while remanding the matter back to the Scrutiny Committee.

11. By an order dated 24.11.2012 the Respondent No.4 terminated the services of the Petitioner after the said decision of the Scrutiny Committee dated 31.03.2012 invalidating the Caste Claim of the Petitioner. Respondent No.6 issued a final termination order dated 30.11.2012 based on the order dated 24.11.2012 passed by Respondent No.4. The Respondent No.6 however by an order dated 24.01.2013 cancelled the order of termination dated 24.11.2012 issued to the Petitioner. The Petitioner accordingly joined the services with Respondent Nos.4 to 6 on 07.02.2013 and still is in service.

12. Pursuant to the said order dated 14.12.2012 passed by this Court remanding the matter back to the Scrutiny Committee, the Petitioner was called for personal hearing by the Scrutiny Committee on 10.01.2013 which was attended by the Petitioner and her father. It is the case of the Petitioner that the Petitioner and her father gave various detailed information to the Scrutiny Committee including the copy of genealogy of the Petitioner's

family and the documents which were already filed before the Committee. It is the case of the Petitioner that the Scrutiny Committee however once again rejected the Tribe Claim of the Petitioner on the same ground of Affinity Test without giving any reasoning by order dated 05.02.2013. The Petitioner has impugned the said decision and order of Respondent No.2-Committee dated 05.02.2013 in this Writ Petition.

13. Mr. Golegaonkar, learned Counsel for the Petitioner invited our attention to various exhibits annexed to the Petition, tendered written submission and also filed two compilations of Judgments some of which are referred to and relied upon during the course of his oral submission. It is submitted by the learned Counsel that the Vigilance Officer had submitted the Vigilance Report to the Scrutiny Committee after due verification of the documents produced by the Petitioner and found those documents to be correct. The Scrutiny Committee however totally ignored the entire documentary evidence on record produced by the Petitioner including the basic school record of the Petitioner herself, her father, real paternal uncles and other close blood relatives issued by the Competent Authorities showing social status of the entire family. Though all these documents which are old and for pre-independence period had great probative value are totally ignored in the impugned order. Not a single contra documentary evidence was produced on record warranting the rejection of the Tribal Claim made by the Petitioner.

14. The learned Counsel placed reliance on the Judgment of the Supreme Court in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims & Ors. 2012 (1) SCC 113**. It is held that:

“20. The rules further stipulate that the Vigilance Officer shall

personally verify and collect all the facts about the social status claimed by the applicant or his parents or guardians, as the case may be. He is also required to examine the parents or the guardians or the applicant for the purpose of verification of their tribe. It is evident that the scope of enquiry by the Vigilance Officer is broad-based and is not confined only to the verification of documents filed by the applicant with the application or the disclosures made therein. Obviously, the enquiry, supposed to be conducted by the Vigilance Officer, would include the affinity test of the applicant to a particular tribe to which he claims to belong. In other words, an enquiry into the kinship and affinity of the applicant to a particular Scheduled Tribe is not alien to the scheme of the Act and the Rules. In fact, it is relevant and germane to the determination of social status of an applicant.

21. We are of the view that for the purpose of examining the caste claim under the Rules, the following observations of this Court in *Madhuri Patil*, still hold the field:

"13. ...5. ... 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 school records, birth registration, if any. 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."

22. *It is manifest from the afore-extracted paragraph that the 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 the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:*

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(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 tribes' 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.

23. *Needless to add that the burden of proving the caste claim is upon the applicant. He 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 scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim."*

15. It is submitted that the order passed by the Scrutiny Committee is totally contrary to the principles laid down by the Supreme Court in the said Judgment of **Anand** (supra).

16. Learned Counsel placed reliance on the Judgment of this Court in the case of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 & Ors. 2010 (6) Mh.L.J.** in support of his submission that the Scrutiny Committee ought to have considered the Validity Certificate issued to the close blood relatives of the Petitioner i.e. cousin grand-father of the Petitioner from paternal side while considering the tribal claim made by the Petitioner. He relied upon paragraphs 7 and 9 of the said Judgment. He submits that Respondent No.2-Committee could not have invalidated the Tribe Claim of the Petitioner solely on the ground of Affinity Test.

17. It is submitted by the learned Counsel that in the impugned decision Respondent No.2-Committee referred to the statement of the grand father of the Petitioner (Thakur) bearing information on traits, characteristic, rituals category sought and answers given by the grand-father of the Petitioner about wedding, after birth ceremonies, rituals followed in tribal community as well as the information given about the traditions, marriages and funeral and special traits and characteristics, rituals which answers were correct and totally matched with the traditions followed in Thakur Schedule Tribe. The surname of the relatives of the Petitioner were stated as Pawar, Bhil, Ahire, Sonwane, Vaishva etc. It is submitted that even in these families, the Scrutiny Committee after following the procedure had already issued a Validity Certificate. The finding of the Scrutiny Committee that the Petitioner had failed in Affinity Test is without any reasons and without

recording any specific finding as to which answers given by the Petitioner were incorrect or there was any lack of information on the part of the Petitioner. The Scrutiny Committee has passed a casual order by overlooking the large number of documents produced by the Petitioner and various replies given to various questions by the Petitioner and her father during the course of oral hearing. The impugned decision of the Committee is in breach of the order dated 05.02.2013 passed by this Court by remanding the matter back to the Committee and shows non application of mind.

18. It is submitted by the learned Counsel that the copies of school record in respect of the Petitioner and her relatives wherein caste was recorded as Hindu Thakur have been discarded on the ground that nowhere on those school records it was mentioned as “Thakur-Scheduled Tribe”. He submits that only entry as Thakur cannot be the reason in an automatic validation of Tribe Claim. He submits that once a particular community is included in the list of Scheduled Tribe for the State then the said community from the State stands to be Scheduled Tribe and it cannot be said that the said community is from non-tribal group. Once a particular community is declared as Scheduled Tribe, then it is to be treated as Scheduled Tribe throughout the State.

19. It is submitted that the Scrutiny Committee could not have bifurcated the Thakur community which is declared as Scheduled Tribe by inserting in serial No.44 in the list of Scheduled Tribe in the State of Maharashtra in 1950 by holding that “Thakur community” in the State of Maharashtra was in existence other than “Thakur Scheduled Tribe” i.e. “Non Tribal-Thakur”. He submits that this part of the order is ex facie contrary to the Presidential

Orders since 1950 amended by the Amendment Act, 1976 by which the “Thakur” community is included in Scheduled Tribes. The learned Counsel placed reliance on the Judgment of Supreme Court in the case of ***State of Maharashtra Vs. Milind Khatware & Ors., 2001 (1) Mh.L.J. 1.***

20. Learned Counsel submits that the Scheduled Tribe orders must be read as it is. In case of Thakur community, in the First Presidential Order of 1950 Part-VII A-Maharashtra at Sr. No.5 Thakur/Thakar including Ka-Thakur, Ka-Thakar, Ma-Thakur, Ma-Thakar have been shown as Scheduled Tribes. In Part IX of the Maharashtra Scheduled Castes and Scheduled Tribes Orders Amendment Act, 1976 at Sr. No.44 the castes Thakur, Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur, Ma-Thakar are entered as Scheduled Tribes. So far as ‘Thakur’ community is concerned, there are no synonyms in existence. In Presidential Order it is clearly provided ‘Thakur’ since 1950 in the list of Scheduled Tribes. It is not open to State Government or the Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the Notification issued under Clause 1 of Article 342. The Committee, therefore, could not have rejected the Caste Claim of the Petitioner by holding that there is different class or group of ‘Thakur’ as ‘Non-tribal Thakur’.

21. The learned Counsel for the Petitioner placed reliance on the Judgment of Supreme Court in the case of ***Jaywant Dilip Pawar Vs. State of Maharashtra & Ors.*** delivered on 08.03.2017 in Civil Appeal No. 2336 of 2011 and would submit that the issue of area restriction is wholly irrelevant. The Petitioner was required only to establish that she belongs to the community mentioned at Sr. No.44 of Part IX of Second Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. In this case Respondent No.2, however, referred to the Scheduled Castes and

Scheduled Tribes Act, 1976 and the Bombay Reorganization Act, 1960 erroneously and contrary to the law laid down by the Supreme Court in the case of Jaywant (supra).

22. The learned Counsel for the Petitioner placed reliance on the Judgment delivered by a Division Bench of this Court on 26.09.2017 in Writ Petition No. 2152 of 2007 in the case of **Jaywant Dilip Pawar Vs. State of Maharashtra & Ors.** which adverted to the Judgment of Supreme Court delivered on 08.03.2017 arising out of the said Writ Petition and would submit that this Court declared that the Petitioner therein belongs to “Thakur” Scheduled Tribe after adverting to the Judgment of the Supreme Court and directed Respondent No.2 to issue Caste Validity Certificate in favour of the Petitioner.

23. Learned Counsel for the Petitioner placed reliance on the Judgment in the case of **Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. Vs. State of Kerala & Anr. (1994) 1 SCC 359** and would submit that after considering the Presidential Order, Thakur Tribe has been categorized as Scheduled Tribe at Sr. No.44 and thus it would not be open either for the State or to the Court to hold that Thakur does not belong to Scheduled Tribe.

24. Learned Counsel for the Petitioner placed reliance on the Judgment of this Court in the case of **Pawan Ramkrishna Deore Vs. State of Maharashtra & Anr.** delivered on 05.07.2013 in Writ Petition No. 6176 of 2012 and in particular paragraph 8 and would submit that the Caste Scrutiny Committee could not have solely relied upon the Affinity Test for the purpose of determining the validity of the Caste Certificate. He relied upon the Judgment of this Court in the case of **Prakash s/o. Shrawan Deore Vs.**

Scheduled Tribe Certificate Scrutiny Committee, Nashik & Anr. delivered on 22.02.2019 in Writ Petition No. 2363 of 2013 and in particular paragraph 13 and would submit that in the said Judgment, the Division Bench of this Court held that the Judgment of Division Bench of this Court in the case of ***Apoorva*** (supra) not having been brought to the notice of the Division Bench at Aurangabad in the case of ***Smt. Monika d/o. Satish Thakur Vs. The State of Maharashtra & Ors.*** in Writ Petition No. 10123 of 2010 dated 04.05.2018, the said Judgment in the case of ***Smt. Monika*** (supra) will have to be held *per incuriam* in law.

25. The learned Counsel for the Petitioner placed reliance on the Judgment of this Court in the case of ***Amol Narayan Wakkar & Anr. Vs. State of Maharashtra & Ors. 2005(1) Mh.L.J. 798*** and in particular paragraphs 16 and 17 in support of submission that the Scrutiny Committee was not justified in proceeding with the ensuing on the basis of alleged socio-cultural traits and ethnical linkage to find out whether the Petitioners belong to Thakar Scheduled Tribe when admittedly the Petitioners belong to Thakar community.

26. The learned Counsel for the Petitioner placed reliance on the Judgment of this Court in the case of ***Narendra Dhudku Thakur Vs. Scheduled Tribe Certificate Scrutiny Committee, Pune & Ors. 2004(2) Mh.L.J. 578*** and in particular paragraph 3 and would submit that the order of the Scrutiny Committee that the candidate belonging to 'Thakur' Caste and not 'Thakur' under the category of Scheduled Tribe, as there was a clear mis-classification of 'Thakur' Caste into 'Thakur' Tribe has been set aside by the Division Bench of this Court after considering the entry at Sr. No.44 Part IX of the Second Schedule to Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

27. The learned Counsel for the Petitioner placed reliance strongly on the Judgment of this Court in the case of ***Motilal s/o. Namdeo Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik & Ors.*** and in particular paragraphs 6, 7, 15 and 17 and would submit that this Court in the identical facts has allowed the said Writ Petition by accepting the Tribal Claim of the Petitioner and set aside the decision of the Scrutiny Committee.

28. The learned Counsel for the Petitioner placed reliance on the Judgment of this Court in the case of ***Madhuri Nitin Jadhav Vs. State of Maharashtra & Ors. 2014(3) Mh.L.J. 900*** and in particular paragraphs 20 to 22, 28, 29 and 39 and would submit that once the regional restrictions are removed, the oral as well as the material documents pertaining to other area are irrelevant and/or cannot be considered. All the parties are bound by the Constitutional orders and protection provided to the Scheduled Tribe in question.

29. The learned Counsel for the Petitioner invited our attention to various grounds raised in the Writ Petition and more particularly relating to the material produced by the Petitioner before the Scrutiny Committee to prove the Affinity Test by showing the (i) manner of conducting funeral in the community of the Petitioner, (ii) the dress used in all community, (iii) about the family deities, (iv) surnames of her relatives in whose case the Committee had validated the Tribe Claims, (v) the traditional profession of the community as agriculture and to collect wood, (vi) performance of the dance i.e. Dhol Nach and Bohada Nach at the time of marriage and festivals by consuming the liquor, (vii) marriages not being performed within the same Kul in her community etc. The Scrutiny Committee however has

totally overlooked those material and crucial data provided by the Petitioner and her father during the course of personal hearing.

30. Mr. A. I. Patel, learned Addl. Govt. Pleader for the State on the other hand supported the findings recorded in the impugned order passed by the Scrutiny Committee and would submit that various findings of facts recorded by the Scrutiny Committee being not perverse cannot be interfered with by this Court in this Writ Petition filed under Article 226 of the Constitution of India. He submits that the Petitioner had submitted the documents about school admission and general register extract of father and two real uncles and grand-father. However in the documents pertaining to the father and two real uncles' caste mentioned was "Hindu Thakur" while in the extract of grand-father the caste mentioned was "Thakur". He relied upon the remarks of the Research Officer addressed to the Vigilance Cell and would submit that the said remarks would clearly show that traits, characteristic customs etc. do not match with that of "Thakur-Scheduled Tribe Community". He submits that the Caste Claim of the Petitioner was considered in the light of documentary as well as oral evidence and Affinity Test in the light of the specific provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste) Certificate Act, 2000 and more particularly Section 4(2) thereof.

31. It is submitted by the learned Addl. G.P. that the Caste Scrutiny Committee has considered the principles laid down by this Court and Supreme Court in several Judgments while invalidating the Caste Claim of the Petitioner. All these Judgments relied upon by the Scrutiny Committee

would clearly show that there are “Thakar” and “Thakur” existing in higher castes and merely the caste mentioned in the school certificate as Hindu-Thakur and Thakur itself would not satisfy that she belongs to Thakur-Scheduled Tribe and is thus rightly discarded by the Scrutiny Committee. The onus was upon the Petitioner to substantiate the claim and character as “Thakur-Scheduled Tribe” which the Petitioner has failed to discharge. The Petitioner has also failed in the Affinity Test by not producing any material and/or the evidence by the statement of her father and other members of her family to establish her Caste Claim.

32. It is submitted that it is correct that an entry made in the school register as ‘Hindu-Thakur’ ‘Thakur’ has been discarded by the Scrutiny Committee. He however submits that it was for the Petitioner to prove her Caste Claim “Thakur-Scheduled Tribe” by adducing necessary evidence. The Caste Validity Certificate of the maternal uncle produced by the Petitioner was of no assistance to the Petitioner. None of the Judgments cited by the Petitioner would be of any assistance to the Petitioner in view of the Petitioner not having adduced any evidence to prove her case. Since there are various Thakur-Thakar communities in higher castes, entry of Thakur-Thakar under Article 342 of the Constitution of India cannot be construed to belong to Schedule Tribe community unless the same is specifically proved. The Petitioner did not produce any material to falsify the Vigilance Cell Report before the Scrutiny Committee.

REASONS AND CONCLUSION

33. The Petitioner claims to be belonging to ‘Thakur Scheduled Tribe’ community and is resident of Palghar, District Thane. It is the case of the Petitioner that in the State of Maharashtra, Thakur is included in the list of

Scheduled Tribes at Serial No.44. With the assistance of the learned counsel for the Petitioner we have perused those documents annexed to the Writ Petition and also the original files of the papers and proceedings before the Respondent No.4 Committee produced by the learned Additional Govt. Pleader.

34. A perusal of the impugned order passed by the Scrutiny Committee clearly indicates that the Petitioner had admittedly produced 38 documents described in paragraph 2 of the impugned order. On 31.03.2012, the Respondent No.2 Scrutiny Committee had invalidated the caste claim made by the Petitioner. By an order dated 14.12.2012 passed by the Division Bench of this court in Writ Petition No.4854 of 2012, this court quashed and set aside the said decision dated 31.03.2012 rendered by the Scrutiny Committee and relegated the Petitioner before the Scrutiny Committee for fresh consideration of the matter in accordance with law keeping all questions raised in the said writ petition open.

35. This court directed the Petitioner to appear before the Scrutiny Committee on 26.12.2012 and directed the Scrutiny Committee to decide the matter on the basis of the documents already on record and shall examine on all aspects relevant for examining the claim of the Petitioner as belonging to Scheduled Tribe Community. This Court observed that the Committee had referred to the documents which were relevant for considering affinity test but no analysis thereof was made in the context of the affinity test in the impugned decision. It was further directed that the Committee was obliged to consider the issue of affinity test keeping in mind the affidavits relied upon by the Petitioner in support of her claim as well as enquiry made by the Vigilance Cell in that behalf in the impugned decision.

36. Before we deal with the impugned order dealing with those 38 documents by the Scrutiny Committee, it would be appropriate to refer to some of the documents which had bearing on the issue of deciding the Caste Validity Certificate by the Committee. The Petitioner was issued Caste Certificate by the Sub-Divisional Officer, (Rev.) Dahanu Division on 08.02.2011 after considering various documents certifying that the Petitioner belongs to Hindu – Thakur Sr.No.44 which was recognized as a Scheduled Tribe under the Constitution (Scheduled Caste) Order, 1950 as amended from time to time as on the date of the said certificate. It was stated in the said certificate that the said certificate was issued on the basis of the certificate of Scheduled Tribe issued to Subhash Pitambar Suryawanshi, father of the Petitioner of village Palghar, Taluka Palghar of Thane District of the State of Maharashtra who belongs to the Hindu-Thakur-44 Tribe which is recognized as a Scheduled Tribe in the Maharashtra State issued by the Executive Magistrate of Sindkheda of Dhule District of the State of Maharashtra.

37. The Petitioner had produced the school leaving certificates of her father and the grandfather, service book, caste certificate of the father issued by the Tahsildar, caste certificate of the uncle issued by the Executive Magistrate, caste certificate of another uncle issued by the Executive Magistrate and caste certificate of the sister of the Petitioner issued by the Sub-Divisional Officer of Dahanu. In the school leaving certificate of the Petitioner dated 23.09.1999, the religion under the column ‘Religion and Caste ‘ it was mentioned as ‘Hindu – Thakur’. In the school leaving certificate of the father of the Petitioner Subhash Pitambar Suryawanshi issued by the Headmaster, Zilla Parishad School, Hol, Taluka Sindkheda,

District Dhule, the Religion and Caste was mentioned as 'Hindu Thakur'.

38. The father of the Petitioner was issued a caste certificate by the Tahsildar, Sindkheda certifying that he was the resident of Hol, Taluka Sindkheda, District Dhule and belongs to Thakur Caste which is recognized as Scheduled Tribe under the Scheduled Caste and Scheduled Tribe order (Amendment) Act, 1976. The Petitioner had also produced the first page of the extract of the service book of the father wherein the caste of the father was recorded as Thakur Scheduled Tribe.

39. In the school leaving certificate of the real uncles of the Petitioner i.e. Motilal Pitambar Suryawanshi and Shantilal Pitambar Thakur who were admitted in the school at Hol, Sindkheda issued on 19.06.1967 and 17.06.1971 respectively, their religion and caste were mentioned as Hindu-Thakur. The Petitioner had also produced the caste certificate issued in favour of those two uncles by the Executive Magistrate of Taluka Sindkheda certifying that they belong to Thakur - Scheduled Tribe.

40. The Petitioner had also produced the school leaving certificate of the great grandfather of the Petitioner i.e. Pitambar Vedu Thakur issued on 27.03.2010 showing that he was admitted in the said Zilla Parishad School, Hol on 19.07.1941 and had left the school on 21.10.1942. In the column of Religion and Caste, it was recorded that he belongs to Hindu Thakur. In the certificate issued by the Executive Magistrate, Dhule in the name of the mother of the Petitioner i.e. Meena Handu Thakur on 15.07.1980 it was certified that she belongs to Thakur Community which was classified as Scheduled Tribes as per Social Welfare Sports and Tourism Department's letter No.CBC-1478/12819-D-V dated 17.04.1978 at serial No.44. The said

certificate was issued on the strength of school leaving certificate. The Petitioner also placed reliance on the caste validity dated 16.02.2000 issued by the Member Secretary, Scrutiny Committee and Verification of Tribe Claims, Nashik Division, Nashik certifying that the maternal uncle of the Petitioner i.e. brother of the Petitioner's mother belongs to 'Thakur, Scheduled Tribe'.

41. The Petitioner had also produced an affidavit before the Scrutiny Committee mentioning the details of the documents as well as the letter dated 10.04.2006 issued by the Information Officer and Desk Officer, Adiwasi Sanshodhan va Prashikshan Sanstha, Maharashtra State, Pune in favour of Raju Madhukar Ingle mentioning therein that as per the revised order of 1976, there was no area restriction in case of 'Thakur-Scheduled Tribe'.

42. A perusal of the reply dated 25.02.2012 from the Petitioner to the Respondent No.2 Committee in respect of the Vigilance Report and the comments of the Research Officer clearly indicates that the Petitioner had not only referred to large number of documents once again but had also dealt with the observations of the Research Officer stating that the information mentioned in the statements recorded regarding the surnames of close blood relatives, traits, living style, birth/funeral rituals, marriage ceremonies, festivals, Panchayat system etc. do not match with that of the 'Thakur – Scheduled Tribe'.

43. The Petitioner had submitted the details in respect of all these issues raised by the Research Officer to demonstrate that all these rituals and social status of the entire Thakur caste would match with that of the Thakur –

Scheduled Tribe. The Petitioner also pointed out that though most of the Thakurs are following Hindu religion and by that they worship Hindu deities but they mainly worship Chedya, Hirwa, Bhawani (Goddesses), Khandoba, Waghya and Vetal. They also worship Hanuman and Gaodevi as their deities.

44. A perusal of the impugned order dated 05.02.2013 passed by the Scrutiny Committee indicates that in paragraph (6) of the impugned order, the Scrutiny Committee has referred to some of the documents relied upon by the Petitioner. Insofar as the documents at paragraph nos. 2(I), (X), (XIII), (XV) and (XXII) are concerned, the same were copies of the caste certificates pertaining to the applicant, her father, mother and real uncles showing caste as Thakur, Scheduled Tribe. The Scrutiny Committee stated that the caste certificate is always subject to scrutiny in view of section 4(2) 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.

45. The documents described in paragraphs 2(V), (IX), (XI), (XIX), (XX), (XXIII), (XXIV), (XXV), (XXVI), (XXVII) and (XXVIII) are the copies of Rajpatras, Domicile certificate, 1st page of service books, affidavit, a copy of Gazette, a copy of letter of President, Shri Madhukarji Pichad, President, Maharashtra Adiwasi Thakur Jamat Mandal, a copy of Note issued to President, Maharashtra Adiwasi Thakur Jamat, a copy of G.R., a copy of letter issued by Sarpanch, Grampanchayat, Hol Pra Be, Taluka Sindkheda, District Dhule. It is erroneously held by the Scrutiny Committee that all these documents were not important while determining the tribe

claim of the applicant and could not be considered as supportive documents.

46. Though some of these documents indicated the caste of the father of the Petitioner and other relatives of paternal side as Hindu Thakur and though in the affidavit filed by the Petitioner various explanation on the issue raised by the Research Officer were given including the rituals as well as social status being followed in the Thakur Scheduled Tribe Community, the Scrutiny Committee did not consider any of those documents and erroneously held that all these documents were not important while determining the tribe claim of the applicant.

47. Division Bench of this court in the order dated 14th December, 2012 while passing and setting aside the order dated 31st March, 2012 passed by the Scrutiny Committee in Writ Petition No.4854 of 2012 filed by the Petitioner had made it clear that the Scrutiny Committee shall decide the matter on the basis of the documents already on record and shall consider the issue of affinity test keeping in mind the affidavits relied upon by the Petitioner in support of her claim as well as enquiry made by the Vigilance Cell in that behalf in the impugned decision. The Scrutiny Committee ignored such affidavit on the ground that such affidavits were not important while determining the tribe claim of the Petitioner and could not be considered as supportive documents contrary to the directions issued by this court.

48. Insofar as documents described in paragraph nos. 2 (II), (III), (IV), (VI), (VII), (VIII), (XII), (XIV), (XVI) are concerned, it is stated in the impugned order that those documents were the copies of the school records in respect of the Petitioner and her relatives, wherein caste is recorded as Hindu Thakur only. Nowhere on these school records mentioned as

‘Thakur, Scheduled Tribe’. It is held that the entry as Thakur cannot, therefore result in an automatic validation of the tribe claim. Caste Thakur and Scheduled Tribe Thakur are altogether two different entities and they had no ethnic linkage with each other. The Scrutiny Committee rejected the Caste Validity Certificate of the Petitioner’s maternal uncle relied upon by the Petitioner erroneously on the ground that the same was not of any use to the Petitioner’s claim.

49. Insofar as affinity test is concerned, the Scrutiny Committee has dealt with the said issue in paragraph (7) of the impugned order. Various traits, characteristics, customs etc. were referred by the Petitioner which were the answers to various questions asked to the father of the Petitioner during the oral evidence and in various affidavits. However the same are rejected on the ground that they were not peculiar traits, characteristic, customs etc. as observed in the genuine Thakur, Scheduled Tribe community and thus information furnished by the Petitioner would not indicate that the Petitioner was a true Thakur which falls at Serial No.44 in the list of Scheduled Tribes. The Scrutiny Committee erroneously came to the conclusion that the Petitioner had failed to succeed in the affinity test. It is held that whether the Petitioner proves her claim as Thakur, Scheduled Tribe which was listed at Serial No.44 in the list of Scheduled Tribes, it is not possible only to rely upon the documentary evidence to prove such claim but such claim should be verified by considering the traits, characteristics, customs of the Petitioner i.e. the crucial affinity test.

50 In paragraph (9) of the impugned order, the Scrutiny Committee has held that from the documents produced by the Petitioner and obtained by the Vigilance Enquiry Officer, pertaining to oldest period, it has become clear that the ancestors of the Petitioner are permanent residents of Hol, Taluka

Sindkheda, District Dhule. Before enactment of Removal of Area Restrictions Order, 1976 the Thakur/Thakar, Scheduled Tribes were restricted only to following areas :-

- (A) Ahmednagar District – Akola, Rahuri and Sangamner Talukas.
- (B) Kolaba District – Karjat, Khalapur, Pen, Panvel and Sudhagad Talukas and Matheran.
- (C) Nashik District – Igatpuri, Nashik and Sinnar Talukas.
- (D) Poona District – Ambegaon, Junnar, Khed and Maval Talukas.
- (E) Thana District – Thana, Kalyan, Murbad, Bhivandi, Bassein, Wada, Shahapur, Palghar, Jawhar and Mokhada Talukas.

It is held by the Committee that it is not the case of the Petitioner that her forefathers had been migrated to Hol, Taluka Sindkheda, District Dhule from any one of the aforesaid areas/Talukas. The Scrutiny Committee held that the Petitioner was well aware about her caste status but only with an ill intention to take the benefit of similarity in nomenclature of caste had obtained the certificate as belonging to Thakur, Scheduled Tribe.

51. In paragraph (11) of the impugned order, it is held by the Scrutiny Committee that it is true that a Thakur is a community which is also included in the Scheduled Tribes list, for the State of Maharashtra under Article 342 of the Constitution of India, it does not mean that every person who is “Thakur” also belongs to the Scheduled Tribe Community. During the course of the arguments, Mr.Patel, learned Additional Government Pleader stated that the Scrutiny Committee has referred to large number of judgments when invalidating the caste claim of the Petitioner.

52. Division Bench of this court in case of **Motilal N. Pawar** (supra) delivered on 22.12.2017 considered a situation where the Petitioner claimed

to be of 'Thakur Scheduled Tribe' and was resident of Anturli, Taluka Bhadgaon, District Jalgaon. Since the year 1960, the father of the petitioner had shifted to Nashik for joining a job. The caste claim of the Petitioner therein was invalidated by the Scheduled Tribe Certificate Scrutiny Committee. The Caste Scrutiny Committee in that matter also had held that though in the school records of the Petitioner and his father etc. the caste was recorded as "Hindu Thakur" and /or "Thakur", the Petitioner had failed to prove that his caste fell in the entry appearing at Serial No. 44 i.e. Thakur, Scheduled Tribe.

53. The Scrutiny Committee in that matter also had held that the Petitioner therein had failed to establish his affinity and ethnic linkage towards the "Thakur", Scheduled Tribe community appearing at serial no. 44 and thus the claim of the petitioner that he belonged to Thakur Scheduled Tribe was not sustainable and was accordingly declared as invalid. The Committee also rejected the case of the Petitioner therein on the ground that the Petitioner was not an ordinary resident of the habitated area of Thakur community and, therefore, he could not be said to be belonging to "Thakur", scheduled tribe. The Scrutiny Committee had also rejected the case of the Petitioner that he had established affinity test towards "Thakur", scheduled tribe appearing at serial no. 44".

54. This court in the said judgment after referring to entry no. 44 of the Scheduled Tribe Order as it stood in Scheduled Tribe Order of 1950 i.e. "Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar" held that the entry is 'Thakur' which is recognized as the Scheduled Tribe amongst other Scheduled Tribes in the State of Maharashtra. The entry at Serial No.44 is not the "Thakur, the scheduled tribe". The Scrutiny Committee is

therefore required to ascertain on the basis of the documentary evidence, whether the person is “Thakur” which is recognized as “Thakur”, scheduled tribe.

55. This Court held that it is unfathomable to believe that prior to enactment of the Scheduled Tribe Order of 1950, any entries would have been recorded as “Thakur scheduled tribe”. This expectation of the Committee that the entries ought to have been recorded as “Thakur, scheduled tribe”, is too much to expect, since that was never the purport of recognition to be granted to the existing tribes as Scheduled Tribe. The person who claims to be belonging to “Thakur Scheduled Tribe” did not foresee that their caste is going to be recognized as the Scheduled Tribe on the Constitution of India being brought into effect and therefore, they should record their entry as “Thakur, Scheduled Tribe”. This court recorded that it had not come across any entry in such pre-constitutional documents also reflecting the caste as “Thakur, Scheduled Tribe”, but entry “Thakur”, which is a recognized Scheduled Tribe.

56. The Division Bench of this court accordingly held that the reasoning adopted by the Committee was therefore, completely fallacious and such reasoning is put-forth by the committee in cases after cases while rejecting the pre-constitutional documents recording caste as “Thakur”, on illusory reason that the entry recorded is not “Thakur, Scheduled Tribe” but is only “Thakur”. This court in the said judgment rejected the reasoning of the Scrutiny Committee that the entry of caste in these documents produced by the Petitioner therein as “Thakur” but it was not mentioned as “Thakur Scheduled Tribe”. This court failed to understand the said stand of the committee, as the entry in the Scheduled Tribe order is “Thakur” and a

person has to establish his claim as belonging to caste “Thakur” as finds place in the scheduled tribe order, for the first time introduced in the year recognized 1950. The “Thakur” came to be recognized as a Scheduled Tribe only for the first time in 1950.

57. This court noticed that even as on today, the caste certificates are not issued as “Thakur' scheduled tribe” by the competent authority but the caste certificates mentions the caste as “Thakur” which is recognized as Scheduled Tribe since the caste “Thakur” finds place in the Scheduled Tribe order. Since the Scheduled Tribe order has come into effect in the year 1950, the documents in existence prior to the inclusion of the caste “Thakur” in the scheduled tribe order, therefore, have attained great significance to establish the genuineness, with a specific object that the claimant has not manipulated the entries intentionally so as to avail benefit of being a “Thakur”. It is for this reason that the pre-constitutional documents are given weightage. The rejection of the claim of the claimant like the petitioner on the ground that though the caste is mentioned as “Thakur”, it was not mentioned as “Thakur Scheduled Tribe”, is nothing but an endeavor to defeat the claim of the persons belonging to said caste.

58. Insofar as rejection of the caste claim by the Scrutiny Committee in that matter on the ground that the Petitioner was not able to establish the affinity test is concerned, this court adverted to the judgment of the Supreme Court in case of **Anand** (supra) in which it has been held that while applying the affinity test, 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, modernization and contact with the

other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of a tribe and therefore, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a scheduled tribe.

59. The Supreme Court in the said judgment also observed that the Petitioner could not be denied benefit 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 etc., and thus the affinity test can only be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim.

60. This court also adverted to the judgment of the Supreme Court in the case of ***Kumari Madhuri Patil and Anr. Vs. Addl. Commissioner, Tribal Development, Thane & Ors.*** which laid down great emphasis on the ethnological and anthropological traits which are peculiar to a tribe and while constituting the committee, mandated an inclusion of Research Officer, who had intimate knowledge in identifying the tribal community / group of tribes or tribal communities. This court observed that the Research Officer was not merely expected to match the traits sought by the applicant but is expected to investigate the community's social status claim by finding out as to what is the place of his origin, whether he has migrated from his original place and to collect all other information by throwing light on his social status including peculiar traits/customs etc.

61. This court in the said judgment did not accept the view of the Scrutiny Committee holding that the Petitioner therein was not from the area where the "Thakurs" were found in namely, 25 tahsils and 5 districts. This court adverted to the judgment in case of ***Yogita Anil Sonawane vs. State***

of Maharashtra & Ors., reported in 2017 (1) Mh.L.J. 643 in which the judgment of Division Bench of this court relied upon the Full Bench judgment in the matter of Shilpa Vishnu Thakur (supra) in which it was held that upon removal of the area restriction by the amending Act of 1976, the persons belonging to a particular different Scheduled Tribe, though residing in areas than earlier specified or migrated from the said area, can also claim to be belonging to the same Scheduled Tribe.

62. This Court also adverted to the Articles 342 and 340 of the Constitution of India. This court considered the statement of objects and reasons of the Act No.108 of 1976 and held that the tribe identified as Scheduled tribes in the Scheduled Tribes Order of 1950, as amended by the Act of 1956, came to be recognized as “Scheduled Tribe” throughout the said State, in contrast to they being confined to a particular area of the State. As a result of removal of the area restrictions, the tribe or caste, if it is recognized as a scheduled caste or scheduled tribe in the State was entitled to avail the benefits irrespective of the places where they were normally traced to since the tribes normally dwelled in clusters and mostly found in certain hilly areas. However, by the amendment of 1976, the restriction of “Thakurs” being hailing from the districts specified in 1956 Order was completely done away with.

63. This Court after perusal of Article 342 of the Constitution of India held that tribes or tribal communities specified by the President, in consultation with the Governor of a State, are deemed to be scheduled tribes in relation to that State. There is no intention to sub-divide, classify or discriminate these tribes based on their place of residence or place of their origin and it would rather create class of tribes within the same “tribe” in a particular State. It is not the intention flowing from the scheme of the

Constitution. This court also considered the fundamental right conferred on every citizen in the form of Article 19 (d) and Article 19 (e) of the Constitution of India, namely to move freely throughout the territory of India and right to reside and settle in any part of the territory of India. This court accordingly quashed and set aside the impugned order passed and directed to forthwith issue the validity certificate in favour of the petitioner therein, as belonging to “Thakur, Scheduled Tribe, at the earliest and in any case, not beyond the period of four weeks from the date of the receipt of the said order. In our view, the facts before this court in case of **Motilal N. Pawar** (supra) squarely applies to the facts of this case. We are respectfully bound by the said judgment.

64. This Court in the case of **Apoorva Vinay Nichale (supra)** held that where the caste claim of the applicant has been scrutinised and accepted and one committee has given a finding about the validity of the caste, another committee ought not to refuse the same status to a blood relative who applies. In this case, Scrutiny Committee ought to have considered the caste validity certificate issued to other close blood relatives of the petitioner while considering the tribe claim of the petitioner. The impugned order passed by the Scrutiny Committee is in violation of principles of law laid down by this Court in the case of **Apoorva Vinay Nichale (supra)**.

65. The Scrutiny Committee has already issued a caste validity certificates in favour of relatives of the petitioner whose surnames are as Pawar, Bhil, Ahire, Sonwane and Vaishva etc. after following due procedure. A perusal of the order passed by the Scrutiny Committee indicates that the Scrutiny Committee has invalidated the tribe claim of

the petitioner solely on the ground of Affinity Test. The statement of the father of the petitioner was recorded by the Vigilance Officer who had submitted various information regarding primitive, traits, characteristics and rituals, about the wedding, after birth ceremonies, rituals, followed in tribal community as well as information given about the traditions followed in marriage, funeral and special traits and characteristics relating to which questions were asked to the father of the petitioner.

66. The Scrutiny Committee has totally overlooked the said part of evidence. The Scrutiny Committee has also overlooked the documentary evidence produced by the petitioner showing that after due enquiry, various authorities had already issued caste certificate in favour of the petitioner and the caste validate certificate in favour of various relatives of the petitioner.

67. In our view once a particular community is declared as Scheduled Tribe, then it is to be treated as Scheduled Tribe throughout the State. The Scrutiny Committee could not have bifurcated the Thakur community which is declared as Scheduled Tribe by inserting in serial No.44 in the list of Scheduled Tribe in the State of Maharashtra in 1950 by holding that “Thakur community” in the State of Maharashtra was in existence other than “Thakur Scheduled Tribe” i.e. “Non Tribal-Thakur”. In our view, this part of the impugned order is ex facie contray to the Presidential Orders issued in 1950 amended by the Amendment Act, 1976 by which the “Thakur” community is included in Scheduled Tribes.

68. The Hon’ble Supreme Court in the case of ***State of Maharashtra Vs. Milind Khatware & Ors. (supra)*** has held that the Scheduled Tribe orders must be read as it is. Since in the First Presidential

Order, it is clearly provided that 'Thakur' since 1950 is included in the list of Scheduled Tribes, neither State Government nor Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes is specified in the Notification issued under Clause 1 of Article 342. In our view, the Scrutiny Committee thus could not have rejected the caste claim of the petitioner by holding that there was different class or or group of "Thakur" as "Non-tribal Thakur".

69. Supreme Court in the case of ***Jaywant Dilip Pawar Vs. State of Maharashtra & Ors. (supra)*** has held that the petitioner was required only to establish that she belongs to community mentioned at Sr. No.44 of Part IX of Second Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The Scrutiny Committee thus could not have relied upon the provisions of the Bombay Reorganization Act, 1960 while rejecting the caste claim of the petitioner on the ground of area restriction. This Court held that if the caste claim of the candidate has been held to be belonging to Scheduled Tribe then other close blood relatives cannot be denied the validity certificate. The view of the Scrutiny Committee is *ex facie* contrary to the principles of law laid down by the Supreme Court in the case of ***Jaywant Dilip Pawar (supra)***.

70. Division Bench of this Court in the case of ***Sachinkumar Vasantrao Wankhede Vs. State of Maharashtra (supra)*** has held that categorization of "Thakur" as "Thakur, Scheduled Tribe" has come into effect after the Constitution was adopted and, therefore, obviously there was no question of having any entry of such caste (tribe) in the pre-constitutional era. As regards the area restriction is concerned, the area restriction was lifted in 1976. This Court in the said judgment also adverted to the Division

Bench of this Court in the case of ***Motilal Namdeo Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee & Ors. (supra)*** and was pleased to set aside the order passed by the Scrutiny Committee and to direct the Scrutiny Committee to issue a caste validity certificate i.e. Thakur, Scheduled Tribe. The principles of law laid down by the Division Bench of this Court in the case of ***Sachinkumar Vasantrao Wankhede (supra)*** squarely applies to the facts of this case. The Scrutiny Committee could not have rejected the caste claim of the Petitioner on the ground that prior to 1976 also the entry in the record produced by the Petitioner ought to show the caste as Thakur, Schedule Tribe.

71. The Supreme Court in the case of ***Palaghat Zilla Thandan Samudaya Samrakshana Samittee and Anr. Vs. State of Maharashtra & Anr. (supra)*** has held that it is not for the State Government or for Court to enquire into in evidence about the correctness of entry of Scheduled Caste in the Scheduled Castes Order or it has to be applied as it stands until the Scheduled Castes Order needs amendment by appropriate legislation. In our view, rejection of caste claim of the petition by the Scrutiny Committee is ex facie contrary to the principles of law laid down by the Supreme Court in the case of ***Palaghat Zilla Thandan Samudaya Samrakshana Samittee and Anr. (supra)***. The order passed by the Scrutiny Committee is overlooking the entry No.44 ex facie illegal.

72. This Court in the case of ***Narendra Dhudku Thakur Vs. Scheduled Tribe Certificate Scrutiny Committee, Pune & Ors. (supra)*** has held that the order of Scrutiny Committee that the candidate belonging to 'Thakur' Caste and not 'Thakur' under the category of Scheduled Tribe amounts to clear mis-classification of 'Thakur' Caste into 'Thakur' Tribe has been set aside by the Division Bench of this Court in the said matter

after considering the entry at Sr. No.44 Part IX of the Second Schedule to Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The said Judgment squarely applies to the facts of this case.

73. In view of the fact that various findings recorded by the Scrutiny Committee are *ex facie* contrary to in utter disregard to the principles of law laid down by the Supreme Court and this Court and also contrary to the entry at Serial No.44 of Part IX of Second Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, this Court has ample power to set aside the said perverse findings of facts as well as the order being perverse.

74. Learned Addl. Govt. Pleader could not distinguish the judgments referred to and relied upon by the petitioner. The judgments referred to and relied upon by the learned Additional Government Pleader are totally distinguishable in the facts of this case. Even otherwise later judgments of the Supreme Court and this Court referred aforesaid taking different views are applicable to the facts of this case and are binding on this Court.

75. There is no substance in the submission of the learned Additional Government Pleader that the caste claim of the petitioner was totally considered in the light of documentary as well as oral evidence and Affinity Test in the light of the specific provisions of the said Act. In our view, the impugned order dated 5th February 2013 passed by the Scrutiny Committee invalidating the claim of the petitioner is totally perverse and is unsustainable.

76. We, therefore, pass the following order :-

- (i) The impugned order dated 5th February 2013 passed by the respondent no.2-The Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane (Exhibit-P to the petition) is hereby quashed and set aside;
- (ii) The Respondent no.2 Scrutiny Committee is hereby directed to issue caste validity certificate in favour of the petitioner as “Thakur” Scheduled Tribe within a period of two weeks from the date of communication of this order;
- (iii) Rule is made absolute in aforesaid terms.
- (iv) There shall be no order as to costs.

[MADHAV J. JAMDAR, J.]

[R. D. DHANUKA, J.]