
(2021) 01 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No.3061 Of 2020

Shubham S. Suryawanshi

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 19(d), 226, 340, 342, 342(1)

Citation : (2021) 01 BOM CK 0004

Hon'ble Judges : R. D. Dhanuka, J;Madhav J.Jamdar, J

Bench : Division Bench

Advocate : A.S. Golegaonkar, Madhur Golegaonkar, K.S. Thorat

Final Decision : Dismissed

Judgement

R.D.Dhanuka, J

1. Rule. Mr.K.S. Thorat, AGP for the respondent nos.1 to 3 and 6 waives service. Rest of the respondents are served. Rule is made returnable

forthwith. By consent of parties petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 5th July 2019 passed by the

Scheduled Tribe Certificate Scrutiny Committee thereby invalidating the caste claim of the petitioner. (Hereinafter referred to as the Scrutiny

Committee). The petitioner also seeks declaration that he belongs to Thakur Scheduled Tribe and a direction against the Scrutiny Committee to issue

validity certificate in favour of the petitioner. In prayer clause (c), the petitioner seeks an order and direction against the respondent nos.4 to 6 to

consider the claim of the petitioner for admission to MBBS and allied course/s from Scheduled Tribe category, on the basis of marks in NEET-2019

and allow the petitioner to pursue the studies of such course. Some of the relevant facts for the purpose of deciding this petition are as under : -

3. It is the case of the petitioner that the petitioner belongs to Thakur, Scheduled Tribe. On 22nd April 2013, the Sub Divisional Officer, Shrirampur

issued a Caste Certificate in favour of the petitioner and certified that the petitioner belongs to Thakur Scheduled Tribe. The said caste certificate was

referred to the Scrutiny Committee for verification on 27th October 2017 through College in which the petitioner was studying in 11th Std. The

Scrutiny Committee referred the documents for verification to the Vigilance Cell. On 30th April 2018, the Vigilance Officer after due verification

submitted his report to the Committee. The said Vigilance report was served upon the petitioner on 13th August 2018. The petitioner submitted his

reply to the said Vigilance report. The Scrutiny Committee thereafter conducted personal hearing on 26th April 2019. On 5th July 2019 the Scrutiny

Committee passed the impugned order thereby invalidating the caste claim of the petitioner i.e. Thakur Scheduled Tribe.

4. The respondent no.4 conducted the National Eligibility Cum Entrance Test (NEET) UG-2019 on 5th May 2019 applicable for admission to

MBBS/BDS courses in India in Medical/Dental Colleges run with the approval of Medical Council of India/Dental Council of India under the Union

Ministry of Health and Family Welfare, Government of India. The respondent no.5 is the authority which conducts the counselling for 15% All India

Quota Seats and is authorised to supply the result to state/other Counselling Authorities. The respondent no.6 is the authority in Maharashtra State for

admission to MBBS and allied courses on the basis of merit in National Eligibility Cum Entrance Test (UG)-2019. On 26th July 2019, the respondent

nos.4 to 6 have allotted a seat to the petitioner from ST category. His number is enlisted at Sr. No.22220.

5. It is the case of the petitioner that on the basis of merit in NEET-2019 from ST category, the petitioner is eligible and entitled to get admission to

MBBS Course in the college of his choice. The petitioner has impugned the said order dated 5th July 2019 passed by the respondent no.2 Scrutiny

Committee invalidating the caste claim of the petitioner.

6. During the course of hearing of this petition, the petitioner filed an interim application bearing (St.) No.98647 of 2020 inter alia praying for

amendment to the writ petition as per the draft amendment appended to the interim application. In the said interim application, the petitioner also prayed for an order and direction against the respondent nos.5 to 7 and more particularly against the respondent no.7 to consider the claim of the petitioner for admission to BDS Course on the seat allotted in TPCT Terna Medical College, Thane from Scheduled Tribe Reserved Category as per the provisional selection letter dated 14th December 2020 and to allow the petitioner to pursue his study in the said course during the pendency of this writ petition.

7. By an order dated 15th December 2020, this Court after hearing the learned counsel for the parties recorded that learned counsel for the respondent nos.5 to 7 did not dispute that the petitioner had already been granted provisional admission vide provisional selection letter dated 14th December 2020 in scheduled tribe reserved category in TPCT Terna Medical College, Thane. This Court by the said order granted ad-interim relief in terms of prayer clause (E-1) and directed the respondent nos.5 to 7 to consider the claim of the petitioner for admission to BDS Course to seat allotted in TPCT Terna Medical College, Thane in Scheduled Tribe Reserved Category as per the provisional selection letter dated 14th December 2020 and to allow the petitioner to pursue his study in the said course during the pendency and final disposal of this writ petition. This Court, however, made it clear that in so far as the condition of submission of caste validity certificate is concerned, the same would be subject to outcome of this writ petition. This Court directed the respondent nos.5 to 7 to comply with the said ad-interim relief on or before 18th December 2020.

8. By an order dated 22.12.2020 this Court passed an order on the application made by the Petitioner's Advocate. Respondent No.7 through its Counsel made a statement that according to the third list published by Respondent No.7, name of the Petitioner was included for admission in Nair Hospital Dental College, Mumbai. This Court, accordingly, modified the order dated 15.12.2020 and recorded the statement made by the learned Counsel for the Petitioner that his client will take provisional admission in the said Nair Hospital Dental College, Mumbai instead of TPCT Terna Medical College, Thane. attention to various documents annexed to writ petition including the impugned order and submitted written arguments for

consideration of this Court.

10. It is submitted by the learned counsel that the petitioner had submitted the school record of the petitioner showing the entry of tribe as Thakur, ST

right from primary education. Sub Divisional Officer who was the Competent Authority after verifying the documents and after conducting an enquiry

had issued a caste certificate in favour of the petitioner certifying that the petitioner belongs to Thakur, Scheduled Tribe. The petitioner also produced

the school record of the father of the petitioner i.e. Shirish Suryawanshi. Even in the said school record, there was entry of tribe as 'Thakur', ST

right from primary education. The Competent Authority had issued a caste certificate in favour of the father of the petitioner after verifying the record

and after conducting the enquiry and certified that father of the petitioner belongs to Thakur, Scheduled Tribe.

11. Learned counsel for the petitioner submits that in the school record of Laxman-grandfather of the petitioner, there was entry of tribe as 'Hindu

Thakur' 'ST' right from primary education. Grandfather of the petitioner was given admission in a school on 12th March 1949. The entry of

tribe in grandfather's school record of the petitioner was taken on 12th April 1949. Grandfather of the petitioner was issued a caste certificate by

the Competent Authority after due enquiry and on the basis of evidence on record certifying that grandfather of the petitioner belongs to Thakur, ST.

12. Learned counsel for the petitioner also placed reliance on school record of Sitaram, real paternal uncle of the petitioner showing the entry of tribe

as 'Thakur', ST right from primary education. The said certificate was issued by the Competent Authority after due enquiry and on the basis of

evidence on record certifying that real uncle of the petitioner Sitaram belongs to Thakur, Scheduled Tribe. Learned counsel placed reliance on the

caste certificate issued by the Competent Authority in favour of Latabai, real paternal aunt as also Vijay, cousin paternal uncle of the petitioner

certifying that they belong to Thakur, Scheduled Tribe.

13. It is submitted by the learned counsel that great grandfather of the petitioner who was born on 11th May 1916 was given admission in a school on

1st July 1924. The entry of his tribe as 'Thakur' was taken in the school record on 1st July 1924 which pertains to pre-independence period,

when there were no benefits for the Scheduled Tribe Category persons and thus

it has got great probative evidentiary value.

14. Learned counsel for the petitioner submits that Tulshiram Gajmal Thakur is the real brother of Laxman Gajmal Thakur, real grandfather of the

petitioner. The said Tulshiram is the real cousin paternal grandfather of the petitioner who was given admission in a school on 8th March 1937. The

entry of his tribe as 'Thakur' was taken in the school record in the year 1937 i.e. during pre-independence period. He also relied upon the school

record of Vithal Gajmal Thakur who is the real brother of Laxman Gajmal Thakur, real paternal grandfather of the petitioner who was given admission

in a school on 4th April 1946. The entry of his tribe was taken in the school record as 'Thakur'. He also placed reliance on school record of

Anandrao Uttamrao Thakur, paternal cousin of grandfather of the petitioner who was given admission in a school on 22nd September 1942. The entry

of his tribe was taken in the school record as 'Thakur' in the year 1942. He relied upon the school record of Pandharinath Uttam Thakur,

paternal cousin of Laxman Gajmal Thakur, real grandfather of the petitioner who was given admission in a school on 7th June 1964. The entry of his

tribe was taken in the school record as 'Thakur' in the year 1964.

15. The petitioner also placed reliance on the Government record maintained by the authorities in Village Form No.14 i.e. Death Register of village

Pankheda, Dist. Ahmednagar showing the entry of name of Uttam P. Thakur and in the caste column, his tribe recorded as 'Thakur'. He also

placed reliance on entry of death of grandfather of the petitioner recorded on 19th November 1942 and in the caste column showing the entry of his

tribe as 'Thakur'. Similar entry was also made in the caste column in so far as the entry of death of Budha Thakur, cousin grandfather of the

petitioner recorded on 24th August 1942. Another similar entry was made in the caste column in so far as the entry of death of Pundlik, cousin

grandfather of the petitioner recorded on 25th September 1962.

16. Learned counsel invited our attention to genealogy of Prabat T. Thakur. The petitioner is nephew of the Prabat T. Thakur. He submits that the

petitioner is cousin nephew of late Vijay Subhash Thakur, whose claim is held valid by the scrutiny committee on 5th April 2004. The said Vijay was

the grandson of Pundlik and was cousin paternal uncle of the petitioner. Entries of tribe claim of other close blood relatives of Prabat were already

held valid by the said Scrutiny Committee.

17. Learned counsel for the petitioner submits that the Vigilance Officer has submitted a report on 30th April 2018 after conducting an enquiry. The

Vigilance Officer verified the school records of the petitioner, father of the petitioner, great grandfather, grandfather, cousin grandfathers and other

close blood relatives and reported that their school records showed correct entry of tribe as 'Thakur'. The Vigilance Officer also visited the

Tahsil Office, Dhule and verified the Birth and Death Record maintained by the Tahsil Office, Dhule. There was entry of death of Laxman Thakur,

grandfather of the petitioner recorded on 19th November 1942 and in the caste column, there was entry of his tribe as 'Thakur'. Similar entries

were also verified in the death record of Budha Thakur, cousin grandfather of the petitioner recorded on 24th August 1942 and in case of death of

Pundlik, cousin of grandfather of the petitioner recorded on 25th September 1962.

18. It is submitted by the learned counsel for the petitioner that the petitioner had also proved the relationship of the petitioner with the other family

members by producing the entire genealogy before the Scrutiny Committee. The Vigilance Officer also verified and considered the relationship of the

Validity Holder and the petitioner in the Vigilance report submitted before the Scrutiny Committee which evidence cannot be brushed aside by the

Scrutiny Committee. He relied upon the judgment of this Court in the case of Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny

Committee No.1 & Ors., 2010 (6) Mh.L.J. 401 in support of the submission that the same Scrutiny Committee had decided the caste claim of paternal

cousin uncle of the petitioner i.e. late Vijay Subhash Thakur and had issued caste validity certificate. The Caste Scrutiny Committee could not have

invalidated the caste claim of the petitioner on the ground that he did not submit documentary evidence of pre-independence period.

19. It is submitted by the learned counsel that the Caste Scrutiny Committee could not have ignored that 'Hindu' is a religion and merely because,

in the column of 'caste,' there is entry as 'Hindu' that does not become caste of a tribal student. A tribal might not have any religion or a

tribal might profess or might be having any religion or even no religion. He placed reliance on clarifier on 2nd May 1975 issued by the Director

General, BCW, Ministry of Home Affairs, Government of India mentioning that if a person claims to be a Scheduled Tribe, he may profess any

religion. The Scrutiny Committee has erroneously treated the entry of tribe as 'Hindu' in the grandfather's school record as a contra

evidence which finding shows perversity. The Scrutiny Committee has also erroneously proceeded on the assumption and presumption that there is a

Thakur community which is similar nomenclature but it is different than the Thakur, ST in the State of Maharashtra. He submits that the approach of

Scrutiny Committee is in violation of the principles laid down by the Supreme Court in the case of State of Maharashtra Vs. Milind and Ors., (2001) 1

SCC 4. The Scrutiny Committee did not have authority/jurisdiction/power/competence to go into questions whether the petitioner belongs to Thakur,

said to be a different caste than the Thakur, ST reflected at Sr. No.44 in the list of STs for the State of Maharashtra.

20. It is submitted by the learned counsel that surname of the family of the petitioner are stated as Pawar, Bhil, Ahire, Sonwane and Vaishva etc.

Even in case of such families, Caste Scrutiny Committee after following due procedure has already issued caste validity certificates in their favour.

He submits that the Scrutiny Committee has referred to the statement recorded in the Vigilance Officer in the Vigilance report of the grandfather of

the petitioner wherein the information about primitive, traits, characteristics and rituals have been sought and answers given by the grandfather of the

petitioner about the wedding, after birth ceremonies, rituals, followed in tribal community as well as information given about the traditions followed in

marriage, funeral and special traits and characteristics are almost correct and totally matched with traditions followed in Thakur Scheduled Tribe. The

Scrutiny Committee however, totally ignored this crucial aspect and material part of evidence in the impugned order while invalidating the caste

claim of the petitioner.

21. It is submitted by the learned counsel that the issue of area restriction considered by the Scrutiny Committee is totally irrelevant. Reliance placed

by the Scrutiny Committee on reference of Bombay Re-organisation Act, 1966 which reference was not permissible for the Scrutiny Committee to

make general observations and on such basis could not have invalidated the caste claim of the petitioner.

22. Learned counsel placed reliance on Amendment Act, 108 of 1976 and also the judgments of the Supreme Court and the High Courts which are as

follows : -

i) Judgment of Supreme Court in the case of Jaywant Dilip Pawar Vs. State of Maharashtra & Ors. delivered on 8th March 2017 in Civil Appeal

No.2336 of 2011;

ii) Judgment of Supreme Court in the case of Palaghat Zilla Thandan Samudaya Samrakshana Samittee and Anr. Vs. State of Maharashtra & Anr.,

(1994) 1 SCC 359;

iii) Judgment of High Court, Bombay at Auragabad Bench in the case of Shivam Rajendra Deore & Anr. Vs. The Scheduled Tribe Certificate

delivered on 15th October 2020 in Writ Petition No.14059 of 2019;

iv) Judgment of Bombay High Court in the case of Pawan Ramkrishna Deore Vs. State of Maharashtra & Anr., delivered on 5th July 2013 in Writ

Petition No.6176 of 2012;

v) Judgment of Bombay High Court in the case of Prakash Shrawan Deore Vs. Scheduled Tribe Certificate Scrutiny Committee, delivered on 22nd

February 2019 in Writ Petition No.2363 of 2013;

vi) Judgment of Bombay High Court in the case of Amol Narayan Wakkar & Anr. Vs. State of Maharashtra & Ors., 2005 (1) Mh.L.J. 798;

vii) Judgment of Bombay High Court in the case of Narendra Dhudkru Thakur Vs. Scheduled Tribe Certificate Scrutiny Committee, Pune & Ors.,

2004 (2) Mh.L. J. 578;

viii) Judgment of Bombay High Court in the case of Motilal Namdeo Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee & Ors., delivered on

22nd December 2017 in Writ Petition No.7 of 2014.

23. Mr. Thorat, learned AGP for the respondent nos.1 to 3 and 6 strongly placed reliance on the findings rendered by the Scrutiny Committee and

would submit that such findings of facts cannot be interfered with by this Court under Article 226 of the Constitution of India. He submitted that

Vigilance Cell of the Scrutiny Committee has carried out the home and school inquiry, recorded statement of the grandfather of the petitioner namely

Laxman Gajmal Suryawanshi on 3rd April 2018 and submitted its report on 8th August 2018. The Scrutiny Committee had forwarded the said

vigilance report to the petitioner and had invited his comments thereon. The petitioner was granted an opportunity of hearing by the Scrutiny

Committee also on the aspect of cultural and social affinity. He submits that though the Scrutiny Committee has rightly come to the conclusion that

though the documentary evidence shows the caste entry as 'Thakur' the petitioner and his family members have failed to show cultural and

social affinity towards the genuine 'Thakur' Scheduled Tribes.

24. It is submitted by the learned AGP that the Scrutiny Committee has considered the fact that there are 'Thakur' in Open as well as in OBC

Category apart from 'Thakur' in Scheduled Tribe category. He submits that the Scrutiny Committee has relied upon various judgments of

Supreme Court and this Court in the impugned order and has rightly invalidated the claim of the petitioner. The Scrutiny Committee has rightly

recorded a finding that the petitioner had failed to establish cultural and social affinity and ethnic linkage towards the genuine 'Thakur' Scheduled

Tribes. The petitioner and his family members were not aware about the basic traits of Thakur Scheduled Tribe.

25. Mr. Golegaonkar, learned counsel for the petitioner submits that the facts and submissions in the Writ Petition No.2230 of 2013 filed by

Smt.Jayshree Subhash Suryawanshi are identical to the facts of this case. Decision that would be taken by this Court in the said judgment would also

be applicable to the facts of this case. He submits that the learned AGP could not defend his submission as to how the findings of the Scrutiny

Committee are not perverse. He submits that the judgments relied upon by the Scrutiny Committee in the impugned order are no longer good law in

view of the subsequent Supreme Court judgments as well as the judgments of this Court taking different views.

REASONS AND CONCLUSION : -

26. Learned Counsel for the petitioner invited our attention to various documents forming part of the record during the course of the arguments which

according to him were verified by the Vigilance Officer and thereafter were produced by the petitioner before Scrutiny Committee. In the school

record of the petitioner, the entry of his tribe was recorded as Hindu Thakur right from primary education. Sub-Divisional Officer had

issued a Caste Certificate on 22nd April 2013 after verifying various documents

including School Leaving Certificate of the petitioner, of father, of grandfather, of uncle, Caste certificate of father, affidavit of father and enquiry report of Talathi, Shrirampur certifying that the petitioner belongs to Hindu-Thakur (ST-44) caste which is recognised as 'Scheduled Tribe' under the Constitution (Scheduled Casts) Order, 1950 and various orders and Acts. The caste of the father in the school record is shown as Hindu-Thakur. The Executive Magistrate had issued a caste certificate in favour of the petitioner certifying that he was Hindu-Thakur (ST-44).

27. In the school record of grandfather of the petitioner, caste of the grandfather was mentioned as Hindu-Thakur. Grandfather of the petitioner was given admission on 12th March 1949. Competent Authority had issued a caste certificate in favour of the grandfather of the petitioner showing caste as Thakur, Scheduled Tribe. In the school record of Sitaram, real paternal uncle of the petitioner, the entry of his tribe is shown as Thakur, ST right from primary education. Competent Authority had also issued a caste certificate in favour of the real paternal uncle of the petitioner certifying that he belongs to Thakur, Scheduled Tribe. The petitioner had produced several documents before pre- independence period which has great probative evidentiary value. Gajmal Thakur who was great grandfather of the petitioner who was born on 11th May 1916 and he was given admission in a school on 1st July 1924. The entry of his tribe as Thakur was taken in the school record on 1st July 1924.

28. The real brother of the grandfather of the petitioner was given admission in a school on 8th March 1937. At the time of his admission, the entry of his tribe as per the practice prevalent before pre- independence period was taken as 'Thakur'. There were no benefits for the Scheduled Tribe Category persons during pre-independence period.

The said entry has thus got great probative evidentiary value supporting the claim of the petitioner. Similarly, in case of Vithal Gajmal Thakur who was the real brother of the petitioner Laxman Thakur, real paternal grandfather of the petitioner, he was admitted in a school on 4th April 1946 and as per practice prevalent before pre-independence period, his tribe was entered as 'Thakur'. Anandrao Uttamrao Thakur, paternal cousin of Laxman Gajmal Thakur, real grandfather of the petitioner was admitted in a school on 22nd September 1942. The entry of his tribe was taken in the school

record as 'Thakur'. The petitioner had also filed affidavit showing traits, characteristics, customs, traditions, deities, pre & post birth rituals, death rituals, marriage system, festivals, dances, traditional profession, original place of residence, general place of residence of relatives etc. showing that the petitioner belongs to Thakur, ST. These facts were also reproduced by the Vigilance Officer in his report.

29. A perusal of the impugned order passed by the Scrutiny Committee indicates that the Scrutiny Committee has totally overlooked large number of documents produced by the petitioner to prove his caste claim as 'Thakur', ST. The Scrutiny Committee has also ignored the affidavit filed by the petitioner and the statement of father of the petitioner recorded by the Vigilance Cell.

30. Division Bench of this court in case of Motilal N. Pawar (supra) delivered on 22.12.2017 considered a situation where the Petitioner claimed to be of 'Thakur Scheduled Tribe' and was resident of Anturli, Taluka Bhadgaon, District Jalgaon. Since the year 1960, the father of the petitioner had shifted to Nashik for joining a job. The caste claim of the Petitioner therein was invalidated by the Scheduled Tribe Certificate Scrutiny Committee. The Caste Scrutiny Committee in that matter also had held that though in the school records of the Petitioner and his father etc. the caste was recorded as 'Hindu Thakur' and /or 'Thakur', the Petitioner had failed to prove that his caste fell in the entry appearing at Serial No. 44 i.e. Thakur, Scheduled Tribe.

31. The Scrutiny Committee in that matter also had held that the Petitioner therein had failed to establish his affinity and ethnic linkage towards the 'Thakur', Scheduled Tribe community appearing at serial no. 44 and thus the claim of the petitioner that he belonged to Thakur Scheduled Tribe was not sustainable and was accordingly declared as invalid. The Committee also rejected the case of the Petitioner therein on the ground that the Petitioner was not an ordinary resident of the habitated area of Thakur community and, therefore, he could not be said to be belonging to 'Thakur', scheduled tribe. The Scrutiny Committee had also rejected the case of the Petitioner that he had established affinity test towards 'Thakur', scheduled tribe appearing at serial no. 44.

32. This court in the said judgment after referring to entry no. 44 of the

Scheduled Tribe Order as it stood in Scheduled Tribe Order of 1950 i.e.

â??Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakarâ? held that the entry is â??Thakurâ? which is recognized as the Scheduled

Tribe amongst other Scheduled Tribes in the State of Maharashtra. The entry at Serial No.44 is not the â??Thakur, the scheduled tribeâ?. The

Scrutiny Committee is therefore required to ascertain on the basis of the documentary evidence, whether the person is â??Thakurâ? which is

recognized as â??Thakurâ?, scheduled tribe.

33. This Court held that it is unfathomable to believe that prior to enactment of the Scheduled Tribe Order of 1950, any entries would have been

recorded as â??Thakur scheduled tribeâ?. This expectation of the Committee that the entries ought to have been recorded as â??Thakur, scheduled

tribeâ?, is too much to expect, since that was never the purport of recognition to be granted to the existing tribes as Scheduled Tribe. The person who

claims to be belonging to â??Thakur Scheduled Tribeâ? did not foresee that their caste is going to be recognized as the Scheduled Tribe on the

Constitution of India being brought into effect and therefore, they should record their entry as â??Thakur, Scheduled Tribeâ?. This court recorded that

it had not come across any entry in such pre-constitutional documents also reflecting the caste as â??Thakur, Scheduled Tribeâ?, but entry

â??Thakurâ?, which is a recognized Scheduled Tribe.

34. The Division Bench of this court accordingly held that the reasoning adopted by the Committee was therefore, completely fallacious and such

reasoning is put-forth by the committee in cases after cases while rejecting the pre-constitutional documents recording caste as â??Thakurâ?, on

illusory reason that the entry recorded is not â??Thakur, Scheduled Tribeâ? but is only â??Thakurâ?. This court in the said judgment rejected the

reasoning of the Scrutiny Committee that the entry of caste in these documents produced by the Petitioner therein as â??Thakurâ? but it was not

mentioned as â??Thakur Scheduled Tribeâ?. This court failed to understand the said stand of the committee, as the entry in the Scheduled Tribe order

is â??Thakurâ? and a person has to establish his claim as belonging to caste â??Thakurâ? as finds place in the scheduled tribe order, for the first

time introduced in the year recognized 1950. The â??Thakurâ? came to be recognized as a Scheduled Tribe only for the first time in 1950.

35. This court noticed that even as on today, the caste certificates are not issued as 'Thakur' scheduled tribe by the competent authority but the caste certificates mentions the caste as 'Thakur' which is recognized as Scheduled Tribe since the caste 'Thakur' finds place in the Scheduled Tribe order. Since the Scheduled Tribe order has come into effect in the year 1950, the documents in existence prior to the inclusion of the caste 'Thakur' in the scheduled tribe order, therefore, have attained great significance to establish the genuineness, with a specific object that the claimant has not manipulated the entries intentionally so as to avail benefit of being a 'Thakur'. It is for this reason that the pre-constitutional documents are given weightage. The rejection of the claim of the claimant like the petitioner on the ground that though the caste is mentioned as 'Thakur', it was not mentioned as 'Thakur Scheduled Tribe', is nothing but an endeavor to defeat the claim of the persons belonging to said caste.

36. Insofar as rejection of the caste claim by the Scrutiny Committee in that matter on the ground that the Petitioner was not able to establish the affinity test is concerned, this court adverted to the judgment of the Supreme Court in case of Anand (supra) in which it has been held that while applying the affinity test, 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, modernization and contact with the other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of a tribe and therefore, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a scheduled tribe.

37. The Supreme Court in the said judgment also observed that the Petitioner could not be denied benefit on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies etc., and thus the affinity test can only be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim.

38. This court also adverted to the judgment of the Supreme Court in the case of

Kumari Madhuri Patil and Anr. Vs. Addl. Commissioner, Tribal

Development, Thane & Ors. which laid down great emphasis on the ethnological and anthropological traits which are peculiar to a tribe and while

constituting the committee, mandated an inclusion of Research Officer, who had intimate knowledge in identifying the tribal community / group of

tribes or tribal communities. This court observed that the Research Officer was not merely expected to match the traits sought by the applicant but is

expected to investigate the community's social status claim by finding out as to what is the place of his origin, whether he has migrated from his

original place and to collect all other information by throwing light on his social status including peculiar traits/customs etc.

39. This court in the said judgment did not accept the view of the Scrutiny Committee holding that the Petitioner therein was not from the area where

the 'Thakurs' were found in namely, 25 tahsils and 5 districts. This court adverted to the judgment in case of *Yogita Anil Sonawane vs. State of*

Maharashtra & Ors., reported in 2017 (1) Mh.L.J. 643 in which the judgment of Division Bench of this court relied upon the Full Bench judgment in

the matter of *Shilpa Vishnu Thakur (supra)* in which it was held that upon removal of the area restriction by the amending Act of 1976, the persons

belonging to a particular different Scheduled Tribe, though residing in areas than earlier specified or migrated from the said area, can also claim to be

belonging to the same Scheduled Tribe.

40. This Court also adverted to the Articles 342 and 340 of the Constitution of India. This court considered the statement of objects and reasons of the

Act No.108 of 1976 and held that the tribe identified as Scheduled tribes in the Scheduled Tribes Order of 1950, as amended by the Act of 1956, came

to be recognized as 'Scheduled Tribe' throughout the said State, in contrast to they being confined to a particular area of the State. As a result of

removal of the area restrictions, the tribe or caste, if it is recognized as a scheduled caste or scheduled tribe in the State was entitled to avail the

benefits irrespective of the places where they were normally traced to since the tribes normally dwelled in clusters and mostly found in certain hilly

areas. However, by the amendment of 1976, the restriction of 'Thakurs' being hailing from the districts specified in 1956 Order was completely

done away with.

41. This Court after perusal of Article 342 of the Constitution of India held that tribes or tribal communities specified by the President, in consultation with the Governor of a State, are deemed to be scheduled tribes in relation to that State. There is no intention to sub-divide, classify or discriminate these tribes based on their place of residence or place of their origin and it would rather create class of tribes within the same "tribe" in a particular State. It is not the intention flowing from the scheme of the Constitution. This court also considered the fundamental right conferred on every citizen in the form of Article 19 (d) and Article 19 (e) of the Constitution of India, namely to move freely throughout the territory of India and right to reside and settle in any part of the territory of India. This court accordingly quashed and set aside the impugned order passed and directed to forthwith issue the validity certificate in favour of the petitioner therein, as belonging to "Thakur, Scheduled Tribe, at the earliest and in any case, not beyond the period of four weeks from the date of the receipt of the said order. In our view, the facts before this court in case of Motilal N. Pawar (supra) squarely applies to the facts of this case. We are respectfully bound by the said judgment.

42. This Court in the case of Apoorva Vinay Nichale (supra) held that where the caste claim of the applicant has been scrutinised and accepted and one committee has given a finding about the validity of the caste, another committee ought not to refuse the same status to a blood relative who applies. In this case, Scrutiny Committee ought to have considered the caste validity certificate issued to other close blood relatives of the petitioner after due enquiry while considering the tribe claim of the petitioner. The impugned order passed by the Scrutiny Committee is in violation of principles of law laid down by this Court in the case of Apoorva Vinay Nichale (supra).

43. The Scrutiny Committee has already issued a caste validity certificate in favour of relatives of the petitioner whose surnames are Pawar, Bhil, Ahire, Sonwane and Vaishva etc. after following due procedure. The Scrutiny Committee thus ought to have issued the caste validity certificate in favour of the petitioner.

44. A perusal of the order passed by the Scrutiny Committee indicates that the Scrutiny Committee has invalidated the tribe claim of the petitioner solely on the ground of Affinity Test. The statement of the grand-father of the

petitioner was recorded by the Vigilance Officer who had submitted various information regarding primitive, traits, characteristics and rituals, about the wedding, after birth ceremonies, rituals, followed in tribal community as well as information given about the traditions followed in marriage, funeral and special traits and characteristics relating to which questions were asked to the father of the petitioner.

45. The Scrutiny Committee has totally overlooked the said part of evidence. The Scrutiny Committee has also overlooked the documentary evidence produced by the petitioner showing that after due enquiry, various authorities had already issued caste certificate in favour of the petitioner and the caste validity certificate in favour of various relatives of the petitioner.

46. In our view once a particular community is declared as Scheduled Tribe, then it is to be treated as Scheduled Tribe throughout the State. The Scrutiny Committee could not have bifurcated the Thakur community which is declared as Scheduled Tribe by inserting in serial No.44 in the list of Scheduled Tribe in the State of Maharashtra in 1950 by holding that "Thakur community" in the State of Maharashtra was in existence other than "Thakur Scheduled Tribe" i.e. "Non Tribal-Thakur". This part of the impugned order is ex facie contray to the Presidential Orders issued in 1950 amended by the Amendment Act, 1976 by which the "Thakur" community was included in Scheduled Tribes.

47. The Hon'ble Supreme Court in the case of State of Maharashtra Vs. Milind Khatware & Ors. (supra) has held that the Scheduled Tribe orders must be read as it is. Since in the First Presidential Order, it is clearly provided that "Thakur" since 1950 is included in the list of Scheduled Tribes, neither State Government nor Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the Notification issued under Clause 1 of Article 342. In our view, the Scrutiny Committee thus could not have rejected the caste claim of the petitioner by holding that there was different class or or group of "Thakur" as "Non-tribal Thakur".

48. The Supreme Court in the case of Jaywant Dilip Pawar Vs. State of Maharashtra & Ors. (supra) has held that the petitioner was required only to establish that she belongs to community mentioned at Sr. No.44 of Part IX of Second Schedule of the Scheduled Castes and Scheduled Tribes Orders

(Amendment) Act, 1976. The Scrutiny Committee thus could not have relied upon the provisions of the Bombay Reorganization Act, 1960 while

rejecting the caste claim of the petitioner on the ground of area restriction. The view of the Scrutiny Committee is ex facie contrary to the principles of

law laid down by the Supreme Court in the case of Jaywant Dilip Pawar (supra).

49. Division Bench of this Court in the case of Sachinkumar Vasantrao Wankhede Vs. State of Maharashtra (supra) has held that categorization of

Thakur"" as ""Thakur, Scheduled Tribe"" has come into effect after the Constitution was adopted and, therefore, obviously there was no question of

having any entry of such caste (tribe) in the pre-constitutional era. As regards the area restriction is concerned, the area restriction was lifted in 1976.

This Court in the said judgment also adverted to the Division Bench of this Court in the case of Motilal Namdeo Pawar Vs. Scheduled Tribe

Certificate Scrutiny Committee & Ors. (supra) and was pleased to set aside the order passed by the Scrutiny Committee and directed the Scrutiny

Committee to issue a caste validity certificate i.e. he belongs to Thakur, Scheduled Tribe. The principles of law laid down by the Division Bench of

this Court in the case of Sachinkumar Vasantrao Wankhede (supra) squarely applies to the facts of this case.

50. Division Bench of this Court in the case of Jaywant Dilip Pawar Vs. State of Maharashtra & Ors. (supra) after adverting to the judgment of the

Division Bench of this Court in the case of Apoorva Vinay Nichale (supra) has held that if the caste claim of the candidate has been held to be

belonging to Scheduled Tribe then other close blood relatives cannot be denied the validity certificate. The Scrutiny Committee has decided contrary to

the principles laid down by the Division Bench of this Court in the said Judgment.

51. Supreme Court in the case of Palaghat Zilla Thandan Samudaya Samrakshana Samittee and Anr. Vs. State of Maharashtra & Anr. (supra) has

held that it is not for the State Government or for this Court to enquire into in evidence about the correctness of entry of Scheduled Caste in the

Scheduled Castes Order or it has to be applied as it is as it stands until the Scheduled Castes Order needs amendment by appropriate legislation. In

our view, rejection of caste claim of the petition by the Scrutiny Committee is ex facie contrary to the principles of law laid down by the Supreme

Court in the case of Palaghat Zilla Thandan Samudaya Samrakshana Samittee

and Anr. (supra). The Scrutiny Committee has acted totally without jurisdiction by entering into the issue of correction of entry of Scheduled Caste in the Scheduled Caste order.

52. This Court in the case of Narendra Dhudku Thakur Vs. Scheduled Tribe Certificate Scrutiny Committee, Pune & Ors. (supra) has held that the order of Scrutiny Committee that the candidate belonging to 'Thakur' Caste and not 'Thakur' under the category of Scheduled Tribe amounts to clear mis-classification of 'Thakur' Caste into 'Thakur' Tribe and accordingly was pleased to set aside the impugned order in the said matter after considering the entry at Sr. No.44 Part IX of the Second Schedule to Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

53. In so far as the submission of the learned Additional Government Pleader that there being no perversity in the impugned finding recorded by the Scrutiny Committee and thus such finding cannot be interfered with by this Court by exercising powers under Article 226 of the Constitution of India is concerned, in view of the fact that various findings recorded by the Scrutiny Committee are ex facie contrary to the principles of law laid down by the Supreme Court and this Court and also contrary to the entry at Serial No.44 of Part IX of Second Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, this Court has ample power to set aside the said perverse findings of facts as well as the order being perverse.

54. Learned Addl. Govt. Pleader could not distinguish the judgments referred to and relied upon by the petitioner. The judgments referred to and relied upon by the learned Additional Government Pleader are totally distinguishable in the facts of this case and also on the ground that later judgments of the Supreme Court and this Court taking different views would be binding.

55. There is no substance in the submission of the learned Additional Government Pleader that the caste claim of the petitioner was totally considered in the light of documentary as well as oral evidence and Affinity Test in the light of the specific provisions of the said Act.

56. In our view, the impugned order dated 5th July 2019 passed by the Scrutiny Committee invalidating the claim of the petitioner is totally perverse and is unsustainable.

57. We therefore pass the following order :-

(i) The impugned order dated 5th July 2019 passed by the respondent no.2-The Scheduled Tribe Certificate Scrutiny Committee, Nashik (Exhibit-S to

the petition) is hereby quashed and set aside;

(ii) The Respondent no.2 Scrutiny Committee is hereby directed to issue caste validity certificate in favour of the petitioner as 'Thakur'?

Scheduled Tribe within a period of two weeks from the date of communication of this order;

(iii) The respondent nos.5 to 7 to accept the caste validity certificate that would be issued by the Scrutiny Committee in favour of the petitioner and to

grant final admission in Nair Hospital Dental College, Mumbai to the petitioner.

(iii) Rule is made absolute in aforesaid terms.

(iv) There shall be no order as to costs.