

(2009) 11 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 3088 of 2007

Shailesh Kohad

APPELLANT

Vs

The Scheduled Tribe Caste Certificate Scrutiny Committee,
The Director of Medical Education and Research and The
Dean, Indira Gandhi Medical College

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2
Civil Procedure Code, 1908 (CPC) — Section 15
Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 10(1), 10(2)
Defence of India Act, 1962 — Section 3(2), 40(2)
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 — Section 11(2), 6, 6(1),
7, 8
Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate
Rules, 2003 — Rule 11(2), 12, 12(4), 12(6), 12(9)
Sales Tax Act — Section 17(3)

Citation : (2010) 2 BomCR 853 : (2010) 112 BOMLR 606 : (2010) 1 MhLj 790

Hon'ble Judges : F.M. Reis, J; B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : M.G. Bhangde and R.M. Bhangde, for the Appellant; N.W. Sambre
and Learned A.G.P. for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—The present Writ Petition challenges the order of respondent No. 1 Caste Scrutiny Committee dated 13.04.2007 invalidating caste claim of the petitioner as belonging to Halba Scheduled Tribe. The certificate dated 31.07.1987 issued to him by the Executive Magistrate has been cancelled and confiscated. This Court has granted interim relief in the matter which continues to operate. The Writ Petition was to be heard and decided at the stage of admission along with other connected matters as the challenge relating to

constitution of the Committee is common in all matters. However, at the stage of hearing, because of other distinct points involved in each matter, it was felt appropriate to decide this Writ Petition first.

2. Before proceeding to narrate the facts and in order to avoid prolixity, we find it appropriate to mention the challenges as raised by the petitioner. The first and foremost challenge is to constitution of respondent No. 1 Committee, which has decided the caste claim of the petitioner on the ground that, Smt. V.P. Naik, Research Officer could not have been the Member-Secretary and hence, there was no quorum as required by law. The second contention is about denial of opportunity of cross examination. One Headmaster of a school and relative of petitioner, were sought to be cross examined. The third challenge is to direction to lodge FIR, and the last contention in the alternative is protection to the Degree which the petitioner has obtained in the meanwhile.

3. We have heard Shri M.G. Bhangde, learned Senior Counsel with Shri R.M. Bhangde, learned Counsel for the petitioner, Shri N.W. Sambre, learned Counsel for respondent No. 1 and learned Assistant Government Pleader for respondent Nos. 2 and 3.

4. Learned Senior Counsel has pointed out that the impugned order dated 13.04.2007 is passed by respondent No. 1 Committee through its Members Shri V.S. Patil as Vice Chairman, Smt. V.P. Naik as Member-Secretary and Shri H.N. Gedam, as Member. He points out the provision of Rule 9 of The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 framed under the Maharashtra Scheduled Caste, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category, (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereinafter referred to as "the Maharashtra Act No. 23/2001 Act" for short), to show that three Members out of total 5 Members are required to be present to constitute quorum and those three Members are - Chairman or Vice Chairman, Member Secretary and any other Member. Notification dated 04.06.2003 issued by the Tribal Development Department of respondent No. 2 in exercise of powers u/s 6 of the Maharashtra Act No. 23/2001, is pointed out to show that the Commissioner/Director of Tribal Research and Training Institute, Pune is the Chairman of the Scrutiny Committee at Nagpur. Additional Commissioner for Tribal Development Department at Nagpur is its Vice Chairman and Deputy Director (Research) is Member Secretary. Senior Research Officer and Research Officer are the remaining two Members. Deputy Director (Research) at Nagpur was promoted as Joint Commissioner and hence Commissioner of Tribal Development, Pune on 12.10.2006 directed the said Deputy Director to get himself relieved for joining on the promotional post by handing over his charge to Senior Research Officer working in his office. It is pointed out that the order dated 11.10.2006 referred to therein only promotes said Deputy Commissioner as Joint Commissioner and State Government directed the departmental head to make internal arrangement

to relieve the promotees for immediate execution of the promotion orders. Learned Senior Counsel contends that Senior Research Officer was therefore not appointed as Deputy Director (Research) at any point of time and as a stop gap arrangement the Deputy Director was asked to hand over charge to Senior Research Officer Smt. V.P. Naik. He states that the Senior Research Officer therefore, could not have exercised powers and functions of the Deputy Director (Research), as this was internal arrangement made by the head of the department and not by the State Government. He argues that Smt. Naik was not even indirectly appointed to officiate as Deputy Director by the State Government. In support of his contentions, he has placed reliance upon the judgments reported at AIR 1965 SC 1619 (Ajaib Singh v. Gurbachan Singh) and Girja Shankar Shukla Vs. Sub-Divisional Officer, Harda and Others, . He has also invited our attention to the Division Bench judgment reported at Avinash Tulshiram Limje Vs. State of Maharashtra and Others, , which has upheld constitution of Committee to urge that the orders dated 11.10.2006 and 12.10.2006 and implications thereof were never pointed to the Division Bench of this Court at that juncture. According to him, the Division Bench of this Court therefore, decided the issue on the facts as presented to it and the judgment therefore, does not take correct view of the matter. According to the learned Senior Counsel, as full and correct facts were not brought to the notice of this Court by the State Government and the Scrutiny Committee, the view reached therein cannot be treated as binding precedent.

5. About the denial of opportunity to cross examine by the Scrutiny Committee, our attention is invited to the communication dated 02.01.2006 forwarded by the petitioner to the Member-Secretary, stating that a specific grievance was made therein, that records of persons sent by the Scrutiny Committee were not in relation to relatives of petitioner and the date of birth of his father was also not mentioned therein correctly. A specific allegation that the Scrutiny Committee was misleading was therefore, made and hence further details in that respect were also sought. Communication dated 03.03.2006 sent by the petitioner is also shown to urge that specific request was made to permit the petitioner to cross examine the Headmaster of the school from where record was obtained and also Shri Sanjay Shrawan Kohad, whose statement was recorded behind the back of petitioner. This was repeated on 04.04.2007, but then the Scrutiny Committee did not pass any orders on any of these applications and has dealt directly with those applications in the impugned order. Paragraph No. 10 of the impugned order dated 13.04.2007 is shown to argue that the Scrutiny Committee has denied opportunity of cross examination on the ground that petitioner never remained present with his Advocate to conduct such cross examination. Learned Senior Counsel states that there was no witness summons issued either to Shri Sanjay or then to the Headmaster and hence there was no question of petitioner taking his Advocate for conducting cross examination. Our attention has been invited to the Division Bench judgment of this Court reported at Rajkumar Mulchandani Vs. State of Maharashtra and Others, decided on 19.06.2008 to

urge that such cross examination and opportunity is integral part of principles of natural justice and of procedure to be adopted by the Scrutiny Committee. Judgment of Hon''ble Apex Court reported at Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, and State of Kerala Vs. K.T. Shaduli Yusuff etc., , are pressed into service for this purpose. The provisions of Section 7 of the Maharashtra Act No. 23/2001 with Rule 12 with Sub-rule [9], are relied upon for this purpose. It is further stated that uncle Dr. Ramesh of petitioner was given validity and that aspect has not been appropriately dealt with by the Scrutiny Committee, merely because the petitioner could not produce affidavit of said uncle showing that petitioner is his nephew. It is further stated that Vigilance officer did not examined either the petitioner or then his parents, but proceeded to examine one Sanjay Kohad and that petitioner was not given opportunity to even cross examine him.

6. Paragraph No. 24 of the impugned order is pointed out to show that it directs withdrawal of benefits secured by the petitioner, as if the same are procured on the basis of false caste certificate and there is further direction to lodge FIR against the petitioner in the matter in exercise of powers u/s 11[2] of the Maharashtra Act No. 23/2001. It is contended that when the Maharashtra Act No. 23/2001 came into force, petitioner had already taken admission to M.B.B.S. Degree and he has been admitted to M.D. Course in July, 2005 and result of his examination is not yet declared. It is contended that the Maharashtra Act No. 23/2001 cannot prejudice admission otherwise validly taken in 1998. It is pointed out that all these needs to be viewed in the background of the fact that uncle Ramesh of petitioner has been given validity. Orders of High Court dated 23.12.2004 in Writ Petition No. 1724/1998 are also pointed out to show that this Court directed the Directorate of Medical Education and Research to accept and consider the application of petitioner for admission to P.G. in CET 2005 Post Graduate Medical Entrance Examination in Scheduled tribe category. Judgment of this Court reported at Yogesh Ramchandra Naikwadi Vs. State of Maharashtra and Others, , and the judgment of Hon''ble Apex Court in the same matter reported at Yogesh Ramchandra Naikwadi Vs. The State of Maharashtra and Others, , are pressed into service to show that prosecution of petitioner in this circumstance is uncalled for, and Degree and Education undertaken by the petitioner cannot be taken away from him.

7. The learned Counsel appearing on behalf of respondent No. 1 Committee has pointed out that the appointment of Deputy Director as Member of the Scrutiny Committee is ex-officio and any body who is holding the charge of the post of Deputy Director [Research] can therefore function as Member-Secretary. He points out that it is the State Government which authorised head of the department on 11.10.2008 to make arrangement to relieve promotee Deputy Director [Research] and accordingly responsible officer like Commissioner for Tribal Development made necessary local arrangement. The Senior Research Officer, already Member of the Scrutiny Committee at Nagpur was therefore, asked to take charge of the post of Deputy Director. According to him in these

circumstances, the contention of learned Senior Counsel are totally misconceived and unsustainable. He further points out that Mrs. Naik, Senior Research Officer is holding qualification of M.S.W. He further contends that the petitioner is before the Scrutiny Committee for 6 years and has raised various objections from time to time, but never raised such type of objection to the constitution of the respondent No. 1 Committee. The petitioner according to him, therefore acquiesced in it and cannot be permitted to raise such challenge. He further states that in any case, prejudice in the matter has not been demonstrated by the petitioner.

8. He relies upon the judgment of Division Bench of this Court in case of Avinash Tulshiram Limje [supra], to urge that constitution of Committee has been upheld there and there is no reason to take different view in the present matter. He contends that the appointment of Deputy Director [Research], as Member-Secretary was not as persona designata but ex-officio and hence Smt. Naik has validly functioned as Member-Secretary. He attempted to distinguish the judgment of Hon''ble Apex Court in the matter of Ajaib Singh v. Gurubachan Singh (supra), by urging that it deals with liberty of individual and statutory scheme in relation thereto. Judgment in case of Girja Shankar Shukla v. Sub Divisional Officer [supra], is also sought to be distinguished by showing that provisions considered therein are not *pari-materia*.

9. On the point of cross examination, the learned Counsel contends that the petitioner never co-operated with the Scrutiny Committee and only wanted to raise objections. The purpose of seeking cross examination was only to delay the decision by the Caste Scrutiny Committee. He did not furnish any information about his ancestors and did not even disclose old documents. All old documents procured by the Vigilance Cell show the case of his ancestors as Koshti and hence petitioner choose to deny the family tree placed on record. Only relationship with Ramesh Kohad was being accepted as he was given validity. He points out that opportunity of cross examination was never denied to the petitioner and petitioner never turned up with his advocate before the Scrutiny Committee. He further states that the basic burden in this respect was upon the petitioner only. He has relied upon the provisions of Sections 8 and 9 of the Maharashtra Act No. 23/2001 read with provisions of Rule 11[2][c] of the 2003 Rules, to urge that the petitioner failed to discharge obligations cast upon him by law. Our attention has also been invited to the consideration of this aspect by the Scrutiny Committee to state that there is no violation of principles of natural justice. The judgment of Hon''ble Apex Court in 2009 [1] Mh.L.J. 1 (Raju Ramsingh Vasave v. Mahesh Deorao Bhivapurkar) is relied upon to show that validity given to Ramesh Kohad is not very relevant and caste claim of petitioner needs to be scrutinized independently. It is further urged that no reason was given as to why affidavit of Shri Ramesh Kohad could not be filed by the petitioner. The selective acceptance of family tree by the petitioner is being adversely commented upon by him in this connection.

10. About the claim for protection, the learned Counsel states that before the Maharashtra Act No. 23/2001 the law was same and judgment of Hon''ble Apex Court reported at Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , contemplated same course of action. He relies upon the judgment of Division Bench of this Court reported at 2007 [2] Mh.L.J. 440 (Nutan Vidarbha Shikshan Mandal v. Presiding Officer School Tribunal and Ors.), in this respect.

11. In his brief reply, the learned Senior Counsel has invited our attention to the judgment of Hon''ble Apex Court reported at Yogesh Ramchandra Naikwadi v. State of Maharashtra [supra], to urge that the said judgment considers constitutional Bench judgment in case of Milind Katware. He further points out that last 5 lines in judgment of Milind Katware are not reproduced there by the Hon''ble Apex Court. He points out that on 30.01.2009 the Hon''ble Apex Court has taken a view that a certificate holder is entitled to protection. According to him, this judgment clearly clinches the issue. He further states that last five lines in case of judgment of Milind Katware are not under Article 142 of the Constitution of India, and he further states that as law has been settled in case of Milind Katware and also judgment of Hon''ble Apex Court dated 30.01.2009 in such circumstances doctrine of prospective overruling is squarely attracted. He relies upon the judgment reported at Bongalgaon Refinery and Petrochemicals Ltd. Vs. Samijuddin Ahmed, , in-support of his contentions.

12. To show that consent cannot confer jurisdiction upon the Scrutiny Committee and there cannot be any acquiescence in the matter, he has placed reliance upon the judgment reported at Khardah Company Ltd. Vs. Raymon and Co. (India) Private Ltd., , Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, , Atul R. Shah Vs. M/s. V. Vrijlal Lalloobhai and Co. and another, and Dresser Rand S.A. Vs. BINDAL Agro Chem Ltd. and K.G. Khosla Compressors Ltd., . He also relies upon the judgment reported at [2000] 4 SCC 299 (Rajasthan State Road Transport Corporation v. Bal Mukund Bairwa) to substantiate his contention about doctrine of prospective overruling. In view of this submissions, according to the learned counsel, as constitution of Committee itself is vitiated, the impugned order dated 13.04.2007 therefore, needs to be quashed and set aside.

13. The judgments on the point of acquiescence cited by learned Senior Counsel are mostly on the provisions of Arbitration Act, 1940. In Khardah Co. v. Raymon & Co. [supra], in paragraph No. 14, the contention considered was about challenge to the validity of Clause 14. It was urged that even if Clause 14 was held to be inoperative, the validity of award could not have been assailed on that ground because the respondent had appeared before the Arbitrators and participated in the Arbitration proceedings. The Hon''ble Apex Court found that contention was respondents acquiesced in the proceedings, but then what conferred jurisdiction upon the Arbitrators to hear and decide a dispute was an Arbitral Agreement, as defined in Section 2[a] of the Arbitration Act and when

there was no such agreement, there was initial want of jurisdiction which cannot be cured by acquiescence. It is therefore, obvious that the judgment finds initial lack of jurisdiction in Arbitrators in the matter, which cannot be made good by acquiescence. Judgment in Karnal Improvement Trust v. Prakash [supra], again considers the validity of award of Land Acquisition. Award was made by the President of the Tribunal. It was contended that Chairman of Tribunal alone could not have made such award. In this background in paragraph No. 12, the Hon''ble Apex Court has held that the adjudication by three Members of the Tribunal was imperative and mandatory, and award declared by the Chairman alone was void. The argument, that position of law prevailing since last 14 years in this respect should not be disturbed and doctrine of stare decisis should be applied, has been rejected by the Hon''ble Apex Court. In paragraph No. 18 it was found that where jurisdiction of Hon''ble Apex Court to reconsider and revise its earlier decision is invoked, the principle of stare decisis cannot be pressed into service. In paragraph No. 22 it has been held that acquiescence does not confer jurisdiction and erroneous interpretation cannot be permitted to perpetuate and perpetrate, defeating the legislative intention. In paragraph No. 11, the Hon''ble Apex Court has pointed out distinction between ministerial acts and statutory quasi judicial function by showing that whether the command to be considered as mere direction or mandatory, is dependent upon scope and object of instrument and in this background in paragraph No. 12 the question considered is whether function by the Tribunal as a Body was mandatory or directory. The discharge of its duties by the Tribunal under Punjab Improvement Trust Act, 1922 was found to be quasi judicial and therefore, adjudication by three Member Tribunal imperative and mandatory. In facts before us, it is not in dispute that the adjudication on 13.04.2007 is by three Members.

14. In Atul R. Shah v. V. Vrijlal Lalloobhai [supra] the learned Single Judge of this Court has considered the provisions of the Arbitration Act, 1996 and in paragraph No. 5 found that when the Arbitral Tribunal is not properly constituted and objection is not raised in this respect before the Tribunal, it would not result in said tribunal exercising jurisdiction validly. Courts cannot confer jurisdiction on themselves by consent of parties and merely because of absence of objection by them, such jurisdiction cannot be presumed. We do not find any such question arising in the present matter.

Dresser Rand S.A. v. Bindal Agro Chem Ltd. [supra], again considers provisions of Arbitration and Conciliation Act, 1996. In paragraph No. 47 the Hon''ble Apex Court mentions the arguments of acquiescence and in paragraph No. 49 the Hon''ble Apex Court found that in matters considering challenge to arbitrability, acquiescence does not confer jurisdiction.

15. The constitution of respondent No. 1 Committee is upheld by the Division Bench in the case of Avinash Tulshiram Limje v. State of Maharashtra [supra]. There before the Division Bench, the constitution of respondent No. 1 Committee was challenged by contending that Smt. V.P. Naik shown as Member Secretary in

order dated 20.02.2007 [impugned therein], was not Member Secretary, but only Senior Research Officer and hence, judgment of Hon''ble Apex Court in case of Ku. Madhuri Patil [supra], and provisions of Section 6[1] of the Maharashtra Act No. 23/2001 and Rule 9 of the 2003 Rules have been violated. The Division bench noticed that there was vacancy in the post of Deputy Director [Research] and observed that vacancies were bound to occur in various offices and that really did not mean that office as such was unoccupied. Person holding a statutory position or a position created under the Rules is a juristic entity and hence, normally a perpetual succession was found to exist. The officer filling in said position to avoid occurrence of vacuum was held competent to function as such Deputy Director. The contention of petitioner there, that the Director could not have asked Smt. Naik to hold the post of Member-Secretary was found to be misconceived, because of absence of such power in Director was not demonstrated. It was found that Director, as a controlling officer must possess necessary powers to ensure that charge of the post which had fallen vacant should be held by another office. In paragraph No. 16, different positions in Committee are found to be held ex-officio and appointments to Committee are found not as persona designata. Reference is also made to adjudication in Writ Petition No. 5415/2005 to note that so long as the officer concerned was holding the additional charge of post of Deputy Director by the orders of superiors, it could not be said that the Committee was not properly constituted.

16. The learned Senior Counsel, has attempted to distinguish this judgment by pointing out the judgment of Hon''ble Apex Court in Ajaib Singh v. Gurubachan Singh [supra]. Perusal of the said judgment shows that there provisions of Defence of India Act 1962 and powers to detain a person according to the Rules framed therein, was under consideration. Provisions of Section 3[2] were noted to found that Authority empowered to detain cannot be lower in rank than that of District Magistrate. The provisions in relation to delegation u/s 40[2] were read harmoniously with Section 3[2][15] and it was concluded that power of detention can only be exercised by State Government or an officer to whom it may be delegated, but such officer cannot be lower in rank than District Magistrate. It is in these circumstances, the Hon''ble Apex Court found that the Additional District Magistrate though appointed u/s 10[2] of the Code of Criminal Procedure with all the powers under the Code and also any other law for the time being in force, he still is not a District Magistrate, unless government appoints him as a District Magistrate u/s 10[1] of the Code. The view taken therefore is in the light of the statutory scheme and its importance, considering the fact that liberty of a person was at stake. No such statutory provision has been pointed out to us in the present matter.

17. The other judgment reported in the case of Girja Shankar Shukla v. Sub Divisional Officer [supra] by the Hon''ble Full Bench of the Madhya Pradesh High Court, considers whether a Sub Divisional Officer could have presided over the meeting to elect President and Vice President of Municipal Council. As per provision of Section 55[3] of the M.P. Municipalities Act, the obligation was upon

Collector and vide notice, meeting was also convened by the Collector. However, then the collector proceeded on leave and meeting was presided over by the Sub Divisional officer. The Sub Divisional Officer was empowered to look after the current charge of the Collector also. It is the contention of learned Senior Counsel that there is no such appointment of Mrs. Naik in present circumstances. In facts before the Hon''ble Full Bench of Madhya Pradesh High Court in paragraph No. 17 it was noted that a person appointed permanently or to officiate on a post, holds that rank while a person which is placed only in current charge of duties of that post does not hold that rank. Hence function and powers of the post which depend on the rank cannot be discharged by a person who is placed only in current charge of the duties of that post. In paragraph No. 24, the Hon''ble Full Bench found that function of presiding over the meeting was not as persona designata, but as an officer who was empowered to perform duties of the Collector of the District. All three Hon''ble Judges constituting the Full Bench have delivered separate judgments and ultimately held that the Sub Divisional Officer was competent to preside over the meeting and he was Collector of the District within the meaning of Section 55[3] of the Municipalities Act. In paragraph No. 38, it has been held that an order appointing a particular officer to hold current charge of the duties as an Administrative Officer intended to cloth such an officer with all administrative powers which has no statutory basis. An officer appointed to hold current charge of the duties of higher post cannot exercise the statutory powers attached to that post unless there is statutory provision to that effect. It is to be noted that ultimately the Full Bench has found that the powers u/s 55[3] conferred upon the Collector were not persona designata and hence the Sub Divisional Officer was competent to exercise those powers.

18. The facts at hand clearly show that on 11.10.2006, when Shri Mhaske, Deputy Commissioner at Nagpur was promoted as Joint Commissioner, State Government directed departmental head to make internal arrangement to relive him. The immediate execution of said orders was felt necessary by the State Government, corresponding orders were issued by the Head of the Department on 12.10.2006 directing Shri Mhaske to get himself relieved by handing over his charge to Senior Research Officer functioning in his office. It is therefore, obvious that a corresponding obligation was also put upon the Senior Research Officer to accept that charge. With the result the State Government which is competent u/s 6[1] to constitute a Committee authorized the Senior Research Officer to take charge of the post of Deputy Director [Research]. The intention not to create any vacuum or vacancy is thus apparent. The fact that Senior Research Officer accordingly took the charge and Shri Mhaske was relieved is not in dispute. The observations of Division Bench that powers given to Deputy Director [Research] to act as Member/Secretary of the Scrutiny Committee are not persona designata, are not shown to be either erroneous or perverse. The only contention is Senior Research Officer who was never expressly directed to accept the charge could not have functioned as Deputy Director [Research]. The moment the

functioning of the Member-Secretary of the Scrutiny Committee is held to be ex-officio for the post of Deputy Director [Research], it follows that Senior Research Officer who held the charge of post of Deputy Director [Research], could have validly functioned as Member-Secretary. It is to be noted that as per Rule 9 presence of three Members out of total 5 Members is essential and according to said Rule, presence of Member-Secretary cannot be dispensed with. Smt. Naik, was validly and legally holding the charge of post of Deputy Director [Research] and hence she has functioned as Member Secretary. We therefore, do not find any merit in the challenge to constitution of the respondent No. 1 Committee and in contention that Smt. Naik, holding the charge of post of Deputy Director [Research], could not have functioned as Member-Secretary.

19. The second challenge is about the cross examination of the headmaster of a school from whom the Vigilance Cell collected some record and of cross examination of one Sanjay Kohad. Division Bench judgment of this Court in case of Rajkumar Mulchandani v. State of Maharashtra [supra], holds that because of provisions of CPC are applicable, the Scrutiny Committee should have permitted the petitioner to cross examine Tahsildar. Perusal of paragraph No. 11 of the said judgment shows that the order of the Scrutiny Committee there was based primarily on the report of Tahsildar dated 26.04.2007, and the petitioner wanted to cross examine Tahsildar, as he was disputing contents of the said report. The Division Bench therefore, found that there was no legal impediment as to why such opportunity could not be granted to petitioner in view of Section 9 of the Maharashtra Act No. 23/2001. In support earlier judgment dated 21.08.2006 in case of Ku. Kalpana Govindrao Tapre, has been relied upon, where the petitioner had requested for permission to cross examine school authorities and it was found that the petitioner thereby wanted to demonstrate that the school records do not disclose factual position. In case of Kalpana, the Scrutiny Committee was found impressed by sole entry in the school record, but no opportunity was given to the petitioner to prove that the record did not depict factual position.

20. The provision of law in this respect are very clear. Section 8 of the Maharashtra Act No. 23/2001 places a burden upon the petitioner to prove that he belongs to Halba Scheduled Tribe. In this background powers of civil court while trying a civil suit under CPC are conferred upon the Scrutiny Committee. It is also to be noted that Section 15 bars jurisdiction of civil court in certain matters. Provisions of Rule 12 of the 2003 Rules, need to be looked into in this backdrop. Under Rule 12[4], Vigilance Officer has to personally verify and collect all facts about the social status claimed by the applicant and for that he has to examine the applicant or his parents or guardian. After completion of that enquiry, Vigilance Cell has to submit its report to the Scrutiny Committee under Sub-rule [6] and the Scrutiny Committee has to scrutinize it. If such report is in favour of the applicant and Scrutiny Committee is satisfied with it, the Scrutiny Committee may issue validity certificate. However, if on the basis of such Vigilance Cell report and other documents available, the Scrutiny Committee is not satisfied with the genuineness of the caste claim, the further process of

verification begins. A personal hearing to the applicant is then contemplated. The scheme above therefore clearly shows that primary burden is upon the applicant. The perusal of order of the Scrutiny Committee shows that the Vigilance Cell officer obtained school record in support of the applicant's father and three cousins - grand fathers, wherein their caste is recorded as Koshti and occupation as weaver. The Scrutiny Committee found that this record being of pre-independence period, it had more probative value. Vigilance officer recorded statement of Sanjay Shrawan Kohad, a cousin uncle of applicant and obtained geological tree to show relationship between the petitioner and above four persons of whose school records were obtained. Scrutiny Committee also noticed that though the petitioner in his written statement denied relationship with those four persons, he deliberately did not disclose any information regarding the paternal side relative. He only stated that Dr. Ramesh Maroti Kohad whose caste claim was upheld by the High Court was his uncle. He also did not disclose educational status of his paternal side relatives. In his application for caste verification, petitioner had stated that his father is M.Com., and his grand-father was educated, but then did not furnish any information regarding his fathers and grandfathers primary and secondary education, even though it was demanded from him time and again. The Scrutiny Committee found stand of petitioner that he is not aware of the educational details of his father unbelievable. He also did not give any other genealogical tree of his family to show that, the genealogy given by Sanjay Kohad was either wrong or incorrect. He also did not furnish any school records or other documents of his paternal uncles, cousin uncles and grand father etc., to prove that persons whose records were obtained by the Vigilance Cell authorities were not related to him. The Scrutiny Committee found that he purposefully suppressed that information and failed to disprove his relationship with those persons. It has considered the objection of petitioner in relation to discrepancy about birth date of his father and found that caste of his father was recorded as Koshti in both the documents. This consideration by the Scrutiny Committee does not appear to be incorrect or perverse. This shows that the Scrutiny Committee gave petitioner enough opportunity to discharge burden placed upon him by Section 8 of the Maharashtra Act No. 23 of 2001. The petitioner could not tender any evidence to show that who were his paternal relatives, thereby indicating the absence of relationship with persons whose documents were collected by the Vigilance Cell. The petitioner could have also submitted his correct gemological tree to disprove the position reported by his cousin uncle Sanjay Kohad. Petitioner avoided to do so and only wanted to cross examine Sanjay Kohad or headmaster of the school from where the documents were obtained. In absence of above material, such cross examination could not have advanced his case in any way in the light of the scheme of the Act and Rules mentioned above.

21. The petitioner has raised objection on 02.01.2006 before the Scrutiny Committee and in it has stated that the persons in relation to whom school records were procured were not known to him and Scrutiny Committee was

misleading him by giving different data of others. He further stated that there were lot of discrepancies in the police Vigilance report and sought details of cases decided by the Scrutiny Committee in case of Halba community since inception. He demanded list in advance and also sought liberty to scrutinize documents relating to decision given by the Scrutiny Committee before he was personally heard. It appears that thereafter he was called upon to appear before the Committee on 08.05.2006 along with his parents or Advocate. On 05.05.2006 petitioner submitted reply to this intimation and mentioned that as per High Court orders his caste claim was to be decided within three months and as the said period of three months was already over he advised the Committee to obtain extension first from High Court. His caste claim was then invalidated on 30.05.2006 and he challenged that order in Writ Petition No. 2922/2006 and this Court found that the objections to the Vigilance Cell report raised by petitioner were not considered. The said order was therefore, set aside and petitioner was directed to appear before the Committee on 1.3.2007. On 1.3.2007, petitioner appeared before the Committee and gave in writing that he is not submitting any additional documents and further stated that he was heard by the Scrutiny Committee as per the High Courts order. On 3.3.2007, he gave a communication that he was forced and pressurized to sign that statement. He sought opportunity of hearing with the help of a Lawyer and stated that he wanted to cross examine headmaster of the school from whom records were obtained and also Sanjay Kohad. On 4.4.2007, he stated that he appeared before the Scrutiny Committee on 21.3.2007, 23.3.2007 and 30.3.2007 and requested the Committee to grant him opportunity of hearing with the help of lawyer to cross examine headmaster and Sanjay Kohad. It is in this background that the impugned order came to be passed.

22. The facts clearly show that the petitioner was already called for hearing, along with his lawyer by the Scrutiny Committee and after that exercise the impugned order was passed on 30.5.2006, that was set aside on 15.02.2007 in Writ Petition No. 2922/2006. His caste claim was earlier invalidated on 25.5.1998 and that was challenged in Writ Petition No. 1724/1998. Writ Petition No. 1724/1998 was disposed of on 23.12.2004 after noticing that claim of petitioner's paternal uncle Ramesh, rejected by the Scrutiny Committee was validated by this Court in Writ Petition No. 1516/1983, on 04.12.1986. The impugned order was found without reasons and also without any reference to judgment in case of uncle Ramesh Kohad. Therefore, Writ Petition was allowed and matter was remanded back. This therefore, clearly shows that the petitioner had approached at least twice on earlier occasion before this Court in the matter. We, therefore, find substance in the contention of the learned Counsel appearing for Scrutiny Committee, that petitioner did not cooperate with the Scrutiny Committee and did not furnish relevant material.

23. Learned Senior Counsel has relied upon judgment of Hon''ble Apex Court reported in the case of State of Kerala v. K.T. Schedule Grocery Dealer Etc. [supra]. Facts in said judgment clearly show that the issue there pertained to

best judgment assessment under the Sales Tax Act, after the returns filed by the assessee were found to be incorrect and incomplete. The returns filed by the assessee were being disbelieved because of books of accounts of a third party by name Haji Usman Kutti. Books of accounts of said Haji revealed certain transfers effected by the assessee in his favour and those transactions were not accounted for in books of accounts of assessee. The assessee had applied to the Sales Tax Officer for opportunity to cross examine said Haji Usman Kutti. But that was denied to him. This controversy is considered by the Hon''ble Apex Court and provisions of Section 17[3] are noticed to conclude that the Sales Tax Officer has to give reasonable opportunity before making best judgment assessment. The said opportunity is contemplated at two stages, as per the said provision. The Hon''ble Apex Court holds that first stage was reaching of satisfaction by the Sales Tax Officer that return is incorrect or incomplete and the second stage was while making best judgment assessment. In this respect, when returns are being disbelieved on the basis of accounts of a third party, the demand of cross examination has been accepted by the Hon''ble Apex Court. In the scheme of the Act, it is clear that burden is upon the petitioner and we have already noted above his conduct and approach in the matter. Only by showing that documents procured by the Vigilance Cell were incorrect or then by cross examining Shri Sanjay Kohad, his claim as belonging to Halba Scheduled Tribe could not have been granted. The petitioner never assisted the Scrutiny Committee and did not bring on record any material to justify his demand for cross examination. We do not find anything on record to show that the Scrutiny Committee at any time denied him that opportunity. The Scrutiny Committee after noticing the conduct of the petitioner has only commented that he never remained present with Advocate to conduct such cross examination. Reliance upon judgment in the case of Bareilly Electricity Supply Co. v. The Workmen and Ors. (supra) (at page No. 629) only shows that the principles of natural justice does not mean that what is not an evidence can be acted upon, but it implies that no material which is not subjected to cross examination by a party against whom it is sought to be relied upon, can be acted upon. As we have already stated above, because of provisions of Section 8, basic burden was upon the petitioner and he failed to discharge it, the insistence upon opportunity for cross examination of headmaster from whom documents in relation to his grand father and three cousin, grandfather were procured was misconceived and unwarranted. Petitioner also did not bring on record any material to support his demand for cross examining Shri Sanjay Kohad. On the contrary, he only wanted to show some lacunae in the process of verification at the hands of the Vigilance Cell and capitalize on it. In these circumstances, we do not find that principles of natural justice have been violated by the Scrutiny Committee in the matter, as Scrutiny Committee has not rejected his prayer for cross examination. It is to be noted that such stage of cross examination by petitioner was never reached in the proceedings before the Scrutiny Committee.

24. The orders of this Court in Writ Petition No. 1724/1998 dated 23.12.2004

show that the Director of Medical Education and Research, Maharashtra State, Mumbai was directed to accept and consider application of petitioner for admission to PG and CET 2005 Post graduate Medical Entrance Examination in Scheduled Tribe Category provisionally. Thus the consideration and admission of petitioner to Post Graduate Courses is provisional. He filed Writ Petition in 1998 when his caste claim was invalidated on 25.05.1998 obviously when he took admission to M.B.B.S Course. Thus his admission to M.B.B.S Course is also subject to verification of his caste claim by the Scrutiny Committee. Though the learned Senior Advocate has contended that the petitioner was acting bonafide and a validity certificate was given to his uncle Ramesh Kohad on 4.12.1986 in Writ Petition No. 1516/1983, his conduct from 1998 onwards till date speaks volumes. Even before this Court he has not disclosed the details of education of his father or grand father and has not pointed out his correct genealogical tree. The caste claim of his uncle was validated in Writ Petition No. 1516/1983 on 04.12.1986. The Constitution of Caste Scrutiny Committee is in the year 1995-96, after the judgment in case of Ku. Madhuri Patil [supra]. The enquiry through Vigilance Cell and other procedure was introduced by the Hon"ble Apex Court to protect the interest of minorities through that judgment for the first time. This detail procedure was not there when on 4.12.1986 the judgment in case of Ramesh Kohad was delivered by the Division Bench of this Court. Perusal of the said judgment dated 04.12.1986 reveals that only documents produced before the Caste Scrutiny Committee by the said Ramesh Kohad were his school leaving certificate from primary school, certificate from his High School, a certificate from Executive Magistrate and 2 certificates from Dean of Government Dental College and Hospital, Nagpur. All these 5 documents of Ramesh revealed that his caste was recorded as Halba. Division Bench of this Court found that there was no other material before the Caste Scrutiny Committee and its conclusion that these certificates appear to be manipulated, was not based on any material. Thus, this Court then placed the burden upon the Committee to disprove the caste claim of said Ramesh and even certificate of his father was not looked into. Paragraph No. 6 of the said judgment of Division Bench shows that the learned Counsel appearing for Scrutiny Committee then had pointed that Committee did not have appropriate infrastructure and expertise .The Division Bench also noticed that the Committee had found that Ramesh Kohad belongs to Koshti caste because of his occupation. This reasoning was found to be invalid. It is apparent that in view of the subsequent judgment of Hon"ble Apex Court in case of State of Maharashtra v. Milind Katware and Ku. Madhuri Patil [supra], these reasons of Division Bench cannot stand to scrutiny of law at this stage. It is to be noted that Shri Ramesh Kohad did not give any affidavit showing that petitioner is his nephew. Though petitioner alleges that Shri Ramesh Kohad is on enemical terms with him, it is not necessary for us to go into the said controversy as refusal of Shri Ramesh Kohad to give such affidavit can very well be understood because of changed position. The contention of petitioner clearly stands answered by the judgment of the Hon"ble Apex Court in the case of Raju Ramsingh Vasave v. Mahesh Deorao Bhivapurkar (supra).

25. The learned Senior Counsel has cited various judgments to press into service the concept of prospective overruling and also to urge that protection extended by the Hon''ble Apex Court in case of State of Maharashtra v. Milind Katware, is not under Article 142. He has also attempted to urge that in view of the subsequent judgment of the Hon''ble Apex Court dated 30.01.2009 in SLP No. 1070/2006 (Union of India v. Vimal Murlidhar Kumbhre and Ors.), the Full Bench judgment of this Court taking a view to the contrary cannot be held as a good law. He also points out that this judgment dated 30.01.2009 is against the judgment dated 06.05.2005 delivered by the Division bench of this Court in Writ Petition No. 5407/2004. He points out that the Senior Judge party to it, has also delivered the Full Bench judgment reported in Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, . It is to be noted that the said Full Bench has categorically held in paragraph No. 12 that protection extended by the Constitution Bench judgment in case of Milind Katware to admissions is under Article 142 of the Constitution of India and therefore, such an exercise cannot be undertaken by this Court. This Bench also had occasion to consider this Full Bench judgment in Writ Petition No. 2593 of 2006 (Tejram Netram Bannagare v. The State of Maharashtra and Ors.) decided on 26th August, 2009 and the said Full Bench has relied upon Larger Bench Judgment of the Hon''ble Apex Court in case reported at Union of India (UOI) Vs. Dattatray Mendhekar and Others, . The order of Hon''ble Apex Court dated 30.01.2009 is by two judges. With respect we note that one of the Hon''ble Judge is also party to Larger Bench judgment of Hon''ble Apex Court reported in Union of India v. Dattatray Namdeo Mendhekar and Ors. [supra]. We do not find any observation to the contrary by the Hon''ble Division Bench of the Apex Court in Union of India v. Vimal Murlidhar Kumbhare (supra). After noting all these developments, this Bench has accepted and relied upon the Full Bench judgment in case of Ganesh Rambhau Khalale v. State of Maharashtra and Ors. (supra). In this situation, we find that reliance upon doctrine of prospective overruling or then effort to show that the protection is available to petitioner is totally misconceived. The law on the point was well settled after adjudication in case of Ku. Madhuri Patil. The petitioner is before the Scrutiny Committee since last about 11 years. The judgment in case of Milind Katware was also delivered after he filed his Writ Petition vide Writ Petition No. 1724/1998 and before that writ petition was decided. His admission to post graduate course was provisional as per the judgment dated 23.12.2004 delivered therein. We therefore, find that claim for protection by petitioner is totally misconceived.

26. Petitioner''s conduct noted above also disentitles him to any protection. He never approached respondent No. 1 Committee with clean hands and never permitted it to examine his caste claim expeditiously. His arguments before us also reveal same attitude. He ought to have disclosed educational carrier and records of his father, grandfather and other relatives on paternal side and could have assisted the respondent No. 1 Committee to adjudicate upon his caste claim as early as possible. His efforts show that he was only insisting upon some

technicalities and tried to obtain advantage of caste validation in case of his uncle Shri Ramesh Kohad. He never cared about the provisional nature of his admission or then about the effect of invalidation of his caste claim. With open eyes he has taken the risk of invalidation and consequences flowing therefrom.

27. For all these reasons, we are unable to consider the case of petitioner for protecting his admission and degree of M.B.B.S. or then his admission to Post-Graduate Course in the matter. The consequences flowing from cancellation of his caste certificate prescribed by the legislature under Maharashtra Act No. 23 of 2001 must follow in the present matter. Whether direction to prosecute him is proper or not cannot be gone into at this stage, as in the light of the arguments advanced we do not find any impropriety in it. However, the question whether any offence is made out because of petitioner's taking admission in 1998 in M.B.B.S. Course can be looked into by Competent Court as and when such question arises.

28. Subject to this, we do not find any merit in the Writ Petition. Writ Petition is accordingly dismissed, however, without any orders as to costs.