

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

WRIT PETITION NO. 5364 OF 2023

1. Rakesh Bhimashankar Umbarje,
Aged 45 years, resident of A-2,
1st floor, Ashish Apartment, near
Shantaram Lace, Kurar Vilalge,
Malad (East), Mumbai – 400 097.
2. Vaibhav Subhash Umbarje
Aged 43 years, resident of Auj (A),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.
3. Rita Bhimashankar Umbarje
Aged 51 years, resident of Auj (M),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.
4. Reshma Basavraj Umbarje
Aged 39 years, resident of Auj (A),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.
5. Vinayaditya Mallikarjun Umbarge
Aged 40 years, resident of Auj (A),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.
6. Satish Shrikrishna Umbarje,
Aged 50 years, resident of Auj (A),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.

7. Chetan Mallikarjun Umbarje,
Aged 37 years, resident of Auj (A),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.

8. Vinod Ravindra Umbarje
Aged 43 years, resident of Auj (A),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.

9. Mallikarjun Sangappa Umbarje
Aged 70 years, resident of Auj (A),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.

10. Nikhil Ravindra Umbarje,
Aged 38 years, resident of Auj (A),
Tal. South Solapur, Dist. Solapur,
Pin Code – 413221.

... Petitioners

Versus

1. State of Maharashtra
Through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai – 400 032.

2. Scheduled Tribe Certificate Scrutiny
Committee, Pune Division, Pune,
Through its Member-Secretary,
Having its office at Kapil Towers,
C-Wing, near RTO Office, Pune,
Dist. Pune – 411 001.

... Respondents

Mr R. K. Mendadkar a/w Ms Priyanka Shaw and Ms Jayshri Mendadkar for the Petitioners.

Mrs M. P. Thakur, AGP or the Respondent/State.

*CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.*

DATE : 3 MAY 2023

Judgment (Per R. N. Laddha, J.) :

Rule. Rule made returnable forthwith. Respondents waive service. At the instance and the request of the learned counsel for the parties, heard finally.

2. This petition, under Article 226 of the Constitution of India, impugns the legality and validity of the notice dated 13 March 2023, issued by the respondent-Scrutiny Committee, seeking to reopen the proceedings of the petitioners caste validity. The dispute pertains to the respondent-Scrutiny Committees' power to review/revisit its orders granting tribe validity certificates to the petitioners.

3. Heard Mr R. K. Mendadkar, learned counsel for the petitioners, and Mrs M. P. Thakur, learned Additional Government Pleader for the respondent/State.

4. It is the case of the petitioners that they belong to the Koli-Mahadev tribe, a scheduled tribe under Article 342(1) of the Constitution of India. It is submitted that the petitioners have been granted caste validity certificates by the Caste Scrutiny Committee in accordance with the law as also in accordance with the orders passed by this Court in the proceedings of *Ms Kanchan Chidanand Umbarje v/s. State of Maharashtra & Ors.*¹, *Sharad Shrikrishna Umbarje v/s. State of Maharashtra & Ors.*², *Kashinath Sangappa Umbarje v/s. State of Maharashtra & Ors.*³, *Mahesh Bhimashankar Umbarje v/s. State of Maharashtra & Ors.*⁴, *Deepak Chandrakant Umbarje v/s. State of Maharashtra & Ors.*⁵, *Kum. Arya Vaibhav Umbarje v/s. State of Maharashtra & Anr.*⁶, *Dhiren Rajesh Umbarje v/s. State of Maharashtra & Anr.*⁷, *Chandrakant Raghunath Umbarje v/s. State of Maharashtra & Ors.*⁸

5. It is submitted that once such validity certificate is granted to the petitioners under orders passed by this Court and such validity certificates not being the subject matter of any challenge before this Court, the validity certificates have attained finality, and now there

1 Writ Petition No. 448 of 1993 decided on 1 March 1996.

2 Writ Petition No. 2360 of 1993 decided on 1 March 1996.

3 Writ Petition No. 2806 of 1994 decided on 1 March 1996.

4 Writ Petition No. 2386 of 1994 decided on 29 July 1994.

5 Writ Petition No. 2389 of 1994 decided on 29 July 1994.

6 Writ Petition No. 3735 of 2022 decided on 31 March 2022.

7 Writ Petition No. 5519 of 2022 decided on 23 September 2022.

8 Writ Petition No. 5522 of 2022 decided on 23 September 2022.

is conclusive proof of the petitioners' social status as Koli-Mahadev scheduled tribe.

6. In respect of another family member of the petitioners, Mr Mendadkar has also pointed out a recent decision of a coordinate Bench of this Court to which one of us was a member (R. N. Laddha, J.) in *Abhishek Mahendra Umbarje v/s. State of Maharashtra*⁹, wherein, the Scrutiny Committee was directed to issue a tribe validity certificate to the petitioner therein, who is a blood relative of the petitioners. It is submitted that in a manner known to the law, the petitioners and their blood relatives have been granted caste validity certificates, which according to Mr Mendadkar, is in consensus with the law laid down in *Apoorva d/o Vinay Nichale v/s. Divisional Caste Scrutiny Committee No.1*¹⁰. It is hence submitted that the respondent-Scrutiny Committee had no authority to reopen the validity of the certificates granted to the petitioners and to issue the impugned notice for cancellation or revocation of their validity certificates.

7. According to Mr Mendadkar, the respondent-Scrutiny Committee in issuing the impugned communication has acted as good as an Appellate Authority over the orders passed by the High Court in reopening the caste validity certificates as granted to the

9 2022 SCC OnLine Bom 2858

10 2010 SCC OnLine Bom 1053

petitioners. Mr Mendadkar has placed reliance on the decision in *Kum. Arya Vaibhav Umbarje (supra) and Akash Sanjay Gawali v/s. State of Maharashtra and Ors.*¹¹ to contend that once the caste certificates of the blood relatives of the petitioners were validated as belonging to the scheduled tribe, the Scrutiny Committee had no jurisdiction to review or revisit its order.

8. Ms M. P. Thakur, learned Additional Government Pleader, contested the contentions of the learned counsel for the petitioners. She contends that the action initiated by the respondent-Scrutiny Committee was in compliance with the orders passed by the coordinate Bench of this Court in *Anshuman Mahesh Umbarje v/s. State of Maharashtra & Ors.*¹² and connected Writ Petition. She submitted that Section 9 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 (for short '**the Act**'), empowers the Scrutiny Committee with all the powers of the Civil Court, including the powers of review in the event of the occurrence of fraud or misrepresentation. In support of her contentions, she relied on *Rajeshwar Baburao Bone v/s. The State of Maharashtra & Anr.*¹³.

11 Writ Petition No. 2305 of 2020 decided on 2 February 2023.

12 Writ Petition No. 13103 of 2022 decided on 11 November 2022.

13 Civil Appeal No. 5778 of 2015 decided on 29 July 2015.

9. The rival contentions now fall for our determination.

10. In the case *Anshuman Mahesh Umbarje (supra)*, as considered by a coordinate Bench of this Court, the caste claim of petitioner Anshuman as Koli-Mahadev was invalidated. The father of Anshuman, however, was issued a caste validity certificate under the orders of this Court in Writ Petition No. 2386 of 1994. This order had attained finality. The other relatives of the petitioner were also issued with the validity under the orders of this Court. Based on the validity certificates of the father, granted under the orders of this Court, the coordinate Bench, by its order dated 11 November 2022, directed the Scrutiny Committee to issue validity certificate to the petitioner. However, there is a passing reference in the order that there appear to be some discrepancies in the genealogy of the relatives of the petitioner Anshuman. In the entire order passed by this Court, the coordinate Bench never directed/ordered to reopen the caste validity proceedings of the petitioners. The respondent-Scrutiny Committee, however, misconstrued the order in such a way as if this Court directed the reopening of the proceedings of the validity certificates issued to the petitioners. The said order passed by the coordinate Bench in *Anshuman's* case reads thus:

“1 The caste claim of the Petitioner as Koli Mahadev is invalidated. It is submitted that the father of the Petitioner has been issued validity under the orders of this Court in Writ Petition No.2386/1994 dated 29th July 1994. The said judgment has become final. It is further submitted that the other relatives of the Petitioner are also issued with the validity under the orders of this Court.

2 The learned AGP points out the discrepancies in the genealogy submitted in the present matter and the matter of the relatives of the Petitioner.

3 It appears that the father of the Petitioner has been issued validity under the orders of this Court and some of the other relatives also. There appears to be some discrepancies in the genealogy of the relatives of the Petitioner. As the validity has been issued to the father of the Petitioner under the orders of this Court, we pass the following order:

a. The impugned judgment is set aside.

b. The Respondent may issue validity certificate of Koli Mahadev, Scheduled Tribe to the Petitioner.

c. It would be open for the Committee to verify the genealogy submitted by the petitioner of his father and other relatives and if it is found that fraud has been played in submitting the genealogy, then the Scrutiny Committee may take further steps in the matter, as may be permissible under the law. The validity issued to the petitioner shall be subject to the same.

d. The Writ Petition is disposed of no costs.”

(emphasis supplied)

11. In regard to the observations made in paragraph 3(c) of the order, we may at the outset observe that such observations are in the context of *Anshuman Mahesh Umbarje (supra)* case and the

subject matter of the proceedings of the said Writ Petition. The observation of this Court in paragraph 3(c) appears to have been totally misconstrued by the Caste Scrutiny Committee in issuing the impugned notice.

12. In so far as the present case is concerned, it is seen from the impugned notice that there is no material to indicate that the petitioners have committed fraud or made misrepresentation while obtaining the validity certificates. Also the order of the coordinate Bench of this Court in *Anshuman Mahesh Umbarje (supra)* do not order reopening of the proceedings of the petitioners tribe claim, nor was the Court's intention to direct to reopen the proceedings including for any reason of fraud while obtaining the tribe validity certificates.

13. Moreover, it appears from the tribe validity certificates of the petitioners that their blood relatives have been validated as belonging to the scheduled tribe under the orders of the Court, which have become final, and based on their validity certificates, the petitioners have also been validated as belonging to the scheduled tribe. It is a settled position of law that a judgment of this Court which has become final shall bind all subordinate authorities subject to control and superintendence of this Court, and respondent-Scrutiny Committee is one such authority. The

respondent-Scrutiny Committee's act of issuing the notice under challenge amounts to acting as an appellate authority over the orders of the High Court, which it can never assume. In any event, it cannot be countenanced that without having any material, respondent-Scrutiny Committee could proceed to reopen the validity proceedings in concluded cases.

14. In *Abhishek Mahendra Umbarje (supra)*, there was a direction given to the respondent-Scrutiny Committee for issuing a tribe validity certificate to the petitioner Abhishek. This validity certificate attained finality. Based on this claim, so also petitioners in other writ petitions, the petitioners herein have received validity certificates. When the High Court, upon examining the record, comes to its conclusion regarding the tribe claim of the blood relatives of the petitioners, then such orders, unless are upset by the Supreme Court would continue to hold the field.

15. In the above circumstances, the issue which would fall for our consideration is whether the Caste Scrutiny Committee at all had jurisdiction to review its own decision granting caste validity certificate to the petitioners, including those granted under orders passed by this Court.

16. In this context, we need to examine the legislation under

which the Caste Scrutiny Committee is constituted and is required to exercise its jurisdiction. The legislation is 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. The Act provides for the regulation of the issuance and verification of the caste certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category and for matters connected therewith or incidental thereto. Section 2 of the Act deals with the definitions such as caste certificates, competent authority, scrutiny committee, etc.

17. Section 4 of the Act requires the caste certificates to be issued by the competent authority. Sub-section (2) of Section 4 of the Act states that a caste certificate issued by any person, officer or authority other than the competent authority shall be invalid. The caste certificate issued by the competent authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee. Section 5 of the Act deals with the provisions of appeal in case any person is aggrieved by an order of rejection of an application passed by the competent authority under sub-section (1) of Section 4 of the Act. Section 6 of the Act deals

with the verification of caste certificates by a Scrutiny Committee.

18. Section 7 of the Act deals with the confiscation and cancellation of false caste certificates. Sub-section (1) of Section 7 of the Act, deals with the power of the Scrutiny Committee to cancel or confiscate caste certificates and not caste validity certificates. Sub-section (1) of Section 7 of the Act is relevant; therefore, the same is transcribed below.

“Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribe (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward category has obtained a false caste certificate to the effect that either himself or his children belong to such castes, tribes or classes, the scrutiny committee may, suo motu or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.”

19. Further, sub-section (2) of Section 7 speaks of the order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any Authority or Court except the High Court under Article 226 of the Constitution of India. Section 15 of the Act concerns bar of jurisdiction of Civil Court.

20. It would be appropriate to note the relevant provisions of the

Act, as noted by us above, which reads thus:

“Section 2 Definitions.

In this Act, unless the context otherwise requires,—

(a) “Caste Certificate” means the certificate issued by the Competent Authority to an applicant indicating therein the Scheduled Caste, Scheduled Tribe, De-notified Tribe (Vimukta Jatis), Nomadic Tribe, Other Backward Class or Special Backward Category, as the case may be, to which such applicant belongs;

(b) "Competent Authority" means a officer or authority authorised by the Government, by notification in the Official Gazette, to issue a Caste Certificate, for such area or for such purposes as may be specified in the said notification and shall include all the Competent Authorities already designated by the Government before the coming into force of this Act, having jurisdiction over the area or place to which the applicant originally belongs, unless specified otherwise;

(k) "Scrutiny Committee " means the Committee or committees constituted under sub-section (1) of section 6 for the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for verification of the Caste Certificate and to perform the function of Scrutiny Committee under this Act;

Section 4 Caste Certificate to be issued by Competent Authority.

(1) The Competent Authority may, on an application made to it under section 3, after satisfying itself about the genuineness of the claim and following the procedure as prescribed, issue a Caste Certificate within such time limit and in such form as may be prescribed or reject the application for reasons to be recorded in writing.

(2) A Caste Certificate issued by any person, officer or authority

other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee.

Section 5 Appeal.

(1) Any person aggrieved by an order of rejection of application passed by the Competent Authority under sub-section (1) of section 4 may, within 30 days from the date of receipt of order, appeal to the Appellate Authority specified by the Government by notification in the Official Gazette.

(2) The Appellate Authority may within a period of three months, after giving the appellant an opportunity of being heard and after satisfying itself about the genuineness or otherwise of the claim of the appellant either confirm the rejection order, or set aside the order of the Competent Authority and direct the Competent Authority to issue the caste certificate.

Section 6 Verification of Caste Certificate by Scrutiny Committee

(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub- section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State

Government, local authority, public sector undertakings, educational institutions, Co- operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative societies or any other Government aided institutions who has not obtain such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.

Section 7 Confiscation and cancellation of false Certificate.

(1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India

Section 9 Civil Court powers to Competent Authority, Appellate Authority, and Scrutiny Committee

The Competent Authority, the Appellate Authority and the Scrutiny Committee shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of any document;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning any public record or copy thereof from any Court or office; and*
- (e) issuing Commissions for the examination of witnesses or documents.*

Section 15 Bar of jurisdiction of Civil Courts.

“No Civil Court shall have jurisdiction to entertain, to continue or to decide any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order, if the claim involved in such suit or proceeding, or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.”

21. The scheme of the Act as noticed from the aforesaid provisions would reveal that it would be the exclusive jurisdiction of the Caste Scrutiny Committee to consider the application for a caste validity certificate as provided for in Section 6. Sub-section (2) of Section 7 clearly provides that the orders passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or Court except the High Court under Article 226 of the Constitution of India. Thus, against any order passed by the Caste Scrutiny Committee, the remedy for a

person aggrieved is only to approach the High Court by invoking its jurisdiction under Article 226 of the Constitution of India and in no other manner.

22. We need to observe that there ought not to be any confusion between the provision of sub-section (1) of Section 7 and what has been provided in sub-section (2), for the reason that sub-section (1) deals with a situation that where, before or after the commencement of the Act, a person not belonging to any Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false 'Caste Certificate' (not a validity certificate) to the effect that either himself or his children belong to such Castes, the Scrutiny Committee in such an event and in relation to the caste certificate, may *suo motu*, or otherwise call for the record and enquire into the correctness of 'such certificate' (caste certificate) and if it is the opinion that the caste certificate was obtained fraudulently, it shall, by an order cancel and confiscate 'the certificate' by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

23. When sub-section (1) of Section 7 uses the word caste

certificate necessarily, the meaning of the same is required to be derived as per the definition of the caste certificate as contained in Section 2(a), which defines caste certificate to mean a certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee.

24. Thus, a 'caste certificate' is certainly not a 'caste validity certificate', as issuance of a caste validity certificate is an independent exercise to be undertaken by the Caste Scrutiny Committee by exercising its quasi-judicial powers. It is hence clear that the power conferred on the Caste Scrutiny Committee under sub-section (1) of Section 7 to enquire into any false caste certificate and form an opinion that a caste certificate was obtained fraudulently and to cancel and confiscate the certificate as ordered in sub-section (1) of Section 7, cannot be read to mean that the Caste Scrutiny Committee has the power to review its own orders/decisions granting caste validity certificate in case of a complaint being made that the caste validity certificate has been obtained fraudulently by any applicant seeking validity of the caste certificate.

25. It is quite clear from the reading of sub-section (2) that not

only such orders passed by the Caste Scrutiny Committee under sub-section (1) but orders passed by the Scrutiny Committee under the provisions of “the Act”, which would include a grant of a caste validity certificate, shall be final and cannot be challenged before any Authority or Court except the High Court under Article 226 of the Constitution of India. This clearly infers that once a decision is taken by the Caste Scrutiny Committee either under the provisions of sub-section (1) of Section 7 or under the provisions of Section 6, the Caste Scrutiny Committee becomes *functus officio*, and such decision can only be assailed by approaching the High Court under Article 226 of the Constitution of India. There cannot be any other reading from the provisions of sub-section (2) of Section 7.

26. Thus, from the scheme of the legislation it is clear that the Caste Scrutiny Committee would not have any jurisdiction to review/revisit its own orders and decisions granting caste validity certificates. This would also be clear from the reading of Section 9. It may also be observed that the legislature is conscious in making available limited powers of the Civil Court to the Competent Authority, Appellate Authority and the Scrutiny Committee, which are specifically enumerated in Section 9. The legislature has consciously avoided to confer the powers of a review as envisaged under Section 114, read with provisions of Order 47 of the Code of Civil Procedure. Once such provision conferring powers of a review

are excluded in their application to the Caste Scrutiny Committee, there is no question of such powers being conferred by any implication under any circumstances.

27. Considering the provisions of sub-section (1) of Section 7, consciously, the legislature has not conferred powers on the authority issuing caste certificate to revisit the decision to issue caste certificate and cancel the same in view of fraud and misrepresentation. Such power is conferred on a higher authority, namely on the Caste Scrutiny Committee. The contention of the learned AGP that because the Caste Scrutiny Committee had issued validity certificate, it would have jurisdiction to revisit/review its decision when there is fraud and misrepresentation is totally untenable. As noted above, the legislature was fully conscious of the fact that a validity certificate could be obtained from the Caste Scrutiny Committee by playing fraud, however, consciously, the legislature has avoided to confer any power of review on the Caste Scrutiny Committee to review/revisit its own decision even in case of fraud, misrepresentation or suppression of material facts. In fact, such an interpretation would defeat the mandate of sub-section (2) of Section 7.

28. It would need no emphasis that the power to review any order in the nature of the order passed by the Scrutiny Committee

would be the power required to be expressly conferred by the provisions of the legislation under which the Caste Scrutiny Committee functions.

29. If the contention, as urged on behalf of the respondent, that the Scrutiny Committee has jurisdiction to review its own decision/orders, although not expressly conferred by law, is accepted, the situation is just to be imagined, inasmuch as on any complaint alleging fraud and in respect of cases wherein the validity to a caste certificate has been continued by substantive orders passed by the Caste Scrutiny Committee or under orders passed by the High Court or the Supreme Court, cannot be reopened by the Caste Scrutiny Committee on any complaint of fraud. This certainly is not the intention of the legislation to unsettle the concluded issues wherein the caste validity certificates are granted as per law and under orders passed by the higher Courts. It is for such reason the legislature has categorically avoided conferring any powers of review on the Caste Scrutiny Committee.

30. We are thus of the clear opinion that in the event a complaint being made in regard to any validity certificate granted by Caste Scrutiny Committee to be vitiated by fraud or illegality, the only course open to such a complainant or otherwise any person/authority is to approach the High Court by invoking the

provisions of Article 226 of the Constitution and seek its interference in setting aside the validity certificate granted in favour of such person in view of the clear provisions of sub-section (2) of Section 7 of the Act. It is in such proceedings under Article 226 the Court would be required to apply its mind as to whether the allegations of fraud or any illegality are of such nature that the decision of the Caste Scrutiny Committee was vitiated and is required to be set aside. This would assume more significance as a grant of caste validity certificate confers substantive rights on the person holding such certificate, by virtue of which a right in rem is conferred on such person on the basis of such caste validity certificate.

31. It cannot be countenanced that a Caste Scrutiny Committee assumes jurisdiction to review its orders merely on a complaint filed by any person and upsets the earlier orders passed by it. Thus, the proposition, as canvassed by the learned AGP, would lead not only to an absurdity but the proposition totally untenable in law and not recognized by the legislation.

32. Our above observations also find support in ***Akash Sanjay Gawali (supra)***, wherein it was held that:

“6. The action of 2nd Respondent committee prima facie appears to be vindictive. It is also completely illegal. This

committee has no suo motu power of review. In case after case, it seems to rely on a general principle that 'fraud vitiates everything' without realising the implications of this or how that fraud is to be detected, ascertained, proved and results based on such a finding. Perhaps this committee has no idea how difficult it is to actually prove fraud. A failure of proof is not fraud. That so-called 'fraud' must arise in the proceeding before it. It cannot be invoked like some mantra to confer on oneself a power of review over orders passed many years earlier, and which no one has called into question, about which there is no lis or proceeding, and which have all attained finality. This is so basic a concept in law that we are surprised that the committee is so utterly oblivious to it. To be plain: no one ever assailed the petitioner's father's and uncles' validity certificates on any ground. The committee had no power to suo motu re-open those validity certificates and call them into question. The committee's orders are not purely ministerial to admit of the narrow exception to the general rule that there is no inherent power of review.

7. We find it surprising that we have to repeatedly state that this committee has no suo motu power of review. None is conferred by statute. None can be necessarily inferred. The impugned order is entirely without jurisdiction.

8. This is also a case of the 2nd respondent committee inviting extreme censure for wholly overreaching this Court. Only because this Court in its order of 13 December 2018 in Writ Petition No. 10194 of 2018 entered a caveat that should the certificates of the uncles or father be recalled or set aside then the petitioner could not get any benefit, the 2nd respondent committee could not have seen this as an opportunity to go ahead and do something that was entirely outside its jurisdiction."

(emphasis supplied)

33. It can be clearly noticed that it has been a consistent view in various decisions that the Caste Scrutiny Committee has no

jurisdiction to review its own orders. There is no dispute whatsoever on this proposition and the Courts would be required to adhere to the mandate of what has been provided for in law i.e. sub-section (2) of Section 7 that the challenge to any decision taken under the Act by the Caste Scrutiny Committee can only be challenged before the High Court by invoking the provisions of Article 226 of the Constitution of India. Furthermore, it is a settled position in law that when substantive provisions are clear, such jurisdiction cannot be conferred by any subordinate legislation or by any executive fiat.

34. As the Caste Scrutiny Committee has no powers to review, there is no question of any *suo motu* powers to be exercised by the Caste Scrutiny Committee and in any exercise of such *suo motu* jurisdiction would be invalid, illegal and contrary to the provisions of the Act.

35. We are not inclined to accept the contention as urged by the learned AGP relying on ***Rajeshwar Baburao Bone (supra)***, firstly, for the reason that this is not a decision on a proposition that the Caste Scrutiny Committee has substantive powers to review its own decision. Secondly, such is not the ratio of the said judgment and thirdly, the facts of the present case are altogether different from that case. Significantly, in ***Rajeshwar Baburao Bone (supra)***, the

petitioner got the validity certificate in 2010, however, the petitioner's brother had his tribe certificate cancelled in 2004. In the present case, the petitioners received validity based on the validity certificates of their blood relatives, which were granted under the orders of the Court and have not been revoked or cancelled yet.

36. Learned AGP has not brought to our notice any judgment which would interpret the interplay between sub-sections (1) and (2) of Section 7 of the Act, and/or any judgment having ratio on the legal consequences as brought about from the holistic reading of the scheme of the Act and more particularly sub-sections (1) and (2) of Section 7, which would authoritatively lay down that under the mandate of the provisions of the Act and more particularly considering the provisions of sub-section (2) of Section 7, any power of review has been conferred on the Caste Scrutiny Committee, to review its decision in case a validity has been obtained by fraud or misrepresentation. In fact, it appears to be a consistent view of this Court that there are no powers with the Caste Scrutiny Committee to review its own decision.

37. Thus, for all the above reasons, we find it difficult to approve the legality of the impugned notice/action of the respondent-Scrutiny Committee. We are, therefore, of the view that the

respondent-Scrutiny Committee has acted without jurisdiction while issuing the impugned notice. The respondent-Scrutiny Committee's action to reopen the validity proceedings by its impugn notice cannot be justified. In our considered view, this action of the respondent-Scrutiny Committee is unsustainable in law, perverse and vitiated by complete disregard to the judicial pronouncements. Accordingly, we quash and set aside the impugned notice of the respondent-Scrutiny Committee.

38. Rule is accordingly made absolute in the above terms. There shall be no order as to costs.

R. N. LADDHA, J.

G. S. KULKARNI, J.