

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 9627 OF 2011**

Dinesh Ramesh Thakur,
Age : 28 years, Occu. Nil,
R/o Ordinance Factory Estate,
Subhash Nagar, Type 1/19/147,
Bhusawal, Tq. Bhusawal,
District Jalgaon.

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Home Department, Mantralaya,
Mumbai - 32.
2. The Deputy Superintendent
of Police (Home) (Rural),
Thane Rural, Tq. & Dist. Thane.
3. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
Division, Nandurbar

RESPONDENTS

WITH**WRIT PETITION NO. 7796 OF 2011**

Vina Eknath Saindane @
Vijaya Pramod Thakur,
Age : 43 years, Residing
at 11, Shivsagar Apartment,
Pathare Park, Ambarnath (East),
District Thane.

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai - 32.

2. The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Region, Nandurbar, through its Member Secretary, having its office at Nandurbar, District Nandurbar.
3. Brihanmumbai Mahanagarpalika through its Chief Accountant (W & S Deptt.), Room no. 300, 3rd Floor, Mahanagarpalika Marg, Boribandar, Mumbai.
4. Executive Magistrate, Amalner, Dist. Jalgaon.
6. Mumbai Housing and Area Development Board, the Regional Unit of Maharashtra Housing and Area Development Authority, having its office at Griha Nirman Bhavan, Kala Nagar, Bandra (E), Mumbai - 51.

RESPONDENTS

WITH**CIVIL APPLICATION NO. 15395 OF 2011 IN W.P. 7796 OF 2011**

Adivasi Mahasang, Nandurbar
Through its Regional President
Shri Suhas Vechya Naik

APPLICANT

VERSUS

Vina Eknath Saindane @
Vijaya Pramod Thakur and others

RESPONDENTS

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Advocate for the petitioners

Mr. M.S. Deshmukh, Advocate holding for Mr. Vijay B. Patil, Advocate with Mr.A.S. Golegaonkar, Advocate in W.P.No.9627/2011.

Mr. R.K. Mendadkar, Advocate with Mr. A.S. Bayas, Advocate in W.P.No.7796/2011.

A.G.P. for the respondent/State

Mr. V.D. Godbharle, A.G.P. for Respondent Nos. 1 & 2 in W.P. No. 9627/2011 and for Respondent Nos. 1 & 4 in W.P. No. 7796/2011.

Advocate for the respondent-Committee

Mr. P.P. More, Advocate in W.P. 9627/2011.

Mr. P.S. Patil, Advocate in W.P. No. 7796/2011.

Advocate for the Intervenor

Mr. V.D. Sapkal, Advocate for the Intervenor.

AND

Mr. S.B. Talekar, Advocate, as an Amicus Curiae in both the Writ Petitions. (Appointed)

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CORAM : B.R. GAVAI & M.T. JOSHI, JJ.

DATE OF RESERVING : 5th JANUARY, 2012

DATE OF PRONOUNCING : 28th MARCH, 2012

JUDGEMENT (PER : M.T. JOSHI, J.) :

1. Rule. Rule made returnable forthwith. The Writ Petitions are taken up for final hearing, with the consent of the learned counsel for the parties.

2. Civil Application no.15395 of 2011, seeking intervention in Writ Petition no.7796 of 2011 is allowed, for the reasons stated therein. The applicant is permitted to intervene in the Writ Petition.

3. In these Petitions, common questions of law have arisen upon rejection of the claims of the Writ Petitioners, by the respondent-Scheduled Tribe Certificate Scrutiny Committee, that they belong to Thakur Scheduled Tribe.

4. One of the grounds in common for rejection of the claims of each of the petitioners is that mere old entries in the school record that either the petitioners or their ancestors shown as belonging to Thakur Caste, has no relevance and as such, one of the factors for determination is as to whether the petitioners or their ancestors had migrated from the area for which the Thakur tribe and other sub-tribes of Thakur were declared as Scheduled Tribe before the removal of area restriction by Act No.108 of 1976. The respondent-Scrutiny Committee has held that the removal of area restriction by Act No.108 of 1976 would not enable any person belonging to any tribe/community to claim the status of Thakur Scheduled Tribe, and he will have to establish that he or his predecessors have migrated from the earlier prescribed area..

5. Since the said common question had arisen in the present Petitions, the Writ Petitions were clubbed together by the Court. Further, finding that an important issue concerning the status of large number of persons would be involved, the Court has requested Shri S.B. Talekar, learned Advocate, to appear as an Amicus Curiae, to assist the Court in the matters. Shri Talekar has graciously accepted to act as such and the submissions made by him bear out our expectations.

6. The common reasons given by the Scrutiny Committee in each of the matter, on this aspect, in short, are as under:-

. That Thakur, Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur, Ma-Thakar are included in the list of Scheduled Tribes of Maharashtra at serial no.44. Further, Thakar is included in the list of Nomadic Tribes at serial no.22. These people lead nomadic way of life, who move from village to village and are mainly found in Ratnigiri and Sindhudurg districts. Thakur is an advanced caste, known as Thakur,

Kshatriya-Thakur, Rajput-Thakur, Sindhi-Thakur, Pardeshi-Thakur, Vaishya-Thakur, etc. Further, Thakur is also found in Balutadar castes such as Grambhat, Bramhabhat. Therefore, it is important to verify whether each of the applicants had proved his claim as belonging to Thakur, i.e. a Scheduled Tribe, listed at serial no. 44 in the list of Scheduled Tribes of Maharashtra. Merely because the caste Thakur appeared in the documents would not clearly distinguish the social status of the incumbent. Therefore, besides necessity of affinity tests by considering traits, characteristics and traditional customs of the claimant, it is also necessary to find out as to whether the claimants or their ancestors have migrated from any place situated in 25 Tahsils of five districts of Western Maharashtra as were listed in the list of Scheduled Tribes prior to the removal of area restriction of 1976 i.e. between 1956 and 1976. The intention behind removal of area restriction was to entitle the tribal persons who are migrated and staying outside the restricted area to claim Scheduled Tribe status. However, those who belonged to different communities do not

automatically become eligible to claim such status of Scheduled Tribe.

7. On the basis of these reasonings and finding that neither the petitioners nor their ancestors had migrated from 25 Tahsils alongwith other grounds and reasons recorded by the Scrutiny Committee, the claims of these petitioners, that they belong to Thakur Scheduled Tribe were negatived.

8. Before advertng to the arguments advanced by learned counsel for the parties, the history as regards the status of Thakur as Scheduled Tribe qua restricted area is necessary to be borne in mind.

9. The President had initially promulgated the Constitution (Scheduled Tribes) Order, 1950 on 6th September, 1950, in exercise of the powers conferred by Clause (1) of Article 342 of the Constitution. As regards the then State of Bombay, in Part III of the Schedule of the Presidential Order of 1950, entry no. 21 was dealing with "Thakur". Thus, sofar as erstwhile Bombay State was concerned, Thakurs were declared to be the Scheduled Tribes.

10. On 25th September, 1956, the Parliament enacted the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956 inter-alia to amend the said Order of 1950 and certain areas of 25 Tahsils from six districts like Ahmednagar, Sindhudurg etc. were declared as areas for Thakur or Thakar including Ka-Thakur, Ka-Thakar, Ma-Thakur, Ma-Thakur.

11. After two decades thereafter, the Advisory Committee appointed by the Department of Social Security, Government of India has made its report on the question of revision of the lists of the Scheduled Castes and Scheduled Tribes in various other States, including the State of Maharashtra. The Committee opined that due to the area restriction, no person could be legally regarded as a Member of Scheduled Caste or Scheduled Tribe for the purpose of Constitution unless he belongs to the listed caste or tribe and also resided in the specified locality. In the opinion of the Committee, this has led to the anomalous situation as the members of the same caste or tribe from ethnical or social point of view were deprived of the special privileges and benefits

merely because they resided in different parts of the same State. Such area restriction was also criticized within and outside the Parliament as it operated as a clog on social mobility, as the communities would confine themselves to the specified area lest they lose the special privileges or benefits by moving outside the specified areas. In view of the report of the Advisory Committee, ultimately, the bill was presented and the Parliament enacted the Act no.108 of 1976 viz. Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976. Section 4 of the said Act of 1976 provided for deletion of the provision as regards entry no.44 in relation to the area. In this background, since 1976 entry no.44 in the relevant Scheduled Tribe Order dealing with Maharashtra, now reads as under:-

"44. Thakur, Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur, Ma-Thakar...."

12. While the arguments from the side of the petitioners revolved around the claim that in view of the removal of area restriction, an enquiry into the fact as to whether a person or his ancestors belonged

to the areas which were earlier specified for the purposes of the said Scheduled Tribes, would be against the mandate of Parliament, learned counsel for the Scrutiny Committee, Mr. P.S. Patil submitted that as one of the tests to determine as to whether a particular person belongs to Thakur Scheduled Tribe, enquiry in this regard is not impermissible.

13. Mr. S.B. Talekar, learned amicus curiae, however, submitted that for a considerable period of time, though there is a stupendous advancement in the social and economic life of the country, the Government has not appointed any Advisory Committee since 1976 to look into the various aspects of revision of the lists. He therefore, with his usual persuasive skill, advanced his submissions and wanted us to enlarge the scope of the present Writ Petitions and to issue directions to the Government of India for appointment of a new Commission, as is provided by the Constitution of India.

14. However, in view of the limited issue before us, we are not inclined to enlarge the scope of the

present Petition and would confine ourselves to the question involved in the present Writ Petitions including the common question of permissibility or otherwise of examining the migration or otherwise of the petitioners or their ancestors from the area earlier provided in the list.

15. False claims of belonging to a particular caste or tribe, appear to have increased in view of the special treatment permitted by the Constitution of India. The phenomenon though in recent past has grown tremendously, the same is not unknown.

16. *Mahabharata*, the great epic of India gives an illustration of great mythological figure 'Karna' in this regard. Feeling the dire necessity of acquisition of technique of Brahmastra, Karna approaches Master Parshuram with a false representation that he belongs to Brahmin caste which solely, according to Parshuram, was qualified to have the said Brahmastra vidya (technique). After rigorous tutelage under Parshuram for one year, Karna obtains Brahmastra vidya from him. However, on the very last day of his training period, a misfortune

occurs, which, according to Parshuram, reveals the true caste of Karna. While, Guru Parshuram takes a nap on the lap of Karna, in a forest, an insect gnaws the thigh of Karna. Sensing the warmth of the blood oozing from the wound, Guru Parshuram suddenly awakes. He starts questioning Karna, as according to Guru Parshuram, a great tolerance shown by Karna in remaining steady, though an insect gnawed his thigh, is a sole characteristic of a '*Kshatriya Varna*'. Ultimately, Karna had to admit that he was not Brahmin. A curse befalls Karna from Parshuram to the effect that at the very juncture when Karna would be in dire need to use Brahmastra-Vidya, he would forget the same.

17. Whether the determination of characteristic of a Kshatriya by Guru Parshuram, is a scientific or unscientific method, is not required to be considered here. The question as to whether a particular person belongs to a particular caste or tribe, however, has vexed the sociologists, legislators and the judges alike. In order to fulfill the dream of having an egalitarian society, the Constitution of India

provided for definite advancement of the under-privileged section of our society in all walks of life. Number of phonyes however started claiming and still are claiming to be of a particular caste or tribe for whom the benefits are provided.

18. The joint committee on the bill inter-alia to provide for the inclusion in and exclusion from the list of Scheduled Castes and Scheduled Tribes in its report dated 17th November, 1969 had vide paragraph no.20 clause (iv), while dealing with the recommendations for amendment to the Constitution (Scheduled Tribes) Order, 1950, inter-alia reported as under :

"(iv) For the specification of communities as scheduled tribes, the Committee adopted as the criterion indications of primitive traits, distinctive culture, geographical isolations, shyness of contact with the community at large and backwardness."

19. In "**Shilpa Vishnu Thakur v. State of Maharashtra and others**" 2009 (5) AIR Bom R 478, the Full Bench of this Court in paragraph 37 has adverted to a monograph by Prof. R.K. Mutatkar, Honorary

Professor of Anthropology at the University of Pune, entitled 'Tribal Identity: Policy Issues'. The broad parameters to be applied in determining the tribal characteristics are given in the said monograph, 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.

20. The main thrust of arguments of both the sides was on the scope of and limitation on the enquiry in reference to the above characteristics could be made in individual cases by the respondent Scrutiny Committee and consequently the courts. While battery of the learned counsels for the petitioners relied in catena of cases as well as the minutes of

the discussion held in the Parliament on the subject, the foremost support was sought from the ratio in "**Palghat Jilla Thandan Samudhaya Samrakshana Samithi Vs. State of Kerala 1994 (1) S.C.C. 359**". On the other hand, learned counsel Mr.P.S. Patil for the respondent-Scrutiny Committee relied on various judgments of this Court, including the Full Bench Judgment in the case of "**Shilpa Vishnu Thakur Vs. State of Maharashtra and ors. 2009(5) A.I.R. BOM (R) 478**".

21. I)**Palghat Jilla Thandan Samudhaya Samrakshana Samithi Vs. State of Kerala 1994 (1) S.C.C. 359.**

The Supreme Court of India was dealing with the question as to whether the claimant residing in Palghat district of Kerala was belonging to Thundan Scheduled Caste or not. The State Government had asserted that there was no Thundan Community in Palghat district, except in certain parts of Chittur taluka. The State Government also claimed that when it had made certain enquiries after the inclusion of

the Thundans in the Scheduled Castes Order by reason of amendment Act of 1976, it was found that some sections of Ezhavas of the Malabar area were also called Thundans but they had nothing common with the Scheduled Caste Thundan. In view of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, the Thundan Community throughout the State of Kerala came to be included in the list of Scheduled Castes. In 1984, the State Government of Kerala had issued an Order that all its earlier Orders were cancelled and Thundans throughout the State of Kerala would be treated as members of the Scheduled Castes. This Order was, however, modified by another Order dated 24th November, 1987, specifying that though a person from the Thundan Caste throughout the State of Kerala would be treated as member of Scheduled Caste, while issuing such caste certificate, the revenue authorities should ascertain after proper verification that the person concerned belongs to Thundan caste and not Ezhavas/Thiyyas.

. In the circumstances, the Supreme Court

noted that once in view of the provisions of the Constitution (Scheduled Castes) Order, Thundans throughout the State of Kerala were entitled to be treated as Scheduled Caste, it was not open to the State Government to say otherwise, as it had purported to do in the 1987 Order. It was also further declared that it was not open to the State Government or indeed to courts to embark upon an enquiry to determine whether a section of Ezhavas/Thiyyas which was called Thundan in the Malabar area of the State, was excluded from the benefits given to Thundan Scheduled Castes.

II) *Nityanand Sharma and anr. Vs. State of Bihar and others (1996) 3 S.C.C. 576*

The Supreme Court in this case also held that it was not permissible for the Courts to consider whether *Lohars* or *Lohras* are declared to be Scheduled Tribes.

III) *Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development 1994 (6) S.C.C. 241*

In this case, the Supreme Court was considering whether Kolis, a backward class in the State

Maharashtra could be declared as Mahadeo Kolis-a Scheduled Tribe in the State of Maharashtra. The Supreme Court held that it had no power to declare them synonymous or as equivalent to the tribes specified in the Order.

**IV) *Heikham Surchandra Singh and others. Vs.*
Representative of "LOIS" Kakching, Manipur
(A Scheduled Caste Uplift Body) and others (1997)
*2 S.C.C. 523***

It was again reiterated in this case that for the purposes of Constitution, Scheduled Tribes defined under Article 366 (25) as substituted by the subsequent Act and the II Schedule thereunder, are conclusive by adding "though evidence may be admissible to a limited extent of finding out whether the community which claims the status of Scheduled Caste or Scheduled Tribe was, in fact, included in the Scheduled concerned, the Court is devoid of power to include in or exclude from or substitute or declare synonymous a Scheduled Caste or Scheduled Tribe or parts thereof or a group of such caste or

tribe."

**V) *State of Maharashtra Vs. Milind Katware
and others 2001 (1) Mh.L.J. 1***

In this case, the same principle was reiterated when the claimant therein claimed that his tribe as Halba Koshti also stands included in entry no.19 which has listed Halba, Halbi as Scheduled Tribe.

**VI) *Shilpa Vishnu Thakur Vs. State of Maharashtra
and ors. 2009(5) A.I.R. BOM (R) 478***

The Full Bench of this Court, in this case, was required to decide the question relating to the standards which have to be applied for determining whether or not a claimant belongs to a designated Scheduled Tribe. The Full Bench took notice of the fact that attempts were made over a period of time by certain persons belonging to non-tribal communities to claim tribe status on the assertion that their community being synonymous with a tribe or group which is specified in the notification or the list. The Full Bench again took the survey of all the

authorities on the issue. The problems of fraudulent claims were also adverted to and it was ultimately held that in the course of verifying the correctness of a caste certificate, the Scrutiny Committee is not precluded from inquiring into whether the applicant has indeed established his membership of a notified tribe and for this purpose the enquiry is not confined merely to consideration of the documentary evidence, relied by the claimants.

VII) *State of Maharashtra & others v. Ravi Prakash Babulasing Parmar & another, 2006 AIR SCW 6093*

This case had arisen out of a direction by a Division Bench of this Court to the Tribe Scrutiny Committee for according greater credence to the documentary evidence as against the oral evidence. The Supreme Court held that the Scrutiny Committee is a quasi-judicial body and it was constituted to prevent fraud on Constitution and the Scrutiny Committee is not precluded from inquiring into whether the claimant has, in fact, established his membership of a notified tribe.

22. In "**Shilpa Vishnu Thakur**" (supra), the survey of judgements delivered by various Division Benches of this Court was also taken by the Full Bench and it was ultimately concluded that the information given during the course of personal hearing from the candidate regarding the traditional occupation of his family, deities worshiped, surnames in the community, the place of residence, diet and the attire of the women, is also required to be considered.

23. The Full Bench in its conclusion at paragraph 40 has approved the requirements as prescribed by Rule 3 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, which inter-alia provides for disclosure of the information by the claimant of the place from which he originally hailed.

24. Specifically so far as the present issue is concerned, the Full Bench adverted to series of decisions of the Division Benches of this Court, and quoted the observations made in "**Shri Murlidhar Ramkrishna Gathe v. State of Maharashtra**", 2007 (4)

AIR Bom R 103, supplemented by comments, as under :

"This court has judicially recognised, that the word or surname "Thakur" is shared by both forward and backward communities. The burden of proving that the person belongs to a S.T./S.C./O.B.C. lies heavily on the person seeking the certificate. The role of the Vigilance Committee is to conduct an enquiry to ascertain and verify the material produced by the candidate including as to traits and characteristics claimed. If the material and information on traits, characteristics, customs, deities and other information did not relate to Thakur S.T. further verification of that material normally would be uncalled for. The law as declared in Madhuri Patil (supra) would require verification of the information given. If that information was associated with the Thakur S.T. then to rule out that the information given was based on bookish knowledge, the vigilance enquiry is required to be conducted to establish that the evidence produced is genuine. Once the committee with whom are associated experts, conversant with the anthropological and ethnological traits and other characteristics of the community, rule out the association of the Petitioner to that community, the burden is on the Petitioner to establish otherwise. That burden has not been discharged.

From the affidavit in reply filed by the Research Officer, the Court noted that the petitioner hailed from Khamgaon in Buldhana District. Before the area restrictions were removed in 1976, the Thakur Scheduled Tribe was restricted only to five Districts, namely (a) Ahmednagar District in Akola, Rahuri and Sangamner Taluka, (b) in Kolaba District (now Raigad), Karjat, Khalapur, Pen, Panvel and Sudhagad Talukas and Matheran (c) In Nashik District Igatpuri, Nashik and Sinnar Talukas (d) In Thane District Thane, Kalyan, Murbad, Bhiwandi,

Vasai, Wada, Shahapur, Palghar, Jawhar and Mokhada talukas. It was not the case of the petitioner that his family had migrated to Khamgaon from any of these areas. The population of the Thakur Scheduled Tribes in Maharashtra increased from 1,78,805 in the year 1971 to 3,23,191 in the year 1981. Dealing with this, the Division Bench observed as follows:

"This cannot be explained as a normal reproduction process leading to the increase in the population of S.T. within 10 years. Scheduled Tribes by their very nature stay close to their original habitat unless they have migrated for work or education which very few still do. This sudden spurt, can reasonably be explained, that persons who did not belong to Thakur S.T. because they also bore a surname Thakur made false claims as belonging to Thakur S.T. though they did not belong to Thakur S.T."

The Court observed that the Scrutiny Committee was justified in applying the affinity test. The petition was accordingly dismissed."

25. Ultimately, the Full Bench observed in paragraph 35 as under :-

"We have adverted to the Judgments of the Division Benches of this Court in order to emphasise that the line of reasoning that has been followed is that before an applicant can be validly regarded as being eligible to receive the benefits attached to being a member of a Scheduled Tribe, the burden lies on the applicant to establish membership of the tribe. An inquiry into whether the applicant belongs to a Scheduled Tribe is not precluded by the Presidential

Order or by the Judgments of the Supreme Court in Palghat Jilla Thandan and Milind Katware. For the purposes of determining as to whether an applicant belongs to a Scheduled Tribe, the Scrutiny Committee has to be satisfied on the basis of all the available material on the record that such is the position. The material on the record would include documentary evidence and oral evidence and comprehend the application of the affinity test."

26. It can thus be found that while the enquiry to be made by the Scheduled Tribe Scrutiny Committee is having a wider scope, the specific question as to whether the place of residence of the claimant or his ancestor can be the subject of the enquiry, is dealt with in the case of "**Shri Murlidhar Ramkrishna Gathe**" (supra) and approved by the Full Bench.

27. The Supreme Court in "**Palghat Jilla Thandan Samudhaya Samrakshana Samithi**" and other cases, referred above, declared that the courts have no power to add, delete, or read anything more in the lists. The issue before us is radically different i.e. whether a Tribe Scrutiny Committee is competent to inquire, inter-alia, into original place of residence of a particular person who claims to be a member of the Scheduled Tribe. This inquiry is not

prohibited, as is clear from the Full Bench decision of this Court in "**Shilpa Vishnu Thakur**" (supra) .

28. Mr. P.S. Patil, learned counsel appearing for the Respondent - Scrutiny Committee, further relied on a decision in "**Deepika Subhash More v. the State of Maharashtra and others**" (Writ Petition No. 1953/2007, decided by a Division Bench of this Court on 22nd March, 2007), "**Dattu Namdeo Thakur vs. the State of Maharashtra and others**" (a group of writ petitions bearing Writ Petition No. 7813/2009 and others, decided by a Division Bench of this Court on 14th December, 2009), as well in "**Chetan Yuvaraj Thakur vs. the State of Maharashtra and others**" (Writ Petition No. 2791/2011, decided on 21st April, 2011 by a Division Bench of this Court to which one of us (M.T. Joshi, J.) was a party.

29. In the case of "**Deepika Subhash More v. the State of Maharashtra and others**" (supra), the petitioner therein claimed to be belonging to Thakur Scheduled Tribe. The ordinary place of residence of the petitioner's family was Upkhed, Taluka Chalisgaon

in Jalgaon district. The Division Bench noted that the said place was not a scheduled area for Thakur tribe as provided earlier from 1956 till 1976. The Court, therefore, observed that it was incomprehensible that only one family of the Thakurs is residing at Upkhed since the time immemorial. Therefore, the Division Bench opined that the said circumstance is rightly held to be against the petitioner by the Tribe Scrutiny Committee.

30. In paragraph no.5 of the said Judgement, the Division Bench has observed that removal of area restriction by the Act of 1976 meant that the persons coming from Thakur community would have to establish that they or their predecessors have migrated from a scheduled area after the removal of the area restrictions. In review application, these specific observations were, however, deleted.

31. In the case of "**Dattu Namdeo Thakur vs. the State of Maharashtra and others**" (supra), the petitioners therein were ordinary residents of various villages in Jalgaon district. The Division

Bench of this court relying in "**Shilpa Vishnu Thakur**" (supra), has declared that the consequence flowing from such removal of area restriction by itself would not allow a person to stake a claim to be belonging to Thakur, Scheduled Tribe, unless such person establishes that his forefathers have migrated from hilly area/tribal area or that they form group of tribals in the particular area. This decision, however, is admittedly a subject matter in a Special Leave Petition pending before the Supreme Court of India, for consideration.

32. In the case of "**Chetan Yuvaraj Thakur vs. the State of Maharashtra and others**" (supra), finding that the petitioner therein failed in one of the tests i.e. he or his ancestors hailed from the hilly area, the ultimate finding of the Tribe Scrutiny Committee, dismissing the claim of the petitioner, was held valid. This judgement was also subject of Special Leave Petition before the Supreme Court. The learned counsel for the petitioners, however, pointed out that the order of the Supreme Court in the said Special Leave Petition 14193/2011 would show that the

said findings regarding migration from a particular hilly area was not assailed in the Special Leave Petition.

33. The petitioners, on the other hand, relied on another judgement of the Division Bench of this Court in the case of "**Prakash s/o Rambhau Thakur v. The State of Maharashtra and another** (Writ Petition No. 2016/2007, decided on 10th September, 2009), to which one of us (B.R. Gavai, J.) was a party. In that case, though the Tribe Scrutiny Committee had already validated the tribe certificate of blood relations of the petitioner, namely, Angadh - petitioner's real brother, Arun - petitioner's son and petitioner's two daughters - Bhagyashali and Swapna, applying the affinity test and conducting the home enquiry, the claim of the petitioner - Prakash was invalidated lateron. The writ petition was, however, allowed basically on the ground that the petitioner cannot be failed in the affinity test once his blood relations including his son and real brother are already held to be belonging to Thakur Scheduled Tribe.

34. In the case of "**Vaibhav s/o Subhash Thakur v. The State of Maharashtra and others** (Writ Petition No. 5940/2008, decided on 9th October, 2009 by a Division Bench of this Court, to which one of us (B.R. Gavai, J.) was a party), one of the issues was that the ordinary residence of the petitioner was not from hilly area. Finding that the petitioner's sister's tribe claim was already validated by the Scrutiny Committee, his petition was also allowed.

35. Similarly, in "**Vijay s/o Dayaram Sonawane vs. The State of Maharashtra and others** (Writ Petition No. 2135/2007, decided on 9th September, 2009, by a Division Bench of this Court, to which one of us (B.R. Gavai, J.) was a party), as the identical issues were there i.e. validation of the claim of the petitioner's brother and daughters, the petitioner's claim was also upheld by the Division Bench.

36. Besides the fact of validations of the claims of the kith and kin of the petitioners, as detailed supra, it was also found that the Committee

had also taken into consideration the report of the Vigilance Cell and had applied the affinity test while validating the tribe certificate of those blood relations. Therefore, reliance placed on the said judgments by the petitioners is misplaced, as the issue involved in the present cases did not arise therein.

37. We need not dilate over the issue as, in our view, upon removal of the area restriction by the amending Act of 1976, the persons belonging to a particular Scheduled Tribe, though residing in different areas than earlier specified or migrated from the said area, can also claim to be belonging to the same Scheduled Tribe. In our view, however, the respondent - Tribe Scrutiny Committee is not prohibited from applying the test of original place of residence as one of the factors to be considered in arriving at a decision of validation of the claim of the claimant in view of the clear pronouncement of law in Full Bench decision of this Court in "**Shilpa Vishnu Thakur Vs. State of Maharashtra and others**", quoted supra.

38. Though galaxy of the lawyers, appearing in the present proceeding, enlightened us on the aspect of history of the subject, reports of the Commissions together with the Minutes of the Discussion held in the Parliament at various points of time, as we have clear declaration of law on the issue before us, there is no necessity to find material from these external aids.

39. In view of above discussion, now it is necessary to consider the respective cases before us.

WRIT PETITION NO. 7796 OF 2011 :

The Scrutiny Committee had taken into consideration the Vigilance Enquiry Report, the oral as well as documentary evidence placed before it by the petitioner. It was also found that the petitioner and his forefathers are residents of Amalner, District Jalgaon i.e. the area far away from the Tahsil places from which originally the members of Thakur Scheduled Tribe hailed. Further, none of the blood relations had at any point of time been granted

any validation certificate. In view of these facts, the reasoning recorded by the Tribe Scrutiny Committee, which is a quasi-judicial forum, cannot be termed as unreasonable. The petition, therefore, fails.

40. **WRIT PETITION NO. 9627 OF 2011 :**

The petitioner and his ancestors in the present case also hail from Bhusaval, District Jalgaon. The Scrutiny Committee after applying the affinity test and also taking into consideration the Vigilance Cell Report, invalidated the claim of the petitioner. The petitioner had relied on the validity certificate of Kalpana d/o Ramdas Thakur. The photocopy of the affidavit of said Kalpana filed on record shows that she is a distant relative of the petitioner - Dinesh. The findings of the respondent Committee would show that the certificate of validity was issued to said Kalpana by another Tribe Scrutiny Committee i.e. the Committee at Nasik, merely on the basis of ratio in the judgement in Writ Petition No. 2746 of 1998 and two other writ petitions, decided by the Aurangabad Bench of this High Court. In that

view of the matter, the reasoning recorded by the Tribe Scrutiny Committee in the present case is based on relevant material before it and those cannot be disturbed. In the circumstances, this petition also deserves to be dismissed.

41. In the result, both the writ petitions are dismissed, without any order as to costs. Rule stands discharged.

[M.T. JOSHI, J.]

[B.R. GAVAI, J.]

NPJ/wp9627-7796-11