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**(2001) 10 BOM CK 0080**

**In the Bombay High Court**

**Case No : Writ Petition No's. 2885 and 4219 of 2000**

Suhas Dashrathe and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision : 06-10-2001**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227, 341, 342

**Citation :** (2001) 2 ALLMR 184 : (2002) 2 BomCR 211

**Hon'ble Judges :** N.V. Dabholkar, J;B.H. Marlapalle, J

**Bench :** Division Bench

**Advocate :** B.L. Sagar, in W.P. No. 2885/2000 and A.S. Golegaonkar, in W.P. No. 4219/2000, for the Appellant; E.P. Sawant, G.P. in W.P. Nos. 2885 and 4219/2000 for respondent Nos. 1, 2 and 6, P.V. Mandlik in W.P. Nos. 2885 and 4219/2000 for respondent No. 3, A.S. Golegaonkar, in W.P. No. 2885/2000 for respondent No. 4 and R.P. Bhumkar in W.P. No. 2885/2000, for the Respondent

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## **Judgement**

B.H. Marlapalle, J.—Pursuant to our order passed on 9-8-2001, the caste verification committee has adjudicated upon the caste claim of the petitioner in Writ Petition No. 4219/2000 and submitted a report dated 21-9-2001 to us holding that the petitioner does not belong to Kunbi caste and the Maratha caste is not a sub-caste of Kunbi caste. By our order dated 24-9-2001, we had granted leave for amendment and instead of amending the petition memo, the petitioner preferred to substitute the same and this was allowed by us and in the said substituted petition, the petitioner has challenged the legality, propriety and justifiability of the scrutiny committee's report.

2. We have heard the respective parties at length including Shri B.L. Sagar, learned Counsel for the petitioner in Writ Petition No. 2885/2000 and we have proceeded to decide the instant petitions finally on their being restored by the Apex Court vide its order dated 20-7-2001.

3. The petitioner in Writ Petition No. 4219/2000 was purportedly issued a caste certificate on 28-12-1993 that he belongs to Kunbi caste, which is listed in the

other backward classes by the State Government. Based on this caste certificate, he contested the Municipal Corporation election held in February, 2000 from Ward No. 63 (Nageshwarwadi) and he got elected. Subsequently, he also got elected as Deputy Mayor of the Aurangabad Municipal Corporation and in the meanwhile his caste status was challenged by filing a complaint with the Divisional Commissioner. The Municipal Commissioner, Aurangabad referred 39 caste certificates in respect of all the Corporations declared elected against reserved seats, to the caste scrutiny committee pursuant to the communication dated 17-4-2000 received from the State Election Commission. By order dated 28-8-2000, the committee held that in view of the report dated 17-7-2000 received from the Taluka Executive Magistrate that no caste certificate in favour of the petitioner was issued by the said office, there was no question of verification of the petitioner's caste claim and the proceedings were, thus, closed. This order came to be challenged before us in Writ Petition No. 4219/2000 and by our common judgment dated 11-10-2000, we had dismissed the petition, whereas Writ Petition No. 2885/2000 came to be allowed by the said judgment and the election of the petitioner in Writ Petition No. 4219/2000 was set aside. Our judgment came to be challenged in Civil Appeal Nos. 4409/2001 and 4410/2001, which came to be disposed of by setting aside the impugned order passed by us and the petition was remanded for fresh decision after the scrutiny committee would adjudicate the petitioner's caste claim de novo.

Impliedly, both the petitions are required to be decided afresh and hence we proceed to do the same.

WRIT PETITION NO. 4219/2000:

4. During the fresh proceedings, the petitioner submitted documents on 20-8-2001 and his written defence in support of his claim on the same date. The petitioner had also referred to the gazetteers of Pune, Aurangabad, Parbhani, Wardha and Nagpur Districts as well as extracts from a book titled as "The Castes and Tribes of Bombay Territory". He submitted in all 35 documents in respect of himself, his father, grand father, daughters, cousins, relations from his wife's side and other family relations. These documents were:

The case of the petitioner, before the scrutiny committee, was:---

- (a) he does not belong to the Maratha caste;
- (b) even otherwise Maratha was not a caste by itself and it was a title derived by persons belonging to Kunbi caste who had joined the Armed Forces during Shivaji's era or earlier;
- (c) even if Maratha is treated to be a caste, it ought to be a sub caste of Kunbi and all Marathas belong to Kunbi caste;
- (d) his caste claim as belonging to Kunbi caste was required to be validated based on the documentary evidence submitted by him.

5. By relying upon a Division Bench judgment of the Madras High Court in the case of Maharaja of Kolhapur Vs. S. Sundaram Ayyar and Others, , the petitioner tried to put up a case before the scrutiny committee that King Shivaji was a Shudra King and not a Kshatriya King and the Maratha title had its origin in the Kunbi caste itself. The scrutiny committee analyzed the documents as relied upon by the petitioner, considered the report submitted by the vigilance committee and held that---

(a) The Maratha caste is not a sub-caste of Kunbi and it was not included in the list of OBCs as sub-caste or synonym of Kunbi caste;

(b) genealogy which was submitted by the petitioner in support of his claim could not be relied upon;

(c) the evidence from maternal side and from the wife's side could not be considered to establish the petitioner's caste claim;

(d) the evidence of candidate's relations and his daughters was of recent period and, therefore, it was not useful to establish his caste claim; and

(e) the caste recorded in the school record of the petitioner and his father was Maratha. The service extract also showed that his father was from Maratha caste and, therefore, the petitioner had failed to establish his caste claim as Kunbi. The petitioner does not belong to the Kunbi caste.

6. The extracts from the gazetteers, which were relied upon by the petitioner, are reproduced for ready reference:

A) Aurangabad District:

Marathas.---The term Maratha is now applied principally to the Kunbis, but it should be confined to the military families of the country. The Kunbis do not as a rule enlist as soldiers; and although Shivaji and some of his Maratha chiefs were of this race, their followers were chiefly drawn from the Mawals of the Western Ghats.

Kunbis.---The Kunbis form the main body of the agricultural population. The term Kunbi has been sometimes applied to husbandmen in general, but in reality it is a caste of Marathas, the members of which are by hereditary occupation, farmers and tillers of the soil. There are several sub-divisions of local Kunbis, such as, Tilvan or Tirole, Maratha, Dakshini, Ghatole, Banjara, Akarmase, Barmase, Zadhav, Vaindeshi, Bijapuri, Khandeshi, Varhadi, etc; but the Akarmase and Barmase are the most common. The Tilvan Kunbis are moderately distributed throughout the district. The Maratha Kunbis are in two sections. 1. Pure Maratha Kunbis, and 2. Gantadi or ordinary Kunbis.

(B) Parbhani District:

Marathas.---The chief fighting, land-owning and cultivating caste found in most numerous in the district forming more than one-third of the total population. It

has two divisions, Maratha Ksatriya and Maratha Kunbi, of which the former is hypogenous to the latter, but was not originally distinct. The dividing line between the Kunbi and the Maratha is not of the nature of a permanent barrier. The Marathas proper are allowed to marry the daughters of the Kunbis. The latter would not ordinarily secure a daughter in marriage from their social superiors.

(C) Wardha District:

The Kunbis are the regular agricultural caste of the district. Under Maratha and perhaps the Gond administration the Kunbis usually filled the office of Deshmukh or Collector of revenue for a circle of villages. The Patils or headmen of the villages were also Kunbis. Principal sub-castes in the district are Tiroles, Wandhekar, Khaire and Dhanoje. The Tiroles are the most numerous and are found in large numbers in all the three talukas. The families also held the hereditary office of Deshmukh which conferred a considerable local position and were usually Tiroles. They have developed into an aristocratic branch of the caste and marry among themselves. They do not allow remarriage of widows nor permit their women to accompany the marriage procession. Some of them say that they were originally Rajputs and derive their name Tirole from a place called Therol in Rajputana.

(D) Nagpur District:

Marathas.---The Marathas are castes formed from military service, and it seems probable that they sprang mainly from the peasant population of Kunbis and followed Shivaji in his guerilla warfare against the armies of Aurangzeb. In the Central Provinces the Marathas are divided into 96 exogamous clans which marry with each other. But the Bhosle Rajas selected seven of the highest clans including their own, and confined their alliances to these. The names of these clans are Bhosle, Gujar, Mohite, Sirke, Mahadik, Phalke and Ahirrav.

Kunbis.---The Kunbis, the traditional tillers of the soil have several sub-castes of whom the Tiroles are considered the highest. These generally held offices of Deshmukh under indigenous rule, and the Deshmukh families have taken to marrying among themselves and prohibiting widow-marriage.

7. In the book "The Tribes and Castes of Bombay" (Volume III) written by Mr. F.E. Enthoben, there is description about the Marathas and Kunbis and the petitioner relied upon the following extracts:---

"The Term Maratha.---The term Maratha, like the cognate terms Bengali, Telanga, Gujarathi and the like, is the titular designation of a people embracing all classes of society in Maharashtra, from the high caste Brahmans and Parbhus and the low caste Nhavis and Parits, to the lowest unclean classes of Mahars and Mangs. But within the people themselves the name is borne as their special designation, by the large fighting and landholding community; while the name Kunbi is popularly applied to those among them who are actually engaged in agricultural

operations.

Although the distinction between high class Marathas and humble Kunbis is thus well marked, it gradually fades away and the ordinary Marathas cannot be distinguished from the Maratha Kunbis, with whom they interline and intermarry freely. There is, in fact, no hard and fast line of demarcation between the two classes and there are instances of well-to-do Kunbis rising to the higher rank as their means increased and adopting finally the title of Kshatriya.

The Marathas proper are allowed to marry the daughters of Kunbis, but the latter could on no account secure a girl in marriage from their social superiors. The line between these is not, however, well defined and, excepting the rich Marathas and poorer Kunbis, intermarriages among them are freely allowed.

8. The petitioner has referred to a decision of the caste scrutiny committee in the case of Babarao Dasharathrao Patil, dated 7-12-1996 and more particularly the ethnographic literature referred to therein. The said judgment in its para Nos. 4, 5 and 6 has referred to the ethnographic literature as well as the gazetteer published by the erstwhile Hyderabad State. Dr. Irawati Karve in her book titled as "Hindu Society and Interpretation" writes the word Kunbi is applied to various groups of tillers of land and the word Maratha used to be applied to a particular group in western Maharashtra.

The Gazetteer of the Hyderabad State stated:

"The term Maratha is now applied principally to the Kunbis, it should be confined to the military families of the country. The Kunbis do not as a rule enlist as soldiers. The Kunbis form the main body of the cultivator population."

The Encyclopedia on Indian Civilization published by the Government of Maharashtra, states:

"Kunbi is a tiller community and in the earlier era, Kunbi was not a caste, but was an occupation. The word Kunbi is derived from Kulpati, Kulwai, Kunbi. There was not much difference between Kunbis and Marathas and if the Kunbis acquire wealth, they adopt the life style of Marathas and call themselves as Marathas."

9. On the basis of this ethnographic literature, the petitioner stated before the scrutiny committee that the Maratha caste was part and parcel of Kunbi caste and, therefore, he ought to be declared as belonging to the Kunbi caste only.

10. The Government of Bombay published a G.R. dated 23-4-1942 and declared the list of intermediate communities, scheduled castes, an-original and hill tribes and other backward communities. At Sr. No.124 in Schedule A (list of intermediate communities), Kunbi (except Tiloni Kunbi in Ratnagiri District) was shown, whereas under list of other backward communities, at Sr. No. 73, Kunbi Tiloni in Ratnagiri District was shown. This position was continued in the G.R. published on 1-11-1950; 29-10-1956 and 21-11-1961. However, the Government of Maharashtra published a fresh G.R. on 13-10-1967 declaring a

separate list of other backward classes and at Sr. No. 83, Kunbi caste has been shown in the said list. It is, thus, clear that till 1967, Kunbi Tirole in Ratnagiri District were treated as OBCs and in other part of the State, they were treated as an intermediary community and for the first time in 1967, the Kunbi caste was shown to be in the other backward classes for the entire State.

11. The petitioner claims that right from his father's grand-father, his family has been staying at Aurangabad and, therefore, it would be also desirable that we refer to the declarations made by erstwhile Hyderabad State in respect of Kunbi caste prior to the reorganization of States on linguistic basis.

The erstwhile State of Hyderabad had also published the list of other backward classes as recommended by the Backward Classes Commission. The said list indicated the castes in other backward classes and also castes considered most backward. Caste Kunbi was not included in this list and, therefore, the same caste was not recognized as other backward class for Aurangabad District so long as it was part of the erstwhile Hyderabad State.

12. While attacking the scrutiny committee's decision, the learned Counsel for the petitioner submitted that -

(a) the report is vitiated on the ground that no Research Officer was either associated with the scrutiny committee or with the Vigilance Commission;

(b) the law laid down by the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, as well as the subsequent review judgment in the same case Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, , has not been followed;

(c) documents submitted by the petitioner have not been considered though they were of probative value and thus, the committee fell in gross error in appreciating the evidence submitted by the petitioner. The committee failed in considering the law laid down by the Supreme Court in the case of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, in that regard;

(d) the committee committed a gross error in refusing to accept the genealogy submitted by the petitioner;

(e) the committee failed to apply its mind to the vigilance report and it mechanically referred to the same without recording any findings thereon; and

(f) the members of the committee, who submitted the impugned report afresh, were not qualified to undertake the adjudication as an expert body and there was no member who had the social and ethnic knowledge about the local social structure.

In support of his challenge to the decision of the scrutiny committee, the learned Counsel relied upon other decisions, namely,

(1) Bhaiya Ram v. Anirudh Patar, 1971 (1) S.C.R. 805.

(2) Dina v. Narayan Singh, 38 E.L.R. 212.

(3) Ganesh Suroshe Vs. State of Maharashtra and others, .

He has also referred to the decisions of this Court in the case of Maharashtra Adivasi Thakur Jamat Seva Mandal and Others Vs. State of Maharashtra and Others, and Subhash Ganpatrao Kabade Vs. State of Maharashtra and Others, . In the case of Kum. Madhuri Patil, the Apex Court observed in para No. 14 as under:

"High Court is not a Court of Appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and record a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts."

In a more recent judgment in the case of (State of Maharashtra v. Milind & others) 2001 (1) B.C.R. 620 : AIR 2000 S.C.W. 4303, a Constitution Bench of the Supreme Court in para 32 observed:

"The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior Tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the Tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior Tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record. The jurisdiction of the High Court would be much more restricted while dealing with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order, considering the language of Articles 341 and 342 of the Constitution. These being the parameters and in the case in hand, the Committee conducting the inquiry as well as the Appellate Authority, having examined all relevant materials and having recorded a finding that respondent No. 1 belong to "Koshti" caste and has no identity with the `Halba/Halbi", which is the Scheduled Tribe under Entry 19 of the Presidential Order, relating to State of Maharashtra, the High Court exceeded its supervisory jurisdiction by making a roving and in-depth examination of the materials afresh and in coming to the conclusion that `Koshtis" could be treated as `Halbs". In this view the High Court could not upset the finding of fact in exercise of its writ jurisdiction."

Regarding the scope of our powers under Articles 226 and 227 of the Constitution, the Supreme Court in the case of M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., re-stated in the following words:

"The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and Tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or Tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an Appellate Court or substitute its own judgment in place of that of the subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior Court or Tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the Court or Tribunal has come to."

13. On the touchstone of these enunciations, we are required to consider the challenge raised by the petitioner against the finding recorded by the scrutiny committee that he does not belong to Kunbi caste.

14. From the record submitted before us by the scrutiny committee, it is seen that in his defence statement submitted on 20-8-2001, the petitioner set out a genealogy of his family as under:

15. On 20-8-2001, he appears to have purchased a stamp paper for Rs. 20/- and set out an affidavit, which was submitted before the scrutiny committee and on the reverse of this affidavit, he submitted yet another genealogy as under:

Deponent

Sd/-

(Vasant Pandurang Narwade)

This affidavit did not carry any details and it was not verified before any competent authority. He submitted yet another application without giving any date before the committee and furnished a third genealogy as under:

On 20-8-2001, he also submitted a genealogy from his wife's side as under:

16. The committee classified the 35 documents in five different groups -

(a) Documents listed at Sr. Nos. 2, 4, 7, 8, 9, 10, 11, 17, 21, 22, 32 to 35 from



paternal side;

(b) Documents listed at Sr.Nos. 24 to 26 from maternal side;

(c) Documents listed at Sr. Nos. 5, 21 and 31 of relations;

(d) Documents listed at Sr.Nos. 12 and 13 pertain to the candidate himself and documents at Sr. Nos. 18, 19, 29 and 30 were in respect of his daughters; and

(e) Documents listed at Sr. Nos. 13, 14 to 16 and 27 in respect of relations from wife's side.

17. The documents submitted from the paternal side have been further sub-categorized by the committee and the committee has relied upon the documents in respect of the petitioner himself, his father and grand father, whereas the other set of documents from paternal side have not been accepted by the committee on the ground that the petitioner was not able to establish the genealogy inasmuch as the name of the common ancestor was not shown and if Gyanoji Narwade and Tukaram Narwade were the brothers, the name of their father was not mentioned. The documents from the maternal side, from the wife's side and in respect of the other relations and the petitioner's daughters have been rightly rejected by the committee and we do not find this approach erroneous, leave alone manifestly erroneous.

18. The petitioner has for the first time brought on record before us an affidavit of Eknath Shripat Narwade. Perusal of this document shows that the stamp paper of Rs. 50/- was purchased on 1-10-2001 and it was sworn before the Notary at Buldhana on the same day. This Eknath Shripat Narwade was also interviewed by the vigilance committee but he did not submit any such affidavit during the vigilance enquiry. In this affidavit, he has stated that during the vigilance enquiry, he could not give the name of his father's grand father as he could not remember the same and, therefore, he enquired in the village and with some other relations and came to know that the name of his father's grand father was Jairamji. He further stated that Jairamji had two sons by name Gyanu and Tukaram Narwade. In the genealogy at A & B, the petitioner claims that Tukaram Narwade was his father's grand father. Though this affidavit has been submitted before us for the first time, that by itself even otherwise does not take the petitioner anywhere because the third genealogy which was submitted by the petitioner before the scrutiny committee mentions about the branch from Ashruba onwards and the petitioner contends that one Rishikumar, who is son of Radhakishan, is his cousin. Ashruba is claimed to be the grand father of Radhakishan. From this genealogy, it is clear that from Ashruba to Rishikumar, there are four generations and same is the case from Tukaram Narwade to petitioner in genealogy B, and if these two i.e. B & C are read together, Ashruba has to be the brother of Tukaram and obviously that of Gyanoji as well. However, the affidavit by Shri Eknath Shripat Narwade on oath stated that Jairamji had only two sons namely Gyanoji and Tukaram. This affidavit does not mention anything about Ashruba being a member of the genealogy descending from

Jairamji. Same is the statement in the affidavit brought on record before us of Shri Namdeo Hari Shewale. In the genealogy at "A", the petitioner has shown Shri Ganpat Narwade as his grand father. Every time, the petitioner went on producing a genealogy which did not tally with the earlier one.

19. The scrutiny committee also referred to the decisions relied upon by the petitioner in the case of Maharaja of Kolhapur v. Sunderam Ayyar as well as the decision of the scrutiny committee in the case of Babarao Dasharath Patil, in support of his claim that Maratha was a sub-caste of Kunbis and the committee did not agree with the said submissions. The decision of this Court in the case of Abhay Shrawanji v. State of Maharashtra, 1984 M.L.J. 289 was also adverted to by the committee and it was held that the facts of the said case had no bearing on the petitioner's case.

20. The petitioner alongwith other documents, had also submitted a copy of the representation dated 26-5-2000 addressed to the Hon"ble Chief Minister of Maharashtra by the Chief Promotor of Marathwada Kunbi Maratha Vikas Mahamandal at Dhamangaon, Tq. Jalkot Dist. Latur. The prayer in this representation was that all the persons belonging to Maratha caste in the Marathwada region should be recognized as Kunbi and they should be issued the caste certificate as belonging to Kunbi caste. This representation has referred to the same Gazetteers as relied upon by the petitioner before the scrutiny committee and attempted to suggest that there was no distinction between Marathas and Kunbis and Maratha caste is part and parcel of Kunbi caste. In short, the petitioner's plea was also on the same lines as is made out in the representation submitted to the Chief Minister and though there were certificates in respect of himself, his father and grand father, that all of them belonged to Maratha caste, he should be declared as belonging to Kunbi caste. The committee rightly held that such a proposition could not be accepted. The committee's jurisdiction was limited to an enquiry whether the petitioner belongs to the Kunbi caste and nothing beyond the same. Even the order passed by the Apex Court remanding the matter for fresh adjudication also goes to show that the committee was required to verify the petitioner's caste claim of belonging to Kunbi caste by giving him a fresh opportunity of submitting evidence - documentary and oral. If the petitioner claims that there is no difference between Maratha and Kunbi caste and Maratha caste is part and parcel of Kunbi caste or a synonym of the same, his remedy is before the State Government and it is not within the powers of the scrutiny committee to adjudicate upon the same. This view is supported by the judgment of the Supreme Court in the case of State of Maharashtra v. Milind (supra). While interpreting the provisions of Articles 341 and 342 of the Constitution, the Supreme Court held that it was not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community was included in the general name even though it was not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950 and the Scheduled Tribes Order must be read as it is. It was not even

permissible to say that a tribe, sub-tribe, part of, or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority and it was not open to State Governments or 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.

What has been held by the Apex Court in the case of Scheduled Tribes must be made equally applicable to the cases of OBCs and it has to be held that it is not open to the committee to modify, amend or alter the list of such classes and it is open only to the State Government to amend the same by following the necessary procedure and more particularly the law laid down by the Apex Court in the case of *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, . We may, in this regard, usefully refer to the decision of the Supreme Court in the case of *Ganesh Suroshe (supra)*, wherein it was observed:

"The notification of the President under Article 342 of the Constitution, subject to the Scheduled Castes and Scheduled Tribes Act, 1976, is conclusive and final. There are catena of decisions of this Court holding that the Court cannot examine, to find out the caste of the party, the basis of the certificate issued. The limited area the Court can survey is whether the caste mentioned in the presidential Notification would be applicable to the claimant or not."

21. The next question we are required to consider is whether the committee was wrong in relying upon the documentary evidence in respect of the petitioner, his father and grand father and discarding the documentary evidence in respect of the purported paternal side from the branch of Buldhana. The petitioner's claim before the committee was that out of the two brothers namely Gyanoji and Tukaram (genealogy A & B), Gyanoji remained in Buldhana District, whereas Tukaram migrated to Aurangabad. However, it is pertinent to note that the petitioner failed to bring any documentary evidence in support of his case from the branch of Tukaram Narwade, who had two sons by name Ganpat and Maroti. Ganpat had two sons by name Pandurang and Shrirang, whereas Maruti had two sons Vishwanath and Shankar. Shrirang is shown to have one son by name Vilas and Shankar is shown to have two sons by name Dilip and Dipak. In the genealogy at A & B, the petitioner shows that he does not have a brother, but the affidavit of Eknath Shripat Narwade, as submitted during the course of vigilance enquiry, indicated that the petitioner has a brother by name Suhas. When we questioned the learned Counsel for the petitioner on this aspect, on instructions, he has stated that this Suhas is the petitioner's step brother. But the fact remains that no documentary evidence stating that any of these individuals belong to Kunbi caste was brought on record, leave alone a reliable evidence. In

the case of Kum. Madhuri Patil (supra), the Supreme Court observed in paras 9 and 10 as under:

9. The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records, as they then census rules insisted upon. Undoubtedly, Hindu social order is based on hierarchy and caste is one of the predominant factors during pre-constitution period. Unfortunately instead of dissipating its incursion it is being needlessly accentuated, perpetrated and stratification is given legitimacy for selfish ends instead of being discouraged and put an end by all measures, including administrative and legislative. Be it as it may, people are identified by their castes for one or the other is a reality. Therefore, it is no wonder that caste is reflected in relevant entries in the public records or school or college admission register at the relevant time and the certificates are issued on its basis. .... ..

10. ... .. This school record, comparatively, is not only oldest but it being the record pertaining to candidate's father's admission to school prior to independence, it carries greatest probative evidentiary value. The caste of the person, as stated earlier, is determined on the basis of the caste of their parents, basically for the reasons that the caste is acquired by birth. When the school record of the candidate's father shows his caste as Koli, the documents which the candidates have produced (documents quoted at Sr. Nos. 3, 5 to 8, 11, 13 to 16) showing their caste as Mahadeo Koli cannot be relied upon. All these documents furnished by the candidates are those manipulated and fabricated with to knock of the seats in educational institutions defrauding the true Scheduled Tribes to their detriment and deprivation. As the school record of the candidate's father shows his caste as 'Koli', the caste certificates which have been issued to the appellants and their relatives by the Executive Magistrate, Greater Bombay (Documents at Sr. Nos. 9, 10, 12, 17 to 19) are without proper enquiry and investigation, besides being without jurisdiction. Its reiteration in service record would not carry any credibility or a ground to accept the caste as Scheduled Tribe. .... ..

In the case of Gayatrilaxmi Nagpure (supra), the Supreme Court held that the burden in support of the caste claim lies heavily on the applicant who seeks the benefit of such a social status. However, that by itself did not mean that the authorities had no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate and they must also play a role in assisting the committee to arrive at a correct decision.

22. Let us examine the documents in respect of the petitioner himself, his father and grand father. We shall start from his grand father. Deed of mortgage is executed on 20 Azur 1347 Fasli. This document was executed in Urdu language and its translation in English was also placed before the committee. This was

registered with the Registrar's Office at Aurangabad on the same day i.e. 20th day of Azar, 1347 Fasli - Monday at 12 noon. The verification as made before the Sub Registrar in this document reads -

"The executant Ganpat s/o Tukaram, aged 33 yrs., Caste Maratha, Occupation business resident of Aurangpura, Aurangabad city admits before me the contents of this document of Mortgage with possession and admits he has executed it. The mortgagee Balaram paid before me the entire mortgage amount of Rs. 100/- O.S. in currency Govt. Notes to the executant before me. The executant is identified by Sheshrao s/o Shivrao Caste Brahmin, age 56 yrs., Occupation an employee in District Court, Aurangabad resident of Aurangabad and Rajaram s/o Daduram age 26 yrs., Caste Teli, Occupation private service resident of Aurangabad."

Coming to the petitioner's father, the first document is the certificate issued by the Middle School, Chelipura, Aurangabad, under Outward No. 309 dated 5-5-1952. This document was also in Urdu language and its translation in English was placed before the committee. It stated that the petitioner's father Pandurang s/o Ganpatrao was admitted in the same school on 15-6-1950. As per the said document, the petitioner's father was born on 8-6-1932 and he left the school on 5-5-1952. The vigilance committee visited the said school and went through the admission register. It found that at Entry No. 74/797 and against the name of the petitioner's father, his religion and caste was shown as Hindu and Maratha. The extract of this register was also provided to the committee. As per this document, the petitioner's father was admitted on 15 Zirkat 1358 Fasli. The next document is the extract of service book of the petitioner's father, who was employed under the Government Printing Press as Workman (Kamgar) and against the column of religion, caste and community, it was shown in this service book as Hindu - Maratha.

So far as the petitioner himself is concerned there were two documents which he relied upon, the first being the extract of general school admission register of Municipal School Moti Karanja. In this extract his caste was shown as Hindu Maratha and his date of admission was 29th June, 1963 whereas date of leaving was 15th June, 1964. Secondly, the extract of general school admission register of Government High School, Chelipura, Aurangabad was also before the scrutiny committee in respect of the petitioner and as per the same he was admitted in Class 10th in the said school on 12th December, 1969 and against the caste column Maratha was written. We have noted that this admission was after October, 1967 when the State Government had included Kunbi caste in the list of Other Backward Classes and even while getting admission on 12th December, 1969 neither the petitioner nor his father had taken any steps to enlist his caste as Kunbi. From the service book of the petitioner's father it is evident that he was subsequently transferred to the Aurangabad Agricultural Produce Marketing Committee and he retired in June, 1975. He is presently receiving pension. There is nothing on record to show that he had sought to take the benefit of

reservation as applicable to the Kunbi caste any time after 1967. Similarly, when the State Government had shown Kunbi caste in one of the reserved categories viz. intermediary caste, he had not sought any benefits of reservation. The documents in respect of the petitioner's grandfather viz. the mortgage-deed was executed on 20th day of Azur 1347 Fasli which correspondingly falls sometime in November, 1938 and this document is from the pre-independence era. The petitioner's father was admitted in Urdu Madarsa in 1949 and his caste was recorded as Maratha. Both these documents, i.e. the certificates of the father and grandfather have the highest probative value and even when the petitioner himself was admitted to the respective schools in 1963 as well as 1969 his caste was shown as Maratha. This entry in respect of the petitioner is certainly based on the caste claim of his father as well as the grandfather. If all these documents in respect of the petitioner, his father and grandfather are considered together it is clear, beyond any doubt, that the petitioner belongs to Maratha caste and his claim of belonging to Kunbi caste, on the basis of the certificates from his purported genealogy branch from Buldhana or from his wife's side have been rightly rejected by the scrutiny committee.

23. The Scrutiny Committee also held that the decision of the Supreme Court in the case of S. Nagarajan Vs. District Collector, Salem and others, was not applicable. This view, to our mind, is erroneous. In the case of Nagarajan (supra) the claimant had taken the benefit applicable to Scheduled Tribes claiming that he was a Konda Reddy. During the inquiry the Tahsildar had found that the certificate issued in favour of the claimant was not correct and was without jurisdiction. The certificate was, therefore, cancelled and this cancellation order came to be challenged before the High Court. The learned Single Judge dismissed the petition and in appeal the same view was confirmed. The Division Bench observed:

" ... about the documentary proof let in by the petitioner, the father's case is the proper proof to know the caste of his son. In the school admission register, the caste of the writ petitioner's father Thiru N. Siddareddi was originally noted as Hindu Reddi only. Subsequently the word 'Konda' has been written in it, in brackets and that too in different ink. The corrections have not been attested by the Headmaster. A certificate issued on 2-7-1953 by the village Munsif of Kannamoochi has been pasted in the admission register which does not bear the initial signature of the Headmaster for having accepted it. In the Transfer Certificate dated 16-6-1955 also, his caste has been originally noted as Hindu Reddiar and subsequently the word "Konda" has been added. Even accepting that the correction in the Admission Register had actually been made in the year 1953 itself on the strength of the Village Munsif's Certificate dated 2-7-1953, the Caste in the T.C. would have been noted as Hindu Konda Reddi in the first instance itself. Even in the Service Register of Siddareddi, it has been noted as Hindu/Reddi (Konda). Hence, it is patently clear that the caste noted in the admission register was not corrected in the year 1953 but was corrected long after the entry of Thiru Siddareddi into Government Service. The other

documents filed by the petitioner do not support the claim that the writ petitioner is a Kondareddi.

3. Further, in a case like this, the determining factor is the community to which the father of the petitioner belonged. In the instant case, the father of the petitioner never claimed that he was a Kondareddi, even though he was Government servant. Kondareddy is recognised as a Scheduled Tribe. Any person entering a Government service, if he is entitled to such a benefit, would never fail to avail such a benefit. If the father of the writ petitioner was a Kondareddi, he would not have failed to take advantage of the fact that he belonged to Kondareddy, as such he was a Scheduled Tribe and entitled to all the benefits. He had not done so."

The Apex Court accepted these findings and noted:

"7. ... His father N. Siddareddi had never claimed his status, though in the ordinary course he would have claimed to be belonging to the Scheduled Tribe community to avail the benefit of reservation available under State service. The learned Single Judge was right in concluding that the appellant's father having been in Government service would not have omitted to claim his status as belonging to Scheduled Tribe had he really been a member of Scheduled Tribe community (Konda Reddy). On the other hand, his father was Reddy which is a forward caste and that, therefore, the subsequent interpolation that he was Kondareddy (interpolation) is not genuine and an incorrect document was thus brought into existence to claim the status as Scheduled Tribe."

These observations are squarely applicable in the facts of the instant case as well and, therefore, the petitioner's caste is required to be determined on the basis of the caste of his father as well as grandfather and if so considered, the only conclusion that could be arrived at is that the petitioner belongs to the Maratha caste.

24. The certificates relied upon by the petitioner in respect of his cousin brothers from the paternal side (Buldhana Branch) have been rightly discarded by the Committee as the genealogy submitted by the petitioner on three different occasions did not lead to any safe reliance in that regard for the reasons we have already indicated herein above. The certificates in respect of the cousins from the maternal side as well as the relations from the wife's side cannot be accepted as the proof to determine the claimant's caste. The certificates of his daughters are on the basis of the admissions as entered in the respective schools in the year 1984 and the caste shown is Maratha Kunbi. In the Government Resolutions issued by the State Government recognising the castes in the category of Other Backward Classes, there is no mention of the Maratha Kunbi caste, if such a caste really exists. It is obvious that the petitioner, by his actions has changed his daughters' caste to derive the benefits of reservation but that by itself would not help him inasmuch Maratha Kunbi caste is not listed in the Other Backward Class category by the State Government. The documents at Serial Nos. 4, 8, 10,

15, 17, 20, 22, 23, 28, 32 and 33 have been rightly discarded by the scrutiny committee and none of these documents, in fact, belong to his uncle or grandfather's uncle i.e. Shrirang Ganpat Narwade, his sons Vilas Narwade or Maroti Narwade, his sons Vishwanath and Shankar as well as Dilip and Deepak who are the grandsons of Maroti Narwade. These documents are purportedly in respect of the persons who are claimed to be from the branch of Gyanoji Narwade or Ashruba Narwade and the three genealogies submitted by the petitioner could not be inter connected in the absence of definite evidence that Gyanoji Narwade, Tukaram Narwade and Ashruba Narwade were three real brothers.

It is for these reasons that the committee proceeded by relying upon the documents which have the highest probative value and this approach of the committee cannot be dubbed as erroneous warranting our interference. On the other hand, we affirm the same view.

25. So far as the petitioner's reliance on the District Gazetteer and other ethnographic literature is concerned, the same does not permit any one to reach to a definite conclusion to show that either the Marathas are originally Kunbi or Maratha is not a caste and it is only a title or Maratha is a sub-caste of Kunbi caste or a synonym thereof. In fact, this literature also shows that there was nothing called Kunbi caste and every tiller was called a Kunbi irrespective of his caste. The word Kunbi indicated tiller of the soil and anybody who was engaged in this occupation was referred to as Kunbi. The State of Maharashtra, for the first time, recognised the Kunbi caste as one of the Other Backward Classes vide its resolution of 13th October, 1967 and it must be deemed that the State Government had addressed itself to the social realities. If the State Government was satisfied that there is a separate caste called Maratha Kunbi it could have said so by issuing amending orders to that effect or declaring Maratha Kunbi as one of the castes in the Other Backward Classes. On the other hand, the Directorate of Social Welfare, Cultural Affairs, Sports and Tourism, Government of Maharashtra, issued a letter on 25th July, 1979 and recognised Leva Kunbi as a sub-caste of caste Kunbi as included in the list of Other Backward Classes and directed that the persons belonging to the caste Leva Kunbi be treated as Kunbis for granting the benefits available to the Other Backward Classes. The contentions that there is a caste by name Maratha Kunbi and it is sub-caste of Kunbi caste cannot be accepted and the findings of the committee on this issue are correct. The literature so relied upon by the petitioner does not, in any case, per se, show that the claim of the petitioner could be accepted as against the existing social realities.

26. The learned Counsel for the petitioner has also attacked the committee's report on the ground that affinity test was not applied in the petitioner's case and the findings are, therefore, vitiated. The affinity test, as prescribed by the Supreme Court, has more weightage in case of persons who do not possess any documentary evidence in support of their caste claim and this is more so when



none from the family in the earlier generations or in the present generation had ever entered a school or entries in the birth registers, as maintained by the village officers, are not available in a reliable form. When the scrutiny committee had before it documentary record for three generations it was not necessary to consider the affinity test and more so such a test is not required to be considered in each and every case. The Vigilance Committee report has made the school inquiries and home inquiries in respect of almost all the documents which were placed before the verification committee. The committee has considered the said report and recorded its own findings in respect of these documents and these findings have been found to be in order by us. Absence of any further observations in the impugned report, regarding the vigilance inquiry report would not, in such circumstances, vitiate the findings recorded by the committee and the challenge in that respect as raised by the learned Counsel for the petitioner must, therefore, fail. We are also of the view that the affinity test carries more significance in the case of Scheduled Castes/Tribes.

27. The petitioner also contends that there was no Research Officer associated with the fresh adjudication process and even in the committee of three members, which has submitted the impugned report, there was no expert who had knowledge of the social structure. Constitution of the Scrutiny Committee has been done by the State Government strictly as per the directions issued by the Supreme Court in the case of Kumari Madhuri Patil (supra) and if we read these directions, as set out in the original order as well as the review order, it is clear that the presence of an expert officer is necessary in case of Scheduled Castes and in the case of Scheduled Tribes there is a requirement of a Research Officer. In the review order also, the Apex Court maintained this structure of the Scrutiny/Verification Committee but increased the committees as such and stated that the committee should have five members and three of them would form the coram. The impugned report has been submitted by a committee consisting of three members and all of them satisfy the requirements of eligibility as laid down by the Apex Court. The Vigilance Inquiry Committee is required to be headed by an officer of the rank of Deputy Superintendent of Police and to be assisted by two officers of Inspector's rank as per the directions of the Apex Court. We have perused the report submitted by the Vigilance Committee. The Vigilance inquiry has been conducted by two Inspectors, the report was submitted to the Deputy Superintendent of Police heading the Vigilance Cell as constituted by the State Government and he specifically endorsed that he agreed with the report made by the Inquiry Officers. No procedural fault could be found with the Vigilance Inquiry report so submitted. The said report does not specifically draw any conclusions and deals with the factual aspect of the various documents submitted before the verification committee and the statements made by the persons with whom the inquiry was carried out. The Scrutiny Committee has given required consideration to this report impliedly and neither in the constitution of the committee nor in the constitution of the Vigilance Inquiry there is any infirmity so as to vitiate the report submitted by the verification committee against the petitioner.

28. On the issue of synonyms as claimed by the petitioner in respect of "Maratha Kunbi" and "Kunbi" caste persons, it would be useful to refer to yet another judgment of the Supreme Court in the case of Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, . The claimant therein had a certificate stating that he belonged to the "Konda Kapu" caste. On inquiry it was found that actually he belonged to the "Kapus" caste and not the "Konda Kapus" caste. However, the High Court had accepted the claim made by the claimant and the Supreme Court reversed the findings of the learned Single Judge as well as that of the Division Bench. The Apex Court observed that when the notifications declaring certain castes to be belonging to either Scheduled Castes, Scheduled Tribes or Other Backward Classes are issued, the respective castes' titles are clearly mentioned in such notifications and if the notification stated "Konda Kapus" or "Konda Reddies", the respective entries must be read specifically and there was no scope for the courts or Tribunals or the Committees to give different interpretations and accept persons belonging to "Kapus" or "Reddi" castes as belonging to "Konda Kapus" or "Konda Reddis". While setting aside the judgment of the High Court the Supreme Court took strong note on such false caste claims being put up by the persons belonging to higher castes and called upon the Government of India to take appropriate steps, in the following words:

"While reiterating the above guidelines to be workable principles, it is high time that the Government of India would have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and corner the benefits reserved for the real tribals etc. etc., so that the menace of fabricating the false records and to gain unconstitutional advantages by plain/spurious persons could be prevented. Lest they would defeat the Constitutional objective of rendering socio-economic justice envisaged under Article 46 in the Preamble of the Constitution and under Articles 14, 15, 16, 38 and 39."

29. We must also make a specific mention of the petitioner's amazing stand before the committee. If these contentions are accepted, every person belonging to the "Maratha" caste has to be issued a certificate that he belongs to "Kunbi" caste and this would be against the stark social realities in Maharashtra State. We do not know about the takers for this proposition and nevertheless this is an issue which needs to be addressed to by the State Government. On one hand, the petitioner relied upon the documents from his wife's side or from the purported Narwade branch from the Buldhana side and contended before the committee that the documents in respect of his own school record, his father's school record as well as service record and the documents executed by his grandfather should be discarded by the Committee. His claim that he belongs to "Kunbi" caste obviously arose for the first time in 1993 when he obtained a certificate to that effect and when he admitted his daughters in a school in 1984, he did not enter their caste as "Kunbi" but instead it was entered as "Maratha Kunbi". The petitioner chose to drag in the name of the Great Maratha King Shri

Shivaji and we fail to understand the relevancy of his reliance on the judgment of the Madras High Court in that regard, unless the petitioner claimed that he was a direct descendant of the Great Maratha Warrior. The petitioner adopted a bizarre stand before the Committee inasmuch as on one hand he claimed that he does not belong to the Maratha caste and on the other hand he contended that Maratha is not a caste and, in any case, it is a sub-caste of Kunbi.

30. For the reasons elaborately set out, we hold that the findings submitted by the Committee on the caste claim of the petitioner, as a result of the fresh adjudication, as directed by the Apex Court, do not call for any interference and there is no case made out for such an interference by invoking our powers under Articles 226 and 227 of the Constitution. We, therefore, endorse the findings of the Committee that the petitioner does not belong to the caste "Kunbi" which is listed as Other Backward Class in the State of Maharashtra.

WRIT PETITION NO. 2885 of 2000:

31. This is a public interest petition filed by a voter in Ward No. 64 (Kotwalpura) and an activist of political party. He has, inter alia, prayed for quashing and setting aside the election of Shri Vasant Pandurang Narwade.

Taking note of the observations, as made by the Apex Court, in the case of Laveti Giri (supra) and the directions issued by us the Government of Maharashtra has enacted the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Class Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000 (for short referred to as the Verification of Caste Certificate Act) and the same has been published in the State Government Gazette dated 23rd May, 2001. Section 1(2) of the said Act provides that it shall come into force on such date as the State Government may, by a notification in the Official Gazette, appoint. The Scrutiny Committee had entered into correspondence with the Director of Social Welfare seeking clarifications whether the Government of Maharashtra has declared the date so as to bring this Act into force and it was informed in writing that no such notification was issued by the State Government, as yet. We hope that the State Government would take appropriate steps at the earliest possible and issue such a notification to bring into force the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Class Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000 soon, so as to fulfill the requirements to ensure that the benefits of reservation are not robbed by spurious elements and these constitutional benefits are made available to the genuine claimants.

32. So far as the other issues raised in this petition are concerned, we reaffirm our reasoning and findings, as set out in paras 16 to 25 of our earlier judgment dated 11th of October, 2000. For these reasons, we allow the petition partly and hold that the corporator so elected is disqualified to continue to be the corporator

elected from Ward No. 63 of the Aurangabad Municipal Corporation any more.

33. In the result Writ Petition No. 4219 of 2000 fails and the same is hereby dismissed. Rule discharged, however, without any order as to costs.

So far as Writ Petition No. 2885 of 2000 is concerned, we reaffirm our earlier views as set out in paras 16 to 25 of our judgment dated 11th October, 2000 and hold that the petitioner in Writ Petition No. 4219 of 2000 (Shri Vasant Pandurang Narwade) is disqualified to continue to be the Corporator elected from Ward No. 63 of the Aurangabad Municipal Corporation any more.

The fresh elections to the said Ward, pursuant to our judgment dated 11th October, 2000 have been held on 7th January, 2001 and by order dated 5th January, 2001 the Apex Court was pleased to stay the result of the elections and this order was to remain in operation till we decided the petition afresh. We now direct the Returning Officer (Shri D.M. Muglikar, Special Land Acquisition Officer, Aurangabad) to declare the result of the elections so held on 7th January, 2001 forthwith, in respect of Ward No. 63.

The Collector, Aurangabad shall proceed with the inquiry against Shri B.T. Chavan, the then Tahsildar, Aurangabad and Shri P. S. Goswami, the then Clerk in the Tahsil Office at Aurangabad and take appropriate action under the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 against them, if not already taken. The Collector may also examine to file F.I.R. against the said Government employees, if not already filed. The Municipal Commissioner, Aurangabad is directed to seek advice from the State Election Commission so as to file F.I.R. against Shri Vasant S/o Pandurang Narwade petitioner in Writ Petition No. 4219 of 2000 for submitting a bogus/fabricated caste certificate and contest the Corporation elections on the basis of such a false certificate and to proceed further according to the said advice.

The Government of Maharashtra has already enacted the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jati), Nomadic Tribes, Other Backward Class and Special Backward Class Category (Regulation of Issuance and Verification of Caste Certificates) Act, 2000 and the same has been published in the Government Gazette on 23rd May, 2001. However, as per section 1(2) of the said Act the date of its enforcement has not yet been notified. We direct the State of Maharashtra through the Chief Secretary to take appropriate steps to issue notification u/s 1(2) of the said Act at the earliest and, in any case, before 31st October, 2001, if such a notification has not already been issued. Rule in Writ Petition No. 2885 of 2000 is made absolute in terms of the above order, however, without any order as to costs.

Certified copy be given on priority basis.