
(2007) 07 BOM CK 0112
In the Bombay High Court
Case No : Writ Petition No. 2576 of 2007

Deorao Umredkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

City of Nagpur Municipal Corporation Act, 1948 — Section 9AA
Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 — Rule 11, 11(1), 12, 12(1), 12(2)

Citation : (2007) 5 ALLMR 757 : (2007) 5 BomCR 629 : (2008) 1 MhLj 364

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : S.V. Manohar, A.B. Patil and B.G. Kulkarni, for the Appellant; N.S. Khubalkar, AGP for Respondent No. 1, M.V. Samarth, for Respondent Nos. 2 and 3 and Jayant Pendsey, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Record and proceedings of respondent No. 4 - Scrutiny Committee was called and petitioner has inspected the same. Parties have nothing to add. Hence this petition along with other petitions are taken up for final hearing. Hence Rule. Rule is made returnable forthwith in all petitions and is heard by consent.

Writ Petition No : 2576/2007

2. The petitioner, who is resident of Nagpur, contested the election to the Office of the Councillor of Municipal Corporation of Nagpur city from a constituency reserved for Scheduled Tribes and has been elected.

3. The petitioner claimed that he belongs to "Halba" included in the list of Scheduled Tribes, as modified by Notification No. SRO - 510 dated 6th September, 1950 published in Gazette of India, Extraordinary 1950, Part II. As per Section 9AA of the City of Nagpur Municipal Corporation Act, the petitioner

was under an obligation to get his caste claim verified within three months from the date of election* else the seat was to fall vacant. The petitioner had applied for verification of his tribe claim to the respondent No. 4- Committee, under the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "the Act of 2000") and Rules made thereunder, namely, Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (in short, "the Rules of 2003").

4. Since his caste claim could not be verified in time, in order to seek protection, the petitioner filed a petition being Writ Petition No. 1985/ 2007 and in the background of grant of protection, it seems that the petitioner made a statement before the Court that he would cooperate with the expeditious disposal, the Committee took up the caste scrutiny for expeditious hearing. This Court also observed while granting protection to petitioner that if petitioner do not cooperate with the committee, this be brought to the notice of the Court.

5. The petitioner submitted before the Scrutiny Committee his application dated 30-12-2006 and certain documents in support of his tribe claim. The Committee scrutinized petitioner's application on 16-1-2007 and referred the case for opinion to the Vigilance Cell.

6. The Vigilance Cell conducted the inquiry by visiting home and other places and collected the documents which appeared to the Cell to be relevant in view of statements recorded and information collected by them. The Research Officer gave his opinion on the report of Vigilance Cell. The Vigilance Cell furnished its report dated 22-2-2007 to the Scrutiny Committee.

7. The Scrutiny Committee considered the report of the Vigilance Cell dated 22-2-2007 and found that it was not favourable to the petitioner and the Committee, therefore, decided to serve its copy with show cause notice by Committee's order dated 6-3-2007.

8. In the meantime, on 2-3-2007 petitioner's Advocate furnished to the Committee common letters in seven cases of Corporators submitting Vakalatnama, one amongst those was claim of present petitioner.

9. The petitioner's Advocate, then, submitted on 9-3-2007, a common letter dated 8-3-2007 and furnishing a photo-copy of detailed affidavit of the candidate sworn before Executive Magistrate on 23-2-2007 each of seven cases, and four documents referred to therein, which learned Advocate has described and are quoted ad-verbatim, namely:

1) Xerox copy of Linguistic Survey of India Vol. VIII - Indo Aryan Family - Southern Group - compiled and edited by G.A. Grierson (Vol: 90 - Halbi - Dist. Ellichpur); with its translation into English language;

2) Janganana Ahwalachya Anushangyane Halbancha Vichar;

3) Swatantrya Purviche Halbancha Sandarbhatil Purave; (Evidence of Halba prior to independence).

4) Government Resolution dated 10th July, 1998.

This letter contains a handwritten post-script /note which reads as follows:

As per this G.R. Shri D.S. Sawarkar Research Officer is not a competent/qualified person to associate with the Police Inspector to conduct enquiry.

10. A notice dated 6-3-2007 forwarding report of Vigilance Cell was sent by the Committee to the petitioner which was in due course served on the petitioner's wife on 15-3-2007. By this notice, petitioner was called to furnish evidence in support of the tribe claim within fifteen days of receipt of show cause notice in view of adverse report of Vigilance Cell.

11. The petitioner submitted application on 17th March, 2007, challenging the report of the Vigilance Cell and praying for time to furnish evidence and submitted as follows:

Unless the Committee gives him clear three months" extension and sends written intimation to that effect, he would not be able to give his reply to the adverse report of the Vigilance Cell furtherance to the show cause notice, and that the Committee should not decide the claim without giving him full opportunity of hearing.

12. The Scrutiny Committee, then, sent to the petitioner telegraphic intimation granting him 15 days" time and fixing the hearing on 26-4-2007 at 11.30 A.M. and calling him to furnish reply/representation and evidence in support of his claim. Copy of telegram was sent for service on the petitioner through the Commissioner, Municipal Corporation of Nagpur city as well through Tahsildar, Nagpur. The intimation was served on the Personal Secretary of the petitioner as the petitioner was not available.

13. It seems that soon after the petitioner received the notice of hearing scheduled on 26-4-2007, the Advocate for petitioner submitted a communication giving reference to his earlier letter dated 2nd as well as 8th March, 2007, complained that he did not receive any intimation from the Caste Scrutiny Committee though his Vakalatnama and authority continues to operate.

The Advocate concerned has further stated in his letter as follows:

I being the counsel appointed by said Corporators, it is your bound duty to inform me about the progress of the case. If any action/decision on the tribe claim is taken by you. Kind authority on the basis of police vigilance cell report, you will be held responsible for further legal consequences as per Advocates" Act. 1961. Please note

This letter does not reveal whether learned Advocate even knows that his client had already filed written objection-cum-request letter dated 17-2-2007 seeking

time for filing reply as well as he has received telegraphic intimation.

14. The learned Advocate, then submitted another letter dated 26-4-2007 by submitting it to Inward Clerk/section, seeking adjournment on medical ground of the petitioner. The medical certificate is signed by Dr. Arun Kumar Somani, a Child Specialist, certifying that petitioner being under his treatment for acute gastro-enteritis with dehydration from 25-4-2007 (afternoon) and being administered by IV fluid in his Nursing Home and was advised complete rest for eight days. Learned Advocate also mentioned in this letter that next date should be intimated to him.

It is seen from the Roznama that, on 26-4-2007 that nobody appeared before the Committee. The Committee considered the contents of the letter written by Advocate on 26-4-2007 to the Committee and granted time by way of last chance and fixed the hearing on 14-5-2007.

15. Proceeding sheet - Roznama dated 14-5-2007 reveals as follows:

(a) Petitioner submitted written representation dated 14-5-2007.

(b) The petitioner was present along with one of the Ex-Corporations - Shri Yogesh Gonnade and one Shri Digambar Yadavrao Bajirao.

(c) The petitioner furnished xerox copies of (1) Service certificate; (2) school leaving certificate from Itwari School, Nagpur (3) School leaving certificate from Dadasaheb Dhanwateyy School, Umred and (4) record of Municipal Council relating to Jama bandi of house and (5) copy of the birth register, all pertaining to Waman Shankarrao Umredkar, uncle of the petitioner.

(d) Petitioner had furnished affidavit of Kishor Ganpat Umredkar affirmed before the Special Executive Magistrate, Nagpur which is dated 14-5-2007.

(e) Petitioner undertook to furnish affidavit showing family tree in genealogical order and undertook to file within eight days his say/ representation to the contents of the statements of Shivnarayan Sadavarte and Devendra Mahadeo Hattimare, recorded by Vigilance Cell.

(f) Petitioner undertook to furnish within the same time copy of the School leaving certificate of Shri Waman Yeshwant Umredkar.

(g) Petitioner prayed that the Committee should postpone the hearing of the case for decision after eight days.

(h) The Roznama proceedings are signed in token of acceptance and notice by petitioner Shri Yogesh Gonnade and Bajirao.

(i) The Committee directed the Vigilance Cell to verify the facts about school leaving certificates of Waman Umredkar from Dhanwateyy Nagar Vidyalaya as well as Itwari High School, Nagpur.

16. In the representation dated 14-5-2007, the petitioner, raised the following

points:

- (a) That he has furnished necessary information called for by the Vigilance Cell.
- (b) The report furnished by the Vigilance Cell is fictitious, false and contrary to record of facts which in reality have been brought to the notice of the vigilance Cell repeatedly;
- (c) since the petitioner came to know about the false and fictitious report of the Vigilance Cell, he has furnished with the application the evidence in support of his tribe claim and he is making continuous efforts to furnish the evidence once again and is also trying to procure documentary evidence.
- (d) in order to have observance of the principles of natural justice he had demanded original record of inquiry conducted by the Vigilance Cell, however, the proceedings are taken against him ex-parte; and inspite of repeated requests, opportunity of hearing was not being given which should be given;
- (e) the Committee was not acting judiciously and was trying to impose ex-parte decision and injustice is being caused which should be stopped;
- (f) until the evidence furnished by him is scrutinized thoroughly and its truthfulness or otherwise is adjudicated, his claim cannot be negated.
- (g) the information and evidence collected by the Vigilance Cell was with prejudiced mind should be outrightly discarded and his claim should be decided on the basis of documents furnished by him.
- (h-i) the report of Vigilance Cell should not have been called unless the Vigilance Cell was constituted in conformity with Government directives and rules and Vigilance Cell should be perfect in all respects;
- (j) though thousands of cases are pending before the Committee for last ten years, the petitioner's case is being inquired into and hence the petitioner had perception that due to political vindictiveness ex-parte proceedings are being taken against him;
- (k) he apprehended that he would not get justice since the case is being heard out of turn and he fears that the entire action being taken against him is politically motivated;
- (l) he reserved his right to bring further evidence and cross-examine the witnesses and that the Committee should not proceed ex-parte since the Committee is under obligation to follow various stages required to be followed by the Civil Court.

The affidavit of Kishor Umredkar contains statement that the Vigilance Cell:

- (i) did not make any enquiry with him;
- (ii) his grandfather's name which was "Baja" deliberately wrote as "Bajirao";

(contrary to what petitioner himself stated in Form "E").

(iii) Whatever was recorded in his statement was not read out to him;

(iv) pressurized to sign; and threatened to put him behind bars if he does not sign;

(v) falsely recorded the information about cultural traits, characteristics, traditions.

17. The petitioner submitted application on 21-5-2007 and again on 30-5-2007 informing that he had taken steps to collect certain old record which he had not received so far and called upon the Committee to carry out further investigation.

18. On 22-5-2007 the Committee received the report of the Vigilance Cell in which the petitioner's uncle Waman Yeshwant Umredkar is shown to be "Koshti" in Primary School record. The Committee forwarded notice to petitioner on 22-5-2007 calling upon him to explain about the entry made in the Primary School as found by the Committee within seven days, on 30-5-2007. The case was then posted on 11-5-2007.

19. The petitioner submitted application on 11-5-2007 and produced the xerox copy of the school leaving certificate of one Pandurang Vithoba Umredkar. This copy is at Page 153 of the record indicating that Pandurang Umredkar is shown to be belonging to "Halba" caste.

It is seen that the petitioner, however, did not furnish any further records as undertaken by him and recorded by the Committee in its Roznama on 14-5-2007. In the result, the Committee proceeded to decide the case and gave its decision on 13th June, 2007 thereby invalidating petitioner's caste claim.

20. In this petition, the petitioner has pressed various grounds in support of challenge to the decision of Committee which is impugned, which can be summarized as follows:

(a) The respondent No. 4-Committee has passed the impugned order without appreciating the documentary as well as oral evidence on record and has passed the impugned order without application of mind. Hence the same is liable to be quashed and set aside by this Hon'ble Court.

(b) This Court has (at Bombay) in Writ Petition No. 4/2006 passed judgment on 20-4-2006, and directed the State Government to make an inquiry, as to whether the Research Officers, who are attached to various caste Scrutiny Committees, have sufficient and expertise and knowledge of various tribes of the region and whether they are possessing requisite qualification as has been directed by the Supreme Court of India in Madhuri Patil 's case.

(c) The Research Officer who is attached with the Vigilance Cell of the Committee does not appear to be duly and properly qualified, nor is he having expert knowledge of "Halba" tribe of the region, to be able to take a proper and correct

decision in the matter. The Government of Maharashtra, Tribal Development Department had issued Government Resolution dated 5-7-2006 in this regard. Hence it can be said that in the present case also, the Vigilance Cell inquiry has been conducted by vigilance Cell which is not constituted in accordance with the directions of the Supreme Court and as per the aforesaid G.R. Hence on this count alone the entire proceedings vitiate and the impugned order deserves to be quashed and set aside.

(d) The Committee has further failed to appreciate the documents submitted by the petitioner of the year 1936 pertaining to Shri Waman Yashwant Umredkar, who is the paternal uncle of petitioner's father, in which the caste has been mentioned as "Halba". The document is of pre independence period and therefore carries more probative value as compared to any other document. The respondent No. 4 Committee has rejected the said document on the sole ground that the change has been made in the column of caste earlier in the year 1954.

(e) The Scrutiny committee has further failed to appreciate the service certificate issued by the South Eastern Central Railway of Shri Wamanrao Umredkar, in which his caste has been clearly mentioned as Halba. The petitioner has further placed on record the School Leaving Certificate of Shri Wamanrao dated 29-6-1955 and 5-6-1956. The Scrutiny Committee has failed to appreciate these documents in proper perspective.

(f) The respondent No. 4 Committee has given a complete go by to the provisions of Section 9 of the Act of 2000, whereby all the powers of civil court have been vested in the respondent No. 4 -Committee.

(g) The petitioner had raised a specific objection in respect of the report submitted by the Vigilance cell and had requested for grant of time to verify the genuineness of the document procured by the vigilance Cell and had submitted applications to the concerned School and other departments for supply of copies of documents.

(h) The petitioner has also requested to grant him an opportunity to cross-examine the Officers of the Vigilance Cell; this request has been rejected by the Committee.

(i) In order to substantiate his objection the petitioner had filed affidavit of Shri Hattimare and affidavit of his younger brother Kishor Umredkar, the respondent No. 4, however, did not take any cognizance of the objection raised by the petitioner.

(j) The respondent No. 4 Committee has erroneously come to the conclusion that the petitioner has by making false representation secured the caste certificate or the consequential benefits therefrom. In each and every case of invalidation, prosecution u/s 1 of the certificate verification Act cannot be initiated. Hence the direction of the respondent No. 4 initiating criminal proceedings against the petitioner clearly goes to show the political pressure and political vengeance is

involved in the matter.

(k) The respondent No. 4 Committee has given its finding on surmises and conjectures, with a predetermined set of mind to invalidate the caste claim of the petitioner under the political pressure.

21. In present group of petitions, three different Advocates namely, Advocates S/ Shri B.G. Kulkarni, S.V. Manohar and A.B. Patil advanced submissions, which are common in all petitions. This Court has given hearing at length to all three learned advocates appearing for the petitioners.

Apart from the grounds narrated in the petition and noted in foregoing para, learned Advocates S/Shri Sunil Manohar, B.G. Kulkarni and A.B. Patil, raised as prime points of law as common argument in all petitions the following submissions:

(i) The process of investigation and inquiry in the process of reaching final conclusion done by each of the components involved in the process of scrutiny, was not done properly and correctly in strict conformity with the dictum in Madhuri Patil's case (supra).

(ii) Involvement of Research Officer in the Vigilance Cell was not meaningful, namely, it does not reveal from the report of Vigilance Cell that he has applied mind. Opinion given by Research Officer is not in the nature of objective finding as to whether the petitioner answered the test of his being a Member of "Halba" Scheduled Tribe, by withstanding the ethnic linkage, anthropological background and the test of affinity.

(iii) The Research Officer's comments need on the lines of the reasoned order which is required to reveal his mind and the grounds leading to his conclusions. In the absence of reasoned order, the conclusions of the Research Officer are rendered incapable of review and hence the entire procedure undertaken by the Vigilance Cell is vitiated and, therefore, the petitioner did not get proper hearing at all.

(iv) Entire mechanism, namely, Vigilance Cell, Research Officer and the Scrutiny Committee have acted as if they had a crusade for a brief against the petitioner's caste claim, which has resulted into denial to the petitioner of fair trial.

(v) The decision of the Scrutiny Committee suffers from the vice of failing to appreciate, analyze and then reject the evidence. The Committee has rejected the evidence in summary manner and without application of mind and by applying the yardsticks and considerations which are irrelevant.

(vi) The Committee had a role of "fact-finding inquiring forum" coupled with quasi-judicial trappings who was bound to investigate into the fact of petitioner's caste and it was not sitting with an agenda to find out whether the petitioner's caste certificate was false.

22. In reply, learned Advocate for respondent No. 4 committee Mr. Jayant Pendsey, submitted as follows:

(a) The allegations against the Committee and the Vigilance Cell are bald, vague and are without any details.

(b) The petitioner was under an obligation to furnish information to the Vigilance Cell, which the petitioner has failed to do.

(c) The Vigilance Cell does not act in vacuum. It does not proceed to hold the inquiry barely on the basis of the caste certificate. When the matter is referred to the Vigilance Cell, it has to have with it the basic data and evidence, which is the foundation of claim by the candidate.

(d) This material to be furnished to Committee has to be in the form of documents, evidence, information etc. as may have been furnished by the candidate before competent authority, appellate authority or the committee at the time of furnishing the claim for scrutiny in Form "E" and accompaniments thereto and even thereafter.

(e) The candidate is free to furnish such additional information and evidence which he wants thereby he makes his evidence supporting the claim available for scrutiny for being verified to be factual etc.

(f) Thereafter the Scrutiny Committee proceeds to make local inquiry and home inquiry. The very purpose of involving the Police Officer as per the direction of the Honourable Supreme Court, is to deploy their expertise of investigative ability so as to secure relevant information, during which process, a Research Officer is associated with them.

(g) No strict and rigid procedure as to association of Research Officer is prescribed, however, it could be in the form of consultation from time to time, perusal of record and scrutiny of information gathered and offering his final opinion based thereon.

(h) Rules as emerging from the judgment in Madhuri Patil's case as prescribed under the Act of 2000 i.e. Rules of 2003, do not in any manner lay down, prescribe or mandate that the opinion of the Research Officer should be in the form of a reasoned order. Need of reasons to support opinion is not the legislative intent or the dictum of Supreme Court.

(i) The petitioner has, in fact, left the Vigilance Cell to collect the information without any support or participation and assistance from the petitioner. It is the petitioner who has failed to supply facts supporting petitioner's claim.

(j) The Research Officer endorsed his opinion which is adverse to the claim of the petitioner.

(k) The Scrutiny Committee had to proceed to hear the claim expeditiously because the Committee had to decide the claim expeditiously in view of the fact

of filing of the writ petition by the present petitioner along with other petitioners and their high political office was the stake/issue. Had the petition not been there and had petitioner not given an undertaking before this Court to cooperate in the proceedings punctually, the petitioner would probably have to come in queue to have his turn and this Court may not have continued the protection, as can be read as the spirit beneath the order of this Court passed on 30-4-2007 passed in Writ Petition No. 1985/2007.

(l) The record shows that the petitioner did not cooperate either with the Vigilance Cell or with the Committee, as is evident from his applications, learned Advocate's communications etc.

(m) The Committee has acted correctly. There is no fault whatsoever attributable to the functioning of the Research Officer or the Vigilance Cell and, therefore, the impugned decision of the Committee cannot be faulted.

23. In view of the grounds raised in the petition and various points urged during oral submissions, we find that it would be convenient to formulate the questions which arise for consideration, as follows:

General:

(1) What steps and stages are to be followed in the process of scrutiny of caste claim?

(2) What is the procedure to be adopted by the Vigilance Cell and what is the nature of function undertaken by them?

(3) What is the nature of work which the Research Officer is required to undertake as a Member of or associate to the Vigilance Cell?

(4) Whether the Research Officer is required to record his opinion by way of reasoned order to emerge therefrom the objective analysis?

(5) What procedure the Scrutiny Committee is required to adopt, and what is the nature of jurisdiction and functions to be exercised after it received report of Vigilance Cell?

(6) What are the obligations and rights of the parties in the event the Scrutiny committee does not prefer to issue validity after receipt of report of the vigilance Cell and calls upon the claimant to prove his claim?

(7) Is it incumbent on the Committee to summon the members of the Vigilance Cell, either when an application is made or suo motu for cross-examination by the claimant?

Points Specific To Present Case:

(8) Whether on the facts of the case the function undertaken by the Vigilance Cell is vitiated or is rendered meaningless?

(9) Whether the Research Officer associated with the Vigilance Cell was not competent to be so associated, and whether the opinion given by the Research Officer is unsustainable due to lack of competence or being unsustainable on the facts of the case?

(10) What is the effect of petitioner's failure in furnishing requisite information for objective inquiry by the Vigilance Cell?

(11) Whether the petitioner has proved his claim as belonging to "Halba" Scheduled Tribe?

24. At the outset, it is necessary to take a review of the constitution of the Scrutiny Committee and its procedure which was initially a creation of executive decision, which was ultimately shaped by judicial dictum rendered in the case of Madhuri Patil's case (supra), which has been later on translated into statutory provisions.

In present case any controversy about the constitution of the Committee is raised.

This Court, therefore, proceeds to analyse the procedure to be followed by the Committee which is prescribed in Rule 11 and 12 of the Rules. Various stages and provisions are identified and carved out as in following paras:

25. Stage:

(1) The candidate has to make an application in Form "E", accompanied by various documents and affidavit in Form "F". [Rule 11(1) and 11(2)]

(2) Procedure to be followed by Scrutiny Committee to verify the documents received along with application for verification and register the application; [Rule 12(1)].

(3) If Scrutiny Committee is not satisfied with the documentary evidence produced by the claimant, it shall refer the matter to the Vigilance Cell, [Rule 12(2)].

(4) Inquiry by Vigilance Cell shall include:

(a) visit the place of residence;

(b) visit the original place from which the applicant hails and usually resides; and in case of migration to the town, city or place from which he originally hailed.;

(c) collecting all facts about social status so claimed. [Rule 12(4)].

(d) examine parents for the purpose of verification of the tribe of the applicant;

(e) furnish its report to the Scrutiny Committee. [Rule 12(6)].

(5) The Scrutiny Committee shall thereafter scrutinise the report and if the report is favourable and if the Scrutiny committee is satisfied that the claim of

applicant is genuine and true, it may issue validity certificate. [Rule 12(6)].

(6) If not satisfied, shall issue show cause notice to the applicant and serve copy of report of the Vigilance Officer by registered post and through Head of the Department etc. allowing 15 days time for reply from the date of receipt of notice and not to allow more than 30 days time. [Rule 12(8)].

(7) Giving personal hearing and if satisfied issue the certificate if not, order cancellation. [Rule 12(9)(a)].

26. Procedure & Rules of Evidence:

Sections 8 and 9 of the Act are crucial as those prescribe the powers of Scrutiny Committee, procedure to be followed and rules as to proof of facts. These sections should be better referred by quotation as below:

Section. 8 : Burden of Proof. - Where an application is made to the Competent Authority u/s 3 for the issue of a Caste Certificate in respect of Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category and in any inquiry conducted by the Competent Authority and Scrutiny Committee or the Appellate Authority under this Act or any trial of offense under this Act, the burden of proving that the person belonged to such Caste, Tribe or class shall be on such claimant applicant.

(emphasis supplied)

Section 9. Civil Court powers to Competent Authority, Appellate Authority and Scrutiny Committee.--The Competent Authority, the Appellate Authority and the Scrutiny committee shall, while holding an inquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or office; and
- (e) issuing Commissions for the examination of witnesses or documents.

27. This Court while dealing with Writ petition which is referred to in the decision of the Committee namely, Writ Petition Nos. 904 and 907 both of 2007 discussed and reiterated the scheme, took a resume of the scheme, burden of proof and the aspect of cross-examination. However since slightly larger questions have been raised, those are being dealt with hereinafter.

28. In the light of this discussion, it would be convenient first in order to answer

seven general questions formulated in para No. 22 and then to proceed to analyse the facts of the case and thereafter to answer the questions peculiar to the case at hand, in the light of what this Court has narrated above, for which no further and detailed reasoning is required since what this Court has done is extraction of substratum from the provisions of rules. Therefore, these questions are answered as in paras to follow:

29. Question (1) : What steps and stages are to be followed in the process of scrutiny of caste claim:

Answer : The answer is in terms of stages quoted in para 23 (a)(1), (2) and (3) above.

30. Question (2) : What is the procedure to be adopted by the Vigilance Cell and what is the nature of function undertaken by them?

Answer: Through in the discussion hereinbefore, in paragraph 24(1) to (4), this point stands answered.

However, this Court finds that bare perusal of bare text of Sub-rule (3), (4) and (5) of Rule 12 are the complete answer to these questions. For ready reference, these Rules are quoted below:

12(3) The Vigilance Officer shall go to the local place of residence and original place from which the applicant hails and usually resides, or in case of migration, to the town or city or place from which he originally hailed from.

12(4) The Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or the guardian, as the case may be.

12(5) The Vigilance Cell shall also examine the parents or guardian or the applicant for the purpose of verification of their Tribe, of the applicant.

In view of the above any further discussion on this point is not necessary.

31. Question (3) : What is the nature of work which the Research Officer is required to undertake as a Member of or associate to the Vigilance Cell.

AND

Question (4) : Whether the Research Officer is required to record his opinion by way of reasoned order to emerge therefrom the objective analysis?

Answer : (a) In Madhuri Patil's case, Hon"ble Supreme Court has observed as to the functions of the Research Officer. The relevant portion is quoted below:

12. ...

(4) All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, social Welfare/ Tribal

Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

(Quoted from Page 103 of AIR 1995 SC

(b) From the above quotation it shall be clear that the Research officer is to be associated as an expert. He has not been bestowed with any exploratory or investigative role.

(c) He would assess on the basis of information which has been explored with the investigative skills by the Officers of the Vigilance Cell on the basis of information provided in Form "E" and documents and affidavit in Form "F", by the candidate and such information as to Officer of Vigilance Cell are under an obligation to "collect" and based on the training, experience, knowledge and expertise gained by him to "opine" as to his conclusions whether he deems the status of a candidate to be belonging to one claimed by him.

(d) Similarly, no special or separate function than one described in foregoing sub-paras has been entrusted to the Research Officer by any of the rules under the Rules of 2003.

(e) By necessary implication, the association of the Research Officer with vigilance cell is of consultative character. The purpose for which he is associated is due to his knowledge and expertise and not due to the investigative or exploratory ability.

(f) He is, therefore, an expert associated for consideration of material and give his opinion.

(g) This Court finds that due to absence of Rules requiring the Research Officer to render his opinion in a particular form, all that can be concluded is that his opinion has to be eloquent and unambiguous. It could be either in affirmative, or in negative or in the form of "inconclusive". In all the observations either direct or suggestive as recorded in the judgment in case of Madhuri Patil do not even suggest that the opinion should be supported by any analysis and grounds forming basis for such opinion to be recorded.

(h) There is one more rationale seen by this Court as to why the opinion of Research Officer need not be analogues to or in the broader format of a judgment like in a judicial pronouncement. The scheme of Sub-rule (7) of Rule 12 lays down that "in case report of Vigilance Cell is in favour of the applicant, and if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and true, the Scrutiny committee may issue the validity certificate.

This Rule thereby suggests that the opinion of the Vigilance Cell has a value of "opinion" alone, and it does not stand to the test of proof of the fact of status of

a caste or tribe nor is binding on the Scrutiny Committee. It is a matter of exclusive power and jurisdiction of the Scrutiny Committee, to issue the validity if it is satisfied on the basis of record as available supported by report of the Vigilance Cell about "genuineness" and "truthfulness" of the caste claim, and if not satisfied to call upon the candidate to prove his claim. Thus, the nature and function of the Research Officer is consultative and to render "opinion" which does not bind the Scrutiny Committee. He is an "aide" after the process of investigation and exploration by the Vigilance Cell is completed.

(i) This Court considers that construing the functions and the duties of Research Officer some restraints have to be observed and the function of the Research Officer cannot be equated with that of an adjudicator.

This discussion would adequately answer Question Nos. 3 and 4.

32. Question (5) : What procedure the Scrutiny Committee is required to adopt and what is the nature of jurisdiction and functions to be exercised after it received report of Vigilance Cell?

Answer : (a) As it is clear after the stage of Sub-rule (7) of Rule 12 is crossed, the Committee has to serve the copy of report of vigilance cell on the candidate who may then furnish reply or a representation.

(b) The scope of Section 9 therefore, will have to be read through Section 8. Whenever the candidate brings the evidence to prove his claim the power as to and the procedure of receiving such evidence in various modalities shall be as laid down by Section 9.

(c) In view of the vesting of powers to adjudicate on the Committee, the Committee is a quasi judicial forum equipped with powers of Civil Court essentially and an ancillary, as would be available to the Civil Court.

(d) The burden of proof of one's own caste claim on the claimant will have to be construed with the same meaning of the said term "burden of proof as available under the general law - Indian Evidence Act.

(e) Thus, the Scrutiny Committee has to give personal hearing, record satisfaction if the candidate has proved caste/tribe claimed by him by bringing evidence to the satisfaction of the Committee and if genuineness or otherwise of the claim is not proved, invalidate the claim and certificate submitted for scrutiny. Though the rules are silent the scheme of Section 8 and 9 read together renders the Scrutiny Committee a statutory authority equipped with powers available to Civil Court for the purposes of receiving evidence and taking steps essential thereof. The crux and soul of Section 8 is that, "burden of proof that the person belongs to such caste, tribe or class shall be on such claimant/applicant."

(f) This Court, therefore, holds that the Scrutiny Committee, does not have any investigative role. It has to act and function as a quasi judicial forum and adopt necessary procedure to undertake said function. Arguments of the petitioner the

contrary are rejected.

33. Question (6) : What are the obligations and rights of the parties in the event the Scrutiny Committee does not decide to issue validity after receipt of report of the Vigilance Cell and decides to call upon the claimant to prove his claim?

Answer:

(a) The discussion as to jurisdiction of the Committee hereinabove would, in fact, serve as a background for answer to this question.

(b) The primary and ultimate burden of proof is recognized by the statute, the candidate has to bring evidence to prove his claim including proof facts and documentary evidence if any already brought by him or by fresh material, which he considers essential and relevant to prove the fact of caste or tribe claimed by him.

(c) This is the stage where the candidate is made known as to what is the material adverse to him, in view of the report of Vigilance Cell or the fact that committee has indicated that the material brought by the candidate on record is not in the point of view of the Committee "sufficient to prove" petitioner/s caste/tribe claim. He also knows that from whatever has been brought on record, even if in his favour, the committee is not satisfied about fact of petitioner's caste/tribe.

(d) He is, therefore, required to prove his claim to stand to the test of "proof of facts" in general law by legal evidence. It is always open to best judgment of the candidate to assess as to what evidence if brought by him shall help in proving his claim.

(e) If we look at the arguments advanced, it gives an impression that the Committee was required to collect further evidence which would have favoured the claimant. This is not the scheme of the statute or dictum in Madhuri Patil's case.

(f) Thus, the burden of proof and obligation of the candidate is like that on a "party to a suit" who would fail if no evidence was tendered in the litigation if Court regards that said fact was not proved.

34. Question (7) : Is it incumbent on the Committee to summon the members of the Vigilance Cell, either when an application is made or suo motu for cross-examination by the claimant? Answer:

(a) As mentioned earlier this Court has in its judgment rendered earlier in Writ Petition Nos. 904 and 907 both of 2007 already held that in the light of burden of proof, the report of Vigilance Cell simply serves the purpose of an exploratory report.

(b) All that is to be concluded from said report is that the Committee has declined to accept the caste claim may be on account of the reasons expressed

in the report of the Vigilance Cell. Information contained in report is summary of evidence collected and opinion therefrom, i.e. The report itself is not evidence in favour of or contrary to the claim.

(c) The status of Vigilance Cell is that of an Investigation agency, analogous to the Investigation agency/Officer in a criminal case. In the investigation of a crime, the Investigating Officer collects the evidence and is normally examined after recording of evidence of other witnesses is over to prove that he has carried out the investigation and the testimony of Investigation Officer is not substantive evidence of facts in issue or of the relevant facts. Moreover, the testimony of the Officer of Vigilance Cell, conducting the enquiry is not recorded.

(d) The report of Vigilance Cell is analogous to investigation papers or to a report of preliminary enquiry.

(e) If candidate bring legal evidence to prove his caste/tribe claim, there is no occasion for the committee to fall back to the report of Vigilance Cell. If this eventuality arises where the candidate fails to prove fact in issue and for assessment of his evidence the Committee refers to contents of the report of Vigilance Cell is used as evidence against the evidence brought by the candidate.

(f) Third material would not be referred to and relied upon by the Scrutiny Committee until the candidate by his own lapses and failures in bringing legal evidence of the caste/ tribe claimed by him and constrains the Committee to fall back to the report of the Vigilance Cell. In this eventuality also, the report of Vigilance Cell is not a piece of evidence produced by an adversary.

(g) In fact, the report serves the purpose of caveat to the candidate, once the Committee informs the candidate to prove his claim.

(h) Considering this factual and legal aspect of the matter, the concept of cross-examination of officers of vigilance cell is totally strange and alien to the issue as any roots of this right cannot be traced from any principle of law including principles of natural justice.

(i) In view that the examination in chief has not been recorded there is no question of cross-examination particularly in the light of the foregoing discussion. It shall thus be clear that the prayer for cross-examination is based on total misconception, based on a supposition that the Scrutiny Committee is bound or is actually relying upon the report of the Vigilance Cell as "evidence" or proof of facts represented therein to counter the claim made by the candidate.

(j) Therefore, the demand and claim for cross-examination is a bliss of misgivings.

(k) Question No. 7 is thus answered as held in foregoing sub-paras.

35. Having discussed and answered the general questions, now the questions which govern the fate of this case on facts have to be dealt with. This Court has dealt with, in initial paragraphs as to what has revealed from the record of the

Scrutiny Committee and what submissions are made in the petition and at Bar.

It would be convenient to recall the questions and then to appreciate and analyze the facts which is done herein-below:

Questions (8), (9), (10) & (11):

(8) Whether on the facts of the case the function undertaken by the Vigilance Cell is vitiated or is rendered meaningless?

(9) Whether the Research Officer associated with the Vigilance Cell was not competent to be so associated, and whether the opinion given by the Research Officer is unsustainable due to lack of competence or being unsustainable on the facts of the case?

(10) What is the effect of petitioner's failure in furnishing requisite information for objective inquiry by the Vigilance Cell?

(11) Whether the petitioner has proved his claim as belonging to "Halba" Scheduled Tribe?

Answer : (A) In order to deal with these points, it is necessary to take resume of factual aspects commencing from the application for issuance of caste certificate, application for scrutiny in Form "E", and further conduct of the petitioner in the process of scrutiny by Scrutiny Committee. The facts which are emerging, are summarized as follows:

Page 2 of the record of Scrutiny Committee is the application submitted by petitioner six months prior to the date of election for getting caste certificate scrutinized. In this format, he has given following information:

(1) His caste is Halba /Halbi.

(2) His present residential address is "Ganjakhat Chowk, Panchpawali Road, Nagpur";

(3) His father's name as "Ganpat Bajirao Umredkar";

(4) He took admission in the school where caste recorded in the school is "Halba"

(5) He has mentioned in column of religion, the word "Adiwasi" as the religion.

(6) He has given as the place where prior to 1950 residing as "village, Taluqa, Zilla "all Nagpur" in the State of Maharashtra.

(7) He has then submitted the application in prescribed form i.e. Form "E" for giving details to Scrutiny Committee which is at Page 5 which contains the following information:

(8) Column No. 6 the traditional business of the family: "Adatiya/Dalali" (in vernacular) meaning thereby "commission agency";

(9) column No. 7 caste/ tribe claimed by the petitioner to be "Halba /Halbi";

- (10) column (i) 8(a) Mother tongue - Marathi;
- (11) 8(b) Dialect: Marathi;
- (12) 8(c) Deity : Karojibava;
- (13) 9(a) Original place from which the candidate hails : Nagpur;
- (14) Place of residence prior to 1950 : "Nagpur";
- (15) 10(a) Since when residing at present address : and the reason of leaving the place of original since 1962: Reason not given.
- (16) In column No. 16(b) 17 to 19 are left blank;
- (17) In Column No. 20 he has stated that since his parents were illiterate, no record whatsoever relating to school etc. can be produced and he does not know where his father was born.
- (18) Insofar as the evidence relating to the near relatives of petitioner, he states that he has evidence relating to record of his father's uncle and would furnish the same along with evidence after the election is over.
- (19) In the chart relating to information about the family members, he has mentioned in the column NOC relating to place of residence of about all eight relatives namely, father, mother, maternal uncles, paternal sisters, grand mother and grandfather, father's grandfather - as "not known".
- (20) In the affidavit in Form "F" he has mentioned his religion to be "Hindu".
- (21) In the Pedigree stated in the affidavit dated 20-12-2006, which seems to be the accompaniment of the application in the prescribed format which is at page 14 and 15 of the record;
- (22) he has given the pedigree only up to grandfather and any information prior thereto is not furnished.
- (23) He has furnished the School Leaving certificate which is at Page 23 the son of Ganpati Shravan Umredkar, by name, Lahanu Ganpati had left the school and his caste is shown to be recorded "Halba".
- (B) : 2(a): Proceedings and action of Vigilance Cell:
- (a) With the information as available the matter had gone to the Vigilance Cell.
- (b) The Vigilance Cell took the statements of three persons namely :, (1) Kishor Ganpati Umredkar real younger brother of the petitioner; (2). Shivnarayan Khojoji Sadavarte aged 60 years, and (3) Devendra Mahadeo Sarote
- (c) Kishor Umredkar gave information about family background, family traits, conventions etc.
- (d) Shivnarayan Khojoji Sadavarte stated that he was resident of Umred and also

he gave details of family tree of the petitioner giving names of sons and daughters of Bajirao (brother and sister of Ganpatrao, then names of children of Jijabai, the sister of Ganpatrao, Krishna, who was brother of Ganpatrao who was unmarried and had died he has given the reason as to why he knew all this namely, Jijabai was his uncle's wife.

(e) In his statement Devendra Mahadeo Sarote who told that he had purchased the house from Ganpati s/o Bajirao Tedi Umredkar.

(f) The Vigilance Cell report consists of opinion of Research Officer which does not support the petitioner's claim.

(C): Status of record and facts revealing:

(1) At Page 35 of the record, there is a copy of birth register of Bajirao Jago Tedi and his caste is mentioned to be "Koshti".

(2) At Page 36 there is a copy of document called as Jamabandi register, which is issued by Municipal Council where below the name of Bajirao Tedi the name of Devendra Mahadeo Hattimare /Sarote is written.

(3) At Page 39 is a copy of inquiry register of inquiry conducted by City Survey showing the source of title of Devendra Hattimare to be by way of purchase form Bajirao Jago.

(4) At record page no.46 is a copy of "Dakhila Kharij Register" which pertains to Shivnarayan Khojaji and his caste is shown to be "Koshti" and occupation to be "Vinkar" and it is shown that he has left the school in 1952 after passing IV standard examination.

(5) On 2-3-2007, the petitioner's Advocate has furnished his Vakalatnama along with xerox copy of forwarding letter - a common letter in seven cases.

Along with the letter dated 8-3-2007 -(similar or common letter in seven cases), the petitioner's Advocate furnished:

(a) photo copy of affidavit prepared on stamp paper purchased on 21-2-2006, sworn on 23-2-2006 signed as a true copy by Special Executive Officer, District Nagpur; and

(b) compilation of extract of some books etc, giving information and statistics about tribe "Halba".

(6) The petitioner, then submitted written request-cum-objection letter on 17-3-2007 which is at Page 110, whereby demanded three months" time and stated that unless he was communicated extension of time by three months, as prayed by him, he would not be able to furnish his reply.

(6-A) Committee sent to the petitioner telegraphic intimation dated 9-4-2007 with copy by hand delivery.

(7) Mostly, after the petitioner has received telegraphic intimation, his lawyer submitted application dated 23-4-2007 which has a tone of issuing a legal notice to the Presiding Officer of the Scrutiny Committee informing that he was not informed the date of hearing and he would take action against the Committee under the provisions of Advocates' Act, 1961.

(8) On 26-4-2007, petitioner's Advocate furnished application for adjournment on the ground of sickness. The application is again in prototype format, it is at page 119 and accompanied thereto is the medical certificate issued by Dr. Arunkumar Somani, a Paediatrician.

(9) Taking cognizance of this letter dated 26-4-2007, the committee suo motu adjourned the hearing and fixed the case on 14-5-2007.

(10) In order to counter the Vigilance Cell report, the petitioner has filed affidavit of Kishor Umredkar which is filed on 14-5-2007 stating that his statement was not recorded as per his narration.

(11) On 14-5-2007 the petitioner appeared with one Shri Yogesh Gennade, former Corporator and one Digambar Yadavrao Bajirao.

The proceedings recorded on 14-5-2006 are as referred to in para No. 15 and a perusal thereof shall suffice to avoid repetition.

Petitioner prayed for time to bring evidence to rebate the evidence and collected statements recorded by Vigilance Cell and the case was adjourned.

(12) The Scrutiny Committee once again referred the matter to Vigilance Cell for verification of documents furnished by the petitioner about his uncle Waman Yeshwant Umredkar.

(13) Police Vigilance Cell furnished its report on 17-5-2007 which is at Page 135 to 143. The Vigilance Cell had informed that as per the school record pertaining to Waman Yeshwant Umredkar who appeared in first standard in the Municipal School, Nagpur, in the year 1945 and petitioner's caste was recorded as "Koshti". Waman had studied 2nd to 4th standard at Hansapuri Primary School (at present Khadan Prathmik Shala from 14-8-1945 to 9-4-1948 where his caste is recorded as "Koshti". Waman was, then taking education in Dadasaheb Dhanwatey Vidyalaya, Nagpur where his case has been recorded as "Koshti" which has been alleged i.e. 19th July 1995, later on corrected as Halba. The record collected by the Vigilance Cell was furnished before the Committee and it was in turn furnished to the petitioner.

(14) The petitioner has, then, submitted an application dated 30-5-2007 and furnished with it the affidavit of Devendra Hattimare and xerox copies of money receipts showing that the petitioner had applied for certified copies of certain record. He also prayed for annulling the report of Vigilance Cell.

(15) In the affidavit of Devendra Hattimare which is at Page 146 denying that he had purchased house from Ganpati Umredkar. He states that the Police took his

statement by threatening and pressurizing.

(16) The petitioner then submitted application dated 11-5-2007 and has reiterated his prayer for annulling the report of vigilance cell and prayer for observance of principles of natural justice.

(17) It is pertinent to note that the record does not suggest that the petitioner made efforts to represent his case through a lawyer. Even on the last date when the case was taken up for judgment any further extension of time was not prayed for.

(18) In this background, the committee proceeded to consider the case.

37. What this Court finds is that the petitioner approached to the case on the basis of assumptions or hypothesis, viz:

(a) That the certificate which was issued in his favour carried a presumptive value and that it was the Vigilance Cell who was to falsify, and had failed in doing so.

(b) If at all the report of Vigilance Cell was to be relied upon, it has no evidentiary value unless officers were offered for cross-examination. In absence of being tested to the truth including by cross-examination, said report could not be considered at all.

(c) Once the statement recorded by Vigilance cell are disputed by filing a counter affidavit it was sufficient rebuttal.

(d) The petitioner has no duty to prove his tribe claim though the report of the Scrutiny Committee, in this case was unfavourable to him.

(e) The Committee and yet the Committee was bound to give credit to initial certificate which was referred for scrutiny and Vigilance Cell had to disprove it which was not done by the Vigilance Cell.

(f) The Scrutiny Committee had investigative role and ought to have done fact-finding to support the certificate which was referred for scrutiny.

(g) Research officer was not competent.

May be because the petitioner addressed himself on above referred hypothesis, he preferred to adopt the approach while before Scrutiny committee of total non-cooperation and of delaying tactics.

38. If the manner in which the petitioner has avoided the notices and communications from the Committee is seen, namely, the first notice is served on the petitioner's wife ; whereas the second notice was served on the petitioner's Personal Secretary. In none of communications he acknowledges the notices. On one hand, the proceedings before the Scrutiny Committee proceeded and parallel thereto the petitioner started working, however without keeping proper track with Committee. If the dates of service of Vigilance Cell report and

dates on which further notices were sent, and the letters/ communications are received from petitioners' Advocate are seen, it is apparent that the petitioner was tracking the case but observed adherence to non-cooperation.

39. When on 14-5-2007 the petitioner appeared himself with two other persons, did not bring his lawyer with him and lawyer wrote to the committee that it was Committee's duty to send him intimation as if the claimant and his lawyer has no duty towards the Scrutiny Committee indicating back perception of lawyer's role, duty of diligence etc. towards client as well to the Court or Tribunal.

In this background, the Scrutiny Committee had to proceed to decide the case.

40. In view of various challenges and submissions this Court has scrutinised the record and analysed the submissions. What reveals from record is summarised as follows:

- (1) The petitioner's place of origin is all throughout claimed by him to be Nagpur.
- (2) The petitioner has not given his place of residence to prior to 1962, since present address where he or his father have been living since 1962 for treating his abode as a tribal.
- (3) He has shown his mother tongue to be Marathi as well as the dialect.
- (4) His occupation to be "Aditiya/Dalali" (i.e. Commission agency) in his first application.
- (5) He has shown his caste to be Halba/Halbi.
- (6) Then he is sure and states in specific or unambiguous term that he cannot give the place of birth of even one amongst his relatives.
- (7) He suggested that since the elections were suddenly declared, he was not able to give the school record, death, birth record, he would do it in due course; yet he never complied with this undertaking.
- (8) The copy of affidavit placed on record along with Advocate's letter dated 8-3-2007 is a photo copy of affidavit which seems to have been sworn on 23-2-2007 and has not furnished its original.
- (9) In reply to the notice of Vigilance Cell denial is given to two things, namely, statement given by Kishor, i.e. brother of the petitioner and Devendra Hattimare are denied.
- (10) A single word explanation has not come as to what has been recorded as a statement of Shivnarayan Khojoji, who gave all details of family of the petitioner.
- (11) It is pertinent to note that in the statement of Shivnarayan Khojoji which is at Page 31, he gives minutest details of the family of the petitioner. He has given the details of Bajirao Jagoji Umredkar, names of his son Kishan alias Krishnarao who died unmarried, his daughter Jijabai w/o Mahadeo Ramchandra Sadavarte

and the petitioner; Ganpat, name of his wife, names of all children of Ganpat including the sons and daughters and names of children of Jijabai and has also given details of his relations. He has given his place of his deity as "Dhapewada" and has given his mother tongue as Marathi and dialect as Koshtav; occupation as "Vinkari" (weaving). He has mentioned that there is no occupation for Koshtis to which taboo is attached.

(12) The petitioner proceeded with belief that it is sufficient for him to simply deny what was found by the Scrutiny Committee, has failed in bringing any evidence.

(13) He has failed even to deny version of Shiv Narayan and also failed to bring independent evidence to falsify what Shiv Narayan has stated to Vigilance Cell.

(14) It does not reveal as to how Devendra as well as petitioner could deny the Municipal record and inquiry register whereas name of Devendra is recorded and it also reveals the name of the person i.e. Ganpat Umredkar from whom the petitioner has purchased the house.

41. Apart from the hypothesis on which the petitioner has proceeded, as observed by this Court earlier, it was duty of the petitioner u/s 8 of the Act to bring positive evidence to prove his tribe claim. The petitioner however felt to content in denying the evidence which has been collected by Vigilance Cell.

The petitioner has not filed the original of affidavit giving details and he is happy with xerox copy of affidavit. He has given information in the format which corresponds to the contents in Form "E". When the information contained therein matches with the information given by Shivnarayan whose statement is recorded by Vigilance Cell as traits and features of Koshtis, except name and place of Deity.

42. The petitioner then tried to assail the decision of the Committee on the ground that the Committee has narrated without any foundation that the traditional occupation of the Halba Scheduled Tribe is "poha-making". Learned Advocate Mr. Patil took serious objection to this.

43. It is further important to note that the petitioner had placed on record before Committee certain copies of books and, in the midst of hearing before this Court tendered certain extracts of books.

The compilations furnished by the petitioner at the time of hearing consists of all details of Koshtis who are weavers comprising of Halba/Halbis as sub-caste or name of caste as well as details about Halbas in the Tribals. We find that from the said material placed on record by the petitioner the following things further reveal:

(a) The compilation independently gives details of Koshtis as well as Halba, the tribal. It is seen that borrowing the language from the books, the petitioner has tried to give some information; however has not been able to give even a single factual evidence to the fact that petitioner's forefathers belong to "Halba"

Scheduled Tribe.

(b) The term Halba or Halbi when its phonetic synonymy is seen is common amongst the Halba Scheduled Tribes as well as Koshti or weavers community in the non-tribals.

(c) In the Census of India 1989 at Page 201, the details of Koshtis are given in which Halbi is shown as a sub-caste.

(d) In the Census of Provinces and Fiduciaries Vol. XII compiled by B. Robertson, ICS Provincial Superintendent of Census, Weavers, Candours and Diers, are shown as category by occupation and in which at page 156 the those are shown under entry of "Koshti" and "Halbi" as sub-caste.

(e) The petitioners themselves have placed on record copy of report titled "Census of India, 1961 Vol. X Maharashtra State, Part V"-B, Scheduled Tribes in Maharashtra Ethnographic Notes". These notes at Page 249 show etymology word Halba connecting them to "Hal" -Plough. At page 253 it is recorded that many Halbas formerly prepared Poha (beaten rice) for sale. This traditional occupation still continues. It does not refer to Halbas being engaged in weaving. Halbas are distinctly shown as tribals, without any synonymy identity or unity with Koshtis who are not tribals.

(f) In Part-I pertaining to languages in paragraph 132 it is recorded that in all 5929 persons were recorded to be speaking Koshti dialect out of which 4271 were from Chanda District. Halbi and Bastar dialects were specifically referred in paragraph 134 of Part I Languages. Several Halbi dialects have been mentioned in a table and none of these dialects is spoken by more than 150 people. In another chart in paragraph 128 of the report includes Halbi in Hindi language 567 persons from Chandra District were speaking Hindi including Halbi as contrasted with 4271 people speaking Koshti dialect in Chanda District which has been included Marathi as can be gathered from Paragraph 132.

(g) Paragraph 56 in Chapter -III relating to religion in this report show that when survey was conducted in the year 1891 in the erstwhile Central Provinces, there was a forest tribe by name "Halba". The report shows that out of 97913 Halbas, 242 were "animistic" i.e. Professing aboriginal beliefs. Paragraph 200 gives a chart which shows that 13865 Halbas belong to Baster region.

(h) Paragraph 201 records that 18425 were from Bhandara district, 7199 from Chanda district, 47273 from Raipur, 2324 from Nandgaon and 5869 from Kanker. It does not refer to any Halba tribals in Nagpur District.

(i) In this compilation at page 249, beating rice and selling poha are shown to be the business of Halba Scheduled Tribes. Their dialect is shown to be "Bastercha" "Chhatisgadiya" and "Marathiya"

(j) Paragraph 233 of the report refers to castes professing "weaving" as their profession. It is stated that about 7,50,981 persons belonging to various castes

reported "weaving" as profession. They included Gandas and Pankas of Chhatisgarh region and Koshtis of Maratha country and Koshtas in Hindi district like Raipur. Paragraph 234 shows that there were 1,37,891 Koshtis spread in several districts including 44,825 in Nagpur district.

(k) Paragraph 234 mentions Koshti as a caste by whom weaving is generally carried on as a profession. This reference to "Koshti" is not to weaving as profession, but to a caste. The caste Koshti has sub-castes like Devangan, Gadhavi, Lad Salewar and Halbi. Halbi sub-caste had 25262 persons. It was largest sub-caste amongst Koshtis. Koshtis are shown having sub-caste Halbi had predominant presence in Nagpur district as contrasted with Halbi, Scheduled Tribe whose presence in Nagpur district is not at all mentioned.

44. Though much fury was made on the point of "lack of competence" of the Research officer, a discreet scrutiny of the record reveals that all that the petitioner has done is merely to raise the challenge of competence. Beyond this, no further steps are taken. In the Advocate's letter submitted on 26-5-2006, he has stated that the Research Officer (Mr. Sawarkar) lacks competence. This too is written in the form of a post-script. In the oral submissions also, it has been urged that the Research Officer has to be a competent person in terms of the directives given by the Honourable Supreme Court in the case of Madhuri Patil (supra) as well as subsequent Government directives. Lack of competence is stated in the style of an adjective since the ground, on facts as to why Mr. Sawarkar is not competent, for example, that he is not educated and qualified, that he does not have experience, that he is not duly appointed or that he is otherwise disabled, have not been narrated. Lack of authority, eligibility, competence or qualification are the allegations based on objective facts on the basis of which such lack of competence used to be demonstrated. The bare allegation that Research Officer is not competent in absence of narration of facts as to why he is not competent, turns out to be a pleading devoid of material particulars. In absence of such particulars, it would be impossible for the party opponent to meet the allegations and it would be equally impossible for the Court to record its finding on the issue so raised.

45. From the foregoing observations made by this Court, conclusions lien are irresistible are, namely:

(a) The Questions 8 to 11 are liable to be answered stating that the functions and procedure undertaken by the Vigilance Cell is not vitiated nor has procedure adopted by the Scrutiny Committee has undergone any factor vitiating the inquiry.

(b) No error is proved to have been committed by the Research Officer while he gave his opinion without detailed reasons, particularly when, on facts, the petitioner gave such information which has a common factor of "no knowledge", the duty of Research officer to render his expert opinion was narrowed down and his opinion cannot be branded as erroneous, illegal etc.

(c) Due to the fact that the petitioner did not furnish adequate information in application in Form "E", did not furnish details of residence prior to migration to Nagpur, he has led the Vigilance Cell to proceed to investigate without any clue, and the Officers had, therefore, to fall back to their investigative skills and collect the evidence in terms of direction No. 4 given in Madhuri Patil 's case. The petitioner, therefore, has to blame himself for having deprived the vigilance cell of his cooperation and meaningful participation in the process of the inquiry and collection of evidence by the Vigilance Cell, petitioner has maintained silence as if under a protective right of non-disclosure, till he furnished xerox copy of his affidavit on 7-3-2007 i.e. after the Vigilance Cell had completed the enquiry and furnished the report.

(d) The result of perusal of record, analysis and contentions and submissions, this Court finds that the petitioner has failed to prove his claim that he belongs to "Halba" Scheduled Tribe. This Court also finds that on the basis of contents of petitioner's application for issue of caste certificate, the application submitted by him in Form "E" for scrutiny to the Vigilance Cell, that on the date when the petitioner made application he knew that he does not have in his possession any evidence to show that he belongs to "Halba" Scheduled Tribe as well he did not have even the basic information and knowledge much less evidence to support his claim that he belongs to "Halba" Scheduled Tribe.

(e) The conclusions drawn by the Scrutiny Committee that he made the said claim knowing fully well that his claim was untrue constraining the Committee to direct his prosecution also, therefore, cannot be branded as based on no material on record or on imagination.

(f) In the result, the entire decision of the Committee is found to be based on the material which the petitioner had produced and this Court finds that there are absolutely no grounds whatsoever for interference.

46. In the result, the petition is liable to be dismissed and the same is dismissed. Rule discharged with costs.