

(2014) 02 BOM CK 0049

In the Bombay High Court

Case No : W.P. Nos. 3896, 7343 of 2013 and 11472 of 2012

Madhuri Nitin Jadhav

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 341, 342, 366(24)
Evidence Act, 1872 — Section 114

Citation : (2014) 3 ABR 414 : (2015) 2 ALLMR 200 : (2014) 4 BomCR 753 :
(2014) 3 MhLj 900

Hon'ble Judges : Anoop V. Mohta, J;A.A. Sayed, J

Bench : Division Bench

Advocate : R.K. Mendadkar, Ms. Helen Koli-Mandlik in W.P. Nos. 7343 of 2013 and 11472 of 2012, A.S. Golegaonkar, V.A. Sugdare and Mahesh Deshmukh in W.P. No. 3896 of 2013, Advocate for the Appellant; G.S. Hegde for Respondent No. 3 in W.P. No. 11472 of 2012, V.A. Gangal, Special Counsel, A.B. Vagyani, Additional Government Pleader and A.I. Patel, AGP for State, Advocate for the Respondent

Judgement

Anoop V. Mohta, J.—Rule, returnable forthwith. Learned counsel appearing for the respective respondents waive service. Heard finally, by consent of the parties. All these Petitions revolve around the issues relating to and connected to validation of castes certificates belonging to "Thakar"/"Thakur" or "Ka Thakur", "Ka Thakar", "Ma Thakur", "Ma Thakar" Scheduled Tribe (ST) (for short "the Thakur tribes") of the State of Maharashtra. By this common judgment, we are dealing with basically the issues of "the Constitutional area restriction removal", "affinity test", "relations certificates" and its effect on assessing the evidence/documents and the merits of the matter while granting/rejecting/validating the caste certificate.

2. Each case has to be considered on its own merits, as the relevant oral, as well as, documentary evidence are required to be dealt with independently, while deciding the case on its merits. However, the above concepts go to the root of

the impugned orders passed by the Scrutiny Committee under 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 (Maharashtra Act No. XXIII of 2001) (for short, the Act) w.e.f. 18 October, 2001 and the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short, "the Rules"), w.e.f. 4 June, 2003.

3. The scope, purpose and scheme of the Act and the Rules thereunder have been elaborated and discussed in many judgments including *Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others*, and *Shilpa Vishnu Thakur Vs. State of Maharashtra and Others*, . There is no dispute that even prior to the enactment of State Law/Rules, the respondent-State and its Authority/officers used to grant/reject/validate the respective caste certificates principally based upon the Judgments of Supreme Court *Kumari Madhuri Patila* and another *Vs. Addl. Commissioner, Tribal Development and others*, and High Courts. Earlier there was no such statutory provisions, however the caste certificates so issued after validation, have been recognized and accepted for all the purposes. All the concerned have been acting upon those caste certificates till this date. It is only after the Act and the Rules made thereunder, a procedure and practice notified, which required to be followed by all.

4. It is in the interest of applicant/candidate/person who wants to claim the benefits of reservation as declared in The Constitution of India, including The Constitution (Scheduled Tribes) Order, 1950, (for short, "first Presidential Order"), the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, (for short, "Modified Order, 1956"). The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (for short, "the Act of 1976") and The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 dated 8 January 2003. It is also in the interest of other people at large, as no one who claims such reservation or benefits, though they are not deserving and/or entitled, granted such status/benefits.

5. The caste certificate and/or the validation of caste means and covers all the Constitutional benefits/reservation provided to the concerned tribe/caste. Such certificates therefore are important not only for the claimant/applicant, but for the future generation to come. The decision and/or the order therefore, for and/or against claimant/applicant, passed by the Scrutiny Committee in such matters, based upon the material available on record, therefore, need judicious, fair and unbiased and/or unprejudiced approach/inquiry on the foundation of fair and reasonable opportunity as contemplated within the ambit of principles of natural justice.

The Constitutional Area Restriction-Removal Orders:--

6. On 6 September, 1950, in view of the provisions of Article 342 of the Constitution of India, the first Presidential Order was promulgated by The

President of India notifying the Scheduled Tribes for the Bombay State, at the relevant time. As per the list, "Thakur" was listed at Serial No. 21. Therefore, for a whole Bombay State, the "Thakur" were recognized as Scheduled Tribes (ST). There was no area restriction imposed by the Parliament in the first Presidential Order. On 29 October, 1956, the area restriction was imposed for the first time by the Act of Parliament (Modified Order, 1956) for 25 Tahsils of 5 Districts, for the tribe. However, again on 20 September, 1976, by Act of 1976, the Parliament amended earlier list of Scheduled Tribes and thereby brought back the position existing prior to 29 October, 1956 and removed the area restriction so far as the entry of "Thakur" is concerned. The entry is at Serial No. 44. This means, the Parliament has, with the object to achieve, removed/reorganized the area restriction for "Thakur" Scheduled Tribes, for the bifurcated or reconstituted State of Maharashtra.

7. The Bombay Reorganisation Act, 1960, w.e.f. 1 May, 1960, reorganised the State of Gujarat and the State of Maharashtra, thereby rearranged certain territories of the State of Bombay. A new Bombay State was formed by the States Reorganisation Act, 1956. This had affected the Thakur tribe, the other caste/tribe status/benefits. The First Schedule to the Constitution was also amended for Part-A, Part-B and Part-C.

8. The effect of area restriction and/or exclusion and/or inclusion of Scheduled Tribes/Caste in the respective orders in view of Articles 341/342 and 366(24) of the Constitution of India has been considered by the Apex Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, , State of Maharashtra Vs. Milind and Others, and R. Unnikrishnan and Another Vs. V.K. Mahanudevan and Others, thereby specifically declared that neither the State Government nor the Court can inquire into and/or let in evidence about correctness of any entry of SC/ST in the Constitutional Orders. It has to be implemented until amended by the Parliament. Therefore, no one can interfere with the declaration so given and/or the reservation/benefits so extended within the area and/or outside the area, but subject to respective boundaries of the States. The effect is, therefore, once the benefits are declared, it has to be provided/given to the concerned people of Scheduled Tribes/castes/community provided the caste claims must be a genuine and bona fide.

9. The decision of the Supreme Court in Palghat (supra) has been referred and relied in many judgments of this Court while validating the caste certificate relating to "Thakur" (ST) in question, based upon the facts and circumstances of each case on merits. The learned counsel appearing for the parties have cited various judgments for and/or against the tribe claim. We are not dealing with those judgments as those are based on the facts of each case. The issue of Constitutional area restriction removal, is crystallized specifically in view of a recent judgment of the Supreme Court in R. Unnikrishnan (supra), the principles of Palghat (supra) has been reiterated and granted the protection to similarly situated persons/people by observing as under:--

24. This Court reviewed the legal position and declared that Thandan community having been listed in the Scheduled Caste order as it then stood, it was not open to the State Government or even to this Court to embark upon an enquiry to determine whether a section of Ezhuva/Thiyya which was called Thandan in the Malabar area of the State was excluded from the benefits of the Scheduled Caste order....Once Thandans throughout the State are entitled to be treated as a Scheduled Caste by reason of the Scheduled Castes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in the 1987 order.

25The distinction which the State Government sought to make between Ezhuva/Thiyyas known as Thandans like the respondent on one hand and Thandans who fell in the scheduled caste category, on the other, thus stood abolished by reason of the above pronouncement.....

10. Even in *Milind* (supra) the Supreme Court (Constitution Bench) has declared and confirmed that the entries in Presidential orders must be read as it is. The Central Government has also accepted the position by issuing the Circulars in this regard and lastly dated 6 November, 2013, whereby they have declared the status of "Thakur" Community in Maharashtra State in following words:

The area restrictions of "Thakur or Thakar including Ka Thakur, Ka Thakar, Ma Thakur, Ma thakar" communities enlisted as Scheduled Tribes in the then State of Bombay was removed, vide the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The "Thakur, Thakar, Ka thakur, Ka Thakar, Ma Thakur, Ma Thakar" communities is listed at Entry No. 44 in list of the Scheduled Tribes of Maharashtra State.

In terms of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the persons belonging to "Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar" Scheduled Tribe Communities are entitled to avail the benefits meant for Scheduled Tribes in the Constitution, throughout the State of Maharashtra.

The Ministry of Tribal Affairs is the nodal Ministry for notification of a community as Scheduled Tribe under Article 342 of the Constitution. The responsibility for issuance and verification of Scheduled Tribes certificates/social status rests with the concerned State Government/UT Administration.

11. It is clear that the President can specify caste, races or tribes or part thereof, in relation not only to the entire State, but also in relation to parts of the State where such specification is necessary, based upon the material available with them. The education and/or social backwardness in this regard of the caste/races/tribes may differ from area to area even within the State, but once the declaration is made to extend the benefits or declaring a community which falls within the ambit of Scheduled Tribe and/or Scheduled Castes, unless excluded and/or included caste/tribe wise and/or area wise, it binds everyone concerned. Once such declaration is made, the people of concerned Scheduled Tribe and/or

Caste are entitled for the benefits so announced Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others, . Even after reconstruction of the States/ bifurcation, such persons/people of particular tribe are entitled for the recognition at least in the State where such caste is recognized as Scheduled Tribe and/or caste by the Orders. Even the State is not empowered or have any legislative competence to alter the same and/or deny the benefits. Normally, the Court cannot include and/or exclude the social status of particular tribe/caste so also cannot take away benefits once announced.

12. However, this, in no way, be treated as final and binding so far as the correctness of the caste certificate. The enquiry needs to be made as to whether the caste certificate has rightly been issued or not.

13. From the above, it is clear that no authority can after 20 September, 1976, inquire and/or ask for an evidence that the "Thakur" Scheduled Tribe falls within the restricted or outside area in the State of Maharashtra. There is no reason to insist for the inquiry and/or information and/or evidence from the claimant/ applicant to bring on record the documents and/or material of the particular area/ region within the State.

14. It is also clear that all people of Thakur community/tribes belong to State of Bombay were part of first Presidential Order since 6 September, 1950 upto 28 October, 1956. The Bombay State at that time was inclusive of some part of Gujarat and/or Madhya Pradesh. From 2 September, 1976, till this date, most of the areas are part of Maharashtra, after the States reconstitution/bifurcation. The district-region-wise reservation was made after modified order, 1956. Therefore, claimants/persons belong to Thakur/tribes/community just cannot be denied their status for want of documents only of restricted districts as per modified order, 1956. The documents/materials of Bombay State and documents and material of whole State of Maharashtra after 1977 are also important to claim the Thakur tribes benefits. It is also relevant to note that the change and/or recognition from Thakur tribes for the State of Bombay was restricted for the respective districts after modified order, 1956. The said restriction was continued about 20 years as recorded above, but once the Region/district restrictions are removed, the insistence of the documents only from the restricted area by overlooking first Presidential Order, just cannot be permitted. By the Act of 1976, the Thakur tribe, if recognized for whole State of Maharashtra, the documents from the restricted area/districts cannot be the only source for deciding the Thakur/scheduled tribes claims/benefits. The endeavor must be to check and verify the supporting documents of the Thakur tribes of any part of Maharashtra/ Bombay State and as per the first Presidential Order.

15. There is no question of further inquiry by any Authority to challenge and/or test the benefits required to be given to the "Thakur" ST Community, if they reside and/or hail from any part of the State of Maharashtra. The status of "Thakur" ST community in whole State of Maharashtra is equal for all and so also the benefits and reservation.

16. As migrants belong to Scheduled Tribes/resident of the year 1950 in the area, that excludes and/or constitutes the State of Maharashtra and would be entitled to benefits of reservation as ST in the State of Maharashtra. Their legal representation/prayers cannot be denied the same status and benefits. The status/privilege conferred by the Constitution first time in the year 1950, not only because of the birth of father or forefather, but because of socio-economic conditions of the tribe/caste.

17. The Act 108 of 1976 has no retrospective effect. The benefits restricted or expanded also cannot be taken away by overlooking the documents/evidence of any area of Maharashtra. The Full Bench Judgment Kum Shweta Santalal Lal Vs. The State of Maharashtra and Others, was not considered in the recent judgments listed by the State of Maharashtra.

18. The Judgments cited and referred by the learned senior counsel appearing for the State of Maharashtra though based on facts, nowhere taken a contrary view with the position that a tribal belonging to the "Thakur" ST, irrespective of his residence/place is entitled to get his claim validated, if he satisfies all other tests. Therefore, there cannot be any dispute with regard to the proposition as canvassed by both the parties that every person/applicant must discharge their basic burden to prove the claim. The Scrutiny Committee/Vigilance Cell/Research Officer required to consider the case in accordance with law and rules so prescribed. There cannot be any straight jacket formula which announced and followed by all the concerned. Anand (supra). In view of this the Scrutiny Committee bound to make inquiry into the factum including the applicants/claimants and/or their forefathers' original existence and/or place of residence, but this also means to take into consideration unrestricted area/region upto 29 October, 1956 and after 20 September, 1976. The period during which the area restrictions were declared, may be one of the factors, the Scrutiny Committee was bound to consider the oral, as well as, the written evidence/documents to grant and/or reject and/or invalidate the caste certificate of "Thakur Tribes". The decision and/or insistence to place documents, as well as, the evidence only of the restricted area, in our view, cannot be the reason to overlook all other documents and/or material pertaining to the whole State of Maharashtra/State of Bombay, if required.

19. Apart from the broad parameters so announced and declared and as referred by and in the Judgments, the fact whether the claimant/applicant is tribal or not, the requisite test, considering the basic factors like Primitive Traits, Distinct Culture, Geographical Isolation, Distinct dialect, Animism, Clean systems, Shyness of nature, Backwardness in view of the rites of passage, life cycle events, healing rites, construction rituals and agriculture and hunting rituals, also required to be considered, but this does not also mean that in cases where, for various reasons, the applicants family or forefathers left the original areas and shifted to other parts of the State of Maharashtra are not entitled for the benefits of Scheduled Tribes. This, in our view, is impermissible approach as it denies

their constitutional rights.

20. There cannot be any dispute in view of the Judgments so referred by the parties with the inquiry that the applicants are from Tribal Community and for that they have to prove/establish the affinity to his original Dattu Thakur Vs. The State of Maharashtra and Others, . This itself means that no other "Thakur" belonging to the higher class like, Kshatriya, Bhat, Bramhabhat, Rajput are entitled to claim these benefits automatically. But, at the same stroke, the genuine cases of the applicants/people from the "Thakur" Scheduled Tribe Community, cannot be deprived of their rights merely because they failed to produce documents of the restricted area and/or evidence in support of their case, as done in most of the cases we have heard finally.

21. The person and their family who have left their original area long back and living in some other parts of the State of Maharashtra and not following the tribe's culture because of generation gap, they do not lose their rights to claim the tribe certificates in accordance with law. The person's present residence is not the sole criteria. The affinity of the candidates/applicants with a tribe community is one of the relevant factors, but not only element to grant and/or validate the caste claim. All these issues are interlinked and interconnected.

22. The claimants only in case of doubt and/or vagueness are asked to satisfy the basic elements of traits, characteristics, customs, rites, for connecting and/or for association of affinity to Thakur Scheduled Tribe and not otherwise. Shilpa (supra) and Pandurang Rangnath Chavan Vs. The State of Maharashtra and others, .

23. The oral, as well as, the documentary evidence are the requirement of law. Those evidence cannot be overlooked by the Scrutiny Committee and/or by the Vigilance Cell and/or their Officers in view of the clear constitutional provisions, so referred above. There is no reason and/or justification and/or any restriction made out and/or pointed out by the respondent-State of Maharashtra, apart from the provisions of Act and Rules made thereunder. There are no restrictions and/or any clauses which prohibit and/or disentitle the claimant and/or applicant to file the supporting oral, as well as, the documentary evidence of area other than the restricted one. The Scrutiny Committee may accept or reject the contents of the documents and/or supporting evidence, but cannot throw away merely because document is not from the area and/or restricted area in question. The "Thakurs" of above restricted area (25 Tahasils and 5 Districts) cannot be treated differently than the Thakur Scheduled Tribes of other parts of State of Maharashtra, for any other purposes. All are equals, once the restrictions are removed. The Committee insists that the petitioner should prove that his/her forefathers belonged to the 5 Districts mentioned in Presidential Order of 1956, which approach is erroneous after the 1976 enactment removing the 5 Districts etc. i.e. area restriction or area affinity is removed.

24. No one can, including the Court and/or Authorities under the Act, take away

the benefits by invalidating the cases, merely for want of documents from the erstwhile restricted area. *Dinesh Ramesh Thakur Vs. The State of Maharashtra and The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar, .*

25. The aspect of area restrictions and/or removal of restriction and the effect of Constitutional orders in and/or out particular caste/Tribe and its binding effects reported in *Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, .* Further discussed and considered in *Palghat (supra)* and in *Milind (supra)* (Constitution Bench) and now, in *Unnikrishnan (supra)*. Therefore a person/Community/claimant from "Thakur" Scheduled Tribe having resident/origin in State of Bombay, if migrated and shifted in any part of Maharashtra is entitled to carry with him/her the Constitutional benefit privileges. Therefore, the caste certificate and its verification are important, so also the inquiry and the decision at both stages as the applicant/claimant is also entitled to bring oral, as well as, the documentary material from his original traits and Tribe irrespective of region/restriction in support of his claim. He may not get the same caste benefits because of missing entry of particular Tribe and caste in other State, still his caste/Tribe remains the same, as its original. The person, therefore, if able to produce certificate and/or material to establish that his/her father or grandfather though now residing another part of State of Maharashtra and/or earlier residing and/or origins of State of Maharashtra, even prior to 10 August, 1950 upto modified order, 1956, the Scrutiny Committee has to consider the same before rejecting and/or granting the Caste/Tribe claims. Such person cannot cease to be a SC and/or ST and/or become a member of forward Caste automatically. Such applicant/claimant entitled to Scheduled Tribe status of his origins in which, his community is specified as Scheduled Tribes as per the Constitutional orders. It is also settled that the person does not cease to belong to his Caste by migrating to a better and more social-free and liberal atmosphere and cannot be treated to be a member of a forward Caste. The State Government and/or its Scrutiny Committee and/or Officers cannot go beyond the clear Constitutional provisions and the Supreme Court decisions referred above. It binds all.

26. The Division Bench of this Court in *Smt. Sangita Sahebrao Bhalerao vs. State of Maharashtra and Ors.* in Writ Petition No. 6744 of 2011, by judgment dated 12 December, 2013, setting aside the order of invalidating the claim of one of such applicant, belongs to "Thakur" Scheduled Tribe as the Scrutiny Committee failed to note the other evidence placed on record, though unable to place any material of the restricted area, by relying upon the *Palghat (supra)* and allowed the Petition by further observing that the claim cannot be rejected solely on the ground that the affinity test was not established. Similar reliefs have been granted in *Pawan Ramkrishna Deore vs. State of Maharashtra* in Writ Petition No. 6176 of 2012 by judgment dated 5 July, 2013, relying on *Anand (supra)*. The Judgment cited by the learned counsel appearing for the respondents whereby, on merits, as the applicant/claimant failed to prove the case, therefore, the order

of the Scrutiny Committee invalidating the caste claim were upheld. The concurrent findings so given and if no case is made out, even the Supreme Court refused to entertain and/or grant the benefits. There is no dispute with regard to this proposition of law as individual cases are required to be dealt with by the authorities, as well as, by the Court to grant and/or to refuse the respective caste certificates. It all depends upon the facts and circumstances of each case.

Affinity Test-Additional Factor:--

27. The issue of affinity test is also now further elaborated by the Apex Court in Anand (supra) in the following words:

18. In the light of the aforesaid observations, the State of Maharashtra enacted 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"). The Act made statutory provisions for verification and scrutiny of caste claims by the Competent Authority and subsequently by the Caste Scrutiny Committee. In exercise of its rule making power under the Act, the State notified the Rules laying down a complete procedure for obtaining and verification of Scheduled Tribes Certificate. Therefore, insofar as the State of Maharashtra is concerned, the verification and grant and/or rejection of Scheduled Tribe Certificate by the Caste Scrutiny Committee has to be as per the procedure prescribed in the Rules.

20. The Rules further stipulate that the Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or guardians, as the case may be. He is also required to examine the parents or the guardians of the applicant for the purpose of verification of their tribe. It is evident that the scope of enquiry by the Vigilance Officer is broad-based and is not confined only to the verification of documents filed by the applicant with the application or the disclosures made therein. Obviously, the enquiry, supposed to be conducted by the Vigilance Officer, would include the affinity test of the applicant to a particular tribe to which he claims to belong. In other words, an enquiry into the kinship and affinity of the applicant to a particular Scheduled Tribe is not alien to the scheme of the Act and the Rules. In fact, it is relevant and germane to the determination of social status of an applicant.

22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

23. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim.

25. From the documents produced by the appellant, it appears that his near paternal relatives had been regarded as belonging to the "Halbi" Scheduled Tribe. The Vigilance Officer's report does not indicate that the documents produced by the appellant in support of his claim are false. It merely refers to the comments made by the Head Master with reference to the school records of appellant's father's maternal brother and his aunt, which had been alleged to be tampered with, to change the entry from Koshti Halba to Halba and nothing more. Neither the Head Master was examined, nor any further enquiry was conducted to verify the veracity of the Head Master's statement. It is of some importance to note at this juncture that in similar cases, involving the appellant's first cousin and his paternal uncle, the High Court, while observing

non-application of mind by the Caste Scrutiny Committee, had decided a similar claim in their favour.

28. The requirement of affinity test in view of above, therefore, cannot be overlooked by any one. But it is also clear that it cannot be the sole criteria to reject and/or to grant certificate in every matter. If the case is made out, even the affinity test, though there are no supporting documents, and or vice-versa may be taken into consideration by the Committee while passing the reasoned order.

The Approach Needs to be Changed:--

29. The basic burden is upon the applicant/claimant, but at the same stroke, the Scrutiny Committee is also required to evaluate and/or review the material documents as it is a question of Scheduled Tribe for generation. Therefore, the detailed, unbiased and unprejudiced inquiry, information and reasoned decisions are required. Even the result/report of Vigilance Committee for the affinity test may be required to be revisited, if the case is made out in accordance with law. There is no total bar. The facts and the law need to be tested by all on the touchstone of judicious mind and the judicial power, considering the principle of eco-social justice.

30. Due to passage of time, and for various reasons, it is not possible for every one to bring on record the documents and/or supporting the oral, as well as, the material and/or to pass affinity test by answering the questions referring to trait, tradition and culture. The balance needs to be struck by all the concerned. The non-availability of old documents and even if the documents are available, are of not belonging to the region or area, just cannot be the reason to deny the certificate/claim. Every concerned person, started to collect the information and/or insisted for such documents only after 1950, when the Parliament has decided to extend the protection benefits to all the Scheduled Tribes. The restriction though put in modified order, 1956, which remained for 20 years, again created the embargo to claim such benefits as it was only for restricted area. After the Act of 1976, the Community/people again started collecting and/or preparing the record for their purposes to claim their benefits. The old documents or oral evidence of forefathers or father and/or older people of community, may or may not be available, therefore, the Scrutiny Committee required, to consider oral, as well as, the written documents and/or evidence of every part of the State of Maharashtra and in the given case of old State of Bombay.

31. The new generation and/or generation to come, therefore, have no choice but to search and/or to collect the information from the various sources including internet and related books etc. This approach of study and collection of the details of traits and culture of the Tribes, bound to follow. All may not be in position to answer the questions referring to traits, culture and tradition, because various reasons including generation gap and long time migration. The Scrutiny Committee and/or the Vigilance Cell and/or Research Officers are also therefore,

required to inquire and confirm the position by collecting the information and interviews of the applicants/claimants. Those officers based upon their knowledge/experience, may be the expert body in view of their study and research, but the practical part of human life to keep the information and to maintain the trait and culture and/or the rights and/or the customs, in view of the modernization and basically for the new generation, is again the aspect which required to keep in mind while interviewing and/or putting the question before preparing the Vigilance report. The Vigilance or Surveyor Officer, just cannot be the sole authority to play important role to grant and/or to reject the claim of the Person/applicant/claimant in every matter. Those answers also should not be the sole reasons to associate and/or disassociate the claims with particular Tribe and/or Community. Once the trait is established and the requirement is insisted upon and the importance is given to the interview and vigilance report, even the new generation after due research and the particular tribe may or may not be able to answer the questions and would be or would not be in position to interview/test successfully. The Scrutiny Committee, in our view therefore, required to take into consideration the whole facts and the documents. This in no way dilutes the importance of the affinity test as already recorded above. They have to decide the claim of the applicants on merits after due verification and inquiry and after collecting the information, within the power and the jurisdiction.

32. It is also relevant to note that the affinity test or vigilance report is necessary only in case of doubts and/or no material and/or supporting material placed on record. If the valid and genuine supporting material placed on record, the Scrutiny Committee is empowered to grant and/or validate the certificate, after due inquiry. There is no total bar even for this practice and procedure.

The Relatives Caste Certificates/Documents:--

33. Another aspect, which is relevant in view of the submissions so made and raised by the learned counsel appearing for the parties, that the Caste Scrutiny Committee has rejected the claims and/or invalidated the claims, even by overlooking the similar Caste Certificates/documents issued to the claimants/applicants relatives. This issue therefore, is also required to be considered while testing the cases of claimants/applicants specifically when, as by the impugned orders, the Scrutiny Committee invalidated their caste on this ground also.

34. The Apex Court in *Amruta Vijay More vs. State of Maharashtra*, in Civil Appeal No. 7230 of 2011 @ SLP (C) No. (s) 29364 of 2010, by reasoned order dated 23 August, 2011 interfered with the order passed by the High Court, whereby the Caste Scrutiny Committee recorded the findings that the appellant did not belong to the "Thakur" Scheduled Tribe by overlooking the similar certificates of the relatives of the appellant. The Apex Court has read and distinguished even the order of the Hon'ble Supreme Court in *Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Others*, relied by the State of Maharashtra and others supporting the impugned orders and other such Judgments and observed as under:

8. Having considered the submissions made on behalf of the respective parties and also having examined the impugned decision of the Division Bench of the Bombay High Court, we are unable to sustain the same for the following reasons:--

In the present case, it was the Screening Committee of Nasik which had earlier granted caste validity certificates to the appellant's father, paternal uncle, brother and paternal cousins and it would be completely unfair to the appellant if we were to accept the finding of the Screening Committee that despite the above, the appellant did not belong to the Thakur Scheduled Tribe. The decision on which reliance has been placed by learned counsel for the respondents is clearly distinguishable on the ground that in the said case, the father and his uncle were shown to be of "Koshti" caste, which was later recognized as "Halba" and one of the appellant's cousins had been shown to be a member of the "Halba" community. In the said case, a further question arose as to whether "Koshti" would be sub-caste of "Halba" or "Halbee" and whether "Halba" or "Koshti" is a subdivision of "Halba" or "Halbi", as per Entry 19 in the Act having application to Maharashtra. It is in the context of such facts and controversies that the aforesaid decision was rendered. In the instant case, the Caste Screening Committee had clearly found the father, paternal uncle, brother and paternal cousins of the appellant to belong to the Thakur Scheduled Tribe. The subsequent decision of the Screening committee solely on the basis of an Affinity Test, in our view, does not stand scrutiny. The Division Bench of the High Court did not also go into this question, as was expected, but merely dittoed the observations made by the Screening Committee.

(Emphasis added)

35. We have also in *Sanjay Pralhad Pardeshi vs. State of Maharashtra*, Writ Petition No. 6800 of 2013, (2014 (4) Mh.L.J. 101) by order dated 18 February 2014, by referring to the earlier judgments of this Court, granted the relief by observing as under:--

4. In view of no contra material on record, the certificate, in our view, just cannot be overlooked basically when there is no finding of fraud and/or misrepresentation. It is difficult to accept the reason so provided by overlooking the above position, while rejecting the claim of the petitioner and also in view of the Judgment of Division Bench of this Court *Apoorva d/o. Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medical Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences*, . The Division Bench of this Court, (*Anoop V. Mohta and Z.A. Haq, JJ.*) has also taken a view in *Vaishali Chatarsing Ingale (Thakur) Vs. The Committee for Scrutiny and Verification of Tribe Claims, State of Maharashtra and Zilla Parishad*, and noted in paragraph No. 5 as under:--

5.

Where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view of the same facts would not entitle the committee dealing with the subsequent caste claim to reject it.....

The Same view is also taken by another Bench of this Court in *Mayur Vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli and Others*, .

More Reasons:

36. The increase in number of such Caste claim or Petitions, in no way can be the reason not to decide the individual cases in accordance with law. To deny the Caste/Tribe benefits to the deserving candidates/community/Tribe is nothing but injustice to them but, at the same stroke to grant such certificates/benefits to undeserving, is a great injustice to all. The balance needs to be maintained by all. The present place of residence and/or permanent residence is also no decisive factor and/or sole criteria to reject and/or grant the claim. Any claimant from "Thakur" Scheduled Tribe from the State of Maharashtra can apply and/or claim the benefits.

37. All the judgments cited by both the sides are fact based decisions. In some matters, the Apex Court did not interfere with the orders passed by the Scrutiny Committee, as upheld by the High Courts. There are cases read and referred by the parties, where the Apex Court interfered with the findings, as well as, the orders passed by the High Courts and directed to grant certificates and/or remanded the matter for reconsideration. Some basic cases are *Pandurang (supra)* and *Amol Narayan Wakkar and Another Vs. State of Maharashtra and Others*, . The SLP against which were dismissed on 12 July 1999 and 25 August, 2005. Those judgments were not referred and read including the Full Bench Judgment *Shweta (supra)* and Supreme Court Judgment *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others*, , where the High Court in "Thakur" Scheduled Tribe matters, has not interfered on merits for want of supporting material and documents and maintained the order of invalidation. Therefore, those judgments are distinguishable on facts and circumstances itself. Against such orders, also Special Leave Petitions are pending with interim orders, in favour of the claimants, some of the orders are placed on record of the Writ Petitions. Now, in view of recent judgment of the Hon"ble Supreme Court *Unnikrishnan (supra)* again reiterating the law laid down in *Palghat (supra)* and after considering the individual cases, we are inclined to decide the issues by taking note of the similar issues and similar pattern of reasons, so passed in the cases.

38. The Thakurs recognition and/or certificates and/or protection so granted to "Thakur Tribes" prior to modified order, 1956, were never taken away, when regional/district-wise reservation granted/declared. The material evidence/documents of the region may be relevant, but other documents also cannot be overlooked to support the claim of the Tribe. Once the regional restrictions are

removed, to say that the oral as well as the material documents pertaining to other area are irrelevant and/or not to consider the same, in our view, is totally unjust/incorrect approach, specifically when all the parties are bound by the Constitutional orders and the protection so provided to the Scheduled Tribe in question.

39. We have gone through the reasons and the documents in all the matters, as the same were placed for hearing/final disposal. The reasons and the decisions and the conclusions so arrived at, in our view, are relevant and it goes to the root of the matter to decide individual cases on merits, as they have approached wrongly on law, as well as, on the facts and passed stereotype orders by framing the wrong issues itself. We have dealt with those issues separately in this Judgment/Order. The remand/reconsideration on all issues, therefore is desirable approach in spite of granting the reliefs as prayed in these Writ Petitions in which we are intending to pass same orders. The Scrutiny Committee has misdirected itself in law by overlooking the documents and the relative certificates also.

40. The Scrutiny Committee misread the documents and therefore concluded wrongly. All the school records, caste certificates, birth and death certificates of relatives, the oral statements recorded, the relatives certificate, documents may or may not be used for granting or rejecting the claims. The totality of the oral and written documents require judicious decision, not only as experts, but also as judicial mind, considering the constitutional orders.

41. The stereotyped decision on framing wrong issues like restricting only for the Act of 1976 orders itself shows prejudged mind and wrong approach, accordingly and lead to wrong order. There is no question to overlook all the Constitutional orders relating to the "Thakur" tribes. All the issues and the decisions on closed mind on other documents and material itself is unacceptable and that lead to wrong decision on merit of each matter.

42. The Scrutiny Committee must give all opportunities to the affected person. The evidence collected unilaterally by the Vigilance Cell/Authority/Officer, if used against the claimant, all opportunities be given to deal with the same. How the unilaterally collected material be used against the party/claimant, when deciding legal and constitutional rights. The principle of natural justice needs to be followed, in case of no specific rules. The opportunity needs to be given to the person/claimant to rebut the presumption of decision of Scrutiny Committee, if any, especially when against the Scrutiny Committee order, the Writ Petitions are filed, and the Writ Court under Articles 226 and 227, are required to go into the details of the disputed question of fact and documents, though writ jurisdiction and its scope is limited. The decision is required to be considered in Writ Petition like Appellate Authority. The Writ Court needs to examine the case on merits also, including the Vigilance Cell report, which just cannot be overlooked.

43. The Apex Court in *Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others*, observed that:

38. The Act 2000 and the 2003 Rules are based on the directions issued by this Court in Madhuri Patil as the same have been incorporated therein.

39. The correctness of the said judgment in Madhuri Patil was doubted, and the matter was referred to and decided by a larger Bench of this Court in Dayaram vs. Sudhir Batham, wherein, while deciding the various issues involved, including the competence of this Court to legislate in this regard, it was held as under: (Dayaram Case 54, SCC pp. 353-54, paras 35-36)

35. The Scrutiny Committee is not an adjudicating authority like a Court or tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not....

36. Having regard to the scheme for verification formulated by this Court in Madhuri Patil, the Scrutiny Committees carry out verification of caste certificates issued without prior enquiry, as for example, the caste certificates issued by Tehsildars or other officers of the departments of Revenue/Social Welfare/Tribal Welfare, without any enquiry or on the basis of self-affidavits about caste. If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the Scrutiny Committees. Madhuri Patil provides for verification only to avoid false and bogus claims.

(Emphasis added)

Thus, it is evident from the aforesaid judgment in Dayaram, that the purpose of issuing directions in Madhuri Patil was only to examine those cases where caste certificates had been issued without conducting any prior enquiry, on the basis of self-affidavits regarding one's caste alone, and that the said directions were not at all applicable, where a legislation governing or regulating the grant of caste certificates exists, and where caste certificates are issued after due and proper enquiry. The caste certificates issued by holding proper enquiry, in accordance with duly prescribed procedure, would not require any further verification by the Scrutiny Committee.

(Emphasis added)

45. The Scrutiny Committee in ordinary circumstances examined the matter and after investigation through its Vigilance Cell and considering all the documentary evidence on record and after being satisfied, granted the caste verification certificate in 2000. Section 114 Illustration (e) of the Evidence Act provided for the Court to pronounce that the decision taken by the Scrutiny Committee has been done in regular course and the caste certificate has been issued after due verification. Very strong material/evidence is required to rebut the presumption.....

(Emphasis added)

44. The rebuttable presumption and the grounds so raised in all the matters and for above reasons, we are convinced that the case is made out to give opportunity to the petitioners. They have no remedy left, but the challenge the order in Writ Petition only. [U.P. Public Service Commission, Allahabad Vs. Sanjay Kumar Singh, .]

45. One cannot overlook the position of constitutional law that a Scheduled Tribe person, who has migrated from the State of his origin and/or his ordinary place of residence, after the first Presidential Order, can get benefit from the State of his origin and not from the State to which he has migrated. But once, the State of Maharashtra also gives and covers such migrated "Thakur" Scheduled Tribes, the benefits just cannot be denied to such Tribes. The Scrutiny Committees and Vigilance Cell/Officers approach is wrong and unconstitutional. The orders therefore, are illegal and contrary to the law. This approach has not considered and/or even discussed in the Judgments cited by the State against the petitioners, apart from merits, this itself is an additional reason to decide all these matters afresh. [U.P. Public Service Commission Vs. Madhu Rana and Others,].

46. To issue the caste certificate, never intended to mean grant of benefits automatically. The scope of issuance of Caste Certificate and its validation cannot be used and utilized to take away the constitutional benefits provided in view of Scheduled Tribe orders. The certificate cannot be denied if the Tribe falls within the Constitutional Schedules. The benefits may be restricted or taken away by various other means, in view of change of scenario, living conditions of the Tribes/applicant, including following the principle of "Creamy Layer" and/or other such concepts. The applicant belongs to a Tribe/caste cannot be granted a certificate of "open category". The caste/Tribe needs to be respected for all the purposes, even for the future generation. The benefits may be restricted or waived, but only in accordance with law.

Conclusion:

47. All the parties including Authorities are required to follow the provisions of the Act and the Rules made thereunder apart from the principle of natural justice as elaborated and discussed in Anand (supra) and Shilpa (supra).

48. The caste certificates and/or orders validating the caste/tribe, based upon the procedure as followed prior to the Act are also required to be considered by the Authorities, unless case of fraud and/or misrepresentation is made out. Those certificates, therefore, cannot be overlooked while passing the order for or against in the matters relating to the caste/tribe.

49. Oral as well as documentary evidence with regard to the Thakur Scheduled Tribes, based upon the orders before restriction and/or after restriction and/or after removal of restriction are also required to be considered by the Authorities, based upon the origin and/or resident of father and/or forefather of the applicants, at the relevant time of the original Bombay State, the restricted area

and now whole State of Maharashtra.

50. As basic purpose is to give benefits/privileges to the declared Scheduled Tribe/caste in the State and/or in the area as per the existing provisions of the Constitution Orders and also for the reason that merely because claimant/applicant shifted and/or migrated in other part of Maharashtra, he does not cease to be a class and/or Scheduled Tribe and a person belongs to the community. Palghat (supra), Milind (supra) and Unnikrishnan (supra). The Scrutiny Committee therefore required to consider the whole material available on record, oral as well as documentary, judiciously, fairly and with unbiased and unprejudiced mind.

51. The affinity test is very important element. Anand (supra) and Shilpa (supra) and so also Vigilance Cell Report and/or inquiry Dayaram Vs. Sudhir Batham and Others, and Madhuri Patil (supra). But that is not the sole criteria either to grant and/or refuse caste claim/benefits. In a given case, if no documentary evidence is available in any part of the State, the affinity test may be relevant factor. The Scrutiny Committee, if satisfied, based upon the documents placed on record, they can issue the caste certificate and/or validating the caste. In case of doubts and/or dispute, the inquiry, investigation and collection of information is necessary. In such cases, the role of Vigilance Cell Officers and/or Scrutiny Committee is also very important as, if case is made out, the writ Court and/or such other Court may interfere with the finding of facts, if there is perversity and/or illegality and/or breach of principle of natural justice, there is no total bar.

52. The Scrutiny Committee is required to consider the relation certificates issued, on which reliance is placed by the applicant/claimant for the same caste certificate/benefits. It cannot be overlooked and/or denied merely because those were obtained prior to the Act and/or without due inquiry and/or passing the affinity test, unless a case of fraud and/or misrepresentation is made out.

53. There is no scope and power given unless appropriate proceedings initiated to invoke and/or revoke the certificates and/or validation orders passed in favour of the relations, based upon the then provisions available.

54. Therefore, all these elements are necessary to be tested and considered by the Scrutiny Committee before passing any order for and/or against validating the certificate and/or grant of certificates on merits.

55. In respect of Writ Petition No. 7343 of 2013:--

The Scrutiny Committee misread the Judgments, as well as, the provisions of law by overlooking the documentary evidence placed on record by the petitioner in support of her case. The documents against the petitioner were only referred and concluded the issue by observing that the petitioners-applicants failed to prove her Tribal claim.

56. So far as the affinity issue is concerned, in view of above, the Scrutiny Committee needs to consider the provisions of law and the purpose and the

object behind it. The inquiry required to be extended in view of the above observations and so also the opportunity to lead evidence to show the affinity, but it cannot be on a restricted area, as observed by the Scrutiny Committee. The particulars only of the restricted area, just cannot be the foundation to deny the rights in view of the above observations, basically in view of above Constitutional Orders extending the protection of "Thakur" Scheduled Tribe of whole State of Maharashtra.

57. The relation certificates, in view of above observations and the reasons so given, also just cannot be overlooked. The Apex Court, as well as, this Court after considering the facts and circumstances including the Certificates directed the Scrutiny Committee to validate the certificate in question.

58. The Judgments so cited and referred by the Scrutiny Committee/Authority are on the basis of facts and circumstances of each case. In view of above reasons we have given and the reasoned Judgments of the Supreme Court, as well as of this Court, including the Judgments which were not referred and/or discussed in the authorities cited by the Special Counsel for the State of Maharashtra, we see there is no reason to keep all the matters pending. The pendency of such petitions, is not in the interest of anybody. Therefore, as we are clear that in the present case, the Authority has overlooked the above principles, as well as, the provisions, we are inclined to set aside the order with direction to the Authority to reconsider the same as early as possible, preferably within 4 months from today. We are also inclined to grant liberty to the parties to file additional affidavit and/or material in support of the claim. The Scrutiny Committee to pass order, after giving opportunity to all the parties.

59. In respect of Writ Petition No. 11472 of 2012, in this matter also the Scrutiny Committee failed to consider the above principles and proceeded on wrong footing and therefore, we are inclined to quash and set aside the order for the above same reasons, i.e. non-consideration of the documents, affinity test, wrongly overlooking the relation certificates and the Constitutional orders.

60. As Petition No. 3896 of 2013 is also covered on the similar facts, as well as, on the grounds so referred above, therefore, for the same reasons we are inclined to pass the following order.

61. Resultantly, the following order:

ORDER

a) Impugned orders of Scrutiny Committee in Writ Petition No. 7343 of 2013 dated 20 July 2013, in Writ Petition No. 11472 of 2012 dated 4 October, 2012 and in Writ Petition No. 3896 of 2013 dated 13 December, 2012 are quashed and set aside.

b) All the matters are remanded back to the respective Scrutiny Committee, for reconsideration.

- c) The Scrutiny Committee to reconsider every aspect, by giving an opportunity to all the parties, in every matter.
- d) Liberty is granted to the petitioners/parties to apply before the Scrutiny Committee for filing additional evidence, oral as well as, documentary material.
- e) The petitioners/parties to appear before the concerned Scrutiny Committee, on 18 March, 2014. Thereafter, the Committee to fix the date and programme accordingly with endeavor to dispose of the matter as early as possible and within four months from the date of receipt of Judgment/Order.
- f) In case, Scrutiny Committee passes an adverse order against the petitioners/claimants, the same should not be given effect to and/or acted upon for four weeks thereafter from the date of communication of the order.
- g) Rule made absolute in the above terms.
- h) All the parties to co-operate.
- i) There shall be no order as to costs.
- j) The interim protection, if any, granted by this Court in Writ Petition/Civil Application to continue until the decision and four weeks thereafter. No question of claiming any equities.
- k) The parties to act upon the authenticated copy of this Judgment/order.

The learned Special Counsel Mr. V.A. Gangal, appearing for the respondent-State of Maharashtra submitted to stay the effect and operation of this common Judgment. However, considering the fact that we are taken a view based upon the Constitutional provisions and the recent Supreme Court Judgments, as well as, the Judgments passed by this Court and also for the fact that the Petitions are pending since long, there is no reason to stay further the Judgment/Order. Even otherwise, we are remanding the matter for reconsideration and directing the parties to appear before the respective Scrutiny Committee for fresh hearing, no reason to stay the Judgment/Order. The oral prayer, therefore, rejected.