

(2017) 08 BOM CK 0205
In the Bombay High Court
Case No : 4945 of 2013

BHANUDAS S/O HONA GAJBHIV

APPELLANT

Vs

STATE OF MAHARASHTRA; SCHEDULED

RESPONDENT

Date of Decision : 02-08-2017

Acts Referred:

[Constitution of India](#), [Article 226](#), [Article 17](#), [Article 342](#), [Article 15\(4\)](#), [Article 341](#), [Article 366](#)

Citation : (2017) 08 BOM CK 0205

Hon'ble Judges : S C Dharmadhikari, Mangesh S Patil

Bench : DIVISON BENCH

Advocate : S R Barlinge, P V Suryawanshi, D R Kale, A B Kale

Final Decision : Allowed

Judgement

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.
2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by the Scheduled Castes, Scheduled Tribes, DeNotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Class and Special Backward Class Divisional Certificate Scrutiny Committee no.1, Nasik Division, Nasik.
3. This is the Committee functional under the Maharashtra Scheduled Castes, Scheduled Tribes, DeNotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "Maharashtra Act No. XXIII of 2001").
4. The first respondent is the State of Maharashtra. The second respondent is the Committee. The third respondent is the Tahsildar, Shevgaon, Tq. Shevgaon,

District - Ahmednagar and respondent no.4 is the complainant.

5. He had made a complaint against the petitioner and which led to the impugned order.

6. The petitioner claims to be belonging to "Hindu Mahar Scheduled Caste". He received a certificate to that effect from the Executive Magistrate, Shevgaon. That was issued on 29/02/1988. A copy of this caste certificate is annexed to the Petition at Annexure "A".

7. Thereafter, the authority to issue the caste certificate, was conferred on the SubDivisional Officer. The petitioner, therefore, applied for issuance of a caste certificate to this competent authority, namely, SubDivisional Officer, Ahmednagar and he issued a caste certificate on 10/8/2005, copy of which is at Annexure "B".

8. A certificate of validity was issued by the second respondent Committee in the year 2007, validating the claim of the petitioner. A copy of this validity certificate is annexed to the Petition as Annexure "C".

9. It is the grievance of the petitioner that respondent no.4 had a personal grudge against him and both of them are involved in litigation. He instituted Writ Petition no. 3077 of 2012 challenging the certificate of validity issued in favour of the petitioner. It was alleged that the certificate was issued without a reasoned order. This Petition was disposed of by this Court on 24/09/2012. The second respondent - Committee was directed to hear both sides and pass a reasoned order afresh. A copy of this order of this Court in that Writ Petition is marked as Annexure "D".

10. The second respondent - Committee thereafter forwarded the claim papers to the Vigilance Cell. That Cell was directed to hold an Inquiry and submit the report. This Cell submitted its report on 29/10/2013. This Vigilance Cell report after being received by the Committee, it followed the settled procedure of serving a copy thereof on the petitioner and calling upon him to submit his reply in details to

the contents of this report. A copy of the Vigilance Cell report is marked as Annexure "E" and the copy of the petitioner's reply to the contents thereof/show cause notice, is marked as Annexure "F".

11. The petitioner relied upon several documents including a "Hadola Vatan", issued in favour of his grandfather Mohana Balu Mahar. This is dated 31/03/1908. The petitioner also submitted the documents in respect of his uncle Eknath Mohana, whose caste was recorded in village register no. 14 as "Mahar". This document is dated 06/02/1917. Then the petitioner also submitted documents in respect of daughter of Mohana, wherein the entry in the caste column was recorded as "Mahar". The petitioner also submitted the documents, namely, a certificate in respect of his sister Indura Hona Mohana Mahar, wherein also the entry in the caste column is "Mahar". Several such documents and

copies of which are compiled at Annexure "G" collectively came to be forwarded. Respondent no.4 also gave a written reply and he relied on some documents to indicate that some of the relatives of the petitioner had embraced Christianity and extracts in respect of those relatives with entries in the caste column recorded as "Christian". Annexure "H" is a copy of this reply.

12. The petitioner alleges that the fourth respondent had threatened the Committee that he would undergo fast unto death, if the claim of the petitioner is not considered expeditiously. The petitioner alleges that influenced by such threats, the Committee passed the impugned order dated 31/05/2013, copy of which is marked as Annexure "J". The petitioner also relies upon Annexure "I", which is a copy of notice issued by fourth respondent, threatening that he would undertake fast unto death.

13. It is this order of the Committee dated 31/05/2013, which is challenged in this Writ Petition.

14. Mr. Barlinge, learned counsel appearing for the petitioner would submit that in the earlier round, when a certificate of validity was issued to the petitioner, all the documents were considered. A certificate of validity was granted earlier. It is only because of a mischievous and malafide complaint by the respondent no.4, that the Committee proceeded to invalidate the petitioner's claim. The impugned order is vitiated by several errors apparent on the face of record. Mr. Barlinge would submit that the impugned order is wholly perverse. It is contrary to the mandate of the Maharashtra Act no. XXIII of 2001.

15. Mr. Barlinge would submit that if the Maharashtra Act no. XXIII of 2001 provided for the regulation of the issuance and verification of the caste certificates to the persons belonging to the above classes and categories and for matters connected therewith or incidental thereto, then, its ambit cannot be widened or enlarged to include an enquiry into a caste validity certificate issued earlier and when that caste validity certificate was not obtained by fraud or misrepresentation. Mr. Barglinge would invite our attention to the definitions in the Maharashtra Act no. XXIII of 2001, in Section 2, to submit that the Scrutiny Committee means a Committee or Committees constituted under Section 6(1) for verification of the caste certificate and to perform the functions of Scrutiny Committee. Mr. Barlinge would submit that an application can be made for caste certificate in order to claim the benefit of any reservation provided to such castes, tribes or classes, either in any public employment or for admission into any educational institutions or any other benefit under any such provisions made under Article 15(4) of the Constitution of India or for the purpose of contesting for elective offices of any local authority or in the cooperative societies or for purchase or transfer of land from a tribal land holder or for any other purposes specified by

the Government. Mr. Barlinge would submit that if the caste certificate is obtained for any such purpose, and that is relied upon, then, Section 6 requires

that such certificate has to be forwarded to the concerned Scrutiny Committee for the verification of such caste certificate and issue of a validity certificate.

16. Mr. Barlinge would submit that the petitioner was desirous of contesting the election against a reserved seat in the local body elections. Therefore, he made an application for issuance of the validity certificate. That application was made on 03/03/2006. It is upon such an application that the validity certificate was issued. That certificate was issued after the Maharashtra Act no. XXIII of 2001 was brought into force. The Scrutiny Committee referred to various relevant documents and, thereafter, issued the validity certificate.

17. Respondent no.4 challenged the validity certificate but in the order passed by this Court, it is clarified that the bonafides of the complaint made by the fourth respondent had not been gone into or investigated. Thus, this was not a case where respondent no.4 alleged that a false certificate was obtained and, therefore, the Committee should record an opinion whether it was obtained fraudulently or not.

This was a simplicitor complaint, of which note was taken by this Court, namely, that in granting the certificate of validity to the petitioner earlier, this Committee did not pass a reasoned order. Thus, principles of natural justice were violated in issuing the certificate of validity earlier. Therefore, the Committee was directed to pass a fresh order by the Court. This is a case where the Committee did not follow the prescribed procedure and failed to assign reasons earlier. The petitioner before this Court was never at fault. For, he cannot be blamed if the Committee does not perform its statutory duty and function. The respondent no.4 using this as a tool to harass the petitioner, derived advantage and has virtually forced the Committee to pass the impugned order.

18. Since this was not a case of fraud or a false claim, the Committee could not have revisited its order. Assuming for a moment, that it was set aside, therefore, the Committee was obliged to abide by this Court's order, still, in the present case, the Committee has failed to record the requisite satisfaction that the certificate of validity issued earlier was obtained falsely.

19. Mr. Barlinge submits that every document produced by the petitioner before the Committee in the fresh exercise, has been discarded for untenable reasons. It is observed by the Committee that these documents were produced during the course of the proceedings before the Committee and not during Vigilance Cell enquiry. Mr. Barlinge has invited our attention to page 165 of the paperbook to submit that document at serial no. 7, 8, 10, 11, 13 have only been considered. There is a sole finding recorded by the Committee at page 165 of the Petition against the petitioner. However, it is evident from the documents at page 42 to 47 that the petitioner's family follows Hindu religion. They cannot be termed as Christians. There has to be concrete proof before the Committee for it to record that the petitioner has embraced Christianity. There is voluminous documentary evidence produced in the form of a letter from the Church, which records that

the petitioner has not undertaken the ceremonies necessary for induction into Christian religion. Members of the Christian community have not recognized nor they have accepted him and there is no independent proof that he has embraced Christian religion. Then, the Committee has erred in invalidating the claim of the petitioner. Its order is therefore vitiated by nonapplication of mind.

The basic principles and fundamental tenets have been ignored by the Committee. Therefore, its order be quashed and set aside.

20. The impugned order is supported by respondent no.4. Mr. Kale, learned counsel appearing for respondent no.4 submits that the Committee was fully empowered to consider the issue again. Apart from the binding order and direction of this Court, additionally, it is apparent from the record that the wife of respondent no.4 who was a Zilla Parishad employee, purchased a land for construction of a house in Shevgaon town. The petitioner encroached on the said land. Respondent no.4 filed Regular Civil Suit no. 70 of 1991. That suit was decreed in favour of respondent no.4. However, the petitioner filed the compliant, alleging atrocity under the Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the respondent no.4. Respondent no.4 was forced to undergo a trial. In the Criminal trial after the evidence was recorded, the competent Criminal Court arrived at a conclusion that there is no evidence adduced by the petitioner which would enable the Court to convict respondent no.4 for the offences alleged and particularly, Atrocity. Hence, he was acquitted. In the meanwhile, even the Regular Civil Appeal, challenging the judgment and decree of the trial Court in the

Civil Suit, was decided on 07/12/2005 and it was dismissed. The petitioner filed Second Appeal, which came to be dismissed on 16/01/2006. The Special Leave Petition was also dismissed on 12/03/2007. Execution proceedings are pending. It is the petitioner, who used caste certificate and the validity certificate as a tool or weapon to harass the fourth respondent. Respondent no.4 has still not obtained the fruits of the judgment and decree in the Civil Suit and the Execution Proceedings are pending. Further, Mr. Kale took us through the judgment and order of the trial Court in the Criminal Case/Atrocity offence proceedings and, particularly, the version appearing at pages 226 to 228, to submit that a benefit of doubt was given to the respondent no.4 and he was acquitted but while granting such benefit, the trial Court observed that the forefathers of the petitioner has converted to Christianity. It is in these circumstances, that the petitioner perpetrated a fraud and this is a fraud on the public. This fraud was not probed earlier and the Scrutiny Committee mechanically issued the certificate of validity. It was that obligation which is to be discharged under the Statute. But failure to so discharge it, led to a complaint by the respondent no.4. It is in these circumstances, and when the petitioner on the strength of this caste certificate, decided to contest the election, obtain dealership of an Oil Company, that the

fraud came to light. This fraud having not been probed by the Committee, that led to its earlier order being set aside. Mr. Kale, therefore, invites our attention to

the documents in that regard and particularly, pages 149 to 153. He would submit that all the documents produced before the Committee demonstrate that the petitioner's religion is Christian. There is no pleading in the Petition that all the documents produced now were earlier before the Committee. Since no reasons are assigned earlier, the Court cannot indulge in a guesswork, thus, the claim of the petitioner was never genuine but doubtful. The Scrutiny Committee was not acquainted with the ground realities earlier but this time, with the assistance of the Vigilance Cell's report, it arrived at the correct conclusion. There is no perversity nor is the impugned order contrary to law. Hence, it should not be set aside. Mr. Kale heavily relies upon the affidavit in reply of respondent no.4 and the documents annexed thereto.

21. For properly appreciating the rival contentions, the Maharashtra Act no. XXIII of 2001 would have to be perused. As is already referred above, there are certain vital definitions in Section 2. Definitions of the term "Competent Authority" provided in Section 2(b), "Nomadic Tribes" "Other Backward Classes", "Prescribed",

"Scheduled Castes" and "Scheduled Tribes" are relevant. Section 3 provides for an application for caste certificate and by Section 4, a caste certificate has to be issued by the Competent Authority after satisfying itself about the genuineness of the claim and following the procedure as prescribed, meaning prescribed by the Rules. The caste certificate has to be issued within such time limit and in such form as may be prescribed or it may be rejected for reasons to be recorded in writing.

22. That order of rejection of the Competent Authority can be challenged in Appeal as provided in Section 5. Section 6 reads as under:

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

23. Perusal of the same would reveal, as to how the Government has to constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under SubSection (1)

of Section 4. It is only after obtaining Caste Certificate from the Competent Authority, that any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes etc. for the purpose mentioned in Section 3, may make an application, well in time, in such form and in such manner, as may be prescribed to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate. The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity

certificate, as prescribed.

24. Section 7 deals with confiscation and cancellation of a false certificate. Any certificate of validity can be probed by the Scrutiny Committee suo motu or otherwise and on an enquiry into the correctness of the certificate and if it is of the opinion that the certificate was obtained fraudulently, cancel and confiscate the certificate but before that is done, it has to follow a prescribed procedure as also give person concerned, an opportunity of being heard. The order of the Scrutiny Committee is given finality and cannot be challenged before any Authority or Court.

25. By Section 8, there is a burden on the person applying for issuance of a caste certificate of proving that he belongs to such caste, tribe or class. Certain powers of Civil Court are conferred in the Scrutiny Committee and in the Authorities by the Act by Section 9. Similarly, by Section 10(1), it is clarified that benefits secured on the basis of a false certificate to stand withdrawn. The Act has, therefore, provided for serious consequences and has also included provisions by which the obtaining a false certificate by furnishing false information or filing false statement or documents or by any other fraudulent means or securing benefits by producing a false caste certificate has been made an offence and punishable. In addition thereto, issuance of a false certificate is also an offence, for which penalty is provided by Section 11, 12, 13 and 14. By Section 14, even abetment is an offence. Section 15 takes away the jurisdiction of Civil Court and Section 16 protects the acts done in good faith. By Section 17, it is clarified that provisions of this Act shall be in addition to the provisions of any other law for the time being in force. There is a power to make Rules conferred by Section 18.

26. Such being the rigor of the Maharashtra Act no. XXIII of 2001, and its provisions, the Scrutiny Committee is obliged to verify

the claim strictly in accordance with the Act but even when the complaint is made that the certificate has been secured in a fraudulent manner, or a false claim is made, in the sense, false information is furnished or false statement or document is filed or by any other fraudulent means, the certificate is procured, there is an equal mandate to record satisfaction on the above aspects clearly. There is no question of assuming a fraud or accepting the one sided version of fraud. There has to be proof of fraud. In the present case, we find that the Scrutiny Committee had before it, the order passed by this Court and which obliges it to once again consider the claim. The earlier certificate of validity issued to the petitioner is at page 19 of the paperbook. The caste certificate is at page 17 of the paperbook. The order of the Scrutiny Committee is at page 147 of the paperbook. The Scrutiny Committee proceeded on the basis that the order of this Court binds it and it must verify the claim. That is how it issued notice to the petitioner and the petitioner appeared before the Committee. He submitted his version in writing. After a brief hearing on 30/10/2012, the Committee referred the matter to the Vigilance Cell. The Vigilance Cell conducted an enquiry by visiting the school and the home. It submitted its report on 29/01/2013. Copy of

the Vigilance Cell report was forwarded to the petitioner and, thereafter, the petitioner was

heard. The petitioner pointed out the defects and deficiencies in the Vigilance Cell report. On 22/02/2013, the matter was once again referred to the Vigilance Cell in the sense, reenquiry was ordered. Thereafter, another report was forwarded by the Vigilance Cell to the Committee. Subsequently, the petitioner demanded copies of all the relevant documents and his request was granted. Thereafter, the petitioner appeared and also submitted written arguments.

27. The Committee pointed out that the petitioner had for the purpose of contesting elections, submitted a proposal and for issuance of the validity certificate. Together with that proposal, he submitted his school leaving certificate as also certified true copy of his father's school leaving certificate. He also submitted copy of the death certificate of his cousin and an affidavit to support the family tree. The Committee itself records that on the basis of these documents, it issued the certificate of validity earlier. However, the Committee now says that the whole claim is illegal, false and baseless.

28. This is a drastic conclusion recorded by the Committee. In doing so, before arriving at the above conclusion, the Committee took on record certain documents forwarded by respondent no.4. Those

are the birth / death extract of petitioner's grandfather, father, and the birth extracts of his sister and brother. He alleged that the petitioner's blood relatives are Christians by birth. Respondent no.4 alleged that despite this position, the Tahsildar, Shevgaon granted the caste certificate. It is stated that the documents filed before the Tahsildar (Affidavit) and the family tree shown therein, is false. The petitioner had suppressed from the Tahsildar that his blood relations are Christians. It is then stated that there was a Sessions Case no. 127 of 1993 filed by the petitioner in the Sessions Court at Ahmednagar. Therefore, the original birth / death registers were produced and from that, it is evident that the petitioner does not belong to Hindu religion.

29. This record, according to respondent no.4 came to light only when the petitioner filed Atrocity complaint in the Shevgaon Police Station, which was later on converted into Criminal Case no. 280 of 1991. In that case, the petitioner relied upon the birth and death extracts of his sister, brother, father and grandfather. From all this, it is clear that the Sessions Court upon perusal of the same, was satisfied that being a Christian, the petitioner could not have filed an Atrocity complaint. Respondent no.4 relied upon the finding recorded by the Sessions Court on point no.4.

30. Then, the respondent no.4 relied upon the finding in the Vigilance Cell's report inter alia to the effect that one Hona Mohana Gajbhiv was not cremated but buried. He is the father of the petitioner. The place where he was buried, was shown by the cousin Bhagwan Kondiram Gajbhiv and the Police Patil of the village. All these persons including the team of the Vigilance Cell visited the spot.

This is Christian's cemetery and there are tombs. One of them was of the petitioner's father. It is in these circumstances, that it was alleged that all this information was suppressed. The elder brother - Sonaji and Kondiram and cousin Bhagwan as also the petitioner himself in their statement recorded on 07/01/2013 stated that the cremation was by lighting fire pit but that is not borne out from the above.

31. The above allegations made by respondent no.4 were denied by the petitioner. The petitioner says in his version that he never converted to Christian religion. He stated that his grandfather Mohana Bala was Hindu Mahar. That is why the Government allotted to him a piece of land bearing gat no. 32 in village Mouje Erandgaon, this is Hadaki Hadola land. The revenue entries in relation to the same were produced on 08/10/2012 and 18/02/2013 before the

Scrutiny Committee. Hadaki Hadola land is allotted only to those belonging to backward and downtrodden classes (Shudras) i.e. Mahar caste alone. It is stated that there was a second wife of his father and she gave birth to Sari, Kondiram Hona, Katha Hona. The petitioner and these persons are not in touch with each other. They have no relations. It is alleged that none of the documents produced by the respondent no.4 nor the findings in the Vigilance Cell report should be accepted. While it is true that the complaint of Atrocity was filed but that does not have any bearing on the present case or the judgment and order of acquittal therefrom. The Sessions Court has not recorded a categorical finding that the petitioner belongs to the Christian religion. Respondent no.4 was acquitted by giving him benefit of doubt. In the circumstances, the Committee should not be influenced by any finding in the judgment of the trial Court in the Atrocity case. The petitioner belongs to Mahar Scheduled Caste. As far as freedom of religion is concerned, that is not to be confused and equated with the caste and tribe. The caste or tribe cannot be changed and there is no way one can enter into another caste or tribe and exit from one caste or tribe into another. Thus, religion can be changed but not the caste. In the present case, there is absolutely no falsehood. The petitioner is a Hindu. He has never misled any Committee. It is in

these circumstances, that he also made very serious allegations against the members of the Vigilance Cell and argued that if there was no truth in the same, the Committee would not have ordered reenquiry.

32. When such are the materials and the Committee had before it as many as 30 documents, what we find is that it relied on the documents from serial no. 7 to 13. These are the copies of school leaving certificate of Kamal Honaji Gajbhiv who was born on 01/06/1950, entered the school on 14/10/1958. There is another entry in Gaon Namuna No. 14 which shows that Tahsildar, Shevgaon had entered in the religion column of Hona Mohana Gajbhiv, who gave birth to Sari (sister of the petitioner) that Christian is her religion. Similarly, the death certificate of Mohana Bala carries an entry Christian/Christi. Mohana Bala is the grandfather of the petitioner. Then, the petitioner's brother also has been certified as belonging to the Christian religion in the death certificate dated

30/11/1939. There are other two birth and death extracts pertaining to a son born to Hona Mohana Gajbhiv but it is stated that this person is the brother of the petitioner. Similarly, entry in the death certificate of Sari dated 17/08/1939.

33. It is only in these documents, that there is a reference or there is an entry as Christian in the religion column. As against this, the same Tahsildar issued birth certificate to one Shanti dated 05/12/1930. This Shanti is the sister of the petitioner. Pertinently, in the caste column, entry is Mahar. Similarly, Hona Mohana gave birth to one daughter Emal on 26/03/1953 and in the caste column, the entry is Mahar. One Eknath Mohana was born on 06/02/1917 and in the birth extract, the entry in the caste column made by Tahsildar, Shevgaon is Mahar. This Eknath Mohana is the cousin of the petitioner. There is an extract from the Hadola Patrak and produced by the petitioner wherein his name is written as Mahana Balu Mahar. Thereafter, there are other documents referred including one school leaving certificate which was signed by the Headmaster, Primary School of Zilla Parishad, Erandgaon, Tq. Shevgaon, District - Ahmednagar of one Sonyabapu Hona Gajbhiv. He is brother of the petitioner and the entry in the caste column in this document is Mahar. Sonyabapu was born on 01/05/1942 and he entered the school on 12/07/1949. Similarly, the sister of Hona Gajbhiv (Kamal) entered the same school, was born on 01/06/1950. She entered the school on 14/10/1958, In the school leaving certificate pertaining to her as well in the caste column, the entry is Mahar. One Bhagwan Kondiram

Gajbhiv who is the cousin of the petitioner and in his case, the school leaving certificate was produced, where the Headmaster, Janata Vidyalaya, Ghotan, District - Ahmednagar entered Mahar as his caste in the school leaving certificate.

34. It is in these circumstances, and when a very pertinent document, namely, the school leaving certificate issued by the Headmaster, Vidya Prasarak Samaj's Residential Highschool, Ahmednagar, shows that the petitioner was born on 01/06/1948, entered the school on 25/06/1964 and entry in the caste column is Mahar. However, the Vigilance Cell visited the school and the Principal disowned this certificate. Therefore, that was ignored.

35. The Committee then refers to all those certificates where the entries in the caste column is Mahar. All these documents were produced and during the course of proceedings before the Committee. We do not see how, the Committee could have discarded them. The Committee takes up only those documents which were produced before it or which were referred in the Vigilance Cell report and in which the entry in the caste column is Christi/Christian. However, it refers to the document / birth extract of Sari, and who was born to

Hona Mohana Gajbhiv. In regard to this document where the entry is Christian in the caste column, the Tahsil Office, Shevgaon informed that the Gaon Namuna No. 14 register is available and pages 26 and 38 are appearing therein but page 32 on which this entry is supposed to be appearing, is missing. The Committee then refers to the document at serial no. 10 in relation to petitioner's

grandfather and another document at serial no.11, in which the entry in the caste column is Christian. However, there was another document issued and produced at serial no. 12, which is also the extract of birth register and in the birth column of the date 25/11/1939, it is stated that one Hona Gajbhiv gave birth to a son and his caste is Christian, however, even this page was missing from the register when the same was inspected by the Vigilance Cell on 07/12/2012. In relation to document at serial no. 14 as well, the entry in the caste column was verified by the Vigilance Cell and Shanti, the daughter of Hona Mohana was stated to be Mahar. Thus, all these documents which had carried or contained the entry in the caste column as Mahar, were relevant and could have been omitted from consideration only if the Committee found that there was a contemporaneous record of the petitioner and his family embracing Christianity. The documents which were produced at serial no. 21, 24 and 25 were not taken into consideration only because the

contents thereof could not be perused by the Vigilance Cell or the Vigilance Cell had no occasion to scrutinize the same. We do not see how this approach can be justified in the facts and circumstances of the present case.

36. The Committee had before it an allegation that the petitioner has embraced Christianity and which fact was suppressed from the Committee. That has a vital bearing on the case. The Committee could have arrived at another conclusion and such allegation being proved would not have issued the certificate of validity. Had true and correct information about the petitioner's religion being brought before it, it would not have then accepted the petitioner's claim. The petitioner proclaimed that he was a Hindu but the record produced by the respondent no.4 shows otherwise. This is his allegation. As against it, from the record produced and relied upon by respondent no.4, the petitioner relied on documents which carry equal weightage. These documents are pertaining to his close relatives like brother and sister on the paternal side. In their cases, the entry in the caste column is Mahar. Therefore, it is not as if there is clinching evidence in support of the claim or allegation of the respondent no.4. Eventually, only some documents were produced to allege that the

petitioner has embraced Christian religion.

37. Firstly, the Committee has not recorded any finding or opinion as to what bearing the religion can have on the claim. True it is that it is the untouchability amongst Hindus and the differentiation and distinction between human beings on caste basis, which led to atrocities on all those, who do not belong to the upper caste. Caste system was prevalent predominantly amongst Hindus and that is why the Social Reformers and National Leaders like Mahatma Gandhi and Dr. Babasaheb Ambedkar waged a battle to eradicate caste system and were of the firm opinion that we should march towards a casteless society. Article 17 of the Constitution of India was inserted so as to abolish untouchability, which was prevailing in the upper castes amongst Hindus, however, as far as Constitutional provisions go, it is apparent that the Constitution of India contains Articles 341

dealing with Scheduled Castes and under which the President of India, may with respect to any State or Union, and, where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the

case may be. Clause 2 of Article 341 provides for inclusion or exclusion from the list of Scheduled Castes specified in the notification issued under clause (1) any caste, race or tribe or part of group within any caste, race or tribe, but such inclusion or exclusion has to be by Parliament by law. Save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. Article 342 deals with Scheduled Tribes and contains a like provision.

38. We do not see, therefore, justification for the conclusion in the instant case that because the petitioner is allegedly a Christian he is not a Scheduled Caste, namely, Hindu Mahar. Such a conclusion could have been recorded only after the Committee had concrete proof before it that as the petitioner claimed to be Hindu Mahar, his religion has a definite bearing. That is therefore relevant for the enquiry. There is therefore, justification to hold that if the petitioner was not a Hindu, then, he cannot be a Hindu Mahar. For a moment, we accept that such findings or conclusion could be reached but when Article 366 was referred containing definitions, even there, the Constitution clarifies that unless the context otherwise requires, the expressions therein have the meaning assigned to them, and clause 24 and 25 of Article 366 contains the same definitions, of Scheduled Castes and

Scheduled Tribes and referable to Article 341 and 342. If the petitioner claims to be belonging to Hindu Mahar Scheduled Caste, he has suppressed from the Committee earlier, as alleged by the respondent no.4 that he embraced Christianity. Being a Christian, then, the whole foundation of his claim falls to the ground. Such a conclusion can be reached only when there is solid proof of the petitioner embracing Christianity.

39. In that regard, we do not find any material before the Committee, save and except the entries in the case of some blood relations of the petitioner. As held above, there are equal number of documents in which the petitioner's blood relations have been certified as belonging to Hindu Mahar caste. The petitioner specifically denied the allegations of the respondent no.4 and asserted that the entries in the caste column of his blood relations are Hindu Mahar and he has not embraced Christian religion. Yet, the Committee relying upon some observations of the Hon'ble Supreme Court in the case of Madhuri Patil V. Additional Commissioner, Tribal Development and others reported in AIR 1995 S.C. 94 and referring to only few documents, namely, serial no. 7, 8, 10, 11 and 13, which documents have been verified and scrutinized by the Vigilance Cell, came to the conclusion that the petitioner has embraced Christianity.

40. The Committee also heavily relied upon the observations and findings in the Criminal Case.

41. In relation thereto, we have carefully perused that judgment.

42. The Criminal Court was dealing with the complaint of Atrocity which was made. It was a State prosecution. The allegations interalia were that three accused Shantaram Sakharam Jondhale, Sau. Kusumbai Shantaram Jondhale and Bhivsen Yeshwant Pathak - accused have committed offences punishable under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act"). Pertinently, the name of respondent no.4 before us is Shantaram Sakharam Jondhale. The prosecution story has been referred and it is alleged that accused no.1 to 3 (accused no. 1 is Shantaram) abused the complainant by calling him "Mahardya" and uttering the words reproduced at page no.223 paragraph no. 3 and 4 of the trial Court's judgment. The trial Court referred to the version of both sides including the oral and

documentary evidence and framed point no.4 as under:" 4) Whether prosecution proved that accused in furtherance of their common intention intentionally insulted complainant to humiliate him within public view knowing that he is member of scheduled caste and committed an offence punishable under section 3(1) (x) of S.C. & S.T. (Prevention of Atrocities) Act, 1989 ?

.. No"

43. It would be convenient to reproduce the relevant paragraphs from the trial Court's judgment, reading thus :

" 12. Before going to different points, it would be just and necessary to first find out whether complainant belongs to Mahar community. In this regard, complainant examined himself and stated that he belongs to Mahar community. Prosecution has also examined P.W.5 Kishor Govindrao Deshmukh. He has stated that present complainant moved an application to Tahsil office for issuance of caste certificate on 29.2.1988. That on the basis of school leaving certificate, caste certificate was issued by Tahsildar. Accordingly, said caste certificate has been proved which is at Exh. 44. Similarly this witness says that application was also moved to the Prant for issuance of caste certificate. Accordingly, Prant has also made enquiries and had issued caste certificate which is at Exh.45. Both these caste certificate at Exh. 44 and 45 show that Bhanudas s/o Hona Gajbhiv of village Shevgaon belongs to Hindu Mahar which is recognized as Scheduled Caste.

13. On the other hand, defence in order to show that caste certificate was false and ancestors of present complainant belong to Christian community, had examined D.W.3 Kishore Govindrao Deshmukh at Exh.60. This witness states that he was working in Tahsil office and he has brought original registers of the years 1936, 1937 and 1939. He has also filed document on record at Exh.61

showing that Sari Hona Gajbhiv died on 22.9.1936 and he belongs to Christian community. Another document was filed at Exh.62 showing death certificate of Mohana Bala having expired on 25.4.1937, and he belongs to Christian community. Next document was filed at Exh.63 showing death certificate of Sona father Hona having expired on 30.11.1939 and he belongs to Christian community. Another document at Exh.64 was filed showing death extract of Hona Mohana Gajbhiv having expired on 25.11.1939. Another document at Exh.65 was filed showing that Sari Hona Gajbhiv expired on 18.8.1939 and he also belongs to Christian community.

14. My attention was drawn to the crossexamination of complainant, wherein he has admitted that Mohana Bala is his grandfather and that Hona is his father. He admits that Kanta is daughter of his father. Kondiram is his brother and Sundara is sister.

15. From the evidence led by the prosecution, it does disclose that complainant has produced documents to show that he belongs to Mahar community. But at the same time, arguments advanced by counsel for accused will have to be also taken into consideration that ancestors of complainant were Christians and therefore, provisions of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act would not be attracted. Here the complainant does admit that Hona is his father. Mohana is his grandfather. Death Certificate at Exh.64 does disclose that Hona Mohana Gajbhiv expired on 25.11.1939 and he belongs to Christian community.

It is also not contended or argued that death certificate which has been filed on record at Exh.64 does not belong to father of complainant. All these documents which have been proved are old record prior to Independence. There is no reason to doubt it. Taking into consideration that we have two different versions coming, one version which goes to show that parents of complainant belong to Christian community; while other evidence shows that present complainant is shown as belonging to Mahar community. Under these circumstances, as two views are possible, one that is favourable to the accused will have to be accepted. Hence, it is doubtful whether complainant belongs Mahar community or whether he belongs to Christian community who has converted subsequently back to Mahar community. Hence, I hold that it would not be proper on my part to apply provisions of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence, accused deserve to be given benefit of doubt and hence entitled to be acquitted as regards offence punishable under Section 3 (1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989."

44. A bare perusal of these paragraphs would indicate that one of the argument that was considered, is that the evidence of the prosecution discloses that the complainant had relied upon documents to show that he belongs to Hindu Mahar caste. The accused argued on the other hand that it would have to be considered whether the ancestors of the complainant's were Christians, and, therefore, the Atrocities Act would not be attracted. The only observation in paragraph 15 is

that the complainant admits that Hona is his father.

He admits that Mohana is his grandfather. The death certificate discloses that Hona Mohana Gajbhiv expired on 25/11/1939 and he belongs to Christian community. It was not argued nor was it proved that the death certificate filed on record at Exhibit 64 is not that of the father of the complainant - petitioner before us. It was held by the trial Court that these documents are preindependence or old and have better evidentiary value. There is no reason to doubt them. Further, the trial Court came to this conclusion that there are two different versions before it. One is that the parents of the complainant belongs to Christian community while other evidence shows that complainant - petitioner before us belongs to Hindu Mahar community. Under these circumstances, as two views are possible, one that is favourable to the accused will have to be accepted. Hence, it is doubtful whether complainant belongs to Mahar community or whether he belongs to Christian community but has converted subsequently to Mahar community. Now, this finding of the trial Court depicts lack of knowledge of basic tenets. It is not that one can embrace a community or caste and lateron exit to another community or caste. It is clear that religion can be changed and one can embrace another religion. From this finding, which we have reproduced and the ultimate conclusion, the Scrutiny Committee could not have arrived at

the requisite satisfaction. The necessary and requisite satisfaction in the present case is that the petitioner's claim as belonging to Hindu Mahar caste, is exfacie false and fraudulent. That is the finding which has to be recorded. It was necessary to hold that the petitioner suppressed his religion from the Scrutiny Committee in the earlier round. He is Christian and not a Hindu. From the documents that the Committee relied upon including the finding in the trial Court's judgment, it is not conclusively proved and established that the petitioner embraced Christianity. By mere entries in the caste column of his father and his grandfather, it cannot be said that they had embraced Christianity and that there was, therefore, definite attempt of misleading the Authorities subsequently. In the sense lateron the members of the petitioner's family/blood relations prevailed upon the statutory authorities to make changes in the caste column. That is how subsequent documents revealed that the entries are Hindu Mahar. If some documents of 1930 to 1950 are relied and termed as preconstitutional, then, there are equal number of documents from this era or period in which the petitioner's caste is recorded as Hindu Mahar. Even in cases of his blood relatives, the entry Hindu Mahar appears in the caste column. These are also old and ancient documents. The Committee could not have therefore indulged in the

exercise not warranted in the facts of the present case. If there was no conclusive proof emerging from the record and the materials produced by respondent no.4 were insufficient and inadequate, then, the Committee should have maintained its earlier finding and conclusion.

45. All the more, because the petitioner relied on some documents which establish that the Church addressed the communication. At serial no. 26, the Salvation Army, Divisional Headquarter, Tq. Shevgaon, District - Ahmednagar stated in its communication / letter that the petitioner Bhanudas Hona Gajbhiv was not baptized. Thus, no baptism ceremony was held. Equally, Parish Priest, Holy Spirit Church, Shevgaon addressed a communication. It is stated that the petitioner is not a member of the Church. This document is at serial no. 27. Similarly, at serial no. 28, the Headmaster of the Zilla Parishad, Primary School, Erandgaon, Tq. Shevgaon, District-Ahmednagar stated that the school leaving certificate of Sonyabapu Hona Gajbhiv contains an entry in the caste column as Mahar. However, this document was produced by the petitioner after the Vigilance Cell report. Since the contents thereof were not verified, the Committee chose to discard it or omit from consideration. We do not find anything in law, particularly, the

Maharashtra Act No. XXIII of 2001 or Rules framed thereunder which prevented the Committee from getting in touch with the Church or the Headmaster and obtaining from them, the clarification whether they stand by the contents of their Certificates issued and attributed to them or otherwise. It is in these circumstances, that the Zilla Parishad school record of Sonyabapu, Kamal Honaji and Bhagwan was extremely relevant. Merely because in these documents, the entries in the caste column are Hindu Mahar, they could not have been discarded and omitted from consideration.

46. We agree with Shri Barlinge that the Committee's order is therefore perverse and vitiated by nonapplication of mind. Reliance is placed by Shri Barlinge on the two judgments, firstly of the Hon''ble Supreme Court in the case of The Principal, Guntur Medical College, Guntur and others Vs. Y. Mohan Rao reported in AIR 1976 S.C. 1904. In this case, the Hon''ble Supreme Court held that a person whose parents belonged to a Scheduled Caste before their conversion to Christianity can, on conversion or reconversion to Hinduism, be regarded as a member of Scheduled Caste only if he is accepted as a member of that caste by other members of the caste. On such acceptance, he would be eligible for the benefits of reservation of seats of the Scheduled Castes in the matter of admission to a medical college. Therefore, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, on conversion to Hinduism automatically as a matter of course. There has to be material to show that if the other members of the caste accept him as a member and admit him within the fold. However, for that purpose, there has to be proof of a person being born as Christian and converting to Hinduism. It is only then the latter part arises for consideration and not otherwise.

47. A Division Bench of this Court in the case of Dipak S/o Yohan Shinde Vs. State of Maharashtra and others reported in 2014(5) Mh.L.J. 252, heavily criticized the casual and light hearted approach of the Scrutiny Committee. The

Committee in that case, mechanically passed an order invalidating the caste certificate issued in favour of the Dipak S/o Yohan Shinde. No evidence in respect of conversion of family to Christianity was produced or that the father of the petitioner or petitioner adopted Christian faith. The Mang community also accepted the petitioner's family as belonging to the said caste. The reliance placed by Shri Barlinge on this judgment, is apposite. Paragraphs 9 and 10 of this judgment, read as under:

" 9. In this context, reference can be made to a judgment in the matter of Chhatturbhuj Vithaldas Jasani vs. Moreswar Parashram and others, reported in AIR 1954 S. C. 236. The question that arose for consideration before the Court was that after embracing Mahanubhavas faith whether the appellant therein can claim himself to be belonging to Mahar caste. While dealing with the issue, the Supreme Court has observed, in paragraphs 48 and 49 of the judgment as noted below:

"(48) Conversion brings many complexities in its train, for it imports a complex composite composed of many ingredients. Religious, beliefs, spiritual experience and emotion and intellectual conviction mingle with more material considerations such as severance of family and social ties and the casting off or retention of old customs and observances. The exact proportions of the mixture vary from person to person. At one extreme there is bigoted fanaticism bitterly hostile towards the old order and at the other an easy going laxness and tolerance which makes the conversion only nominal. There is no clearcut dividing line and it is not a matter which can be viewed from only one angle.

(49) Looked at from the secular point of view, there are three factors which have to be considered: (1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or excommunicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body the views of the new faith hardly matter. The new body is free to ostracise and outcaste the convert from its fold if he does not adhere to its tenets, but it can hardly claim the right to interfere in matters which concern the political rights of the old body when neither the old body nor the convert is seeking either legal or political favours from the new as opposed to purely spiritual advantage.

On the other hand, if the convert has shown by his conduct and dealings that his break from the old order is so complete and final that he no longer regards himself as a member of the old body and there is no reconversion and readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages which are special to the old order."

10. In the instant matter also, there is absolutely nothing on record to come to

the conclusion that the father of the petitioner was converted to Christianity and has relinquished Hindu faith. There is nothing to suggest that the father of the petitioner or his family have been outcaste and excommunicated and that they have snapped ties with Hinduism. Conversion, if any, is only nominal and for all practical purposes the family belongs to Hindu Religion. Apart from this, the disadvantages which are peculiar to Scheduled Castes, which is sadly a feature of Hindu Religion, continues and the family faces such disadvantages and the difficulties faced by the lower casts from amongst Hindus."

48. In this regard, a reference can usefully be made to another decision of the Hon"ble Supreme Court in the case of Rev. Stainislaus Vs. State of Madhya Pradesh and others reported in AIR 1977 SC 908. In the context of right to Freedom of Religion guaranteed by Article 25(1) of the Constitution of India, the Hon"ble Supreme Court held as under:

" 15. Article 25 (1) of the Constitution reads as follows :

"25 (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

15A.

Counsel for the appellant has argued that the right to "propagate" one"s religion means the right to convert a person to one"s own religion. On that basis, counsel has argued further that the right to convert a person to one"s own religion is a fundamental right guaranteed by Article 25 (1) of the Constitution.

16. The expression "propagate" has a number of meanings, including "to multiply specimens of (a plant, animal, disease etc.) by any process of natural reproduction from the parent stock", but that cannot, for obvious reasons, be the meaning for purposes of Article 25 (1) of the Constitution. The Article guarantees a right of freedom of religion, and the expression "propagate" cannot therefore be said to have been used in a biological sense.

17. The expression "propagate" has been defined in the Shorter Oxford Dictionary to mean "to spread from person to person, or from place to place, to disseminate, diffuse (a statement, belief, practise, etc.)".

18. According to the Century Dictionary (which is an Encyclopedic Lexicon of the English Language) Vol. VI, "propagate" means as follows :

" To transmit or spread from person to person or from place to place; carry forward or onward; diffuse; extend; as to propagate a report; to propagate the Christian religion."

19. We have no doubt that it is in this sense that the word "propagate" has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one"s own religion, but to transmit or spread one"s religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees

"freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.

20. The meaning of guarantee under Article 25 of the Constitution came up for consideration in this Court in *Ratilal Panachand Gandhi v. The State of Bombay*, (1954) SCR 1055 = (AIR 1954 SC 388) and it was held as follows :

" Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others".

This Court has given the correct meaning of the Articles, and we find no justification for the view that it grants a fundamental right to convert persons to one's own religion. It has to be appreciated that the freedom of religion enshrined in the Article is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore, be no such thing as a fundamental right to convert any person to one's own religion. "

49. Even before us, the petitioner relied upon an independent document, namely, Hadola Patrak. There was no reason to discard it. The Committee does not even assign any reason to discard it. It completely misdirected itself when it relies on the observations of the trial Court's judgment in the Sessions Case/Atrocity Case. It also misdirects itself when it relies upon the report whereby it is certified that dead body of the petitioner's father was buried and there was no cremation peculiar to Hindu religion nor any ceremonies. To our mind, merely because of some burials and referred to in the report of the Vigilance Cell, that too of 20122013, it was not proper to have concluded anything against the petitioner. Though the petitioner may have relied upon the lack of Baptism ceremony and there was a communication from the Church, yet, the Committee relied on the Vigilance Cell report and the conclusion therein to the effect that this Mukti Fauj Missionary do not organize such a ceremony nor performs the rituals. The casual approach is also revealed when the Committee records that when the Vigilance Cell visited the houses of the petitioner's brother Sonyabapu and one Kondiram Hona Gajbhiv and his son Bhagwan, no photograph of Bhagwan Buddha or Dr. Babasaheb Ambedkar was found. It is in these circumstances, that we are of the opinion that the impugned order cannot be sustained.

50. Reliance is placed by Shri Kale, on the judgment of the Hon"ble Supreme Court in the case of S. Swvigaradoss v. Zonal Manager, F.C.I. reported in AIR 1996 S.C. 1182. There, the facts were as under : " The petitioner's parents initially belonged to AdiDravida by caste hailing from Kattalai village in Tirunelveli District, Tamil Nadu. Admittedly, before his birth, they had converted into Christian religion. He was born on May 7, 1941. He joined the service of the Food Corportion of India on Marcy 7, 1968 as Assistant GradeI.

Subsequently, he had married on February 14, 1969 according to Christian rites in a Church. On these facts, notice was given to the petitioner to show cause how the petitioner would be entitled to benefits and privileges extended to the Scheduled caste candidates in future. Challenging it, he filed a suit. His case is that he was baptised when he was a minor. After he became major, he is continuing as a AdiDravida.

The trial Court though decreed the suit, on appeal it was reversed and in S.A. No. 270/84, the High Court confirmed the same. Thus this Special Leave Petition.

2. It is contended for the petitioner that though he was born of Christian parents, but with their consent, he got converted to Hindu at the age of 14 and on such conversion, he became AdiDravida and consequently entitled to the status of Scheduled Caste. Therefore, he is entitled to the status as a Scheduled Caste, Article 366(24) of the Constitution of India defined Scheduled Caste as under:

"Art. 366(24) Scheduled Caste means such castes, races or tribes or parts of or group within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution."

51. In the above circumstances, the Hon"ble Supreme Court referred to all the judgments in the field, including "Madhuri Patil"s case and held that the Courts have no power except the President of India, to subtract or add to the notifications, notifying the Scheduled Castes and Scheduled Tribes. In that case, the admitted position was that the petitioner was born to Christian parents and his parents also were converted prior to his birth, to Christianity, he no longer remained AdiDravida, a Scheduled Caste for the purpose of Tirunelveli District in Tamil Nadu. He therefore could not have claimed to be Scheduled Caste. The judgment is rendered essentially on the facts noted by the Hon"ble Supreme Court and reproduced above. It cannot be of any assistance in the present case.

52. As a result of the above discussion, the Writ Petition succeeds. Rule is made absolute in terms of prayer clause (B). Consequently, the Certificate of Validity issued to the petitioner on 24/04/2007 bearing no. 4270 validating his claim as "Hindu Mahar Scheduled Caste" is restored. In the circumstances, there would be no order as to costs.