
(2018) 08 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition Nos. 804, 3024, 2352, 2959, 3121, 1838, 619, 2960, 2595, 3387, 4105, 957, 3287, 447, 2889, 2890, 446 Of 2002, 2054, 4875, 5718, 5817, 3605, 1494, 726, 1553, 2516, 2918, 2489, 3227, 3185, 4751, 4069, 4714, 6104, 2912, 2596, 2004, 3216 of 200

Deepak Chandraprakash Thakur

APPELLANT

Vs

State Of Maharashtra & Others

RESPONDENT

Date of Decision : 08-08-2018

Acts Referred:

Constitution of India, 1950 — Article 341, 342
Indian Evidence Act, 1872 — Section 90

Citation : (2018) 08 BOM CK 0037

Hon'ble Judges : B.P. DHARMADHIKARI, J;Z.A. HAQ, J

Bench : Division Bench

Advocate : A.Y. Kapgate, N.P. Mehta

Judgement

,

B.P. DHARMADHIKARI, J",

1. All these matters are placed together jointly for consideration, as according to all petitioners, question involved is "When pre-constitution",

documents record the Caste as "Thakur" and those documents are genuine, whether the recourse to affinity test is open? "They rely upon the",

judgment of Hon'ble Supreme Court in case of Anand .vrs. Committee for Scrutiny and Verification of Tribe Claims and others (2011 (6) Mh.L.J.,

919), to buttress their submissions. On the other hand, respondents contend that a Caste by name "Thakur" exists and said Caste is not a Tribe",

and is also not recognized as Scheduled Caste. It is an Upper Caste and hence, the old documents or relevance of and reliance upon mention of Caste",

as Thakur, therein is not decisive. "As the Tribe and Caste have same name,

only way left out is to apply affinity test. Â AGP's appearing on behalf",
of respondent State, state that the judgment of Hon'ble Supreme Court in case
of Anand (supra), does not rule out relevance and use of affinity test in",
such facts.,

2. In Writ Petition No. 4198/2018, Senior Counsel Shri A.M. Gordey, appearing
on behalf of the petitioner by inviting attention to the impugned order",

dated 15.07.2005, submits that in paragraph no.2 it has looked into old
documents like dated 25.06.1928, 03.07.1968 and few other documents. None",

of these documents are found to be interpolated. In this situation, recourse to
affinity test was not warranted and validity ought to have been given.",

Â He has also placed reliance upon observations contained in judgment in case of
Kumari Madhuri Patil and another .vrs. Addl. Commissioner",

(supra), (Paragraph nos. 13[5] and [6]). According to him, the Vigilance Cell/
Research Officer and the Scrutiny Committee in present matter have",

breached these directions of Hon'ble Supreme Court. Vigilance Cell Authorities
recorded statement of neighbours/tenants who allegedly deposed that,

the petitioner belong to Rajput caste. A statement of aunt and a friend also came
to be recorded, but, then the Research Officer did not accompany",

the Vigilance Cell Squad at that juncture. Traits needed to be ascertained from
some elderly member from the family. Aunt Krantidevi does not have,

cordial relations due to a dispute and therefore, has deliberately deposed against
the petitioner. Â In any case, old customs like Ghungat, etc., are not",

decisive in modern times. Petitioners' say on police vigilance clarified these
aspects, but, it has been ignored. The home enquiry is, therefore, alleged to",

be incomplete.,

3. It is contended that though traits and customs which have come on record are
rejected by the Scrutiny Committee, material looked into by it does",

not show why it could not have been accepted. The standard traits of Thakur
Scheduled Tribe, if any, are absent on record. Our attention is also",

invited to the fact that son of Aunt Krantidevi by name Vikrant has recorded his
caste as Thakur only on 10.07.1989. The caste of aunt Krantidevi is,

also recorded as Thakur on 30.06.2003. Observations of the Hon'ble Supreme
Court in Anand .vrs. Scrutiny Committee (supra), in paragraph nos. 18",

to 20, are relied upon to demonstrate how Vigilance Cell report and traits in this
situation needs to be discarded.",

4. Ms. Mehta, learned A.G.P. appearing for respondent has submitted that the petitioner Ku. Chhaya, is upper caste Thakur and as such mention of",
caste in her old documents or documents of her ancestors, is not decisive. Hence, affinity test was must. Chhaya, was given sufficient opportunity and",
her reply after show cause notice on vigilance cell report has been considered. Â She relies upon judgment delivered at Aurangabad in case of,
Monika d/o Satish Thakur .vrs. State of Maharashtra and others (supra), to urge that contentions raised by learned Senior Counsel are erroneous and",
unsustainable.,

5. Shri N.C. Phadnis, learned counsel appearing for petitioner in Writ Petition No. 7/2014 had read out the judgment delivered at Bombay on",

22.12.2017 (22.11.2017) in case of Motilal Namdeo Pawar .Vrs. Scheduled Tribe Scrutiny Committee (supra), particularly paragraph nos. 1, 12 and",

16. He argues that this judgment clinches the controversy.,

6. Shri Parsodkar, learned counsel appearing for petitioner in Writ Petition No. 564/2009, submits that petitioner did not get any effective opportunity",

as she was unwell. Total 22 documents were relied upon and though all of them are genuine, the affinity test has been resorted to. Â Customs and",

traits brought on record have been brushed aside as bookish knowledge and erroneously â??area restrictionâ? has been used to the prejudice of the,

petitioner. He submits that as per the information received by petitioner on 01.07.2006, the Scrutiny Committee does not have authentic traits or",

customs of Thakur Scheduled Tribe to transparently apply affinity test.,

7. Shri Parsodkar, learned counsel submits that Writ Petition Nos.804/2002 and 2054/2002 are by brothers and in identical fashion, documents have",

been discarded and affinity favoured. The validities produced on record of cousin Rajendra and aunt Sheela have thus been arbitrarily overlooked. He,

relies upon the family tree to press relationship with them. The law laid down by this Court and pointed out to the Scrutiny Committee has been,

overlooked. Incident of Totaram Thakur and certificate dated 17.04.1919 and other certificate dated 05.01.1942 establish tribe to be Thakur only. He,

fairly states that document dated 05.01.1942 is not before the Scrutiny Committee. He has drawn attention to the judgments to demonstrate how entry,

No.18 pertaining to Gond has been construed by the Hon'ble Supreme Court in case of Mana Adim Jamat Mandal .vrs. State of Maharashtra and,

others (supra). To challenge finding of upper caste, he places reliance upon judgment in case of Narendra Dhudku Thakur .vrs. Scheduled Tribe",

Certificate Scrutiny Committee, Pune and others (supra). Judgment delivered by the Division Bench of this Court in Writ Petition No. 4869/2012 in",

27.09.2013 (paragraph nos. 3,5,6 and 7) and dated 08.03.2012 in Writ Petition No. 11241/2012 (paragraph no.4), are also relied upon by him.",

8. He points out previous adjudication and validity and its consideration in Writ Petition No. 6356/2014 decided on 25.04.2015. He submits that Special,

Leave Petition against it is rejected. The judgment of Hon'ble Supreme Court dated 08.03.2017, is relied upon to point out how "area restrictions",

after 1976 amendment, "lost its significance. "Judgments in case of (1)Sonak Bakade .vrs. Joint Commissioner and Vice Chairman and others",

(supra) (paragraph no.7), (2) Chandrashekhar Gaikwad .vrs. State of Maharashtra and others (supra) (paragraph no.12) and Narendra Balaji",

Ghodmare .vrs. Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli and others (supra) (paragraph nos. 17 and 18) are relied upon by him.",

9. Shri Anup Gilda, learned counsel appearing for petitioner in Writ Petition No. 4875/2004, addressed the court only on law points. He has relied upon",

judgments in case of Vaishali Liladhar Mahale .vrs. The State of Maharashtra and others (supra) (paragraph nos. 4,5, and 7) and Pritesh Subhash",

Thakur .vrs. State of Maharashtra and others (supra) (paragraph nos.11 and 12). To press into the service relevance of old documents and Section 90,

of the Evidence Act, he has relied upon judgment in case of Madhuri Dhananjay Nalawade .Vrs. State of Maharashtra and others (supra) (paragraph",

no.15).,

10. On merits he points out that the impugned order unnecessarily tries to distinguish between Thakur Scheduled Tribe and Thakur Scheduled Caste.,

"According to him vigilance report is in favour of petitioner only, finding of affinity is incorrect. In any case it is insufficient to overlook the old",

genuine documents.,

11. Ms. Rane, learned counsel appearing for petitioners adopts the above arguments and submits that there are several decisions of this Court in",

which because of validity in the family, applying judgment in case of Apoorva Nichale .Vrs. Divisional Caste Scrutiny Committee [supra], this Court",

has directed the Scrutiny Committee to issue validity to petitioners. She submits

that petitioners in Writ Petition Nos. 619/2005, 620/2005 and",
6026/2005 have brought on record pre-constitutional documents which are all found to be genuine. All these documents record caste as Thakur.,
Relative of petitioner in Writ Petition No.620/2005 has been given validity and she submits that suitable/appropriate application seeking leave to, produce it on record is being filed today.,

12. Shri R.M. Ahirrao, learned Counsel supports above arguments and states that in Writ Petition No. 3024/2004, the petitioner had expired and Writ",

Petition is being prosecuted by legal heirs for continuing caste benefits.,

13. Shri Dhatrak, learned Counsel for petitioners in Writ Petition No. 5718/2004, Shri Palshikar, learned counsel for petitioner in Writ Petition",

No.2352/2002, Shri Jagdale, learned Counsel for petitioner in Writ Petition No. 872/2002 adopt above arguments.",

14. Shri Sirpurkar, learned counsel for petitioner in Writ Petition No. 5817/2004, additionally submits that cousins of said petitioner have validity which",

has been erroneously rejected by the Scrutiny Committee.,

15. Shri Mishra, learned Counsel for Petitioner in Writ Petition No. 3605/2004, adds that though all old documents are consistent with the tribe claim,",

because of only one stray entry of Bhat, the petitioners' caste claim has been invalidated. He submits that said entry is of one Gulab taken on record",

on 24.05.2005. He points out that for very same period, there is another document of Gulab, which mentions caste as Thakur, and not as Bhat.",

Explanation furnished by the petitioner has been erroneously rejected. He further states that petitioners have not filed validities with affidavit to,

demonstrate relationship and the scrutiny committee has ignored the same by observing that there is no affidavit. He points out that on 24.01.2011, in",

Writ Petition No.9026/2010, validity is given to daughter of petitioner. In Writ Petition No. 4186/2007, he points submits that there is validity in favour",

of one Rupesh. According to him, therefore, order of the Scrutiny Committee shows total non-application of mind.",

16. With leave of the Court, Shri Parsodkar, learned counsel attempted to distinguish the judgment delivered by the Aurangabad Bench on 04.05.2018",

in case of Monika Thakur [supra]. He claims that said judgment ignores binding precedents and also overlooks the law laid down by the Hon'ble,

Supreme Court of India on judicial discipline in case of (2008) (10) SCC 1

(Official Liquidator .vs. Dayanand and others).,

17. Shri Sohoni, learned counsel for petitioner in Writ Petition No. 4099/2005, submits that in said matter the farce vigilance enquiry has been",

conducted by examining only wife and mother of petitioner.,

18. Shri Saboo, learned counsel for petitioner in Writ Petition No. 1496/20047, states that on 24.10.2013, validity is given to a relative. He adds that",

affidavit in support of the family tree has been filed for the first time in this petition and fairly submits that it was not before the Scrutiny Committee.,

19. Shri Dangre, learned counsel for petitioner in Writ Petition No. 726/2004, submits that because of Bhat entry dated 21.10.1935, the tribe claim has",

been invalidated. That document does not contain full name of grand father and because of this incomplete and inadmissible entry, other genuine",

documents have been overlooked. He further states that the scrutiny committee has not restored to affinity test also. His contention that there is no,

affinity test used while examining the caste claim of Pushpalata in Writ Petition No.726/2004, runs contrary to paragraph no.8 of the impugned order",

of the Scrutiny Committee. Moreover, the Committee has in paragraph nos. 4,6 and 7 looked into the entries of relatives wherein old documents caste",

is recorded as 'Bhat'. Petitioner denied her relationship with one Narayan Bhat. However, the Committee could trace out his relation with Ajab",

Narayan Bhuyar, by procuring a document of his date of birth and also a reported date of birth of male child Narayan Bhat. The said contention",

therefore, is, misconceived.",

20. Shri Kalmegh, learned counsel adopts the arguments advanced by various counsel stated above. He states that Civil Application (W) No.",

2813/2017 has been filed in Writ Petition No. 1553/2004, seeking leave to produce new documents. He further points out that in Writ Petition No.",

2516/2004, there is a validity issued on 30.05.1998 to a relative. He further invites attention to orders of the Scrutiny Committee to show that it has",

overlooked various documents. He is relying upon judgment reported at 2014 [1] All MR 78 (Vaishali Chatarsing Ingale (Thakur) Vs. Committee for,

Scrutiny and Verification of Tribe Claims and Â ors.), to point out relevance of such old validity.",

21. Respective learned A.G.Ps., have submitted that in all these matters there is no contention and ground that upper caste Thakurs do not exist.",

Various judgments and Texts shows that Thakur caste and Thakur tribe are different. Thakur Tribe has become Thakur Scheduled Tribe after 1950,"

but, difference between Thakur caste and Thakur Tribe is in existence since beginning. Reference to this difference by the scrutiny committee and",

therefore, its interpretation or mention of caste as Thakur in old documents therefore, cannot be confused with later concept of "Scheduled",

Tribe". The language employed by the committee members may not be strictly legal and precise, however, it needs to be understood liberally in the",

context of this age old well recognized difference. When Thakur Scheduled Tribe community is very less in number, swell therein is due to upper",

caste people attempting to take benefit of reservation. Hence, mere relevance of word Thakur, recording Thakur as caste in old documents is not",

decisive and affinity test is the only way out to preserve and protect the interest of real Scheduled Tribe Thakur community.,

22. Various judgments pointed out by the petitioners including that of Full Bench judgment in case of Shilpa Vishnu Thakur .vrs. State of Maharashtra,

and others (supra), and Murlidhar Ramkrishna Gathe .vrs. State of Maharashtra and others (supra), is relied upon for this purpose.",

23. It is pointed out that in Writ Petition No.804/2002 and some other matters petitioners have filed new documents which did not form part of,

exercise of verification. These new documents therefore, have never been subjected to vigilance enquiry. "The validities could have been pointed out",

to the scrutiny committee earlier or then at least a correct family tree tracing relationship with the holders thereof could have been filed before the,

scrutiny committee. Submission is, selectively relationship is accepted even after the scrutiny committee has validated any caste claim. Persons like",

petitioners avoided to associate themselves with relatives when validity is declined by the Scrutiny Committee. .,

24. Without prejudice, it is submitted that if this court is inclined to permit such documents/validity on record, the vigilance enquiry into such documents",

cannot be avoided, and therefore, remand is the only solution." 25. Before proceeding further, it will be worthwhile to mention that the petitioners",

bank upon judgment of Division Bench of this Court delivered at Bombay in Writ Petition No. 7/2014 Motilal Namdeo Pawar .Vrs. Scheduled Tribe,

Scrutiny Committee. They have relied upon several other judgments which takes similar view. Respondents rely upon Division Bench judgment,

delivered at Aurangabad in Writ Petition No. 10123/2010 and others dated 04.05.2018 (Monika d/o Satish Thakur, Chetan s/o Satishchandra Thakur",

.vrs. State of Maharashtra and others). This judgment is reported at 2018 Law Suit (Bombay) 816. Â They point out that after considering the,

judgments relied upon by petitioners and other judgments which take note of existence of Upper Caste Thakur, judgment in case of Monika (supra),",

must be accepted as laying down the law which must be held to be binding. Their effort is to demonstrate that judgment in case of Motilal Pawar,

(supra), is on facts, does not lay down law, and therefore, is not a precedent at all.",

26. In the light of these arguments, petitioners have also relied upon the judgment of Hon'ble Supreme Court reported at (2008) (10) SCC 1 (Official",

Liquidator .vs. Dayanand and others), to point out how judicial discipline mandates adherence. to Division Bench judgment in case of Motilal and",

others (supra). We will refer to all these judgments little later in the course of this judgment.,

27. We find it appropriate to begin with consideration of the judgments which take one or the other view on the controversy.,

28. Judgment reported at 2017 (1) Mh.L.J. 814 (Madhuri Dhananjay Nalawade .Vrs. State of Maharashtra and others), is relied upon to urge that",

when documents produced in support of Caste claim which are more than 30 years old, presumption under Section 90 of the Evidence Act, 1872 is",

attracted. In the said judgment, reliance was placed on a Caste validity certificate issued to one Rajendra. This certificate was discarded by the",

Scrutiny Committee observing that it was granted as per legal position then prevailing. In addition, petitioner relied upon old documents dated",

15.07.1910, 15.03.1913, 15.06.1914. It is in this background that in paragraph no.13, the Division Bench has recorded that the Scrutiny Committee fell",

in error in discarding the validity. Change in law is held to be an irrelevant factor and in the light of the judgment in case of Apoorva Nichale .Vrs.,

Divisional Caste Scrutiny Committee (2010 (10) Mh.L.J. 401), the Committee found that said validity could have been used by the petitioner. It is in",

this background that the Division Bench makes reference to Section 90 of the Evidence Act, in paragraph no.15 of its judgment.",

29. Division Bench at Nagpur in case of Vijaykumar Narayan rao Kale .vrs. State of Maharashtra (2013 (5) Mh.L.J.930), has considered the",

provisions of 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 Certificates Act, 2000 (Maharashtra Act No. 23 of 2001)",

(hereinafter referred to as "the Act No.23 of 2001" for short), while examining a challenge to old order Additional Commissioner dated",

07.08.1993, dismissing the appeal against the invalidation by the Committee as per procedure then in force. This Court has found that in said",

Enactment, the caste validity certificates issued before its coming into force, have not been recognized. One of us (B.P.Dharmadhikari, J), is party to",

said judgment.,

30. In 2018 SCC Online Bom. 1035 (Pritesh Subhash Thakur .vrs. State of Maharashtra and others), Division Bench of this Court at Bombay has in",

paragraph no.12 found that it was not open to the Scrutiny Committee to reach a conclusion that Pritesh belongs to Caste Thakur, and not Thakur",

Scheduled Tribe. Committee is duty bound to read the entry in Constitution, Scheduled Tribe Order, 1950 at Sr.No.44 as it is, and it was not open to",

the Committee to observe that Thakur Caste existed. "It is in this backdrop that recourse to affinity test by the Committee is found erroneous. To,

support these findings, judgment of Hon'ble Supreme Court in case of Anand .vrs. Committee (supra), has been relied upon. Thus, the Division Bench",

here does not rule out or conclude that Upper Caste Thakur are not in existence.,

31. In 2017 SCC Online Bombay 8784 (Vaishali Liladhar Mahale .vrs. The State of Maharashtra and others.) in paragraph no.4, again a similar view",

has been taken. "In paragraph no.7, finding of the Scrutiny Committee that petitioner could not produce a document mentioning Caste as Thakur",

Scheduled Tribe, is found erroneous, with conclusion that before the Scrutiny Tribe Order, 1950 in preConstitution documents word "Scheduled",

Tribe" could not have figured. In paragraph no.5 there is reference to area restrictions. Again this judgment does not hold that Thakur Upper Caste,

is not in existence.,

32. In Writ Petition No. 9356/2014, decided at Bombay on 23.04.2015 in paragraph no.8, the similar approach of the Scrutiny Committee is criticized.",

Facts there show that the Division Bench finds that each matter needed individual consideration, but, in cases where relatives have validity, and",

validity is granted because of orders of the High Court or the Hon'ble Supreme Court, the Scrutiny Committee has limited scope to undertake",

verification. This judgment relied upon by the petitioners, therefore, does not support the contention that mention of Caste as Thakur in a pre-1950",

constitution document is decisive and recourse to affinity test is prohibited. On the contrary, observations in paragraph no.8 in said judgment",

indirectly militate with this contention. It is to be noted that Special Leave Petition (Civil) No. 26523/2015, filed against this judgment has been",

dismissed by the Hon'ble Supreme Court on 21.09.2015.,

33. Petitioners have also relied upon the judgment delivered on 12.12.2013 at Bombay in Writ Petition No. 6744/2011, in case of Sangita Sahebrao",

Bhalerao .vrs. State of Maharashtra. Perusal of this judgment, particularly paragraph no.14 shows that old documents reveal that Caste of ancestors",

of Sangita was recorded as Thakur in school records. The research officer had opined that traits, characteristics, disclosed by her were not of Thakur",

Scheduled Tribe. It appears that question whether she belong to Upper Caste Thakur or not, did not fall for consideration and has not been looked into",

by this Division Bench.,

34. In judgment in Writ Petition No. 4504/2015, delivered at Bombay on 14.07.2017, the contention of petitioner Vaishali that there was no material on",

record even remotely suggested that she belongs to Upper strata or a different Caste, has been accepted and it is concluded that the affinity test",

cannot be said to be decisive. Thus, view taken is in the facts and circumstances of the matter.",

35. In Writ Petition No. 1553/2017 (Jairam Vishram Gangwane .vrs. State of Maharashtra and others) decided at Bombay on 10.02.2017, it appears",

that relatives on paternal side of Jairam already had validity certificates and the Scrutiny Committee had no material with it to dispute the same.,

36. In Writ Petition No.15/2009 (Padmakar Babasaheb vishve .vrs. State of Maharashtra) decided at Aurangabad on 16.03.2017, it appears that real",

brother of petitioner had a validity dated 31.05.2004. There were also validity certificates ie. validities issued on 30.03.2015 and 06.04.2015 to other,

relatives. It is in this backdrop that the order of the Committee invalidating the Caste claim of petitioner Padmakar dated 03.10.2008 was quashed and,

set aside.,

37. In 2003 (3) Mh.L.J. 513 (Mana Adim Jamat Mandal .vrs. State of Maharashtra and others), Division Bench of this Court has looked into the",

judgment of Hon'ble Supreme Court in case of Palghat Jilla Thandan Samudaya Samrakshna Samiti .vrs. State of Kerala ((1994) 1 SCC 359, in",

paragraph no.23, it is found that no action to modify the plain effect of Schedule Caste order, except as contemplated by Article 341, was valid. The",

Division Bench further observes that it was not open to the Committee or the Court to make any addition or subtraction in the Presidential Order. The,

Division Bench in paragraph no.24 of the judgment thereafter looks into entry no.18 of the Scheduled Tribe Order, 1950 and concludes that as Mana",

community finds inclusion therein, it was not possible for the Committee or the State Government or the Court to deny benefit to members belonging to",

Mana community. Â Action of State Government in declaring Mana community as Special Backward Class was therefore, quashed and set aside.",

Â The Division Bench also finds that if there be a separate community by name Mana in Vidarbha Region, which does not possess any affinity with",

Gond Tribe, that community would also fall in entry no.18. The inquiry to determine whether a section of Manas' was excluded from the benefit of",

Scheduled Tribe Order was therefore, held not open.",

In paragraph no.25, reference is made to earlier judgments in case of Pandurang Chavan .vrs. State of Maharashtra, which quashed government",

action declaring their community as Other Backward Class. While mentioning the judgment of Hon'ble Supreme Court in case of Pankaj Kumar Shah,

.vrs. Sub Divisional Officer, Islampur ((1998) 8 SCC 264), the limited inquiry or evidence admissible is taken note of. It is found that in paragraph no.6",

of its judgment, the Hon'ble Supreme Court found that evidence was admissible only to find out whether particular Caste claimed by to be Scheduled",

Caste or Tribe was included in the Presidential Notification or not. Â The Hon'ble Supreme Court held that Court is devoid of power to include or,

order to exclude from or substitute or declare synonyms to be Scheduled Caste or Scheduled Tribe. The action of State Government in declaring,

Thakur to be other backward class was therefore, found unsustainable in Pandurang Chavan (supra). Â Again this Division Bench was not required to",

consider whether Thakur Caste existed independent of Thakur Tribe and it has different status in the society.,

38. Division Bench of this Court in 2004 [2] Mh.L.J. 578 (Narendra Dhudku Thakur .vrs. Scheduled Tribe Certificate Scrutiny Committee, Pune and",

others.), has looked into the finding of the Scrutiny Committee that the petitioner Narendra belonged to Thakur Caste and was a non tribal. In",

paragraph no.4, the Division Bench reproduces consideration in Pandurang Chavans case (supra), and thereafter in paragraph no.5, mentions",

judgment of Hon'ble Supreme Court in case of Palghat Jilla Thandan Samudaya (supra). Division Bench has concluded that no action to modify the,

Scheduled Tribe Order 1950 was possible and the Committee could not have distinguished between Thakur Caste and Thakur Tribe. Thus, this",

appears to be the only judgment which hold that no distinction can be made between Thakur Caste and Thakur Tribe. However, again attention of this",

Division Bench was not invited to the difference between a Caste and a Tribe.,

39. In Writ Petition No. 1661/2009 (Praful Anirudha Ingle .vrs. State of Maharashtra and others), decided at Nagpur on 10.10.2013, the Division",

Bench has found that there was validity in the family and it was not disputed by the Scrutiny Committee. In the backdrop of this validity, judgment of",

Hon'ble Supreme Court in Caste of Anand .vrs. Committee for Scrutiny (supra), and Division Bench judgment in case of Apporva Vinay Nichale",

(supra), have been applied. One of us (Z.A. Haq, J), is party to this judgment. Â Again this judgment does not consider the existence of Thakur Upper",

Caste.,

40. On same date (10.10.2013), same Bench has delivered judgment in Writ Petition No. 2750/2009 (Sou Sheela Sudhakar Gathe .vrs. The Scheduled",

Tribe Caste Certificate Scrutiny Committee and others). There again a validity was available.,

41. Very same Bench has on 27.09.2013, decided Writ Petition No. 4869/2012 (Gopal Mahadeorao Bayaskar .vrs. The Scheduled Tribe Caste",

Certificate Scrutiny Committee and others). In paragraph no.7, the assertions of Scrutiny Committee that entry Thakur is found in Caste certificates of",

others who are not Scheduled Tribes, has not been considered and in paragraph no.8, judgment of Hon'ble Supreme Court in case of Anand .vrs.",

Committee for Scrutiny (supra), has been relied upon. Â Again this judgment does not consider existence of Thakur Upper Caste.",

42. Judgment delivered at Bombay on 08.03.2013 in Writ Petition No.

11241/2012 (Ravindra Pralhadrao Khare .vrs. State of Maharashtra and others), in paragraph no.4, the Division Bench finds that in 1947-48 entry as "Thakur Tribe" could not have been made. Thereafter there is reference to", judgment of Hon'ble Supreme Court in case of Anand .vrs. Committee for Scrutiny (supra). This judgment therefore, does not deal with Thakur Upper", Caste.,

43. Division Bench at Aurangabad in judgment reported at 2016 [1] Mh.L.J. 94 (Chandrashekhar Gaikwad .vrs. State of Maharashtra and others), in", paragraph no.12 records that preconstitution documents mentioning Caste deserve more credence and affinity test could not have been used as a, decisive test.,

44. In 2016 [5] Mh.L.J. 907 (Sonak Bakade .vrs. Joint Commissioner and Vice Chairman and others), failure in affinity test is held not decisive. The", matter was in relation to Halbi Scheduled Tribe and question of present nature did not arise for consideration there.,

45. Judgment of Hon'ble Supreme Court in Civil Appeal No.12336/2011 dated 08.03.2017 (Jaywant Dilip Pawar .vrs. State of Maharashtra and, others), shows that the Scrutiny Committee could not have rejected Caste claim of Jaywant on the ground that he or his relatives were not residing in", the area mentioned in the Presidential Order. The Hon'ble Supreme Court looks into impact of removal of area restrictions in 1976 and finds the, High Court in error in applying area restrictions even thereafter.,

46. Recent judgment of Division Bench of this Court at Nagpur in case of Narendra Balaji Ghodmare .vrs. Scheduled Tribe Certificate Scrutiny, Committee, Gadchiroli and others (2018 (2) Mh.L.J. 766), shows importance of Pre-independence documents. There all documents reveal that the", petitioner and his forefathers belonged to Mana Scheduled Tribe, as observed by the Division Bench in paragraph no.21 of the said judgment. The", finding of the Committee that the documents revealed Caste Mana and not Mana Scheduled Tribe is not accepted. In paragraph no.19, the Division", Bench observes that prior to 1950, the concept of Scheduled Tribe was not in existence, and therefore, the Tribe or Caste were recorded under", heading "Caste". Division Bench has also observed that "while entering name, the distinction between Caste and Tribe is ignored." This", Division Bench therefore, takes note of fact that Caste and Tribe are different.",

47. We at this stage may point out that framers of Constitution have in Article 341 and 342 of the Constitution of India have also taken note of this,

distinction between Caste and a Tribe. "Certain Caste have been recognized as Scheduled Caste, while certain Tribes have been recognized as",

Scheduled Tribe. This treatment shows that difference between a Caste and a Tribe already existing, has been taken note of by the Constitution. The",

distinction has not been made for the first time while issuing the Constitution, Scheduled Caste or Constitution Scheduled Tribe Order, 1950.",

48. Division Bench of this Court at Bombay in Writ Petition No. 9026/2010 (Ku. Sampada P. Wankhede .vrs. State of Maharashtra and others) on,

24.01.2011 noticed this difference in caste Thakur and scheduled tribe Thakur in paragraph no.3. Said Division Bench noted finding of the Scrutiny,

Committee that the petitioner belonged to Thakur Scheduled Tribe. High Court has held that as petitioner belonged to Thakur Scheduled Tribe there,

was no justification for holding the affinity test. This Division Bench thus finds that had Committee found that the petitioner belonged to Thakur Caste,

or had any reason to doubt it, then only the Committee could have inquired into affinity to find out whether she belonged to Thakur Scheduled Tribe.",

This judgment, therefore, indirectly recognizes existence of Thakur Caste, which is distinct from or independent of Thakur Scheduled Tribe. This also",

does not rule out use of affinity test in appropriate cases.,

49. Petitioners have relied upon judgment of Hon'ble Supreme Court dated 23.08.2011 in Civil Appeal No. 7230/2011 (Amruta Vijay More .vrs. State,

of Maharashtra and others). The Hon'ble Supreme Court has allowed appeal of Amruta and her Caste claim as belonging to Thakur Scheduled Tribe,

has been accepted. It appears that because of validities in the family, use of affinity test to discard those validities is not countenanced by the Hon'ble",

Supreme Court.,

50. In 2016 [4] All M.R. 404 (Dattatraya Shriram Ingle .vrs. The Committee for Scrutiny and Verification of Tribal Claims and another), Division",

Bench of this Court at Nagpur found that when Caste with name Thakur is available, holding of affinity test to determine whether the candidate",

belongs to Thakur Scheduled Tribe is warranted and mere Scrutiny of all documents will never be sufficient to determine the real status.,

51. Full Bench judgment of this High Court reported at 2009 [3] Mh.L.J. 995

(Shilpa Vishnu Thakur .vrs. State of Maharashtra and others), looked",
into a situation which arises when a Caste and a Tribe have same name. Division Bench judgment in case of Maharashtra Adivasi Thakur Jamat Seva, Mandal and others .vrs. State of Maharashtra and others (1986 Mh.L.J. 1021), has been looked into along with other judgments. We are referring to",
this judgment at some length below. Division Bench judgment in case of Murlidhar Ramkrishna Gathe .vrs. State of Maharashtra and others (2007 (3), Mh.L.J. 308) is also looked into. Division Bench in Murlidhar Gathe [supra] observed that when word or surname 'Thakur' is shared by both, forward and backward communities, burden of proving that he belongs to Scheduled Tribe heavily lies on a person claiming it. Examination of traits, characteristics, is therefore, essential. In paragraph no.36, a contrary view taken by the other Division Bench in case of Raviprakash Babusingh", Parmar .vrs. State of Maharashtra and others (2004 [1] Mh.L.J. 177), is also taken note of. Full Bench finds that the Hon'ble Supreme Court has", overruled it in appeal filed by State of Maharashtra by a decision reported at (2007) 1 SCC 80.,

52. Judgment in case of Pandurang Raghunath Chavan (supra), is also considered and this Full Bench points out that it does not deal with standards to", be applied in determining whether an individual has established his status as Scheduled Tribe. Full Bench also holds that Division Bench does not, preclude an inquiry into question, as to whether a person who stakes a claim to belong to a Scheduled Tribe, does in fact belong to that Tribe or not.",
Â,

53. This Full Bench also considers the judgment of Division Bench in case of Chandrakant Bajirao Shinde .vrs. State of Maharashtra and others (2003, [2] Mh.L.J. 471). That Division Bench had held that once it was found that the petitioner belongs to Caste Thakur, it was not open for the Scrutiny", Committee to find out whether he belongs to Thakur Scheduled Tribe. Full Bench points out that this judgment in case of Chandrakant [supra], is prior", to judgment of the Hon'ble Supreme Court in case of Raviprakash Parmar [supra] and Division Bench judgment therefore, cannot be understood as", laying down a principle that the Scrutiny Committee is debarred from considering whether a person who applies for Caste certificate is in fact a, member of Scheduled Tribe or not. Â It has been found that Chandrakant Shinde

is impliedly overruled because of judgment of Hon'ble Supreme, Court in case of Raviprakash Parmar. Other judgments i.e. Narendra Thakur .vrs. Scheduled Tribe Certificate Committee (2004 [2] Mh.L.J. 578)," , and Arun Babarao Ingle .vrs. State of Maharashtra (2005 [1] Mh.L.J. 1081), were overruled by Raviprakash Parmar (supra). Even Division Bench", judgment in case of Pravin Pandurang Ingle decided on 24.11.2004 is found not laying down a correct law. Even judgment in case of Amol Nagorao, Wakkar .vrs. State of Maharashtra (2005 [1] Mh.L.J. 798), delivered by the High Court holding that the Scrutiny Committee could not hold inquiry on", the basis of socio cultural traits and ethnic linkage to find out whether petitioner belong to Thakur Scheduled Tribe, is found overruled.",

54. Full Bench of this Court has recorded its conclusion in paragraph no.39 of its judgment. It is held that affinity test is an integral part of, determination of the correctness of the claim. It has found that merely because documents produced by a person reflect his surname as being, synonym with the name of a designated Tribe, it is not sufficient to establish that he belong to Scheduled Tribe.",

55. In Maharashtra Adivasi Thakur Jamat Seva Mandal and others Vs. State of Maharashtra through the Secretary to the Tribal Development, Department, BombayÂ³2 and others, (supra), the Division Bench of this Court observes in paragraph No. 9, as under :â³",

Â³Â³Â³Â³Â³9. From the material placed on record it appears that there is also a caste known by name, 'Thakure' which is amalgamation of certain", subcaste. The details of this subÂ³caste are given in the accompaniment to the Government Resolution dated 29th April, 1985, though the list is not", exhaustive and is merely illustrative. From Entry No.44 in the II Schedule the Scheduled Castes and Scheduled Tribes Order (Amendment) Act 1976," , the Tribes known as Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar are notified as Scheduled Tribes. In the list notified by the", Maharashtra Government for other Backward Class. Therefore, from the material placed on record it appears that there is a distinct caste carrying", same nomenclature. Hence it is necessary to find out in each case as to whether the claimant belongs to Scheduled Tribe or the Caste carrying the, same name. By indirect method or obliquely a caste which is not included in the Schedule relating to Scheduled Tribe, cannot be equated with or",

conferred the status of Scheduled Tribes. It is experienced that benefits are snatched away by most vocal classes, and thus keeping the weaker", among the weak always weak. This not only robs them of their share in benefits but creates further inequalities amongst the unequals. Therefore an, enquiry in each case is a must and this is precisely what is contemplated by the various Government Resolutions. It is true, that only because in the", various certificates produced by the claimants he is described as 'Hindu' Thakur' it does not mean that he necessarily belongs to Thakur Caste and, not to the Thakur Scheduled Tribe. His or her place of residence is also not a decisive factor. Though it was the case of the State Government in, Kum. Sunita's case that the tribals cannot be Hindus, the said stand is rightly given up before us.â??",

56. We find that this Full Bench judgment shows that a Caste byname Thakur exists independent of Thakur Scheduled Tribe and after a dispute of, present nature arises, legitimately affinity test can be resorted to. Petitioners state that this Full Bench judgment is stayed by the Hon'ble Apex Court.", They claim that it therefore has no binding effect. However, they have not cited any precedent in support. We find from Shree Chamundi Mopeds", Ltd. v. Church of South India Trust Association, Madras, a stay by the Supreme Court does not mean that such a law laid down in said judgment", ceases to apply. This is also seen in (2007) 3 CHN 178 Piyush Kanti Chowdhry vs. State Alka Gupta vs Medical Council Of India And Anr on 5, May, 2014. Similarly in W.P.(C) 889/2013 and CM APPL. 1689/2013 on 5/5/2014, the learned Single Judge of the Delhi High Court has reached", same conclusion. To comprehend the impact of interim order staying the operation of the impugned order, distinction between quashing of an order", and stay of its operation needs to be kept in mind. Quashing results in the restoration of the position on the date of the passing of said order. The stay, of its operation only does not lead to such a result. It only means that said order can not operate from the date of grant of the stay. It does not mean, that the impugned order is wiped out. Kolkata and Delhi High Courts therefore, find that the effect of the order of stay in a pending appeal before the", Hon'ble Apex Court, does not amount to 'any declaration of law' but is only binding upon the parties to the said proceedings and at the same time, such", interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the",

Hon'ble Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned.,

When the Constitution of India itself treats Castes and Tribes separately, We need not delve more into this submission of the Petitioners.",

57. In (1994) 6 SCC 241 (Kumari Madhuri Patil and another .vrs. Addl. Commissioner, Tribal Development and others), the Hon'ble Supreme Court",

has in paragraph no. 13[5] and 13[6] laid down a principle which shows relevance of affinity test in case of Scheduled Tribes. In Anand .vrs.,

Committee for Scrutiny (supra), the Hon'ble Supreme Court does not rule out or prohibit use of affinity test. Consideration by the Hon'ble Supreme",

Court reveals need of adopting a balanced approach. In cases of present nature, where a Caste and a Tribe has same name, the mere mention of a",

Caste in old documents cannot be understood as indicating a reference to a Tribe. Such reference may be to Upper Caste Thakur or even to a,

Scheduled Tribe Thakur. In this situation, when a doubt arises, the Scrutiny Committee is not prohibited from taking recourse to affinity test.",

Observations in paragraph no.18 of this judgment by the Hon'ble Supreme Court cannot be understood to prevent the Scrutiny Committee from,

applying the affinity test.,

58. Judgment in Motilal Namdeo Pawar .vrs. Scheduled Tribe Scrutiny Committee (supra) turns mostly on facts of the matter and errors by the,

Scrutiny Committee which are found sufficient to award validity. In other words, it does not lay down a law applicable in controversies like present",

one. Though the School records of Motilal mentioned the caste as "Hindu Thakur" or Thakur, he was not fitting in entry 44 of ST Order and could",

not establish affinity or linkage with it. Hence on 4.3.1989, the Scrutiny Committee canceled his caste certificate. The Division Bench mostly points",

out faulty consideration of facts by the Committee. The stereotype format of order is seen as routine thereby indicating mechanical application of,

mind. That Committee formulated usual three points. This Court looks into its findings on documents and notes that the Committee by relying on para 8,

in judgment of the High Court in WP 1953 of 2007 (Dipika Subhash More vs. State) concludes that Thakurs exist in upper castes like,

Kshatriya, Rajput, Sindhi, Maratha, Brahmins etc. Said Scrutiny Committee therefore found recourse to affinity crucial. Committee also referred to WP",

2791 of 2011 where the Aurangabad Bench observed similarly. Validity dated 28.8.2000 to relative Sunildatta Pawar was discarded by it as,

relationship was not proved. Family Tree filed earlier did not mention said validity holder as relation and validity holder did not come forward to vouch,

for relationship. Motilal himself filed an affidavit of relationship later on.Â Sunildatta's validity was also found by Committee to be based on law laid,

down by the High Court following the Hon'ble Apex Court judgment in Palghat Jilla Thandan Samudhaya (supra). Committee noted that the Hon'ble,

Apex Court in Sunil Muralidhar Thakur found the view of High Court incorrect. Committee also relied upon the cases in which High Court upheld its,

exercise of invalidation applying the affinity. While looking into ethnic linkage, the Committee found that Motilal was not resident of the area forming",

ordinary dwelling place of Thakur schedule tribe. With reference to Area restriction removal in 1976, that Scrutiny Committee held proof of migration",

out of "restricted area" essential.,

Further consideration by the Division Bench shows how the Committee mechanically applied affinity test also again falling back on area restriction.,

The Division Bench in paragraph No. 7 finds the approach of the Committee subjective. The reasoning and line adopted is identical as in earlier as,

seen by the High Court in earlier matters. Expectation of the Committee to have a "thakur schedule tribe" instead of "thakur" entry is also,

found unsustainable. This Court explains that entry 44 is not "thakur, schedule tribe". Expectation of Committee to have thakur schedule tribe",

entry in preconstitutional documents is found unacceptable. The Division Bench concludes that said Scrutiny committee rejected pre-constitutional,

documents on illusory grounds.,

59. This Court in Motilal's case, in the light of these findings relies upon the judgment of the Hon'ble Apex Court in Anand vs, Committee of Scrutiny",

(supra) to gather its scope, content and notes that affinity is not a litmus test. The observations in paragraph 11 of its judgment by the Division Bench",

show that in facts before it, the affinity test could not have been used as sole criterion to invalidate the claim. In subsequent sub-paragraphs the",

reason given by the Committee to arrive at a negative finding on the affinity test is found shocking.,

In paragraph 12, the approach of the Committee in general in such cases is

found objectionable. In next paragraph, faulty use of area restriction", despite its removal in 1976 finds consideration in the backdrop of Full Bench Judgment in Shilpa Vishnu Thakur vs. State of Maharashtra (supra)., Residence within such area can be used as one of the factors in favour of the claimant. In paragraph 19, this judgment holds finding of the Committee", that petitioner Motilal could not prove relationship with validity holder Sunildatta, incorrect. This Court therefore draws support from the Full Bench", view in Shilpa Thakur (supra) though said judgment is stayed by the Hon'ble Apex Court. This appreciation by the Division Bench and its comments, briefly noted supra show that it is mainly the impugned order dated 22.11.2013 of that Scrutiny Committee and defects already criticized by the High, Court found repeated therein, that made it come down rather heavily on the mode and manner of the functioning of the Committee. The findings and",

Tribal communities,Non- Tribal communities

1. Mahadeo Koli, Tokre Koli,"1. Koli (including Son Koli,Malhar Koli

Suryawanshi Koli, Vaiti Koli etc.);

2. Dhanwar,2. Dhangar

3. Thakur/Thakar kaThakur/ KaThakar

MaThakur/Ma Thakar","3. Thakur (including Bhat, Brahmabhat, Thakur, Kshatriya Thakur,

Rajput Thakur, Sindhi Thakur, Maratha Thakur, Pardeshi Thakur);

4. Gond Gowari,5. Gowari

5. Mannerwarlu,6. Munnurwar/Mannerwar/ Mannawar

6. Halba/Halbi,7. Koshti/Halba Koshti

(PARA 14:Â) A Bench of two Judges cannot overturn or disagree with an equi- Bench, if the decision is otherwise a good precedent, their limited",

option would be to refer the matter to a larger Bench. Such opinion of reference even normally should be supported by reasons and a mechanical,

process need to be avoided, unless the decision of a coordinate Bench ceases to be good law due to any subsequent event or change in law. It is",

settled principle that it is not every thing said by a Judge, while giving judgment, that constitutes a precedent. The only thing in a Judge's decision which",

bind parties is the principle upon which the case is decided and for this reason it is important to analyse the decision and isolate ""ratio decidendi"" from",

it. Its three essential features are (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge",

draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii),

judgment based on the combined effect of the above."",

(PARA 15:Â) Furthermore, ratio decidendi of a judgment has to be found out only on reading the entire judgment. The ratio of the judgment is what",

is set out in the judgment itself. Answer to the question necessarily would have to be read in the context what is set out in the judgment and not in,

isolation. In case of any doubt as regards any observations, reasons or principles, the other part of the judgment must be looked into. By reading a line",

here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment. The reasoning could be deciphered upon reading the",

judgment in its entirety and then applying these principles to the subsequent cases. (Reference : (i) Union of India vs. Godfrey Philips India Ltd., AIR",

1996 SC 806, (ii) Union of India vs. Dhanwanti Devi, 1996 (6) SCC 44, (iii) State of Tripura vs. Tripura Bar Association, AIR 1999 SC 1494 and (iv)",

Islamic Academy of Education vs. State of Karnataka, 2003 (6) SCC 697)."" Â",

63. When a judgment acts or operates as a precedent, is considered by the Larger Bench of this Court in M/s. Emkay Exports .vrs. Madhusudan",

Shrikrishna, (supra). Observations supra in paragraph nos. 12 to 14 therein reveal that when after due consideration of legal provisions and a binding",

precedent holding the field, a reasoned view one way or the other is reached, such a view and reasons only can operate as binding precedent.",

64. In this background, when the Division Bench judgment delivered at Aurangabad in case of Monika Thakur (supra), on 04.05.2018, is looked into, it",

considers the facts as also precedence available in the field. Â In paragraph nos.3 and 10 there is a reference to Full Bench judgment in case of Shilpa,

Vishnu Thakur .vrs. State of Maharashtra (supra), and thereafter in paragraph no.12 onwards other judgments have been looked into. Â In paragraph",

no.14, there is a categorical finding that in Maharashtra State â??Thakurâ? is â??Tribeâ? as well as â??Casteâ?. In paragraph no.18, judgment of",

Hon'ble Supreme Court in Raviprakash Parmar (supra), has been looked into. In paragraph no.21, judgment of Hon'ble Supreme Court in case of",

Pournima Pawar .vrs. State of Maharashtra (AIR 2013 SC 1508), has been looked

into. The Scrutiny Committee in case of Pournima has noted that",

there was evidence to show that she belonged to Thakur Caste and Hon'ble Supreme Court accepted and upheld the said finding of Scrutiny,

Committee. In paragraph no.22, judgment of Hon'ble Supreme Court in case of Anand .vrs. Committee for Scrutiny (supra), is appreciated and in",

paragraph no.23, it is mentioned that when the Scrutiny Committee is not satisfied with documentary evidence, it can conduct vigilance inquiry and",

also apply affinity test. In paragraph no.24, there is a conclusion that the petitioner has to prove that he belongs to a Tribe shown as Scheduled Tribe,"

and it is permissible to consider whether he is tribal or non-tribal. In paragraph no.26, the Division Bench finds that Caste is inherited from father.",

In paragraph no.27, there is reference to judgment of Hon'ble Supreme Court in case of Raju Ramsingh Vasave .vrs. Mahesh Deorao Bhivapurkar",

((2009) 1 Mh.L.J. 1) to take note that principles of res-judicata do not apply. Judgment in case of Pournima Pawar (supra), is again reiterated for this",

purpose. Judgment in case of Motilal Namdeo Pawar .vrs. Scheduled Tribe Scrutiny Committee (supra), is looked into in paragraph no.29, and it is",

found that there the Tribal Validity Certificate was issued in favour of paternal relative. The Division Bench goes through various other judgments and,

in paragraph no.35, 4, validity certificates issued in favour of siblings of petitioner are looked into. It is found that same were without satisfaction of the",

Scrutiny Committee and hence, the Committee had no option but, to consider whether the petitioner belongs to non tribal group or not. Its observations",

in paragraph no.35 are as under :,

35. Applying these principles, we find that, in the present case, four validity certificate issued in favour of four siblings of the petitioners are issued",

without satisfaction of the Scrutiny Committee that the claimants therein belong to Scheduled Tribe. The Vigilance Enquiry was conducted. There is,

reference that, the claims of the petitioners were not supported by the affinity test. In fact, the Scrutiny Committee had rejected the claim of Yogita",

and Meghana but this Court had remanded the matter holding that the Committee had no option to consider whether the petitioners belong to non-tribal group or not. Therefore, the Committee without satisfaction of mind issued validity certificates. Same is the case with regard to certificate issued",

in favour of Ganesh. The order hardly runs a page, still it is noted that the

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

65. This judgment in case of Monika Thakur at Aurangabad dated 04.05.2018 (supra), therefore, appears to be laying down a law on the point, in", terms of Full Bench judgment of this Court in case of M/s. Emkay Traders (supra). XXXX There are various theories of CASTE system originated in, India. Those are Traditional Theory, Racial Theory, Political Theory, Occupational Theory, Evolution Theory. We need not comment on this facet at", all but then it demonstrates that in an attempt to discipline the civil society, the fractions were introduced by some external agency. It therefore", prevailed where the disciplining was possible. In case of Tribes who leaved away in Jungles and difficult areas, said caste system had no relevance.", Â On internet learned articles and essays are available but for us the distinction made by the Constitution amongst the Scheduled Castes and, Scheduled Tribes is itself more than sufficient.,

66. This brings us to the consideration of adherence to discipline and binding precedents. The Hon'ble Supreme Court in case of Official Liquidator, (supra), has explained and highlighted need and importance thereof. Â Petitioners have rightly invited our attention to observations in paragraph nos.", 75, 78 and 90 of the said judgment. The present issue cannot be decided without considering those observations.",

67. We find that though in Writ Petition No. 564/2009, Shri R.S. Parsodkar, learned Counsel appearing for petitioner has contended that the order was", without giving petitioner necessary opportunity, when petitioner was unwell, the

impugned order shows that on 21.02.2008, petitioner was asked to", remain present before the Scrutiny Committee on 13.03.2008. She sought adjournment with medical certificate for a period from 12.03.2008 to, 15.03.2008. The Committee has taken note of the fact that the claim was pending since 2005, and in Writ Petition No.188/2006, Committee was asked", to decide the same within a period of three months. Â The employer also was pressing for validity and petitioner was also permitted to appear through, an Advocate. Â The Committee has looked into all 22 documents produced by her, and it also records that the information regarding traits and", characteristics of Thakur, Scheduled Tribe were given by the petitioner only on the basis of bookish knowledge. Â The Committee has while", answering the issue no.2 found that surnames given by per are found in Thakur Caste in Buldhana District, and are not found in Thakur Scheduled", Tribe. This finding of the Committee is not shown to be perverse. The observations also does not mean that the Committee has applied affinity test., Even before this Court, petitioner does not point out what or whose evidence it wanted to adduce before the Committee to discharge obligation cast", upon it under S.8 of Act no. 23 of 2001.,

68. In Writ Petition Nos. 804/2002 and 2054/2002, petitioners are brothers. The Scrutiny Committee has looked into the documents and found that it", was necessary to find out whether petitioners belong to Thakur Caste or Thakur Scheduled Tribe. It has then proceeded to apply affinity test. On the, basis of vigilance cell report and other material, the Committee concludes that petitioners are not Scheduled Tribe Thakur. These findings are not", shown to be perverse at all. Date of order passed by the Scrutiny Committee and impugned in Writ Petition No.804/2002 by Sunil Kumar is, 19.11.2001. The Scrutiny Committee has considered the case of younger brother on 26.04.2004. Application of mind by the Scrutiny Committee in, said matter is on same lines. In both these Writ Petitions, Sunil Kumar and Bhalchandra have filed affidavit in an attempt to bring on record more", material. Along with that affidavit, they have given some old documents urging that their caste is recorded as Thakur, Scheduled Tribe. It is apparent", that prior to Constitution, Scheduled Tribes Order, 1950, concept of Scheduled tribe itself was not in existence, mention in old documents, particularly", in document dated 17.04.1919 cannot be construed as referring to Thakur

Scheduled Tribe. The contention of petitioners only brings on record settled, practice of referring to Thakur Tribe as Thakur schedule tribe to distinguish it from Thakur Caste. Validity given to one Sheela d/o Sudhakar Gathe, and two other relatives are pressed into service by them , however, relationship with these ladies is being brought on record for the first time by", producing a family tree in High Court. Reliance on Division Bench judgment of this Court in Writ Petition No.803/2002, in case of Rajendra Madhukar", Gathe, is also misconceived. Â There the Division Bench was not required to ponder over existence of Thakur caste independent of Thakur", Scheduled Tribe.,

69. Shri Anup Gilda, learned Counsel appearing for petitioner in Writ Petition No. 4875/2004, has only argued the question of law. Perusal of the", impugned order in this petition shows that the Scrutiny Committee has in paragraph no.17, found that only mention of caste as Thakur, does not mean", that person belongs to Thakur Scheduled Tribe. It has applied affinity test and concluded that petitioner does not belong to Scheduled Tribe Thakur., The case law relied upon by learned counsel is separately considered in this judgment.,

70. Advocate Ms. Rane's argument in Writ Petition Nos.619/2005, 620/2005 and 6023/2005 are almost on the same lines as that of Advocate Shri", Parsodkar. The Scrutiny Committee in its order dated 24.12.2004, in Writ Petition No.619/2005 found that the caste entries which are synonymous or", have same nomenclature as that of Tribes, needed cautious approach, and hence, recourse to affinity.Â This observation in paragraph no.6 is not", shown to be erroneous.,

71. In order dated 28.12.2004, impugned in Writ Petition No.620/2005, similar observations appear again in paragraph no.6. In Writ Petition No.", 6026/2005, impugned order is dated 25.06.2004, and again same observations are repeated in paragraph no.6 by the Committee.",

72. Shri Ahirrao, learned Counsel for petitioner in Writ Petition No. 3024/2004 and other matters adopted the same line of arguments. Perusal of the", impugned order dated 26.07.2002 in Writ Petition No. 3024/2004, reveals a consideration of documents in the name of Digamber Manohar Dahake i.e.", petitioner himself, in which in junior college on 09.07.1990, caste has been recorded as 'Bramha Bhat Thakur'. The caste certificate issued to him by",

the Executive Magistrate is dated 27.02.1991, and this document has not been explained by the petitioner. The Committee has found that after",

applying affinity also the candidate could not be said to be belonging to Scheduled Tribe Thakur. This consideration by the Scrutiny Committee is not, demonstrated to be perverse.,

73. In Writ Petition No. 5718/2004, the Scrutiny Committee in the impugned order , in paragraph no.5, has found that Thakur's are found in different",

caste such as Kshtriya Thakur, Rajput Thakur, Vashya Thakur, Pardeshi Thakur and Sindhi Thakur. It is also noted by the Committee that Thakur is",

called Balutedar caste such as Gram Bhat and Bramha Bhat. It is in this backdrop, that the Committee has looked into the documents, applied affinity",

test and found that the petitioner does not belong to Thakur Scheduled Tribe.,

74. In Writ Petition No. 2352/2002, in impugned order dated 05.04.2002, after mentioning documents produced by the petitioner, the Scrutiny",

Committee has again made similar observations and pointed out that only on the basis of documents one cannot decide whether the person mentioned,

in those documents belong to Thakur caste or Thakur Tribe i.e. Scheduled tribe.,

75. The order impugned in Writ Petition No. 5817/2004 is dated 30.08.2004, and there in paragraph no.5, again similar observations have been made",

by the Committee. It has applied affinity test and came to the conclusion that the candidate before it does not belong to Thakur Scheduled Tribe. In,

view of these observations of the Committee, reliance upon two validities given to cousins of petitioner, cannot be said to be decisive.",

76. In Writ Petition No. 3605/2004, the impugned order is dated 27.01.2004. The Committee has after mentioning documents produced by the",

petitioner, has in paragraph nos. 6 and 7 recorded similar observations. While considering the contentions of candidate in paragraph no. 15[ii], the",

Committee has also found that caste of grandfather Gulabrao Tukaramji Wankhede was recorded as 'Bhat', when he passed 5th standard. In 7th",

standard, his caste was found recorded as Thakur. Because of this finding and use of affinity test, validities given to relatives on 09.06.2000,",

02.06.1999 and 09.06.2000, have been discarded. The Committee finds that those validities were given on the basis of orders of High Court and at that",

juncture concerned validity The recipients suppressed the information which came to its notice in police vigilance inquiry. It is to be noted that these,

validities are before coming into force of the Act no.23 of 2001, and hence, cannot be said to be decisive.",

77. In Writ Petition No. 4099/2005, Shri Sohoni, learned counsel has submitted that the vigilance inquiry was carried only with mother and wife of",

petitioner. Perusal of the impugned order dated 21.03.2005, shows that there in paragraph no.6, after making similar observations and reference to",

vigilance enquiry, the candidate was given opportunity. The vigilance cell could bring on record entry dated 30.06.1973 in case of petitioner himself,"

which mentioned his caste as Rajput. The records are maintained by Smt. Dhanabai Vidyalaya, Balapur. Contention of petitioner is, therefore,"

erroneous.,

78. In Writ Petition No. 1494/2004, Shri Saboo, learned counsel has relied upon the validity given to relative on 24.10.2013. Impugned order in the",

matter is dated 25.02.2004. Validity therefore, is obviously after it, and it is subject to decision of the Special Leave Petition filed before the Hon'ble",

Supreme Court. Petitioner has also produced an affidavit dated 10.08.2017, tracing out for the first time relationship with validity holder Gopal. Thus,"

new evidence is being brought on record. Petitioner does not mention that while giving validity to Gopal, order dated 25.02.2004, invalidating his caste",

claim was looked into by the Committee. The exercise undertaken by the Committee in case of petitioner Ganesh and its observations are on same,

lines as mentioned by us supra, and petitioner has not assailed the same.",

79. In Writ Petition No. 4186/2007, the impugned order of Scrutiny Committee dated 16.04.2007 shows that after mentioning documents in paragraph",

no.4, the Committee mentions findings of vigilance inquiry. It appears that in Writ Petition No. 2550/2004, petitioner was permitted to prosecute his",

studies in D.Ed. Course and his caste claim was to be decided within a period of 4 months. The Committee has then framed points for determination.,

Paragraph no.1[ii], shows a finding that old documents record caste as Thakur and not Tribe as Thakur. The Scrutiny Committee has then applied",

affinity test and concluded that it was not going behind the constitutional entry, as there was a caste carrying same nomenclature. It has relied upon",

judgment of Division Bench of this Court reported in case of Maharashtra Adivasi Thakur Jamat Seva Mandal and others .vrs. State of Maharashtra,

and others (supra), for that purpose. Thus, there is conscious consideration and

a finding that as a forward caste by name Thakur only exists",
documents mentioning caste as Thakur cannot be conclusive of claim as Scheduled Tribe Thakur.,

80. In Writ Petition No. 726/2004, the Scrutiny Committee has passed an order on 07.02.2004, and consideration therein, particularly paragraph no.4",

shows that the documents mentioning caste of Sunanda Bhuyar, Dattatraya Bhuyar and Digambar Bhuyar, as Bhat, were traced out by the police",

vigilance cell. Petitioner claimed that these persons are not related to her, but, even in case of paternal uncle of petitioner, caste is found recorded as",

Bhat only on 21.10.1935. In this situation, the Committee has after applying affinity test, recorded a finding that petitioner does not belong to Thakur",

Scheduled Tribe. It is to be noted that burden to establish caste claim is upon the petitioner, and petitioner Ku. Pushpashila Bhuyar was given full",

opportunity to substantiate it. She has not even attempted to demonstrate that the Scrutiny Committee did not accord her necessary opportunity.,

81. Arguments of Shri Kalmegh, learned Counsel for petitioner in Writ Petition No.1553/2004, are not much different. There a Civil Application No.",

2813/2017 has been taken out seeking leave to produce documents. Effort is to bring on record new documents and effort is to also to place the same,

on record. Petitioner in the proposed amendment submits that he learnt about the documents of grand father and great grand father mentioning caste,

as Thakur Scheduled Tribe in their school records.,

82. Order of the Scrutiny Committee dated 16.12.2003,impugned therein by the petitioner Ku. Pranita Shankapal, shows that she has not given those",

documents to the Scrutiny Committee and has not disclosed the details of education of grand father or great grand father. In paragraph no.5, the",

Scrutiny Committee points out how word 'Thakur' cannot be determinative and caste with similar names exists in Kshtriya, Rajput, Vaishya, Pardeshi",

and Sindhi communities. It again points out that Thakurs in different communities is Balutedar caste, such as Grambhat and Bramhabhat. These",

findings are not shown to be perverse. Hearing after service of vigilance cell report, was attended to by father of the petitioner and there again he did",

not bother to point out details of education of his father or of his grand father. In this situation, in the light of the findings recorded by the Scrutiny",

Committee, the effort to introduce alleged old documents at this stage cannot

further the case of the petitioner at all. On the contrary, the same cannot",
be countenanced.,

83. Accordingly, in view of above discussion, we dismiss all the Writ Petitions.
Rule discharged, however, in the facts and circumstances of the case,"
there shall be no order as to cost.,

84. At this stage, learned Counsel appearing for petitioners in Writ Petition
Nos.3227/2004, 2432/2010, 619/2005, 620/2005, 6026/2006, 726/2004,"
2341/2005, 2912/2004, 4069/2004, 2516/2004, 4714/2004, 447/2002,
957/2002, 1494/2004, 2489/2004, 2595/2004, 2596/2004, 2889/2002,
2890/2002,"
2959/2002, 2960/2002, 3121/2002, 3387/2002, 3389/2002, and 4751/2004
seek continuation of interim orders for a further period of eight weeks as",
petitioners are in employment.,

85. The learned A.G.P. is opposing the request. However, in the interest of
justice, we continue that order for a further period of eight weeks, and it",
shall cease to operate automatically thereafter.,