

(2019) 09 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 9259 Of 2019

Subodh	Vs	APPELLANT
State Of Maharashtra And Ors		RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Maharashtra Scheduled Tribes (Regulations Of Issuance And Verification Of) Certificate Rules, 2003 — Rule 10, 11(2), 12(2), 12(8), 12

Citation : (2019) 09 BOM CK 0020

Hon'ble Judges : S.C. Dharmadhikari, J;Avinash G. Gharote, J

Bench : Division Bench

Advocate : R.K. Mendadkar, C.K. Bhangoji, T.V. Jadhav, V.M. Mali

Final Decision : Dismissed

Judgement

Avinash G. Gharote, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.
2. By this petition, the petitioner challenges order dated 09th July, 2019 of respondent No.2 - Caste Scrutiny Committee, Amravati, rejecting his caste claim.
3. The petitioner claims to belong to Thakur tribe which is notified as Scheduled Tribe under the Constitution (Scheduled Tribe) Order, 1950 as amended from time to time. The petitioner had been issued the appropriate caste certificate on 05th November, 2016 certifying that he belonged to Thakur tribe, which is recognized as a Scheduled Tribe.
4. On the basis of the caste certificate, as issued by the competent authority, the petitioner took admission in the course of Diploma in Engineering with respondent No.3 in the reserved category. The following dates being material, are listed as below:

03/11/2013

The caste certificate of the petitioner was forwarded by the College to the respondent No.2/Scheduled Tribe Certificate Scrutiny Committee, Amravati, for verification.

31/08/2016

The Vigilance Cell submitted its report to the Committee, which according to the petitioner, was not served upon him.

26/11/2018

As no decision had been taken by the respondent No.2 upon the caste claim of the petitioner, Writ Petition No. 11756 of 2018 was filed, in which the respondent No.2 was directed to decide the claim within three months from the date of the order.

27/11/2018

Copy of the Vigilance Report was served upon the petitioner.

29/11/2018

The petitioner filed reply to the Vigilance Report.

02/07/2019

The matter was heard and closed for orders.

09/07/2019

The caste claim of the petitioner was rejected by the impugned order by the Caste Scrutiny Committee.

5. The Learned Counsel for the petitioner has assailed the impugned order on several grounds. It is contended that the Committee in-spite of having admitted that there were several pre-constitutional documents of blood relatives of the petitioner from paternal side showing their duly recorded caste as Thakur, merely on the ground of non-residence in the area, has ignored them, unmindful of the fact that the area restrictions have been done away with effect from 27/07/1977. The Committee has incorrectly co-related the relationships of the relatives of the petitioner. The law as laid down in several judgments including Madhuri Patil Vs. Additional Commissioner, 1994(6) S.C.C. 241, Anand Vs. Committee for Scrutiny & Verification of Tribe Claims, 2012(1) S.C.C. 113, laying down that the affinity test may be used to corroborate the documentary evidence and should not be a sole criteria to reject a claim, has not been considered in its proper perspective. The reliance placed upon the Govt. Resolution dated 31/07/1957 was unwarranted, in the face of the Amending Act 1976 removing the area restrictions. The decision making process in non-consideration of the documents in their proper perspective was illegal.

6. The documents relied upon by the petitioner (as many as 22 documents) to

buttress his claim of belonging to the Thakur Scheduled Tribe, are as under:

Sr.No.

Description of documents

i.

The original caste certificate dated 05/11/2016 issued to the petitioner by the competent authority of jurisdiction.

ii.

Birth extract in relation to petitioner.

Iii.

Primary School Leaving Certificate of the petitioner showing date of birth, place of birth, religion, caste and names of his parents.

Iv

Primary General School Admission Register extract in relation to petitioner

v.

Primary School Leaving Certificate in relation to father of the petitioner, namely, Digambar Mahadev Donge, showing his duly recorded caste as Thakur.

vi.

Birth Extract in relation to father of the petitioner.

Vii.

Caste Certificate of the father of the petitioner.

Viii.

Copy of the first page of service book extract of father of the petitioner.

ix.

Affidavit duly executed by the father of the petitioner furnishing genealogy tree of his family.

x.

Primary School leaving certificate of grand-father of the petitioner, namely, Mahadev Onkar Thakur, who was born on 02.06.1929 and was admitted in primary school on 15.06.1936, showing his duly recorded caste as Thakur i.e. pre-independence period.

xi.

Land Revenue Record in relation to the grand-father of the petitioner, Shri

Mahadeo Onkar Thakur, as on 01.05.1943 i.e. pre-independence period.

Xii.

Primary School Leaving Certificate of cousin grand-father of the petitioner, namely, Janardhan Onkar Thakur, who was born on 10.04.1910 and was admitted in primary school on 13.07.1925 showing his duly recorded caste as Thakur i.e. pre-independence document.

Xiii.

Death Certificate in relation to agnate grand-father of the petitioner, namely, Janaji Pamaji Thakur as on 28.03.1928, showing his duly recorded caste as Thakur. He is the common ancestor. It is a pre-constitution document.

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Birth Register extract in relation to great grand-father of the petitioner, namely, Onkar Janaji Thakur as on 02.09.1929, showing his duly recorded caste as Thakur. It is a pre-constitutional document.

xv.

Birth Register extract in relation to grand-mother of the petitioner from paternal side, namely, Darki Sampat Ganpat as of 1932, showing her duly recorded caste as Thakur. It is a pre-constitutional document.

Xvi.

Birth Register extract in relation to cousin great grandfather of the petitioner, namely, Sadashiv Janaji Thakur, as on 14.01.1941, showing his duly recorded caste as Thakur. It is a pre-constitutional document.

Xvii.

Birth Certificate in relation to daughter of cousin great grand-father of the petitioner, namely, Bebibai D/o Sadashiv Janaji Thakur, showing her duly recorded caste as Thakur as on 11.01.1941. It is a pre-constitutional document.

Xviii.

Birth Certificate in relation to uncle of the petitioner, namely, Ajay Mahadev Donge as on 16.09.1968, showing his duly recorded caste as Thakur.

Xix.

Primary School Leaving Certificate of cousin grand-father of the petitioner, namely, Laxman Shankar Thakur showing his duly recorded caste as Thakur

xx.

Primary School leaving certificate of aunt of the petitioner, namely, Nirmala Mahadev Donge, showing her duly recorded caste as Thakur.

Xxi.

Caste Certificate as belonging to Thakur, a Scheduled Tribe, issued by the competent authority to the cousin brother of the petitioner, namely, Abhishek Ajay Donge, after thorough enquiry.

Xxii.

Affidavit duly executed by the petitioner furnishing the genealogy tree of the petitioner's family.

7. The position of law as regards the verification of a caste certificate already issued by the competent authority, is already settled by a catena of decisions of the Hon'ble Apex Court as well as the High Courts. The learned Counsel for the petitioner has placed reliance upon:

(a) Order of the Hon'ble Supreme Court dated 08/03/2017, passed in Civil Appeal No. 2336/2011, in the case of Jaywant Dilip Pawar Vs. State of Maharashtra, in respect of Thakur Scheduled Tribe.

(b) 2017 S.C.C. Online Bombay 9778, Motilal Namdeo Pawar Vs. Scheduled Tribes Certificates Scrutiny Committee, to which one of us (Mr. S.C. Dharmadhikari, J.) was on the Bench, in respect of Thakur Scheduled Tribe,

(c) Writ Petition No. 6142 of 2007 Santosh Purshottam Bayaskar Vs. Scheduled Tribes Caste Certificate Scrutiny Committee, decided on 25th April, 2019, in respect of Thakur Scheduled Tribe,

(d) 2012(1) S.C.C. 113 Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, in respect of Halbi Scheduled Tribe,

(e) Judgment in Writ Petition No. 2363 of 2013 - Prakash Shravan Deore Vs. Scheduled Tribes Certificate Scrutiny Committee, Nashik, decided on 22/02/2019, in respect of Thakur Scheduled Tribe.

(f) Judgment in Writ Petition No. 7048 of 2018 - Ruchir Shriram Pawar Vs. State of Maharashtra and others, decided on 02nd July, 2018, to which one of us (Mr. S.C. Dharmadhikari, J.) was on the Bench, which is in respect of Thakur Scheduled Tribe.

8. On the other hand, the impugned order is supported by Shri V.M. Mali, learned Asstt. Govt. Pleader for the respondent No.2 by submitting that the same is a reasoned one, based upon consideration of all the relevant and material documents as well as the law applicable.

9. The parameters for testing the veracity of a caste claim, have already been laid down in various judgments, some of which have been relied upon by the learned Counsel for the petitioner, as quoted above. These include the existence of pre- as well as post constitutional documents, weightage being given to pre-constitutional documents, they having higher probative value; the affinity test - focusing on the ethnological connections and anthropological traits, which are

peculiar to the tribes - which has corroborative value to support the documentary evidence on record; oral testimony, amongst others.

10. The judgment in the case of Motilal Namdeo Pawar Vs. Scheduled Tribes Certificates Scrutiny Committee, Nashik - 2017 S.C.C. Online Bom. 9778, has very lucidly delved into the various aspects of the matter and, in fact, has in paragraph No. 34 expressed its anguish in respect of the approach of the Committees for verification of Scheduled Tribes in deciding caste claims in an adversarial manner by ignoring the settled position of law and misdirecting itself as to the factual position.

11. The learned Asstt. Govt. Pleader does not dispute the propositions as laid down in the above cited judgments, nor has placed on record any contrary position of law. The impugned order, thus, has to be tested in the light of the above position of law, as applicable to the facts and documents available on record.

12. A perusal of the impugned order demonstrates that in-spite of being aware of the number of documents as produced on record by the petitioner, as reflected from paragraph No.2 thereof and in-spite of rendering a finding while answering issue No.1 in the following words.

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However, immediately the same is discarded by observing:

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This is in-spite of the fact that the Committee was aware that area restrictions are no longer extant in the light of the 1976 Amendment. The respondent No.2 has relied upon the observations in Writ Petition No. 7813/2009 - Dattu Namdeo Thakur Vs. State, which is affirmed by the Hon'ble Apex Court in Special Leave Petition (Civil) No. 3314 of 2010 decided on 07/12/2011 as well as the judgment in Review Petition No. 1614/2003 - Dattatraya Shriram Ingle Vs. State, decided on 07/06/2016, in holding that the entry "Thakur" in the documents, relied upon by the petitioner, cannot be relied upon to hold that the same relates to the Scheduled Tribe "Thakur", as the caste "Thakur" is available in "Rajput, Sindhi, Maratha, Bramhan, Kshatriya communities also. Same reasoning has been given to disbelieve the caste certificates and entries in other documents in respect of the relatives of the petitioner. It has been further observed that in so far as the entry in the school certificates of the ancestors of the petitioner are concerned, they relate to the period 1925 to 1975 indicating that they were taking education

in the pre-independence period, whereas, Thakur Scheduled Tribe was residing aloof from the society in hilly and non-accessible areas, due to which, these documents were not reliable. The reasoning of the respondent No.2 in deciding issue No.1 holding that the claim of the petitioner is not proved on the basis of the documents filed by it, is wholly unsustainable.

13. The petitioner has filed as many as 28 documents as stated in paragraph No.2 of the impugned order. Out of these, at-least nine documents at serial No. 8, 11, 13, 15 to 18, 20 & 21 were independently verified by the Vigilance Cell, as reflected from its report dated 31/08/2016 at Exh. 'D' page 70 to the petition. The position in this regard as contained in the report of the Vigilance Cell is reproduced as under:

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record that these persons belonged to the caste 'Thakur', all of whom are related to the petitioner. The report further in its concluding part at record page No. 75 enumerates that the Committee has recorded the statement of the father of the petitioner, namely, Shri Digambar Mahadeo Donge alongwith the genealogical tree, in pursuance to which, after verifying the records of birth and death as kept in record room in Nagar Parishad, Shegaon, it has found that the entry in respect of demise of great grand father of the petitioner, namely, Janji Pamaji, who passed away on 28/03/1928, his caste is shown as 'Thakur'. Similarly, the Vigilance Report also demonstrates the verification of the death certificate of cousin grand father of the petitioner, by name, Janardhan Omkar with the same authority, which also contains the entry of caste 'Thakur'. The entries of birth of Omkar Janji, Panjoba Sadashiv Janji and Mahadeo Omkar have also been verified, all of which mentioned their caste as 'Thakur'. So also, the Vigilance Report also mentions the verification of the Admission Register of Nagar Parishad Primary School No.1, Shegaon, from 1916 to 1974, which show the entries in the name of Janardhan Omkar (cousin grand-father), Mahadeo Omkar, Digambar (father of petitioner) and uncle Ajaykumar, all of which showed their caste as 'Thakur'. Thus, the documentary evidence, of pre-independence era, of the ancestors of the petitioner as well as his relatives, categorically and consistently demonstrates the entry of caste as 'Thakur'. It is nobody's claim that the Vigilance Committee did not make any enquiry in respect of the caste of the petitioner or his ancestors and relatives for verifying their caste as Scheduled Tribe 'Thakur'. In fact, that was the very purpose of the Vigilance Committee, a perusal of whose report categorically demonstrates this position. A perusal of the Vigilance Cell report at Exh. 'D' to the petition at paragraph No. 1(5) itself demonstrates that the enquiry was in respect of the claim of the petitioner that he belonged to the Scheduled Tribe 'Thakur'. This being the position, it was not permissible to the respondent No.2 Committee to discard the findings and report of the Vigilance Committee and substitute its own finding, which was purely based upon conjectures and surmises, without any basis whatsoever. It is trite law that while dealing with documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status of caste, as compared to post-independence documents. This is so for the obvious reason that pre-independence, no benefits were to be had on account of one belonging to any caste and, as such, an entry of the caste in the records at that point of time could be believed to be genuine, depicting the correct position. In the present case, there are not one but multiple documents, which are of pre-independence even, which demonstrate that the ancestors of the petitioner belonged to the caste 'Thakur', which later-on came to be notified as a Scheduled Tribe. This documentary evidence, which was overwhelming in nature, could not have been discarded by the respondent No.2 merely on the basis of conjectures and surmises and based upon an unjustified and unfounded apprehension of persons taking advantage, of a spurious caste claim.

14. The reliance placed by the respondent No.2, upon the judgments in Writ Petition No. 7813 / 2009 - Dattu Namdeo Thakur as well as Writ Petition No. 1614/2003 - Dattatraya Shriram Ingle Vs. State, in the light of facts of the present matter is wholly misplaced. Merely because in upper castes also, the caste 'Thakur' exists, that does not mean that the enquiry report of the Vigilance Cell, which was conducted to establish the caste of the petitioner as Scheduled Tribe 'Thakur', was to be ignored. The Vigilance Cell is a Cell constituted under the provisions of Rule 10 of the Maharashtra Scheduled Tribes (Regulations of Issuance and Verification of) Certificate Rules, 2003 (hereinafter referred to as 'the Rules 2003' for short) and comprises of (i) the Senior Deputy Superintendent of Police (ii) the Police Inspector (iii) Police Constables to assist the Police Inspector and (iv) the Research Officer, whose joint duty is to investigate into the social status claims by conducting school and home inquiries and other enquiries as per the reference made by the Scrutiny Committee under sub-rule (2) of Rule 12 of the Rules 2003. Thus, the report of the Vigilance Cell is an independent enquiry into the caste claim of the petitioner/claimant and carries great weight and is worthy of reliance, the same having been initiated at the behest of the respondent No.2 Committee itself. The respondent No.2 cannot, on the one hand, initiate an independent enquiry into the caste claim and on the other hand, discard the enquiry report, that too, without assigning any reason to disbelieve the same. The impugned order does not give a single reason for discarding the Vigilance Report. Indeed, a perusal of the impugned order would demonstrate that there is neither a proper appreciation nor subjective consideration of the Vigilance Report. A perusal of paragraphs No. 2 & 3 of the impugned order while addressing issue No.1, while discarding the documents, as mentioned therein, completely ignores the Vigilance Report at Exh. D (record page No.70), which report demonstrates the credibility of the documents as independently verified to be correct by the Vigilance Cell. The provisions of Rule 12 of the Rules 2003 specifically enjoin upon the respondent No.2 to take into consideration the Vigilance Report and failure to do so, vitiates the impugned order and the findings rendered therein in so far as issue No.1, cannot be sustained on the facts of the case.

15. The fact that the ancestors of the petitioner were taking education in the pre-independence period, is no cause to reject the caste claim. In fact, such pre-independence entries would carry greater weight as at that time no benefits were available on the basis of one's caste and, therefore, there was no reason or cause whatsoever for a person to deliberately insert a caste in the official records.

16. A perusal of Rule 11(2) of the Rules 2003 will demonstrate the requirement of documents to be accompanied by an applicant for verification of person's Scheduled Tribe Certificate, as prescribed therein. These include documents of the applicant, his father and near relatives. When the requirement is prescribed by a statute or Rule for obtaining a certificate, it is enough that the requirement is satisfied. In the present case, documents much beyond those required by Rule 11(2) have been placed on record by the petitioner, which have been just

brushed aside by the respondent No.2 in its misplaced overzealous intention to weed out so called pseudo claimants. The approach and attitude on the part of the respondent No.2 leaves much to be said. The Courts having once indicated that the approach and attitude of the respondent No.2 ought not to be adversarial, while considering a claim for grant of certificate, persisting with it and ignoring the dictate of the Court is not a correct posture for the respondent No.2. In fact, Rule 12 of the Rules 2003 also spells out the nature of enquiry to be conducted by the Vigilance Cell and Rule 12(8) would inherently mandate the spelling out of reasons by the respondent No.2 in case it is not satisfied with the enquiry report, to be spelt out at-least in the order rejecting the claim of an applicant. Absence of such consideration would vitiate the impugned order.

17. While dealing with the issue of the affinity test, the respondent No.2, Committee has placed great reliance upon the statements as contained in the book *The Tribe and Castes of Bombay* by R.E. Enthovan, by ignoring the statement of the petitioner given to the Vigilance Cell on 29/09/2016, wherein he categorically states that his family worships "Khandoba", which is one of the recognized deities by the Author in the above book as the deity worshiped by the Scheduled Tribe 'Thakur'. So also, the other information given by the petitioner as to the customs and traits is brushed off by the respondent No.2 on the ground that there is difference between the statement dated 29.09.2016 as made by the petitioner before the Vigilance Cell and the statement made by the father of the petitioner at the time of hearing on 23/01/2019. If at all any difference was to be found, the same ought to have been found between the established traits and customs of the Scheduled Tribe 'Thakur' vis-a-vis the statements of the petitioner dated 29/09/2016 and that of his father dated 23/01/2019. However, instead of doing that the respondent No.2 merely on a difference between the above two statements concluded that the difference gave rise to suspicion and, therefore, the affinity test was not satisfied. This, in our opinion, was not the correct way to approach the issue while applying the affinity test. The respondent No.2 while applying the affinity test cannot adopt a policy of pick and choose but has to take an overall holistic view of the position keeping in background that due to change in areas and residence there for a long period of time, there may be a possibility of some changes in the traits and customs, affected by the local, social and other conditions of the area of residence.

18. The Hon'ble Apex Court in the case of *Anand Vs. Committee for Scrutiny and verification of Tribe Claims and others* (2012) 1 S.C.C 113, in paragraph No. 22 has held as under :

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

that the following broad parameters could be kept in view while dealing with a caste claim:

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

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

19. The judgment of *Shilpa Vishnu Thakur Vs. State of Maharashtra and others* - 2009(3) Mh.L.J. 995 (F.B.) has been duly considered by this Court in the case of *Prakesh Shravan Deore Vs. S.T.C.S.* in Writ Petition No. 2363/2013, decided on 22/02/2019, in which, it has been held as under:

"12. No doubt that the learned AGP relied on the judgment of the Full Bench of this Court in the case of *Shilpa Thakur* (supra) that the claim cannot be decided only on the basis of the documentary evidence but the affinity test also plays an important role. However, it is to be noted that the judgment of the Full Bench in the case of *Shilpa Thakur* is dtd 7th May, 2009, whereas the judgment of *Anand Kathole* is delivered by the Hon'ble Apex Court on 8th November 2011. In the case of *Rashmi Metaliks Limited and anr. Vs. Kolkata Metropolitan Development Authority and Ors.*, the Hon'ble Apex Court has frowned upon the practice of lawyers citing multiple judgments in support of a proposition of law. Any sincere student of law, leave aside a practising lawyer, who has put a number of years at the bar, is expected to know that the judgment of High Court, including the judgments delivered by the Full Bench, which has taken a view, which is contrary

to the view taken by the Hon'ble Apex Court, subsequently, the earlier judgment stands impliedly over-ruled. We do not understand the propriety in citing the judgment which is impliedly over-ruled."

20. In the judgment in the case of Gajanan Pandurang Shende Vs. Head Master, 2018(2) Mh.L.J. 460 this Court (Nagpur Bench) has held in paragraphs No. 8, 14 & 19 as under:

" 8. In the decision of the Apex Court in the case of Jaywant Dilip Pawar v. State of Maharashtra & Ors., delivered in Civil Appeal No.2336 of 2011 on 8-3-2017, the decision of the Scrutiny Committee that the relatives of the appellants in the said case were not the residents of the area mentioned in the Presidential Order, 1956, is set aside and it is held that what the appellants were required to establish was that they belong to the community mentioned in the Schedule of the Act No.108 of 1976. It is thus clear that the petitioner in the present case, was not required to establish that either his forefathers were the ordinary residents of the place meant for the tribals in the Constitution (Scheduled Tribes) Order prevailing prior to 1976 or his forefathers migrated from the said area to the present place of residence. The Committee was, therefore, wrong in asking the petitioner to establish such facts and rejecting the claim on failure of it.

14. This Court has held and it is confirmed by the Apex Court in the aforesaid decisions that even if it is assumed that there was a separate entity, which is called as 'Mana' in Vidarbha Region, which has no affinity with 'Gond' tribe, that community would also fall within the scope of the Scheduled Tribes Order by virtue of the Amendment Act, 1976, and the State Government was not entitled to issue orders or circulars or resolutions contrary thereto. It holds that since under Entry 18, 'Manas' are specifically included in the list of Scheduled Tribes in relation to the State of Maharashtra, 'Manas' throughout the State must be deemed to be Scheduled Tribe by reason of provisions of the Scheduled Tribes Order. Once 'Manas' throughout the State are entitled to be treated as a Scheduled Tribe by reason of the Scheduled Tribes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in various Government Resolutions. It further holds that it is not open to the State Government or, indeed to this Court to embark upon an enquiry to determine whether a section of 'Manas' was excluded from the benefit of the Scheduled Tribes Order.

19. In our view, the concept of recognized Scheduled Tribe for the purposes of giving benefits and concessions was not prevailing prior to 1950 and, therefore, only caste or community to which a person belonged was stated in the birth, school and revenue records maintained. The documents are issued in the printed format, which contains a column under the heading 'Caste' and there is no column of tribe. Irrespective of the fact that it is a tribe, the name of tribe is shown in column of caste. While entering the name, the distinction between caste and tribe is ignored."

The respondent No.2, in the impugned order, has not considered the mandate of the Hon'ble Apex Court, as laid down in the case of Anand Kathole (supra), as well as the judgments quoted above and merely because there was some discrepancy in the two statements of the petitioner and his father, has rejected the caste claim, which cannot be sustained in law.

21. The reliance placed by the respondent No.2 while considering the issue no.3, upon two circulars dated October 1954 and 31/07/1957 is wholly misplaced, as the Vigilance Cell Report speaks otherwise. Much water has flown consequent to the judgments in Dattu Namdeo Thakur - Writ Petition No. 7813/2009, Murlidhar Ramkrishna Ghatge - Writ Petition No. 2748/2000 and Dinesh Ramesh Thakur Vs. State - W.P. No. 9627/2011 and the position is now covered by the judgments referred to in the earlier paras. The finding in respect of issue No.3, in the impugned order, therefore, cannot be sustained.

22. The respondent No. 2 further while deciding issue No.4 has considered that 21 persons as listed therein, had withdrawn their applications for grant of Caste Certificate and has opined that the petitioner therefore, could not be held to belong to Scheduled Tribe 'Thakur'. This reasoning of the respondent No.2, is wholly misconceived as observed in Writ Petition No. 7048/2018 - Ruchir Shriram Pawar Vs. State and others, decided on 02/07/2018, to which one of us (Mr. S.C. Dharmadhikari, J.) was on the Bench, in the following words:

"Para 6:The claims of the persons towards the very scheduled tribe (21 in number) have not been found to be fraudulent, bogus or vitiated by misrepresentation on their part. Twenty one aspirants/applicants, though interested in obtaining Caste Validity Certificates, were advised to give up their claim or rather gave up their claims voluntarily. That is why in their case no Caste Validity Certificate was issued. From that it cannot be presumed that the petitioner's claim is also lacking in bona fides or is not genuine or is tainted. Merely because every applicant, who withdrew his claim, belongs to Akola, Amravati or Buldhana District and these areas having never been inhabited by Thakur Scheduled Tribe persons, according to the Committee, would enable it to reject the petitioner's claim as well. -----". Besides that, the petitioner produced overwhelming documentary evidence as also a genealogy which would indicate that none of those, who withdrew their claims, are his relatives from the paternal side. The Committee has found his claim otherwise to be untenable. The reason assigned and which we have referred to above contravenes the legal position as emerging from a judgment, copy of which is annexed as Exhibit 'N'. That judgment of this Court in Writ Petition No. 7 of 2014 Motilal s/o Namdeo Pawar Vs. Scheduled Tribe Scrutiny Committee, Nashik and others, decided on 22nd December, 2017, makes reference to this very aspect and a judgment and order of the Hon'ble Supreme Court, which has been delivered recently and in the month of March, 2017."

The above observations squarely covers the case in the present matter also and as such, findings of the respondent No.2 committee vis-a-vis issue No. 4 also

cannot be sustained.

23. The respondent No.2 while considering issue No.5 has quoted multiple judgments including Shilpa Vishnu Thakur (supra). However, as discussed above, in the light of the judgment of the Hon'ble Apex Court in Anand Kothale's case (supra) as well as of this Court in Prakesh Shravan Deore Vs. S.T.C.S., Ruchir Shriram Pawar Vs. State and others, and Gajanan Pandurang Shende Vs. Head Master, the position is no longer extant.

24. Thus, having considered the entire position as emanating from the record, as discussed above, we find that the impugned order dated 09/07/2019 passed by the respondent No.2 cannot be sustained on the touchstone of the law, as applicable in the matter and accordingly, the same deserves to be quashed and set aside. Accordingly, the impugned order is quashed and set aside and it is held that the petitioner belongs to the Scheduled Tribe 'Thakur'. The respondent No.2 is, thus, directed to issue the appropriate certificate to the petitioner forthwith.

25. Rule is made absolute in aforesaid terms.