

(2011) 10 BOM CK 0154

In the Bombay High Court

Case No : Writ Petition No. 5377 of 2004

Ajaykumar Yadaorao Nikhar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 15, 16, 245

Citation : (2012) 1 ALLMR 280 : (2012) 3 BomCR 223 : (2012) 114 BOMLR 523

Hon'ble Judges : B.P. Dharmadhikari, J;A. P. Bhangale, J

Bench : Division Bench

Advocate : S.R. Narnaware, for the Appellant; D.M. Kale, AGP for Respondents No. 1 and 3, Shri P.B. Patil, Advocate for Respondent No. 2 and Shri C.S. Kaptan, Advocate, for the Respondent

Judgement

B.P. Dharmadhikari, J.—Order dated 16/10/2004 passed by Caste Scrutiny Committee invalidating caste claim of petitioner as belonging to Halba scheduled tribe forms subject matter of challenge in this matter. Impugned order is under 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-referred to as Act no.23 of 2001 hereafter. Petitioner has sought that caste certificate on 9/3/1983 & contested election as councilor of Municipal Council, Bhandara on 22/1/2002 against a reserved seat. Because of this invalidation, Collector had declared him disqualified on 6/11/2004 and it was recalled on 22/11/2004 as this Court on 11/11/2004 stayed the order of Scrutiny Committee. Thereafter, during pendency of this petition & because of orders dated 29/11/2004 in it, he has been elected again in January,2007 as scheduled tribe candidate on the strength of same caste certificate & current tenure is due to expire on 2012.

2. In this background, we have heard Adv. Narnaware for petitioner, Adv. Patil for respondent 2 Scrutiny Committee, Adv. Kaptan for respondent 6 & Shri Kale, learned AGP for respondents No. 1 & 3

3. Advocate Narnaware has basically raised 4 issues. The constitution of Committee according to him is not legal as it is in breach of mandatory directions issued by the Hon. Apex Court in case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, as modified in 1997 at Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, . Strong support is being taken from direction 4 in 1995 verdict & para 5 of later. Second contention is about no association of Research Officer with vigilance cell and his not accompanying the police officer for spot inquiry & verification. Third ground raised is about not applying affinity test legally & ignoring material provided by petitioner on 28/7/2003. Lastly, it is urged that allegations of malafides leveled are not denied by filing an affidavit of competent officer and plea about perversity of findings is not traversed.

4. In order to substantiate the first contention, Shri Narnaware, learned counsel relied upon assertions in para 16 of writ petition to point out Constitution of Scrutiny Committee which has adjudicated the caste claim of the petitioner. The reliance is being placed on direction No. 4 of the Hon''ble Apex Court in the case of Madhuri Patil vs. Additional Commissioner, Tribal Development, (supra), and view expressed in the case of GM, Indian Bank vs. R. Rani & Anr. reported at (2007) 12 SCC 796. He states that the Additional Secretary or Joint Secretary is not the Chairman of said Committee and Director of Tribal Development was also not associated with it. He also invites attention to the judgment in the case of Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, and Baswant vs. State of Maharashtra reported at (2007) 14 SCC 800, to urge that said direction in Madhuri Patil-(supra) is binding and mandatory. To demonstrate that there was no Research Officer involved in Vigilance investigation, he points out that Police Inspector has made enquiry as part of Vigilance Cell on 28.07.2003 and Research Officer has countersigned it on 29.07.2003. The attention is also invited to reply given by the petitioner to vigilance report to show that Research Officer had not accompanied said Police Inspector for field enquiries. The case of Madhuri Patil vs. Additional Commissioner, Tribal Development, Thane, (supra), particularly para 5 therein is cited to buttress this contention. The learned counsel states that because of these lacunae, two documents relied upon by the petitioner which supported his case have not been looked into by the Vigilance Cell and the Committee. The first document according to him is caste certificate of his father issued on 05.10.1977 while the later document is dated 05.01.1927 and of cousin grand father. The attention is being drawn to para 5 of writ petition.

5. Affinity test has also not been rightly applied and material supplied on behalf of the petitioner to vigilance authorities on 28.07.2003 has not been properly evaluated. The only consideration is the remark of Research Officer dated 29.07.2003 where he records that traits do not match. Para 12 of writ petition and judgment of the Hon''ble Apex Court in the case of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, are relied upon. It is further contended that the allegations of malafides are not rebutted and even the

contention in writ petition that finding recorded by the Scrutiny Committee are perverse, has not been denied. According to him, the approach of Scrutiny Committee in the matter has been too casual. The judgment in the case of (wrong citation ?) reported at 2009 ALL MR (SC Reporter) 193, para 115 is stated to be relied upon for said purpose.

6. In reply, Shri Patil, learned counsel for respondent No. 2- Committee has invited attention to Government Resolution dated 14.07.1997 to urge that constitution of Committee is in accordance with the observations of the Hon''ble Apex Court in Madhuri Patil's case (supra) and Committee is valid. He further states that here the impugned order is passed on 16.04.2004 and Act No. 23 of 2001 has come into force on 28.10.2001. The Notification constituting Scrutiny Committee u/s 6 of said Act is dated 04.06.2003 and it has been slightly modified on 12.07.2006. The reliance upon 1999 Government Resolution in this respect by the petitioner is misconceived and there is no challenge to these later notifications. Affidavit dated 03.10.2011 filed by Respondent No. 2- Committee is pressed into service to urge that Constitution of Committee is as per judgment of the Hon''ble Apex Court in the case of Madhuri Patil's case. The learned counsel has further stated that the petitioner never challenged constitution of Committee and submitted to its jurisdiction and, therefore, doctrine of de facto has to apply. The unreported judgment of Division Bench of this Court at Aurangabad delivered on 12.08.2011 in Writ Petition 107 of 2010 is relied upon for this purpose. He has also relied upon State Bank's Staff Union (Madras Circle) Vs. Union of India (UOI) and Others, to show how validity of an Enactment subsequent to court verdict needs to be examined.

7. The first judgment in the case of Madhuri Patil vs. Additional Commissioner, Tribal Development, Thane, (supra) is relied upon along with later Madhuri Patil vs. Additional Commissioner, Tribal Development, (supra) to urge that as required by said judgments of the Hon''ble Apex Court, Research Officer has participated in vigilance enquiry. Reply filed, particularly para 14 onwards are relied upon for this purpose. The judgment in the case of Prajakta vs. State of Maharashtra, 2007 (2) Mh. L.J. 760 (paras 14/ 19) are read out to contend that Research Officer need not go with Vigilance Cell Officer for field enquiry. The observations in para 14 in this judgment are relied upon to urge that directions issued by the Hon''ble Apex Court are only "workable principles". Rule 10 of Rules framed under Act No. 23 of 2001 along with Rule 12(2) is also relied upon for this purpose. Judgment in the case of Bharat vs. State of Maharashtra, reported at 2010 (4) Mh. L.J. 458, para 18 is relied on for same purpose along with above referred unreported judgment in Writ Petition No. 107 of 2010 at Aurangabad (para 21). The judgment in Sangeeta Balayya Bhurewar vs. State of Maharashtra, reported at 2003(5) Mh. L.J. 645 is pressed into service to show that constitution of committee need not be strictly as per directions in the judgment of the Hon''ble Apex Court.

8. About old document of 1914, the learned counsel states that person named

therein viz. Ganpat Desaru does not figure in family tree disclosed by the petitioner and it was also not made available to Vigilance Cell authorities or Committee. The learned counsel states that that document is misleading and has been produced before this Court with malafide intention. According to him, as demonstrated in reply affidavit in paras 11 & 12, principles of affinity have been correctly applied. The judgments in the case of Ramatai Madhukarrao Tapre vs. State of Maharashtra & Ors. reported at 2002 (Supp. 2) Bom. C.R. 268, (para 10) by learned Single Judge of this Court and of Hon. Apex Court in L. Ushadevi vs. Union of India reported at 2007 (14) SCC 491 are pressed into service to urge that Act No. 23 of 2001 is complete code. The judgment in the case of Vijaya Deorao Nandanwar vs. State of Maharashtra reported 2010 (6) Mh. L.J. 445 is relied upon to urge that only when constitution of committee is contrary to law or then "working principles" in Madhuri Patil-(supra), interference is warranted and not otherwise. The material on record is pressed into service to show that appropriate opportunity has been given to petitioner and principles of natural justice have been followed. There is no procedural illegality or jurisdictional error. There is no prayer in writ petition to set aside notification constituting Scrutiny Committee and by producing wrong documents, effort has been made to mislead this Court. Wrong statements have been made in writ petition and on its basis, the petitioner has completed first five years of elected tenure. The scope of judicial review being limited, petition should be dismissed but then serious cognizance of malafides on the part of the petitioner should be taken.

9. Shri Kaptan, learned counsel for respondent No. 6 has relied upon reply affidavit filed by the Scrutiny Committee to show that the Commissioner appointed as Chairman of said Committee is of level of Joint Secretary and hence composition of that Committee is proper. In Writ Petition, challenge is to non existent resolution or notification & in absence of proper prayer, it must fail. He contends that direction No. 4 in the judgment in the case of Madhuri Patil (supra) is fully complied with here. The judgment of Division Bench of this Court in the case of Rohit Rathod (supra) is pending in SLP before the Hon"ble Apex Court and has been stayed. The judgment in the case of Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others, , is sought to be distinguished by pointing out that there caste claim was held invalid without referring the matter to Caste Scrutiny Committee and thus Article 141 was violated. Here, the invalidation is after due opportunity to petitioner & in full compliance with law on the point. In the alternative and without prejudice, he states that 3 members out of total 5 members constitute quorum and as in present proceedings, quorum always existed, all meetings and adjudication by the Scrutiny Committee is valid. Hence, even if the Commissioner is not held to be competent as Chairman Member, still the proceedings therein are not vitiated. Support is being taken from the judgment in the case of The Punjab University, Chandigarh Vs. Vijay Singh Lamba and Others, .

10. The learned counsel further states that when the Hon"ble Apex Court

considered the controversy either in 1994 or then in 1997, there was no Enactment framed by competent Legislature occupying the field. The judgment of the Hon''ble Apex Court in the case of Rajeswar Prasad Misra vs. The State of West Bengal & Anr. reported at AIR 1965 SC 1887 is relied upon to show that the Hon''ble Apex Court or then no Court enacts a law. To point out that even adjudication by the Court of Law can be nullified by Legislature by enacting a competent law, he relies upon the judgment in the case of I.N. Saksena vs. State of Madhya Pradesh reported at AIR 1976 SC 2250 (1). He contends that though direction No. 4 in the case of Madhuri Patil (supra) is not completely diluted by Act No. 23 of 2001, the Notification issued u/s 6 of said Act is consistent and in consonance with direction No. 4. Lastly, Division Bench judgment in the case of Deorao G. Umredkar vs. State of Maharashtra reported at 2007 (5) BCR 629 (para 30) is relied upon to show that role of Research Officer starts after vigilance investigation and hence he is not supposed to visit the spot during field enquiry.

11. Shri Narnaware, learned counsel, in reply argument has contended that there is no answer by any of the respondents as to why officer higher in rank than Director could not be appointed as the Chairman. He repeats that directions No. 4 in first and 5 in later Madhuri Patil case are mandatory and the same are never modified nor diluted. The judgments in the case of Director of Tribal Welfare Vs. Laveti Giri and others, & GM, Indian Bank vs. R. Rani & Anr., (supra) are relied upon to contend that the State Legislature had not obtained any permission from the Hon''ble Apex Court before enacting Act No. 23 of 2001. The Government Resolution dated 14.07.1997 after second judgment in the case of Madhuri Patil, law stated in the case of Rohit Rathod vs. State of Maharashtra, reported at 2010 (2) Mah. L.J. 384, and judgment of the Hon''ble Apex Court in the case of Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others, are pressed into service for this purpose. The judgment in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, is pressed into service to urge that Section 6 confers upon the State Government a wide and un-canalized power. Therefore, challenge to notification issued thereunder is not necessary. The judgment in the case of Shri Vijay Kisan Karanjkar Vs. The State of Maharashtra and Others, and unreported judgments in Writ Petition No. 8413 of 2008 (paras 6 & 7), Writ Petition No. 2136 of 2011 (paras 6 & 8) are relied upon for this purpose. Hari Singh Vs. State of Haryana, is pressed into service to show how principles of law need to be applied & consistent approach is of paramount importance.

12. Unreported judgment in Writ Petition No. 107 of 2010 (para 21) and judgment in the case of Ashwini Anil Chavan Vs. State of Maharashtra and Others, are cited to point out how the Research Officer is expected to accompany vigilance cell authorities. The judgment delivered at Nagpur in the case of Bharat vs. State of Maharashtra reported at 2010 (4) Mh. L.J. 458 (para 18) is relied upon for said purpose. The Government policy on this in Circular dated 06.09.2000, particularly clause 5, thereof is relied upon to point out the role to

be played by a Research Officer in field enquiry. Learned Counsel has further urged that here, the affidavit of Research Officer filed on 03.10.2011 is not by that Officer who was associated with present vigilance enquiry and hence that affidavit cannot be accepted. The judgment in the case of C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, is cited to show how the allegations of malafides need to be dealt with by respondent & by Courts. The learned counsel has concluded his reply by contending that non-inclusion of Additional or Joint Secretary from Committee is in fact Contempt of Court.

13. It will be appropriate to first deal with the issue of composition of Scrutiny Committee. The challenge is based upon directions of the Hon'ble Apex Court in the case of Madhuri Patil vs. Additional Commissioner, Tribal Development, (supra), and its later judgment also in the case of Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, . Direction No. 4 as contained in para 12 in first judgment requires State Governments to constitute a Committee of three officers and first one amongst them is Additional or Joint Secretary or any officer higher in rank of the Director of concerned departments. The second one is Director, Social Welfare, Tribal Welfare, Backward class welfare etc. Therefore, first member has to be of a rank above Director. In later judgment, the Hon'ble Apex Court has not touched this direction and it is retained as it is. The later judgment is on application moved by State Government for some modifications in earlier directions. On 14.07.1997 mentioning both these judgments, State Government has issued a resolution and for Nagpur Area, officer of the rank of the Additional Secretary or Joint Secretary/ Director, Tribal Development and Research Institute, Pune, is nominated as Member. The Assistant Director, Tribal Development, Pune and Assistant Director, Tribal Development, Amravati are its two members. The Deputy Director (Research) is its Member Secretary. Two Research Officers are also its members. After coming into force of Act No. 23 of 2001 vide Notification dated 04.06.2003, the Committee has been constituted in exercise of powers under S. 6 thereof and this notification does not refer to earlier resolution mentioned above, issued in pursuance of directions of the Hon'ble Apex Court. This resolution with its modification is already mentioned by us above. The officer of the rank of Additional Secretary or Joint Secretary expressly does not figure in it. The Chairman of the Committee is Commissioner/ Director for Tribal Research and Training Institute, Pune. The resolution has undergone slight change on 12.07.2006. The petitioner has not challenged any of these resolutions or notifications.

14. Shri Kaptan, learned counsel, had therefore, contended that in the absence of challenge to any particular notification issued u/s 6, the arguments of the petitioner are only of academic importance. However, in the case of Vijay Kisan Karanjkar vs. State of Maharashtra, (supra), Division Bench of this Court has considered the judgment of the Hon'ble Apex Court in the case of Madhuri Patil- (supra) and in para 15 observed that it was not open to State Government to

contend that the constitution of committee as directed by the Hon''ble Apex Court was not compulsory. This judgment of Division Bench of this Court is delivered on 27.06.2003 i.e. after notification dated 04.06.2003. However, it does not appear that this notification dated 04.06.2003 was being considered there, as challenge was to adjudication by the Scrutiny Committee dated 12.05.2003. Thus, that Committee was not constituted under Act No. 23 of 2011. This Court also found that Government itself had prescribed quorum of two members and hearing was also accorded only by two members but the order was passed by three members and signed by the committee consisting of three members. The Government had then contend that third member was necessary only in case of verification of caste claims of Scheduled Castes or Scheduled Tribes candidate. This Court did not accept that stand. The Division Bench in the process has noted contention that Act No. 23 of 2001 did not provide minimum number of members on committee and the petitioner had not challenged the resolution which prescribed quorum or constitution of committee. The Division Bench has, however, nowhere specifically stated that it was not necessary for the petitioner to challenge said resolution. However, in view of this judgment, we have proceeded further to consider the challenge even on merits. We are required to look at it again in the course of discussion.

15. The Scrutiny Committee has filed an affidavit of reply on 03.10.2011 during hearing and in it, it is stated that the Commissioner/ Director of Tribal Research and Training, Pune, is Chairman of the Committee. The said officer is I.A.S. and of the rank of Joint Secretary. Similarly, the Additional Commissioner was the person of the rank of the Director of Tribal Welfare. It is also pointed out that status of the Commissioner/ Director for Tribal Research and Training, Pune and of Additional Commissioner has nowhere been questioned in the petition. These assertions on oath have not been traversed by the petitioner thereafter though hearing continued till 10th October 2011. In *GM, Indian Bank vs. R. Rani & Anr.* (supra), the Hon''ble Apex Court has found that directions in *Madhuri Patil* judgment would have binding force of law. The observations are made while considering the challenge to judgment of the Madras High Court where it appears that there was no Enactment like Act No. 23 of 2001. In this judgment, the Hon''ble Apex Court has pointed out that its directions have binding force of law after noticing earlier precedents. Consideration in para 7 shows that reiteration of principles laid down in *Madhuri Patil* (supra) in subsequent judgment in the case of *Director of Tribal Welfare, Government of Andhra Pradesh vs. Laveti Giri*, (supra), requiring Government of India to examine the issue in greater details and to bring up uniform legislation are taken note. Thereafter judgment of the Hon''ble Apex Court itself in the case of *Baswant vs. State of Maharashtra & Ors.*, (supra), arising out of State of Maharashtra is also noted and the Hon''ble Apex Court has found that Constitution of Committee there, was not in accordance with decision rendered by it in *Madhuri Patil*-(supra). The judgment of larger Bench of the Hon''ble Apex Court in the case of *Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others*, , is then looked into with mention that there

caste claim was invalidated without referring the matter to appropriate committee. The Hon''ble Apex Court, therefore, noted that the directions given in Madhuri Patil (supra) cannot be viewed simply as guidelines and said law reiterated on number of occasions was found approved even by three judge bench of the Hon''ble Apex Court. It is to be noted that Baswant vs. State of Maharashtra & Ors., (supra), is the matter which arises out of SLP(C) filed in the year 1998 and hence it is prior to coming into force of Act No. 23 of 2001. The other judgment in the case of Sudhakar Vithal Kumbhare vs. State of Maharashtra, (supra) which goes to the Hon''ble Apex Court from State of Maharashtra only, also shows that there claim was not referred to Scrutiny Committee at all. The later judgment of the Hon''ble Apex Court in Director of Tribal Welfare vs. Laveti Giri, (supra) finds mention in para 8 of this judgment. The Hon''ble Apex Court in this later judgment has approved draft rules submitted to it by State of Andhra Pradesh. The draft rules were prepared in pursuance of a State Act already in force in that State prior to Madhuri Patil-(supra). We have to make reference to this 1997 judgment in Laveti Giri, little later. The Hon''ble Apex Court approved those draft rules and constitution of the State Level Committee and District Level Committees thereunder. In said para 8, the Hon''ble Apex Court has pointed out that directions issued in Madhuri Patil-(supra), have not been modified. All this holds good where the field of caste claim verification is not occupied by a competent legislation.

16. In the case of Sangeeta Balayya Bhurewar vs. State of Maharashtra reported at 2003 (5) Mh. L.J. 645, Division Bench of this Court has considered the law on the point and has observed at the end of para 16 that the learned Single Judge who found non compliance with paragraph No. 5 in the case of Madhuri Patil-(supra) not sufficient to vitiate the findings recorded by Committee, correct. In the said judgment, learned Judge follows view of another learned Single Judge in the case of Chhaya Namdeorao Binekar Vs. State of Maharashtra and Others, . In the said judgment in para 26, the learned Single Judge has held that manner of investigation need not be strictly in accordance with the words of the Hon''ble Supreme Court. In the case of Vijaya Deorao Nandanwar vs. State of Maharashtra reported at 2010 (6) Mh.L.J. 445, Division Bench of this Court has considered the question of Constitution of Scrutiny Committee and found that when Constitution of Scrutiny Committee is on the basis of first judgment of the Hon''ble Apex Court in Madhuri Patil, qualification and experience of personnel in the rank and cadre as on date of said judgment have to be construed as adequate as saved by necessary implication. In para 28, said Division Bench has observed that it is open to State Government to legislate as regards qualifications of members of Scrutiny Committee in conformity with Madhuri Patil's case. The Division Bench also noted that said process was going on. If the Committee is found constituted in accordance with law, Division Bench found that it was not open to anybody to challenge its constitution on the ground of lack of qualification so long as its constitution conforms to the dictum in the Madhuri Patil's case.

17. This brings us to consideration of Division Bench judgment in the case of Rohit Rathod vs. State of Maharashtra reported at 2010 (2) Mh. L.J. 384. There the order of Scrutiny Committee dated 30.04.2009 invalidating his caste claim as belonging to Vimukta Jati was assailed. The Scrutiny Committee as constituted under Act No. 23 of 2001 as per Notification dated 12.02.2009 had considered that issue of invalidity. The said Committee consisted of Additional Collector, Nagpur, who acted as Chairman, Research Officer and Member Secretary and Member of Divisional Social Welfare Officer. The invalidation was questioned on the ground that constitution of Committee was not in accordance with the judgment of the Hon''ble Apex Court in the case of Madhuri Patil (supra). The Division Bench has noticed that constitution of committee which adjudicated caste claim was not as per notification dated 12.2.2009 issued under S. 6 of Act no. 23 of 2001. As per this 12.2.2009 notification, the Committee for Social Welfare, Cultural Affairs and Sports Department, was to comprise of Additional Commissioner (Revenue) as Chairman, Divisional Social Welfare Officer as Member and Research Officer as Welfare Officer Member. The Research Officer was to function as Member Secretary. The learned Assistant Government Pleader had tried to justify the Constitution of Committee by placing reliance upon Section 6(1) of Act No. 23 of 2001. He contended that enactment did not require Government to constitute a Committee of Officers of particular status or rank. Rule 9 of 2003 Rules framed under the Act no. 23 of 2001 were also pressed into service to support the contention that Additional Commissioner (Revenue) was not required as a Chairman. The Division Bench of this Court has found that neither said Section 6 nor Rule 9 stipulated who should be appointed on Committee. In para 9 of the judgment, it has been mentioned that said provisions confer un-canalized discretionary powers on State Government and it would, therefore, be unconstitutional. Said Division Bench has drawn support for this from the judgment of the Hon''ble Apex Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . But as there was no prayer for declaring said Enactment (23 of 2001) unconstitutional, Division Bench has left that issue open. Because of Division Bench judgment in the case of Vijay Kisan vs. State of Maharashtra, (supra), it found that Direction No. 4 is clearly mandatory and the Additional Collector could not have functioned as Chairman. It, therefore, has set aside that adjudication of caste claim and directed fresh consideration by a duly constituted Scrutiny Committee. The respective counsel have also pointed out to us that this judgment is stayed by the Hon''ble Apex Court presently. We also note that earlier view of Division Bench of this Court in Dattatraya Thorat Vs. The State of Maharashtra and Others, negating challenge to constitutional validity of Act no. 23 of 2001 has observed:-

40. u/s 6 of the Act provision has been made for constituting, by notification in the official gazette, one or more scrutiny committee(s) for verification of caste certificates and it is further provided that the said 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. The composition of the committee viz. the number of members etc., has not been spelt out and, therefore, the natural presumption that is required to be drawn is that the composition of the committee shall be as per the directives laid down by the Apex Court in Kumari Madhuri Patil's case (supra). The provisions of section 6 of the Act are clear on the composition of the committee and the contentions that they are contrary to the directives issued by the Supreme Court are without any substance." This judgment is looked into by Full Bench of this Court in Sujit V. Patil vs. State Of Maharashtra (2004) 3 Mah. L.J. 1109. Hon. Apex Court has while considering overriding effect of Act no. 23 of 2001 on government resolution dated 15.6.1995 in case of State of Maharashtra vs. Sanjay Nimje, noted that a different Scrutiny Committee constituted under S. 6 of said Act has started functioning in Maharashtra when it observes:-- "11. The Caste Scrutiny Committee was initially constituted in terms of the decision of this Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . The Committee which was now constituted in terms of the 2000 Act issued a notice upon the respondent. He was given an opportunity of hearing. The principles of natural justice had, thus, been complied with. The Caste Scrutiny Committee opined that the respondent failed to prove-----." This shows that this Court in Rohit Rathod vs. State of Maharashtra(supra) was not required to & has not laid down any law on the aspect raised before us.

18. The judgment of Division Bench of this Court in the case of Vijay Kisan vs. State of Maharashtra, (supra) reveals that there the order of Scrutiny Committee was dated 12.05.2003 and the Committee consisted of three members but then hearing was afforded by two members only and the impugned order was signed by three members. The petitioner, therefore, had contended that such order was unsustainable. The learned AGP supported that order and pointed out that on two days when hearing took place, it was before two members of Scrutiny Committee while the impugned order was issued by all three members. The stand was, the proceedings could not have been held as vitiated because of Government Resolution dated 25.01.2000. The said Government Resolution dealt with quorum and prescribed that at each hearing, there should be quorum of two members but then the validity certificate should be issued under the signatures of all three members and needed seal of office of the Committee. This controversy is examined and in para 15, the Division Bench has found that State Government could not have contended that it was not obliged to constitute a Committee as per judgment of the Hon"ble Apex Court in the case of Madhuri Patil-(supra). It also noted that validity of Government Resolution prescribing quorum of two members was not assailed before it and hearing extended by two members, therefore, could not have been objected to. In para 18, the contention that in facts of the matter, participation by third member was not necessary as caste claim was of OBC candidate, has been taken note of. The conclusion reached in para 19 shows that there were no separate and independent committees and hence this contention was held only academic. It is held that the

Hon"ble Apex Court had directed constitution of Committee of three members and that direction needed to be complied with. All three members, therefore, ought to have accorded hearing to the petitioner. Because of this reason, challenge to Government Resolution prescribing quorum was found immaterial and the impugned order was set aside. It is, therefore, obvious that the issue of Constitution of Committee under Act No. 23 of 2001 or then statutory rules dealing with quorum during such proceedings of Scrutiny Committee did not fall for consideration before the said Division Bench.

19. Thus Rohit Rathod vs. State of Maharashtra,(supra) does not hold that S. 6 of the Act no. 23 of 2001 is bad or the committee constituted thereunder is illegal. It only finds functioning of Additional Collector as chairman contrary to notification dated 12.2.2009 issued by State Government by using its powers under said S. 6. Before us, the issue is of conflict between the statutory notification and committee as envisaged by Hon. Apex Court in absence of any statute. The need to have uniform law on the subject is already noted by Hon. Apex Court. At this stage, we only wish to indicate that the nature of directions issued as "workable principles" or "guidelines" and two judgments of Hon. Apex Court with reference to State Enactments were not pointed out to this Court in Rohit Rathod vs. State of Maharashtra,(supra). As the contention was not specifically raised there, the relevant arguments having bearing on the matter were also not advanced. We will like to revert back to this aspect little later when we consider judgments of Hon. Apex Court in matter Laveti Giri (1997) & L. Ushadevi vs. Union of India, (supra).

20. This brings us to consideration of the other argument about not applying affinity test properly or then non consideration of two documents submitted by the petitioner. The service of vigilance cell report upon the petitioner is not in dispute. The petitioner has also replied to said reports. The pleadings before us show contention that said enquiry cannot be said to be proper enquiry as it did not go into requisite details and no person related to the petitioner was examined. The recording of statement of the petitioner is not sufficient and his father and uncle were not examined. The Research Officer was not associated as required by paragraph No.5 in later judgment in the matter of Madhuri Patil-(supra). The documents and reply submitted by the petitioner have not been properly considered.

21. The first document is issued by the Executive Magistrate, Bhandara on 05.10.1977 to the father of the petitioner, showing that he belongs to Halba community which is recognized as Scheduled Tribe. It also mentions that father and his family ordinarily resided in Bhandara district. The reply of the petitioner to Police Vigilance Cell is dated 28.05.2004 and this reply does not make any reference to said document. It is also important to note that the order of Scrutiny Committee nowhere mentions this document & it states on oath about its non-supply on record. In para 3 of writ petition, after mentioning the fact of his election, the petitioner has stated that he has placed on record caste

certificate of his father dated 05.10.1977. There is thus no specific averment that this document was supplied to Scrutiny Committee. The documents supplied to Scrutiny Committee show photostat copy of birth certificate of a male child born to Yadavrao Somaji (father of the petitioner) on 26.02.1961, photostat copy of caste certificate of the petitioner's brother issued by the Executive Magistrate, Bhandara, on 16.07.1974 and also birth certificate of male child born to grand father Soma Jagat on 22.11.1937. The other four documents are also mentioned. In this situation, it is apparent that non consideration of this document dated 05.10.1977 by itself is not sufficient to invalidate the consideration by the Scrutiny Committee. Moreover, this document does not anywhere show that the Executive Magistrate had verified any other document or material before issuing said certificate on 05.10.1977 to Yadavrao. It appears that said document was never supplied by petitioner. The other document not looked into by the Scrutiny Committee is a School Leaving Certificate which has been annexed with writ petition as Annexure 5. It is undated and name of student mentioned therein is Ganpat Dasru. His caste is shown as Halba with date of birth as 30.05.1914. In June 1927, said Ganpat had taken admission in III Standard and left School on 11.04.1929 after passing IV Standard examination. The Scrutiny Committee has in reply affidavit stated that said document was not supplied to Scrutiny Committee at any point of time. Though during oral arguments, the learned counsel has stated that Ganpat Dasru is cousin grand father, in para 5 of the petition, he has been mentioned as grand father and pleading is "petitioner has submitted". This plea of submission is thus too vague as it does not clarify whether said document is being annexed with writ petition for first time or then was also filed before the Scrutiny committee. The family tree is provided by the petitioner's father himself during vigilance enquiry and not in dispute, does not mention name of said Ganpat Dasru as relative any where. The perusal of statement of father of the petitioner recorded by Vigilance Cell authorities on 16.7.2003 shows that family of the petitioner shifted to Bhandara sometimes in the year 1930. Looking to the age of father of the petitioner and name Soma disclosed as grand father, we find it impossible to connect this document with the petitioner. Moreover, looking to the date of birth of said Ganpat and passing of IV Standard by him in 1929, again it is not possible to hold that he had son Soma who could have given birth to Yadavrao(father of petitioner), 65 years old as on 16.7.2003. Thus this document can not be accepted as relevant even to examine any link in the light of pleadings in para 5 of writ petition. The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, , to urge that as important documents are not looked into, the consideration by the Scrutiny Committee is vitiated. The relevant observations noted by the Hon'ble Apex Court there show that about 17 documents were produced by the petitioner Gayatrilaxmi and the Hon'ble Apex Court was not satisfied with the approach of Committee towards certificate at Sr. Nos. 5, 7, 10, 13 & 14. In the absence of any attempt on the part of Government to suspect the correctness or genuineness of documents produced, the observations made in first judgment in

Kum. Madhuri Patil, in para 14 are then noted in this judgment. The Court has to see whether Committee has considered all relevant material placed before it and applied to its mind to relevant facts. Here, we are not in a position to find any fault with the application of mind by the Scrutiny Committee. The production of these two documents before the Scrutiny Committee or their relevance and possible impact has not been established & sufficiently demonstrated so as to enable us to take a view as in *Gayatrilaxmi*-(supra). In any case, the Scrutiny Committee has looked into old documents and how that consideration is or gets vitiated because of these two documents has not been demonstrated. Thus, mere non consideration itself, even if it is to be presumed that such documents were produced, in present facts, is not sufficient to help the petitioner.

22. The Vigilance Cell has, in fact, while conducting field enquiry, recorded the statement of father on the very first date i.e. on 16.07.2003. He has stated that his father i.e. grand father of present petitioner was illiterate. The native place (Takli) was required to be left in 1930 because of flood. He has also given the family tree. Yadavrao has given name of his grand father as Jagan. When undated document showing name of Ganpat Dasru is viewed in this background, the case of the petitioner appears to be doubtful. In fact, Scrutiny Committee has alleged deliberate attempt to mislead. We find substance in this contention because in para 12 of the petition, the claim has been made that father was not examined by vigilance cell and it is found to be incorrect by us. The grievance about non examination of uncle is also made but then the petitioner has not given any reasons why he could not examine uncle as his witness. In para 12 of the petition, he has stated that he was appointed as workshop attendant in the year 1997 and Act No. 23 of 2001 being prospective in nature, the Scrutiny Committee has no jurisdiction to verify caste claim. In para 21 at page 14 again, it is contended that if services of the petitioner are not protected, he would suffer irreparable loss. In para 19, he has mentioned that he has completed 16 years of service and the principle to protect services in such circumstances is settled by various judgments of the Hon'ble Supreme Court and High Court as also by Government Resolutions dated 15.06.1995, 24.07.1998 and 04.09.2000. It thus appears that by producing a document not connected with him and by making such irrelevant & irresponsible allegations, the petitioner has attempted to mislead this Court. The petitioner was aware of the remark of the research officer and had full opportunity to prove traits & establish affinity. Without taking these steps to discharge burden on him, petitioner has only raised roving pleas of too technical nature in an attempt to continue to usurp the status by misleading this Court.

23. The judgment of the Hon'ble Apex Court in the case of *Madhuri Patil vs. Additional Director, Tribal Development*, (supra) contemplates a Committee of three officers and in case of Scheduled Caste, another officer who has intimate knowledge in the verification and issuance of the social status certificates, is prescribed. In the case of Scheduled Tribes candidate like the petitioner, the Research Officer who has intimate knowledge in identifying the tribes i.e. Tribal

communities, parts of or groups of tribes or Tribal communities, is directed to be associated. In later judgment in the case of Madhuri Patil vs. Additional Commissioner, Tribal Development, Thane, (supra) in para 5, the Hon'ble Apex Court has directed that along with Vigilance Cell, one Research Officer/ Tribal Development or Social Welfare Officer would be associated in finding the social status of eligibility of the officers. After this later judgment of the Hon'ble Apex Court, the State Government has added two Research Officers as members of Scrutiny Committee and as per judgment in the case of Bharat vs. State of Maharashtra (supra), it is settled by Division Bench of this Court that Research Officer associated with Vigilance Cell and one functioning as Member of Scrutiny Committee are distinct persons. In this connection, Rule 10 of 2003 Rules framed under Act No. 23 of 2001 show Research Officer as part and parcel of vigilance cell. In Prajakta vs. State of Maharashtra, (supra), Division Bench of this Court has after considering this position, concluded that it is not necessary for this Research Officer to accompany Police Officer to conduct Police enquiry. This view is reached after considering the view reached by the learned Single Judge of this Court. The learned Single Judge in the case of Chhaya Namdeorao Binekar vs. State of Maharashtra, (supra) held that Vigilance Cell enquiry need not be strictly in accordance with exact words contained in Direction No. 5 in Madhuri Patil's judgment. The direction of the Hon'ble Apex Court is held by the Division Bench in para 14 to be fulfilled when the Research Officer functions as one of the Members of the Committee.

24. In Prajakta vs. State of Maharashtra, (supra), Division Bench that as per subsequent judgment in the case of Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development, Thane and others (Second), along with the Vigilance Cell, one Research Officer/Tribal Development or Social Welfare Officer would be associated in finding the social status of eligibility of the officers. It then notices important observations of Hon. Apex Court in the case of Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, where while reiterating the guidelines in Madhuri Patil's case, Hon. Court has observed in paragraph 8 :

While reiterating the above guidelines to be workable principles, it is high time that the Government of India should have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences-----plain/spurious persons could be prevented.

This Division Bench finds that the guidelines issued by the Apex Court are in the nature of "workable principles". Government Resolutions dated 07.03.1996, 15.03.1996 and 14.07.1997 by State Government are found issued in the light of modifications suggested by the Apex Court in the case of Kumari Madhuri Patil. It then notes the observations made by the learned Single Judge in paragraphs no.25 to 29 in the case of Chhaya Namdeorao Binekar Vs. State of Maharashtra & others, (supra) after noticing the relevant words in paragraph No.5 as given by

the Apex Court, & reproduces following observations of learned Single Judge as under:

In my view, since the State of Maharashtra has not specifically given effect to this part of direction No.5 of the Supreme Court in its Government Resolutions, as reproduced hereinabove and in its wisdom, it has left the manner of its investigation to be carried out by the vigilance cell to be an open question. The manner of investigation need not be strictly in accordance with the exact words of the Supreme Court as reproduced hereinabove and that merely because the investigation is not carried out strictly in accordance with the wordings of the Supreme Court referred to hereinabove, that by itself would not vitiate the final order of the Caste Scrutiny Committee, which would be subsequently passed after giving full opportunity to a claimant the petitioner to put forward his case regarding his caste, to receive the copy of the vigilance cell report with all annexures and even to point out the lacuna, if any, in the vigilance cell report and its enclosures, before the Scrutiny Committee. This, however, would not mean that the vigilance cell has a licence to carry out an investigation which is slipshod, negligent or unfair.

It also finds that the Learned Single Judge has held that the aggrieved caste certificate holder has sufficient safeguards after vigilance inquiry. The Division Bench has then reproduced the situations in which learned Single Judge has held that the ultimate order of the Scrutiny Committee would not be vitiated. Those are:--(a) If the Research Officer did not accompany the Police Officer to the actual field of investigation. (b) That the investigation of the vigilance cell need not be strictly in accordance with the relevant words as contained in direction No.5 and as reproduced above.(c) There can be flexibility in the manner in which the investigation should be carried out as long as the investigation is not slipshod, negligent or unfair. These observations of the learned Single Judge have been approved in a case decided by the Division Bench of this Court in the matter of Sangeeta Balayya Bhurewar Vs. State of Maharashtra & Others reported in 2003 (5) Mh.L.J. 645, wherein said Division Bench has observed:-

Though the learned Single Judge was dealing with the situation regarding non compliance of direction No.5, whereby the investigation in the social status of the candidate was not done, the learned Single Judge found that such non compliance cannot vitiate the finding recorded by the Committee. We respectfully concur with the view taken by both the Single Judges in the judgments referred to above.

It also takes note of the fact that the same view of reiterated by the Division Bench of this Court in Writ Petition No.1930/2003, decided on 08.07.2003. In 2002 (supp-2) Bom. C.R. 268-Ramatai Madhukarrao Tapre vs. State of Maharashtra, learned Single Judge of this Court followed view in Chhaya Namdeorao Binekar vs. State of Maharashtra, (supra) & also held that research officer is not required to conduct field investigation along with vigilance cell police officer.

25. Division Bench judgment in the case of Deorao G. Umredkar vs. State of Maharashtra reported at 2007 (5) BCR 629 relied upon by Adv. Kaptan, holds in paragraph 30 after referring to judgment in Madhuri Patil that Research Officer is to be associated as an expert and he is not bestowed with any exploratory or investigative role. He has only consultative character and entire report of vigilance cell is only an opinion which does not bind the scrutiny committee. This Division Bench holds him an "aide" who steps in after completion of exploration & investigation by vigilance cell. His role is found not that of an adjudicator. Thus it is already held by this Court that research officer is not required to record his opinion through a reasoned order with objective analysis. Bharat vs. State of Maharashtra (supra) also does not lay down any such law.

Three unreported judgments relied upon by Adv. Narnaware now need brief consideration. W.P. 2136 of 2011, 5340 of 2010 and other connected petitions decided by the Division Bench at Aurangabad on 25/8/2011 consider validity of a condition no.7 which denied appointment or promotion to candidate whose caste claim was under consideration of scrutiny committee. Petitioners assailed it as contrary to S. 6(3) of Act 23 of 2001 & also directions in Madhuri Patil. State Government attempted to justify it in public interest. Condition was held unreasonable & set aside after noticing impossibility of verification of caste within reasonable time due to large pendency and S. 10 of said Act. Unreported judgment in W.P. 8413 of 2008, 260 of 2009 with other matters decided on 1/9/2009 at Bombay considered the issue whether one A.V. Hankare, member & research officer was competent to act on committee. This person was nominated to complete quorum due to promotion of research officer Shri Shaikh. Division Bench has noted that the committee was formed due to directions of Hon. Apex Court in Madhuri Patil and it was not pointed out how Shri Hankare was found eligible. The challenge was thus upheld. Unreported judgment dated 20/7/2011 in W.P. 5332 of 2004 delivered by Division Bench at Nagpur (to which one of us viz. J. B.P. Dharmadhikari is party) considers a case where the vigilance cell report was in favour of petitioner and though claim of a scheduled tribe candidate was being looked into, research officer was found not associated with vigilance inquiry. There, on facts, inconsistent position about such association appearing on record after comparing original report with its copy supplied to petitioner is noted by this Court. Apart from this other lacunae having bearing on compliance with principles of natural justice are also found. This case nowhere speaks of field inquiry by the research officer. Thus these three unreported judgments have no relevance in present matter. The Circular dated 06.09.2000 relied upon by petitioner also does not spell out any field enquiry by a Research Officer.

26. The Scrutiny Committee has heavily relied upon the unreported judgment dated 12/08/2011 of Division Bench of this Court at Aurangabad in. There the contention that Scrutiny committee was not constituted as per notification dated 23/6/2003 issued under S. 6 of Act no. 23/2001 has been examined & thus question of violating the principles laid down in Madhuri Patil did not arise. Said

notification appointed the Commissioner/Director for Tribal Research & Training Institute, Pune as Chairman and he was not present to decide. The quorum prescribed was 3 & there was no grievance of its breach. The qualification for appointment to the post of Senior Research Officer are prescribed by Rule 3 of notification dated 16/5/2006 and challenge was to appointments of one D.P. Jagtap as senior research officer and M.G. Navghare as research officer. Both of them were the members of scrutiny committee. The Division Bench has found that both these persons were not possessing requisite qualification. In this background, defence of De facto doctrine by Scrutiny Committee & judgment in *The State of Haryana vs. The Haryana Cooperative Transport Ltd. & Others* AIR 1997 SC 237 has been considered. Division Bench notices that said doctrine requires an intruder who attempts to perform the duties of an office without authority of law & without support of public acquiescence. His acts are not allowed to be questioned except by some direct proceedings instituted for the purpose by the State or by somebody claiming the office de- jure or except when the person himself attempts to build up some right or claim some privilege or employment by reason of being the officer which he claims to be. The finding by Hon. Apex Court that merely because writ of quo-warranto is not sought in writ petition, it can not be urged that appointment was challenged collaterally in a proceeding to challenge the award is also noted. In this light, though the Division Bench found appointments of Jagtap & Navghare illegal, it also found that these two persons were not usurpers of the post and they were issued appointment orders, albeit without authority of law. The Division Bench therefore in paragraph 20 of its order has remarked that decision of committee needed acceptance unless it was found bad on some other ground. On merits, said Bench at Aurangabad has found the decision vitiated as vigilance inquiry there was conducted only by police officer and questions put to find out affinity regarding sociological traits & characteristics were not recorded by vigilance cell. Earlier Division Bench in *Ashwini Anil Chavan vs. State of Maharashtra* reported at 2006 (4) Mah. L.J. 415 which holds such record essential to ascertain proper use of affinity test has been relied upon. This Division Bench considers the order of Scrutiny Committee dated 15.10.2005 & observes that said committee has to apply its mind to the report of research officer. In writ petition before us, petitioner Ajaykumar has not led any evidence before the Scrutiny Committee to establish affinity though he was aware of the adverse opinion of Research Officer. Moreover, before this Court also, there is no effort to demonstrate how said opinion of Research Officer is incorrect. Moreover, the Scrutiny Committee has independently considered the data collected by vigilance cell and concluded that the knowledge of traits & characteristics were mentioned due to knowledge gathered from literature. His contention that caste recorded as "Koshti" in documents was not really caste but profession is also rejected. This application of mind by Scrutiny Committee is not shown to be perverse.

27. Consideration by the Hon. Apex Court of scheme of Kerla (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 in

L. Ushadevi vs. Union of India, (supra) fully supports the contention that Act No. 23 of 2001 enacted by State of Maharashtra is a complete code. The Hon. Apex Court has also held that Kerla Act is applicable to employees of central government. In another important judgment Director of Tribal Welfare Vs. Laveti Giri and others, ; Hon. Apex Court considers A.P. Scheduled Castes, Scheduled Tribes and Backward Classes Rules for Issue of Community Certificates Rules (1997) (Draft Rules) under A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificate Act (16 of 1993), and finds that said Rules are substantially in conformity with directions issued by it in that behalf. As we are concerned with composition of Scrutiny Committee in this writ petition, it is important to note how Hon. Apex Court has considered the said aspect as far as Andhra Pradesh Rules are concerned.

4. Rule 7 provides for constitution of Scrutiny and Review Committee at the State Level and Rule 8 deals with Scrutiny Committee at the District Level. They are as under :

Rule 7. Scrutiny and Review Committee (State level):

A Scrutiny and Review Committee shall be constituted at the State Level with the following officers :

- a) 1) Principal Secretary to Government Social Welfare Department.- Chairman
- 2) Commissioner, Social Welfare-Member
- 3) Commissioner, Tribal Welfare-Member
- 4) Commissioner, Welfare of Backward Classes.- Member
- 5) Inspector General of Police, C.B.C.I.D. (P.C.R. and Vigilance Cell).-Member
- 6) Additional Secretary/Joint Secretary/Deputy Secretary to the Government Social Welfare Department.-Member (Convenor)
- b) This Scrutiny and Review Committee shall meet one in three months or as often, depending on the necessity.
- c) Presence of three members will form the required quorum for the meeting of the Committee.
- d) This Committee shall review and monitor the functioning of the Scrutiny Committees at the District level (constituted under Rule 8), it shall render necessary advice to the Government on various policy decisions to be taken for streamlining the procedures or on any other issues related to the issuing of Community Certificates as per Act 16 of 1993.
- e) The Committee may also render necessary guidance and advice to the Government on cases referred to it, where divergent and conflicting enquiry reports are received by the Government, in respect of the community claims.

Rule 8. Scrutiny Committee (District Level) :

a) In every District, a Scrutiny Committee shall be constituted with the following officers :-

1. Joint Collector- Chairman

2. District Revenue Officer- Member (Convenor)

3. Deputy Director (Social Welfare)- Member

Deputy Director (Tribal Welfare)/District Tribal Welfare Officer.)-Member

Deputy Director (Backward Classes Welfare)/District Backward

Classes Welfare Officer- Member

4. Officer of the Research Organisation in the Commissionerate of SW/TW nominated by the concerned Heads of the Department.- Member

5. Officer representing the PCR/Vigilance Cell in the District.- Member"

6. A reading of the Rules would indicate that except some variation, in the matter of the constitution of Committees, in Rules 7 and 8 from the guidelines issued, all other provisions are in conformity with the guidelines issued by this Court.

This judgment needs to be viewed in background of earlier judgment between parties reported at Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, , where the Hon. Apex Court has observed:--

It is, therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following :-

These 15 directions are not reproduced here as above part itself is sufficient to demonstrate its nature as guidelines. This also becomes clear from observations of Hon. Apex Court which appear immediately after these guidelines. Hon"ble Apex Court in this judgment then observes:-

7. While reiterating the above guidelines to be workable principles, it is high time that the Government of India would have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and corner the benefits reserved for the real tribals etc. etc. so that the menace of fabricating the false records and to gain unconstitutional advantages by plain / spurious persons could be prevented. Lest they would defeat the Constitutional objective of rendering socio-economic justice envisaged under Article 46 in the Preamble of the Constitution under Articles 14, 15, 16, 38 and 39.

28. The dispute whether directions in Madhuri Patil- (supra) are mandatory or

not is already settled by this Court after noticing that Hon. Apex Court itself held it to be "working principles" or "guide lines". But then whether petitioner's effort to work out a legal injury by alleging inconsistency between the statutory notification under S. 6 of Act 23 of 2001 & these directions of Hon"ble issued when the field was unoccupied, holds any water or not also needs to be gone into. Act no.23 of 2001 came into force with effect from 18/10/2001. State Government constituted Committee as required by S. 6 thereof for Nagpur area vide notification dated 4/6/2003. It consists of 5 members & the Commissioner/ Director for Tribal Research & Training Institute, Pune is the Chairman of this Committee while Additional Commissioner, Tribal Development, Nagpur was its Vice-Chairman. Deputy Director (Research) is its member- secretary. Senior Research officer & Research Officer are its members. On 12/7/2006, by another notification State has effected slight change in this composition & substituted Joint Commissioner, Nagpur as its Vice-Chairman. Committee constituted on 9/9/1999 consisted of Director for Tribal Research & Training Institute, Pune as Chairman, Additional Commissioner, Tribal Development as its Vice-Chairman, Deputy Director (Research) is its member-secretary & Two Research officers also were its members. Notifications issued under S. 6 of Act no. 23/2001 do not refer to this 1999 notification or to judgments of Hon. Apex Court in Madhuri Patil's cases. Said Enactment also does not contain any such reference. It is apparent that Act no. 23 of 2001 is therefore issued in exercise of its legislative powers under Constitution of India by State Legislature and its competence to do so or then validity of said exercise is not in dispute before us. There are no such prayers or arguments advanced by petitioner. S. 2(k) of the Act defines Scrutiny Committee as constituted under sub-section(1) of S. 6. Section 6 confers absolute powers upon State to constitute such Committee and even that provision is not assailed before us. Adv. Kaptan & Adv. Patil have advanced arguments before us to assail attempt made by petitioner to co-relate & compare constitution of S. 6 Committee with Committee functioning earlier as per directions of Hon. Apex Court in Madhuri Patil's matters. Petitioner has not even attempted to meet their attack. Whether an otherwise valid enactment which comes into force later on can be scrutinized in the light of "workable principles" in judgment delivered when that field was unoccupied is therefore the issue that arises in this situation.

29. Precedents on validity of law enacted to get over the judgments of a Court hold an answer to this issue. Hon. Apex Court in AIR 1965 S.C. 1887-"Rajeswar Prasad Misra v. State of W.B.", states that its observations can not be read as statutory enactments. This judgment shows that no doubt, the law declared by Apex Court binds Courts in India but it has directed to remember that it does not enact. The Code of criminal procedure contemplates that a retrial may be ordered after setting aside the conviction or acquittal if the trial already held is found to be unsatisfactory or leads to a failure of justice. The Legislature has not chosen to indicate the limits of the power of a Court in Cr.P.C. and this precedent shows that it (Hon. Apex Court) must not be understood to have laid them down

& illustrations in its previous judgments are stated to be not exhaustive. In AIR 1976 S.C. 2250 "I. N. Saksena v. State of M.P.", Hon. 4 Judges bench of Apex Court lays down that the validity of a validating law is to be judged by applying three tests. Firstly, whether the legislature possesses competence over the subject- matter, and secondly, whether by validation the legislature has removed the defect which the Courts had found in the previous law and thirdly, whether it is consistent with the provisions of Part III of the constitution. Applying these tests it held that the provisions of Sections 2 and 5 of M. P. Shasakia Sevak Anivarya Sevanivritti Ka Vidhimanyata Karan Adhiniyan (5 of 1967) are valid & not an encroachment on judicial power. Hon. Court has pointed out that the distinction between a "legislative" act and an "judicial" act is well known, though in some specific instances the line which separates one category from the other may not be easily discernible. Hon"ble Court states that an adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the Court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the law, prescribing norms of conduct which will govern parties and transactions and to require the Court to give effect to that law. It also clarifies that while, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Article 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing retrospective, curative or neutralizing effect the conditions on which such decision is based. The rendering ineffective of judgments or orders of competent Courts and tribunals by changing their basis by legislative enactment is a well known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of action or proceedings is not an encroachment on judicial power. Shri Patil has relied upon State Bank's Staff Union (Madras Circle) Vs. Union of India (UOI) and Others, where "I. N. Saksena v. State of M.P."(supra) has been followed to state that the Legislature cannot by a mere declaration, without anything more, directly overrule, reverse or override a judicial decision. However, it may, at any time in exercise of the plenary powers conferred on it by the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field, fundamentally altering or changing with retrospective, curative or neutralizing effect the condition on which such decision is based. Whenever any amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be effective one way or the other. In every case the exercise by legislature by introducing a new provision or deleting an existing provision with retrospective effect per se does not amount to violation of Art. 14 of the Constitution. The legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. As laid down by

Hon. Apex Court, such legislation cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate Court or Tribunal, which is against the concept of separation of powers. Recently in *A. Manjula Bhashini and Others Vs. The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another*, Hon'ble Apex Court has held that the language of first proviso to S. 7 of A.P. (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern of Pay Structure) Act (2 of 1994), by which the policy of regularization was engrafted in the 1994 Act revealed that the amendments were made with the sole object of removing the ambiguity in the policy contained in G. O. dated 22-4-1994 and the same were not intended to nullify or override the judgment in (1998) 2 Andh LT 5 (SC). It found that policy of regularization as contained in first proviso to S.7 of Act No. 27 of 1998 is one time measure intended to benefit only those daily wage employees, who completed 5 years continuous service on or before 25-11-1993 & employees who completed 5 years service after 25-11-1993 cannot claim regularization. S. 7A providing of abatement of claims arising under any Government order, judgment, decree or order of any Court, Tribunal or other authority was held not an encroachment on Court's power of judicial review.

30. These judgments of Hon'ble Apex Court, therefore, show that an error or lacuna judicially noticed and resulting in vitiation of a legislation can be cured by a proper legislation. It is obvious that the legislature always intended to enact a valid law within four corners of its powers and Hon'ble Apex Court has found that such factors vitiating it can always be rectified by the legislature even retrospectively. Thus when an adjudication can be avoided by competent legislation, here where there was no legislation at all, it can not be perceived that Hon. Apex Court while issuing various directions in its judgments in *Madhuri Patil* (supra) wanted State Legislature not to exercise its plenary powers under schedule VII or then expected it to exercise the same in particular manner. Its no doubt true that in view of unique position of Hon'ble Apex Court in constitutional set-up of this Country, such directions need to be given due importance & consideration by State Legislature. The same are obviously guidelines to control exercise of a power which otherwise may appear un-canalized. However, merely because State Legislature has in exercise of its constitutional powers enacted a law in particular manner or even little differently than said "workable principles", it can not be labeled as unconstitutional or bad as it does not cease to be law under schedule VII of the Constitution of India or then it does not violate any constitutional safeguards. Three tests laid down by the Hon'ble Apex Court & noted above, when applied here, do not lead to any such finding of invalidity of Act no. 23 of 2001. The Hon'ble. Apex Court has only recognized need to have a uniform legislation but has not issued any mandate to legislate and, normally, Courts may not issue such a direction or a direction to adopt particular scheme in proposed Statute. Hence, effort undertaken by petitioner to show violation of the

"workable principles" by a valid State Enactment is itself misconceived. Said effort, however, was bound to succeed had the field still remained unoccupied.

31. Though it is argued by learned Counsel for petitioner that 2003 Rules framed by State of Maharashtra under Act no. 23 of 2001 have not been placed before Hon. Apex Court & its approval has not been obtained as in Director of Tribal Welfare Vs. Laveti Giri and others, ; no direction of Hon. Apex Court or any other law obliging State to do so has been pointed out. This 1997 judgment is in the backdrop of its 1995 judgment at Director of Tribal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, , where after considering the serious problem & usurpation by spurious candidates, (same Hon"ble. Judges who decided Madhuri Patil) Hon"ble Court has observed-- "After falsely gaining entry, resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is the parent or the guardian who may play fraud claiming false status certificate of his child. It is, therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following". Nature of these guidelines is already narrated by us above. In this situation, when there is no challenge to constitutionality of Act no. 23 of 2001 and directions issued by Hon. Court are only "workable principles" which do not in any way eclipse the legislative powers of State, We do not find any merit in the petitioner"s challenge to composition of Scrutiny Committee.

32. Moreover, here affidavit filed on behalf of respondent 2 Scrutiny Committee denying the assertion of petitioner about its composition. The scrutiny Committee has pointed out S. 6 of Act no. 23 of 2001 as its source and hence, non-applicability of guidelines in Madhuri Patil. It has also pointed out absence of pleadings in writ petition to enable this Court to undertake scrutiny into its composition. Without prejudice, it is pleaded on affidavit that Commissioner/Director for Tribal Research & Training, Pune who is Chairman of the Committee is an IAS officer in the rank of Joint Secretary. Second Member of the Committee i.e. Additional Commissioner is disclosed to be the person of the rank of Director of Tribal Welfare. Hence, in matter before us, constitution of the committee can not be said to be even contrary to direction number 4 in Madhuri Patil"s judgment of Hon"ble Apex Court. We also note that petitioner has not raised any objection to the composition of Scrutiny Committee at the earliest before the Committee itself or then before the State Government. On the contrary, he participated in its proceedings effectively & took efforts to have an adjudication in his favour. It is also not his case that during any of the hearings there was no quorum. Quorum is explained in paragraph 7 of its judgment in The Punjab University, Chandigarh vs. Vijay Singh Lamba & Ors, (supra) by Hon"ble Apex Court to mean the number of persons adequate to validly transact business of any body. Here, there is no effort to even urge that the business transacted by the Scrutiny Committee was vitiated on any count. We therefore find that doctrine of de-facto is also attracted in present case. The Chairman of the

Scrutiny Committee, even if held to be not of rank expected by Hon'ble Apex Court, it is not sufficient to vitiate otherwise valid adjudication here. The Scrutiny Committee which has passed impugned order consisted of an officer of the rank of joint secretary, other two highly placed officers & two research officers. Hence, in the absence of any arguments of resulting prejudice, even if contention of petitioner is presumed to be true, still the above doctrine dis-entitles him to any relief. The State of Haryana vs. The Haryana Cooperative Transport Ltd. & Others (supra) unreported judgment dated 12/08/2011 of Division Bench of this Court at Aurangabad in W.P. 107/2010 apply with full vigour. Even otherwise, We have already noticed that he has not approached this Court with clean hands & his blameworthy conduct is itself sufficient to deny him the relief. This is not the matter where by picking up some lacuna here & there, and without pointing out its impact on consideration of merits of controversy by a Scrutiny Committee, the petitioner can hope to continue to enjoy that status to which he is not legally entitled. Petitioner who failed to discharge the basic burden to establish his caste claim by producing relevant material has attempted to throw entire burden on State Government and by abusing the process succeeded in securing second term for himself. Since we are not taking a view different than any binding precedent in the matter, there is no scope for reference to larger bench. The necessary facts are pleaded are placed by the Scrutiny Committee & hence, reference to other judgments cited before us is not called for.

33. We accordingly find no merit in the matter and writ petition is dismissed. Rule is discharged. However, in the facts and circumstances of the case, there shall be no orders as to costs.

At this stage, Shri Narnaware, learned counsel for the petitioner seeks continuation of interim order, which is already operating, for a period of six weeks. Shri Patil, learned counsel for respondent No.2 points out that here the question is of continuation on a post of Municipal Councillor.

In the interest of justice, we continue the interim orders already operating for a period of six weeks from today. The same shall cease to operate automatically after expiry of the said period.