

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

WRIT PETITION NO. 10123 OF 2010

Smt. Monika D/o. Satish Thakur,
Age : 23 years, Occu. Student,
R/o. 8-B, Santoshi Mata Colony,
NakaneRoad, Deopur, Dhule, Dist. Dhule. ... Petitioner

VERSUS

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai-32,
Through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division, Nandurbar,
through its Member Secretary.
3. The Sub-Divisional Officer,
Dhule Division, Dhule, Dist. Dhule.
4. Adarsh Shikshan Prasarak Mandal's,
Bapusaheb D.D. Vispute College of Education,
Walwadi, Dist.Dhule, Through its Principal.
5. North Maharashtra University,
Jalgaon, through its Registrar. ... Respondents

.....
Mr A. S. Golegaonkar with Mr M. A. Golegaonkar, Advocate for
petitioner
Mr P. S. Patil, AGP for respondents No. 1 to 3
Respondents No. 4 and 5 served
.....

WITH

WRIT PETITION NO. 7079 OF 2009

Chetan S/o Satishchandra Thakur,
Age : 19 years, Occu. Student,

R/o. Plot 8-B, Santoshi Mata Colony,
Nakane Road, Deopur Dhule, Dist. Dhule.

... Petitioner

VERSUS

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32,
Through its Secretary.
2. The Committee for Scrutiny and Verification of Tribe Claims,
Through its Vice-Chairman and its Member,
Nandurbar.
3. The Sub-Divisional Officer,
Dhule Division, Dhule, Dist. Dhule.
4. The Director of Technical Education,
Maharashtra State, Mumbai.
5. The Principal,
Maratha Vidya Prasarak Samaj's College of
Engineering, Udoji Maratha Boarding Campus,
Gangapur Road, Nashik, Dist. Nashik. ... Respondents

.....
Mr A. H. Koralkar, Advocate for the petitioner
Mr P. S. Patil, AGP for respondents No. 1 to 4
None for respondent No. 5
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE OF RESERVING THE JUDGMENT : 24TH FEBRUARY, 2018
DATE OF PRONOUNCING THE JUDGMENT : 04TH MAY, 2018

JUDGMENT (PER A. M. DHAVAL, J.) :-

1. These petitions are filed by Monika and Chetan, who are real brother and sister. They are seeking quashing and setting aside

of the orders invalidating their tribe claim of Thakur, Scheduled Tribe. The impugned orders passed by Caste Scrutiny Committee, Nandurbar on 24.09.2009 and 24.06.2010, respectively, are on the same grounds.

2. Pleadings and the arguments of Shri. Golegaonkar, learned advocate for the petitioner, disclose following grounds for challenge.

- (i) One brother and three sisters of the petitioners have been granted validity certificates of 'Thakur' Scheduled Tribe.
- (ii) The consistent school record of the petitioners, their siblings, father and grand-father disclose caste as 'Thakur', which is declared as Scheduled Tribe. It was not open for the Committee to consider whether the petitioner are tribals or non-tribals.
- (iii) The committee erred in considering the area of residence even though the area restriction has been removed by the amendment of 1976 to the Scheduled Tribes Order.
- (iv) When the caste was shown as Hindu-Thakur in the school record of the petitioners and their forefathers and when there were validity certificates in favour of their four siblings, the same could not have been ignored on the basis of the affinity test. Besides, no specific reasons are disclosed to show that the affinity test & home enquiry was against the petitioners.

3. Shri. P. S. Patil, learned Assistant Government Pleader for respondent/State strenuously argued in support of the orders with following submissions :-

- (i) The directions were issued in the case of **Madhuri Patil vs Addl. Commissioner & Ors.** reported in **AIR 1995 SC 94** and State enacted 'the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000' (Maharashtra Act No. XXIII of 2002) so as to curb spurious claims for caste certificates and persons not belonging to Scheduled Tribe obtaining tribe certificates thereby denying the persons of genuine Scheduled Tribes from enjoying the constitutional benefits. Still there was huge increase in population of Scheduled Tribe. It was not biologically possible.
- (ii) There is caste by name Thakur in Maharashtra. The school record of the petitioners & their forefathers showed only caste as Hindu-Thakur. Nowhere it is stated that the petitioners' forefathers were belonging to Thakur-tribe. It was mandatory for the petitioners to prove that they belong to Scheduled Tribe (ST) Thakur before claiming validity certificate of ST.

(iii) The certificates granted in favour of siblings of the petitioners were granted even though affinity test and vigilance report were found not in favour of the petitioners. Those were granted even when the scrutiny committees were not satisfied about the tribe claim of the siblings of the petitioners, in view of the confused legal position holding that the Scrutiny Committee had no jurisdiction to consider whether Thakur is a caste or a tribe. The position has been now cleared by full Bench judgment in **Shilpa Vishnu Thakur vs State of Maharashtra and others** reported in (2009) 3 Mh.L.J. 995 and the Apex Court judgments.

(iv) The caste/tribe claim is to be decided by the Scrutiny Committee on the broader prospective. It has to consider old record. Vigilance report is integral part of enquiry. The affinity test for anthropological or sociological linkage is relevant consideration.

(v) Though area restriction has been removed, it is open for the Committee to consider whether the petitioners forefathers had roots in localities identified as localities of Thakur tribe and whether there was migration of the forefathers. There is no claim of the petitioners that they were belonging to such areas and there was subsequent migration.

4. The record and proceedings of the claims of both the petitioners as well as the proceedings with respect to their siblings were called and perused.

5. Heard learned counsels appearing on behalf of the respective parties and we have gone through the voluminous case laws produced before us.

6. Before appreciating the rival contentions, it is necessary to record the factual aspects. Monika's proposal for caste verification was forwarded to the Scrutiny Committee when she was in 12th std. Now she has completed B.A. and she claims that she is selected as Shikshan Sevak but did not get appointment order for want of validity certificate. Her claim was based on caste recorded as Hindu-Thakur in the school record of her father and grand father at the time of their admission on 08.06.1956 and 15.06.1935, respectively. Monika's school record does not disclose the caste. She relied on caste validity certificates issued in favour of her three sisters Meghana dt. 17.03.2004, Vandana dt. 02.06.2005, Yogita dt.17.03.2004 and brother Ganesh dt. 20.03.2005. Besides she relied on caste certificate issued in favour of her father by Executive Magistrate on 31.08.1977 and later on by Sub-Divisional Officer on 31.05.2000. Pertinently, her father was serving as Special Accounts Auditor in a Cooperative Society at Dhule. In vigilance, statement of her father was recorded and genealogical tree was produced. She

has filed her reply to the vigilance report. The Scrutiny Committee held that, the affinity test did not support Monika's claim. The certificates issued in favour of her siblings by earlier scrutiny committees were issued without support of vigilance test and without satisfaction of the Committee members. It is not shown that Monika's forefathers belonged to the areas identified as Tribal areas of Thakur-tribe and thereafter they were migrated. She failed to prove her tribe claim. Hence the claim was rejected by order dt. 24.06.2010.

7. Chetan is real brother of Monika. The facts of his case are identical. His claim was rejected by order dt. 24.09.2009 on the same grounds.

8. The point for our consideration is a) whether the rejection of claim of the petitioners is made by the Scrutiny Committee by not following the proper process and whether it needs any interference?

9. There is huge litigation on the subject and lot of judgments on the same. There are many judgments taking divergent views.

10. In Shilpa Thakur's case (supra), the full Bench of this

Court has taken a resume of the background of the subject. Article 342 empowers the President to specify certain tribes or tribal communities or parts of or groups within tribes or tribal communities as Scheduled Tribes. Such presidential order was issued on 06.09.1950. Thakur-tribe is one of the Scheduled Tribes specified in presidential order. In the past, the issuance of caste certificates was not systematic, scientific and with thorough enquiry. Considering the spurious claims made by persons not belonging to Scheduled Tribe or Scheduled Caste thereby taking away the privileges and benefits only meant for Scheduled Tribe people, in Madhuri Patil's case, the Apex Court issued several guidelines. It observed that, there was necessity to give more weightage to the old documents of pre-presidential order. There should be also affinity test, home enquiry and verification of documents through Vigilance Officer and Special Committees should be appointed for scrutiny of the caste certificates issued by the competent authorities. It was observed that, despite the cultural advancement, the genetic *traits* pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. The Apex Court issued directions to introduce the scheme of verification of caste claims, until comprehensive legislation fills the gap.

11. The Maharashtra Act No. XXIII of 2002 enacted 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.

12. In the case of **Palghat Jilla Thandan Samudhaya Samrakshna Samithi Versus State of Kerala** reported in **1994 SCC (1) 359**, the issue was whether the Scrutiny Committees has right to consider whether people belonging to Ezhavas/Thiyyas called as Thandan from Malbar district were included in Scheduled Caste Thandan. The presidential order under Article 341 had specified Thandan caste as a Scheduled Caste. It was held that, the presidential order is to be read as it is and there can be no alteration, modification or expansion of the scope of the order. Neither the Committee nor the State Government nor the Court can embark upon an enquiry to determine whether particular group of Thandan in the Malabar area was excluded from the Scheduled Castes Order or not.

13. In the case of **State of Maharashtra vs. Milind Katware & Ors** reported in **(2001) 1 SCC 4**, the issue was whether Halba-Koshti

was part of Halba/Halbi declared as a Scheduled Tribe. The Apex Court again held in this case that the presidential order is to be read as it is and it was not open to make any alteration or expansion of the same. Halba-Koshti was not included in presidential order and it cannot be read as part of Halba-Scheduled Tribe. These two rulings probably gave rise to divergent views.

14. In Maharashtra, Thakur is a tribe as well as a caste. In a judgment of Full Bench in Shilpa Thakur's case, in para 38, this factual aspect has been accepted. Thakur caste includes people not belonging to any reserved category whereas; Thakur-tribe is a Scheduled Tribe. A group of judgments proceeded on assumption that once it is shown that the person belongs to Thakur, it must be assumed that he is a Thakur-tribe and it is not open to show that he is a non-tribal. Following are the judgments taking such view.

- (1) Chandrakant Bajirao Shinde v State of Maharashtra 2003
(2) Mh.L.J. 471.
- (2) Shobha Mahesh Jadhav v State of Maharashtra (WP No. 856/1998) decided on 23.02.1998.
- (3) Ms Asmita B. Dhage v State of Maharashtra & Ors (WP No. 2746/1998) decided by this Court on 19.06.1999 (Principal Seat).

(4) Ravindra S/o Baburao Shinde vs The State of Maharashtra (WP No. 5123/1999 decided on 20.06.2000).

(5) Dattu S/o Namdev Thakur v State of Maharashtra & Ors (WP No. 7813/2009) and other connected group decided by Division Bench at Aurangabad on 14.12.2009.

15. There was a group of judgments taking a view that it was permissible and in fact the Committee was bound to consider whether the petitioner belongs to Thakur-tribe or not.

(i) Suchita Bhuyar v State of Maharashtra (WP No. 2434/2003) dt. 05.06.2003.

(ii) Murlidhar Gathe v/s State of Maharashtra reported in 2007 (3) Mh.L.J. 308.

(iii) Dinesh Thakur v/s State of Maharashtra reported in 2012 (4) Mh.L.J. 396.

16. In State of Maharashtra v Sunil Thakur (CA No. 4088 of 1998) decided on 21.01.2004, the Apex Court observed “the question that arose for consideration in Palghat vs State of Kerala (supra) was whether the State Government or the Court can enquire into or let in evidence about the correctness of entry of Scheduled Caste in the Scheduled Caste Order which had to be applied as it stands until the same is amended by appropriate legislation. Such a question clearly

did not arise in the case at hand. The question that arose for consideration is already noted above as to whether the respondents belong to Thakur (ST) which is one of the enumerated entry in the Scheduled Tribes order. That being the position, the High Court in our view was not right in justifying the decision in writ petition by merely referring to the decision of this Court in Palghat's case." The High Court order was set aside and the matter was remanded for fresh consideration.

17. In the case of **Raju Ramsing Vasave v Mahesh Deorao Bhivapurkar** reported in (2009) 1 Mh.L.J. 1, a co-employee of respondent no. 1 challenged his validity certificate granted as belonging to Halba-tribe. Relying on Milind Katware's case, the High Court had decided that it was impermissible to take inconsistent view and it was not permissible to hold that the petitioner was not a tribal. The Apex Court in the context held that:

21. We reiterate that to fulfill the constitutional norms, a person must belong to a tribe before he can stake his claim to be a member of a notified Scheduled Tribe. When an advantage is obtained by a person in violation of the constitutional scheme, a constitutional fraud is committed.

18. In **State of Maharashtra and Others vs Ravi Prakash Babulalsing Parmar and another** reported in (2007) 1 SCC 80, the

issue was whether the respondent was member of Scheduled Tribe belonging to Thakur community as envisaged under Entry 44 of the list of the Scheduled Tribes pertaining to the State of Maharashtra issued in terms of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (similar one to the present case). The High Court had taken a view that, in view of the judgment in Milind Katware's case, no enquiry was permissible whether the person belongs to Thakur tribe or Thakur caste. It has to act on the documentary evidence. The Apex Court observed that,

12. The Caste Scrutiny Committee is a quasi-judicial body. It has been set up for a specific purpose. It serves a social and constitutional purposes. It is constituted to prevent fraud on Constitution. It may not be bound by the provisions of Indian Evidence Act, but it would not be correct for the superior courts to issue directions as to how it should appreciate evidence. Evidence to be adduced in a matter before a quasi-judicial body cannot be restricted to admission of documentary evidence only. It may of necessity have to take oral evidence.

It referred to the ratio laid down in Madhuri Patil's case with regard to Koli-Mahadeo tribe as follows.

19.

Since the Scheduled Tribes are a nomadic class of citizens whose habitat being generally hilly regions or forests, results in their staying away from the mainstream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for development of their scientific temper, educational advancement and economic improvement so that they may achieve excellence, equality of status and live with dignity. Reservation in admission to educational institutions and employment are major State policies to accord to the tribes,

social and economic justice apart from other economic measures. Hence, the tribes, by reason of State's policy of reservation, have been given the exclusive right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota. For availment of such exclusive rights by citizens belonging to tribes, the President by a notification specified the Scheduled Tribes or tribal communities or parts of or groups of tribes or tribal communities so as to entitle them to avail of such exclusive rights. The Union of India and the State Governments have prescribed the procedure and have entrusted duty and responsibility to Revenue Officers of gazetted cadre to issue social status certificate, after due verification. (The underlining is by us)

19. With reference to the observations in **State of Maharashtra vs. Milind Katware & Ors** reported in (2001) 1 SCC 4, it is observed that:

22. *The said decision, therefore, is an authority for the proposition that only because a claim is made by a person that he belongs to a member of a tribe notified to be Scheduled Tribe in terms of the provisions of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, no immunity in absolute terms can be claimed.*

20. The Apex Court referred to the observations in its judgment from **Gayatrilaxmi Bapurao Nagpure vs State of Maharashtra & ors.** reported in 1996 (3) SCC 685, which read as follows:

. The High Court without appreciating the probative value of the documents placed before it has dismissed the writ petition filed by the appellant by simply accepting the conclusions reached by the second-respondent Committee. Undoubtedly, in cases of this type, the burden heavily lies on the applicant who seeks such a certificate. That does not mean that the authorities have no role to play

in finding out the correctness or otherwise of the claim for issue of a caste certificate. We are of the view that the concerned authorities must also play a role in assisting the Committee to arrive at a correct decision. In this case, except the documents produced by the appellant, nothing has been produced by the authority concerned to arrive at a different conclusion.

21. In the case of **Pournima Pawar v State of Maharashtra** reported in **AIR 2013 SC 1508**, same Scrutiny Committee had validated the caste claim of the paternal uncle of the petitioners. The Scrutiny Committee after vigilance enquiry noted that there was contra evidence showing that the petitioner was belonging to Thakur caste ('Bhat', 'Thakar', 'Marathe' and 'Hindu Marathe'). The Apex Court held the decision of Scrutiny Committee that the petitioner did not belong to Scheduled Tribe Thakar was not perverse or based on no evidence. Hence it was upheld.

22. In the case of **Anand vs. Committee for Scrutiny & Verification of Tribe Claims** reported in **(2012) 1 SCC 113**, the scope for enquiry by Scrutiny Committee was under consideration. The Apex Court quoted with approval the following observations from Madhuri Patil's case (supra) with regard to relevancy of affinity test.

"The anthropological moorings and ethnological kinship affinity (sic) gets genetically ingrained in the blood and no one would shake off from past, in particular, when one is conscious of the need of preserving its relevance to seek the

status of Scheduled Tribe or Scheduled Caste recognised by the Constitution for their upliftment in the Society. The ingrained Tribal traits peculiar to each tribe and anthropological features all the more become relevant when the social status is in acute controversy and needs a decision. The correct projectives furnished in proforma and the material would lend credence and give an assurance to properly consider the claims of the social status and the officer or authority concerned would get an opportunity to test the claim for social status of particular caste or tribe or tribal community or group or part of such caste, tribe or tribal community. It or he would reach a satisfactory conclusion on the claimed social status.

In para 18, it is observed, 'therefore, insofar as the State of Maharashtra is concerned, the verification and grant and/or rejection of Scheduled Tribe Certificate by the Caste Scrutiny Committee has to be as per the procedure prescribed in the Rules'.

23. It provides that if the Caste Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other enquiry. Sub-rule (3) of Rule 12 requires the Vigilance Officer to visit the local place of residence and the original place from where the applicant hails and usually resides (Para 19).

In para 20, it is observed, "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.”

In Shilpa Thakur's case, the Full Bench of this Court noted, 'A person claiming to be belonging to Scheduled Tribe must prove that he belongs to the Nomadic Tribe, which is shown in presidential order as Scheduled Tribe. Mere fact that the document produced by a person reflects his surname as being synonymous with the name of designated tribe is not sufficient to establish that the applicant belongs to a Scheduled Tribe. Before a person can be regarded as belonging to a Scheduled Tribe, that person must demonstrably be a member of the tribe. It is also held that the vigilance enquiry is integral part of the scrutiny by the Scrutiny Committee.'

24. We rely on above rulings to hold that the petitioners must prove that they belong to a tribe shown as Scheduled Tribe and it is permissible to consider whether the petitioners are tribal or non-tribal.

25. It is also pertinent to note that, as per Article 342, only person belonging to tribes or tribal communities can be declared as Scheduled Tribes. Unlike, article 341 which empowers the President to declare a particular tribe or caste as a Scheduled Caste, there is no provision for declaring the persons of particular caste as Scheduled Tribe.

Point: Relevance of Validity Certificates of near relative : -

26. It is trite that, a person inherits his caste from his father. Therefore, when a person is belonging to a particular caste, his

brothers, real sisters, sons and daughters, grand-sons, grand daughters shall also belong to the same caste. It will be not proper to hold that, particular person belongs to Scheduled Tribe and his brother or sister is not belonging to Scheduled Tribe. When a caste or tribe certificate is issued in the name of any person after due enquiry, his brother or sister or paternal relative is also entitled for similar certificate. In this regard, it is however necessary that the validity certificate issued in favour of the first person should be properly issued.

27. In the case of Raju Vasave (supra), the effect of the validity certificate issued in favour of relative was under consideration. The Apex Court observed that,

“we do not mean to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another Committee while examining the case of other members of the family at some details. If it is found that in granting a certificate in favour of a member of a family, vital evidences has been ignored, it would be open to the Committee to arrive at a different finding.”

With regard to doctrine of stare decisis, it is observed “the rule of stare decisis is not inflexible so as to preclude a departure therefrom in any case but its application depends on facts and circumstances of each case. It is good to proceed from precedent to precedent but it is earlier the better to give quietus to the incorrect one by

annulling it to avoid repetition or perpetuation of injustice, hardship and anything *ex facie* illegal, more particularly when a precedent runs counter to the provisions of the Constitution. The first two decisions were rendered without having the benefit of the decisions of this Court, that too concerning the interpretation of the provisions of the Constitution.

It is also held that decision rendered without jurisdiction shall be a nullity and when fraud is committed on the court nobody can take benefit of the same.

The principle of *res judicata* will not apply in such case.

28. In the case of **Pournima Pawar v State of Maharashtra** reported in **AIR 2013 SC 1508**, the validity certificate was issued in favour of the petitioner's uncle Dilip but the Scrutiny Committee on enquiry found contra evidence and invalidated the claim of the petitioner. The High Court has confirmed the said finding and the Apex Court upheld the decision of High Court.

29. In **Motilal Namdeo Pawar v Scheduled Tribe Scrutiny Committee, Nashik (WP No. 07/2014)** decided on 22.12.2017, the Division Bench of this Court (Principal Seat) found that, issuance of tribe validity certificate in favour of paternal relatives should have been considered and validity certificate should have been issued to the petitioner. (para 16)

30. In **Jahangir Gani Patekari vs. Divisional Caste Scrutiny Committee No. 2, Kolhapur & Ors. (WP No. 3535 of 2013)**

dt.29.03.2016, validity of the relative was held to be relevant but when no reasons were given while granting such certificate, it was held as not decisive. The Scrutiny Committee refused to place reliance on such certificate and the Division Bench of this Court upheld the invalidation of the claim.

31. In **Madhuri Jadhav v State of Maharashtra & Ors** reported in **[2014(3) Mh.L.J. 900]**, the resume of the case law on the subject has been taken. Relying on **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra** reported in **(2013) 4 Mh.L.J. 561 (SC)**, it was held that, if there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the Scrutiny Committees. Such certificate will not require further verification. It is further observed that, very strong material evidence is required to rebut the presumption u/s 114(e) of Evidence Act about the caste certificate issued after following the due procedure.

32. In **Mangesh Nivrutti Kashid & Ors. vs. District Collector & Ors.** reported in **2012 (5) Mh.L.J. 473**, it was held that, the Scrutiny Committee is obliged to follow the procedure spelt out in the judgment in **Madhuri Patil (supra)** and that procedure is

indispensable and is made mandatory before issuance of validity certificate by the concerned Scrutiny Committee. In such a scenario, if the argument of Mr.Gangal is to be accepted, then a person may get the caste certificate on the basis of some documents alone and if the documents are found in order, the scrutiny committee will issue the validity certificate. In such a procedure there will be no verification of the claim of the candidate without there being proper inquiry. The argument of the State is that, whenever the validity certificate is issued to the near relative, there is no need to call for the vigilance cell report, cannot be accepted. Each case will have to be decided on its own merits and merely because one relative is granted validity certificate, the certificates to others may not automatically follow.

33. In *Dharmendra Devram Patil v Scheduled Tribe Caste Certificate Scrutiny Committee & Ors* reported in *2004 (4) Bom. C. R. 474*, it is observed, we have noted earlier that Rupchand's caste claim was validated by the Additional Divisional Commissioner solely on the basis of the validation order passed in favour of Devram and Dashrath as well, and both these orders could not have been relied upon. It was held that when there was no vigilance enquiry, the validity certificate cannot be upheld.

34. In Ravi Parmar's case (*supra*), it is held by the Apex Court that, if caste certificate is obtained by fraud played by a person, such certificate is required to be set aside. It is held that, when a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter. It is held that,

“33. We may notice that in [Bank of India and Another v. Avinash D. Mandivikar and Others](#) [(2005) 7 SCC 690], a two-Judge Bench of this Court opined that the employee concerned having played fraud for obtaining an appointment, should not be allowed to get the benefit thereof.”

35. Applying these principles, we find that, in the present case, four validity certificate issued in favour of four siblings of the petitioners are issued without satisfaction of the Scrutiny Committee that the claimants therein belong to Scheduled Tribe. The Vigilance Enquiry was conducted. There is reference that, the claims of the petitioners were not supported by the affinity test. In fact, the Scrutiny Committee had rejected the claim of Yogita & Meghana but this Court had remanded the matter holding that the Committee had no option to consider whether the petitioners belong to non-tribal group or not. Therefore, the Committee without satisfaction of mind issued validity certificates. Same is the case with regard to certificate issued in favour of Ganesh. The order hardly runs a page, still it is

noted that the surnames origin, trait, characteristic, traditions of the petitioner were not associated with Thakur-Scheduled Tribe. The ethnic linkage towards Thakur-Scheduled Tribe was not established. Still in view of the decision of this Court, the Scrutiny Committee had no alternative but to hold the petitioner as belonging to Thakur - Scheduled Tribe. The order in favour of Vandana is similar to the order in favour of Ganesh. As held in Raju Vasave's case, the High Court decisions were rendered without hearing the benefit of the decision of the Supreme Court. We find that, these validity certificates will be of no assistance to the petitioners as there was no satisfaction of the Scrutiny Committee members and as those were conducted without following the due procedure. There was no vigilance. The affinity test and home enquiry did not tally with the traits, anthropological linkages of Scheduled Tribe - Thakur.

36. When these two material facts relied upon by the petitioners cannot be considered, the case of the petitioners becomes quite weak. They have relied upon the school record of their father and grand-father. The school record of the father at the time of admission dt. 08.06.1956 shows his caste as Hindu-Thakur. While the school record of the petitioners' grand-father Ambar on the date of admission on 15.06.1935 shows the caste as Thakur. At both the

places, it is now shown that the Thakur was a tribe. The petitioners' father himself is a Government servant. The Government record has not been produced to show that, he is shown as belonging to Thakur tribe in the official record. It may be stated that, long back in 1933, some benefits were conferred to certain tribes. The record nowhere shows that the petitioners' father or grand-father have claimed any of the benefits conferred to Thakur tribe. The information recorded at the time of census of 1951 or thereafter could have been quite useful to determine whether forefathers of the petitioners were of Thakur tribe or not. Such record is not produced.

37. The statement of the petitioners' father disclose that, he and his father were residing in Dhule district only. His father was residing at Shindkhea and later on they shifted to Dhule. The petitioners' mother is from Chimthane, Dist. Dhule. The other relatives of the petitioners were also residing at the places which are not identified as locations of Scheduled Tribe - Thakur. After extensive research by the Government, 25 talukas from 5 districts namely Nashik, Ahmednagar, Akola, Thane & Raigad were identified as locations of Thakur-ST. It was argued that, after removal of area restriction in 1976, it cannot be expected from the petitioners that they should show that their relatives were residing in such locations

and subsequently they were migrated. There are some judgments to that effect. However, in full Bench judgments in Yogita Sonawane's case (WP No. 6103/2010) decided on 15.09.2016 and Shilpa Thakur's case (2009(3) Mh.L.J. 995) (and also in Deepika Subhash More v/s. State of Maharashtra (WP No. 1953/2007) (DB) decided on 22.03.2007), it has been held that it is relevant to see whether the petitioners' forefathers were residing in such locations or not and whether they have migrated thereafter. However it will be only one of the circumstances and not decisive of the issue.

38. Even Rule 3(2) of Form to be filled in provides for a disclosure of original place from where the petitioner hailed.

39. The characteristics of Scheduled Tribe are described in para 37 of Shilpa Thakur's case, which are as follows.

- i) Primitive traits;
- (ii) Distinct culture;
- (iii) Geographical isolation;
- (iv) Distinct dialect;
- (v) Animism;
- (vi) Clan systems;
- (vii) Shyness of nature; and
- (viii) Backwardness.

40. In **Motilal Namdeo Pawar v Scheduled Tribe Scrutiny Committee, Nashik (WP No. 07/2014)**, it is held that, in view of the amendment, the area restriction is not applicable. In view of the full Bench judgment, it is relevant but mere failure to lead evidence on this point will not be fatal to the claim of the petitioners.

41. We find that the petitioners did not lead any evidence on this material aspect.

42. As held in Anand's case, the Scrutiny Committee has to consider the claim on broader prospective taking into consideration all the facts and the cumulative effect thereof. In Madhuri Patil's case (supra) it is observed that, the the Scheduled Tribes are inhabitants of intractable terrain regions of the country kept away from the mainstream of national life and with their traditional moorings and customary beliefs and practices, they are largely governed by their own customary code of conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos. This view is somewhat diluted by following observations in Anand's case.

“A cautious approach has to be adopted while applying the affinity test, which focuses on ethnological connections with the scheduled tribe. Affinity test could serve as a

determinative factor in the times when tribes were immune to cultural development happening around them. However, with the migrations, modernization 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. Thus this test cannot serve as a litmus test for establishing the link of applicant with a Scheduled tribe. It can be used to corroborate the documentary evidence, but should not be the sole criteria for rejecting a claim.”

43. It is not in dispute that, the burden is on the petitioners to prove that they belong to Thakur tribe to claim the benefits and privileges of Scheduled Tribe. The petitioners relied on the validity certificates of their siblings which cannot be relied upon. The petitioners relied upon the school record which merely shows that their father and grand-fathers were Hindu-Thakur without specifying whether it was Thakur caste or Thakur-tribe. The service record of the father of the petitioners is not produced. The area location does not match with the locations identified as of Thakur Scheduled Tribe in the past or present. The affinity test discloses several factors which indicate that father of the petitioners was not aware about the basic traits of the Thakur-tribe. He has stated that, they were speaking impure Marathi and they were not knowing tribal language.

Their marriages are arranged through a Brahmin. Their festivals are also common to Hindu rather than to the Scheduled Tribe. The Scrutiny Committee has considered all these aspects and has held that the affinity test and the report of Vigilance Officer does not support the claim of the petitioners.

44. While exercising the writ jurisdiction of this Court, we cannot sit as an appellate Court. We find that the Scrutiny Committee has followed the due procedure and has considered all material aspects. The view taken by the Scrutiny Committee is reasonable and is not arbitrary or perverse. We therefore find no scope for interference with the said decision.

45. In the result, the writ petitions deserve to be dismissed and are accordingly dismissed. Rule is discharged. No order as to costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde