

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7254 OF 2008

Sumeet Dattatray Pawar ..Petitioner.

VS.

State of Maharashtra and anr. ..Respondents.

Mr R.K. Mendadkar and Mr H.K. Mandlik, Advocate for the
Petitioner.

Mr V.A.Gangal, Special Counsel with Mr Ashok Gadikar for
Respondent No.2.

CORAM:- D.K.DESHMUKH AND K.K.TATED, JJ.

DATE :- 14TH DECEMBER, 2009

P.C:-

The petitioner, by this petition, challenges the order passed by the Caste Scrutiny Committee holding that the claim of the petitioner that he belongs to Thakur, Scheduled Tribe is invalid. The learned counsel for the petitioner submitted that so far as affinity test is concerned, the report of the Vigilance Cell is in favour of the petitioner. He, then, submits that the validity

certificates issued in favour of his relatives have not been correctly appreciated. He submits, relying on two judgments of the Supreme Court, in the cases of **the State of Maharashtra vs. Mana Adim Jamat Mandal (2006) 4 SCC 98** and **Sayanna vs. State of Maharashtra and ors in Civil Appeal No.6253/2009**, that affinity test cannot be applied.

A full Bench of this Court in its judgment in the case of **Shilpa Vishnu Thakur vs. State of Maharashtra and ors., 2009 (3) Mh.L.J. 995** has held that the nature of the inquiry in regard to the claim of a candidate to belong to a Scheduled Tribe is not merely to be confined to an examination of the birth and the school records and of documentary evidence but would involve an investigation of the affinity of the candidate with a tribe. The Scrutiny Committee by a detail and reasoned order has recorded a finding of fact that the petitioner does not belong to “Thakur Scheduled Tribe” after applying the affinity test. The Scrutiny Committee, after perusal of the record of the relatives of the petitioners, has held that at the relevant time the relatives of the petitioner has been granted validity certificates without applying affinity test. In our opinion, in view of the judgment of the Full Bench, which has considered all the relevant judgments of the Supreme Court, we cannot find any fault with the order of the

Scrutiny Committee. Petition is therefore, rejected.

At this stage, a request is made by the learned Counsel appearing for the petitioner for continuation of ad-interim order. There is statutory law in force in the State of Maharashtra saying that in case the caste certificate is found to be invalid all benefits taken pursuant to that caste certificate should be cancelled. In our opinion, if we continue the interim order after finding that the Scrutiny Committee was justified in holding that the Caste certificate of the petitioner is invalid, it will be contrary to the statutory provision. As per the law settled by the Supreme Court, the Court shouldnot make interim order which is contrary to the statutory provisions. The request is, therefore, rejected.

(D.K.DESHMUKH, J)

(K.K.TATED, J)