

(2007) 10 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 6490 of 2005

Vinayak Kolshikwar

APPELLANT

Vs

The State of Maharashtra, Tribal Development Department,
The Committee for Verification and Scrutiny of Tribe Claims
and Maharashtra State Electricity Board, EHV, Construction
Division

RESPONDENT

Date of Decision : 17-10-2007

Acts Referred:

Evidence Act, 1872 — Section 114

Maharashtra Births and Deaths Registration Rules, 1976 — Rule 13

Registration of Births and Deaths Act, 1969 — Section 13, 16(1), 22(1), 8

Citation : (2008) 1 ALLMR 716 : (2008) 1 BomCR 126 : (2008) 2 MhLj 179

Hon'ble Judges : R.M. Borde, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : S.R. Barlinge, for the Appellant; R.D. Reddy, A.G.P. for Respondent
No. 1, M.S. Deshmukh and H.T. Joshi, for the Respondent

Judgement

R.M. Borde, J.—Some essential facts, giving rise to this petition, can be summarised as below:

Petitioner claims to be belonging to "Chhatri", Scheduled Tribe. He secured certificate on 29.01.1993, issued by Taluka Executive Magistrate, Nanded, certifying therein that petitioner is member of "Chhatri", Scheduled Tribe. Petitioner was employed as "Wahini Madatnis" with Respondent No. 3 - Maharashtra State Electricity Board as against seat earmarked for reserved category candidate on 29.03.1997. The tribe certificate secured by petitioner came to be referred to the Scrutiny Committee by the employer on 27.06.2002.

2. It is contended by the petitioner that Respondent No. 3 issued notice directing him to produce caste validity certificate as expeditiously as possible, failing which, it was threatened that his services shall stand terminated. Petitioner, who was apprehending order of termination of his services, approached this Court seeking protection till Caste Scrutiny Committee decides status claim of the

petitioner, by filing Writ Petition No. 6760/2004. This Court granted protection in favour of the petitioner by order dated 02.11.2004, thereby directing the employer not to put an end to the services of the petitioner until disposal of tribe claim by the Scrutiny Committee. Although, in the memo of petition, it is stated that said writ petition is pending, however, we find from the record that said petition came to be disposed of by an order dated 04.03.2005 and the petitioner was permitted to withdraw the petition in view of his preferring another writ petition bearing W.P. No. 1257/2005. The interim relief, which was operating in favour of the petitioner, was continued for a period of two weeks thereafter.

It appears that as the Scrutiny Committee invalidated tribe claim of the petitioner and as such petitioner approached this Court by filing Writ Petition No. 1257/2005. In the said petition, petitioner made a grievance that although he filed a detailed reply on 06.09.2004 to the report tendered by vigilance officer, the Scrutiny Committee has not considered the same and passed order on 15.12.2004 invalidating status claim of the petitioner. This Court, therefore, by an order dated 22.03.2005, remitted the matter back to the Scrutiny Committee for giving an opportunity of personal hearing to the petitioner and the Committee was directed to decide the matter afresh on its own merits and in accordance with law.

3. The matter was again reconsidered by the Scrutiny Committee during the second round and after giving an opportunity of hearing to the petitioner, the Committee was not convinced regarding the claim put forth by the petitioner and as such by an order dated 07.07.2005, invalidated the tribe claim lodged by the petitioner. The said order, passed by the Scrutiny Committee, is impugned in this petition.

4. In order to substantiate his claim, petitioner has filed as many as sixteen documents before the Committee. Petitioner also caused appearance in person before the Committee for the purposes of hearing on 16.05.2001. An interview form was got filled in from the petitioner to ascertain the peculiar traits and characteristics of the tribe. Petitioner was also supplied with the copy of inquiry report tendered by the vigilance officer and the petitioner had tendered his reply to the said report on 06.09.2004. The Committee, after considering the documentary evidence and after offering personal hearing to the petitioner, has passed the impugned order.

5. So far as documentary evidence tendered by the petitioner is concerned, document at Sr. No. 1 is the caste certificate issued in favour of the petitioner himself, which was subject matter of scrutiny. That so far as school admission extract of the petitioner, wherein date of admission was mentioned as 01.07.1974, is concerned, the Committee found that against the caste column, initial entry of caste as "Shimpi" was rounded up and new entry as "Chhatri" was recorded. There also appears a remark on the document that the entry is changed on the basis of caste certificate issued by Tahsildar dated 13.10.1979. The document at Sr. No. 3 is the school leaving certificate of the petitioner issued

by Zilla Parishad High School, Hadgaon, bearing date 21.01.1982 wherein caste is recorded as "Chhatri", so also in document at Sr. No. 4, which is the xerox copy of first page of service book of the petitioner. Document at Sr. No. 5 is the certificate issued by Tahsildar. Other documents are of less significance as those are issued by revenue authorities who don't have an authority to certify entries in respect of caste. Some documents are in the nature of birth extract of petitioner's father issued by village officer, whereas one document is xerox copy of petitioner's grand father's caste certificate issued by Taluka Executive Magistrate, which, according to the Committee, was not readable. Some of the documents are the certificates issued by "Chhatri Samaj". One document is in respect of petitioner's maternal uncle's caste certificate. Another document, on which reliance is placed, is in the form of affidavit of petitioner's neighbour.

6. The Committee, on appreciation of documentary evidence, observed that in the basic school record pertaining to the petitioner, there is entry in the caste column initially recorded as "Shimpi", which was rounded up and a new entry was taken as "Chhatri". The Committee observed that as the basic school record pertaining to petitioner himself is contrary to the claim lodged by the petitioner, other documents in the form of certificates issued by Sarpanch, Talathi and Police Patil cannot be relied upon. That so far as the birth certificate issued in respect of petitioner's father is concerned, wherein date of birth is recorded as 13.04.1933, the Committee observed that the entry was of a period when Gram Panchayats were not in existence and, therefore, refused to rely upon the said document. The Committee also observed that the petitioner has also failed to prove affinity and ethnic linkage towards "Chhatri", Scheduled Tribe. In this view of the matter, it was held that petitioner has failed to substantiate his status claim.

7. We have perused the order passed by the Committee and heard the arguments advanced by Shri S.R. Barlinge, learned Counsel for the petitioner, Mrs. R.D. Reddy, learned A.G.P. for Respondent No. 1, Mr. M.S. Deshmukh, learned Counsel for Respondent No. 2-Committee and Mr. H.T. Joshi, learned Counsel for Respondent No. 3.

8. Learned Counsel for the petitioner has assailed the order passed by the Scrutiny Committee mainly on the grounds as mentioned below.

It is contended that although the petitioner has secured employment on 29.03.1997, on the strength of caste certificate, reference was made to the Scrutiny Committee on 27.06.2002, which is a belated one and in view of the Full Bench Judgment in the case of Prakash Namdeorao Kedar and Others Vs. Union of India (UOI) and Others, , the reference, which was directed beyond a period of two years, could be said to be belated one and need not be taken note of. According to the learned Counsel for the petitioner, the whole reference itself is bad in law as the same having been made beyond a period of two years.

It is contended that the Committee ought to have taken into consideration the document in respect of birth extract of father of the petitioner wherein entry of

birth is recorded as 13.04.1933 and an entry in respect of caste in the said extract has been taken as "Chhatri".

Learned Counsel for the petitioner also contended that the Committee ought not to have discarded the school admission extract pertaining to the petitioner wherein the entry has been corrected as "Chhatri" and the correction has been carried out on the basis of certificate issued by Tahsildar dated 13.10.1977. It is contended that the Secondary School Code permits such correction in respect of school admission record and as such no serious doubt can be raised in respect of said document. Learned Counsel, relying upon a decision rendered by the Apex Court in the case of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, , contended that appreciation of evidence by the Committee is unsatisfactory and the evidence tendered by the petitioner is more than sufficient to substantiate his status claim.

9. From the facts narrated in the petition, it is evident that petitioner secured a certificate in the year 1993 and was appointed on the strength of said certificate as against a seat earmarked for Scheduled Tribe category candidate on 29.03.1997. The employer referred the status claim of the petitioner for verification at the hands of the Committee, on 27.06.2002. On the basis of dates stated above, the learned Counsel for the petitioner contends that the reference, which has been made by the employer to the Scrutiny Committee, for verification of status claim of the petitioner, has to be construed as belated one.

10. Per contra, learned Counsel appearing for the Committee, has placed reliance on the judgment of Division Bench of this Court in the case of Vidyasagar s/o Babarao Ashtake v. State of Maharashtra and Ors. reported in 2005 (3) All MR 548, and contended that the judgment rendered by the Full Bench in respect of time frame for rendering decision by the Scrutiny Committee, the same is held to be a "decision" without perceiving the relevant point involved in the matter and as such the decision is said to pass sub silentio in respect of the said relevant point and therefore cannot be treated as an authority on that point. Learned Counsel also contended that the Scrutiny Committee having answered the reference, it cannot be said now that the reference made after expiry of a period of two years is bad in law and the order passed in pursuant to such reference cannot be held to be annulled. Learned Counsel for the Committee supported the decision rendered by the Scrutiny Committee and requested to maintain the decision.

11. So far as first point raised by the Counsel for the petitioner, relying upon the decision rendered by Full Bench in the case of Prakash (cited supra), it would appear that the conclusions reached by the Full Bench, are that:

(a) the reference for verification of the caste claim at the earliest possible and within a reasonable period is appreciable;

(b) as a rule of prudence and the rule of uniformity, two years period could be said to be a reasonable period as it corresponds to the probation period, but it

would depend upon the facts of each case;

(c) except in cases of fraud, the reference beyond the reasonable period, may be accompanied by the valid reasons for the same; and

(d) the reference made even after the expiry of the period of two years is not bad in law and order passed in such reference cannot be held as null and void.

12. In the instant case, it could be seen that the reference made by the employer to the Committee was initially answered and the decision was rendered by the Committee on 15.12.2004. Petitioner has challenged the said decision, rendered by the Committee, in Writ Petition No. 1257/2005. However, petitioner has not raised the contention in respect of belated reference in the earlier round of litigation. The point is being canvassed after petitioner has failed to establish his claim during the second round before the Committee. Even otherwise, it is not open for the petitioner to raise such a contention in view of the law laid down by the Apex Court in the case of *R. Vishwanatha Pillai Vs. State of Kerala and Others*, . In the said case, the Apex Court has clearly ruled that even though the caste claim was referred to the scrutiny committee years after the date of appointment of the employee, that cannot enure to the benefit of the employee to discard the ruling of the scrutiny committee and insist for continuation to be in employment. An employee who obtains appointment against a post meant for a reserved candidate on the basis of a caste certificate which to his knowledge is either false or has been obtained by fraud, or does not disclose the factual position as regards the caste of such employee, certainly no right is created in favour of such person, either in law or in equity to insist to continue to be in employment.

The Apex Court has observed that:

We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

13. It would be appropriate, at this stage, to refer to the decision rendered by this Court in the case of *Vidyasagar Babarao Ashtake v. State of Maharashtra* reported in 2005 (3) All MR 548. The Division Bench of this Court, while considering the issue involving reference in relation to status claim made beyond the period of two years, or nearly 15 years after appointment of the petitioner in the said petition, has commented upon the decision rendered by the Full Bench in the case of *Prakash* (cited supra). The observations made by the Division Bench are as below:

It is evident from various judgments preceding the one delivered by the Full Bench that the main issue which required consideration was relating to the jurisdiction of the Court to prescribe limitation for reference of the caste claim to the scrutiny committee. The decision of the Full Bench in *Prakash Namdeorao's* case does not disclose any consideration or discussion on the said basic point nor any conclusion having been arrived at in that regard. In fact, in order to arrive at

the decision on the point of reasonable period in the absence of specific period being prescribed by the Legislature for reference of the caste claim for verification by the scrutiny committee, the basic point which required attention was whether the Court has jurisdiction to prescribe such period in the absence of statutory provision in that regard. The said judgment discloses that the said point was not blessed with. In other words, although the said point was logically and essentially involved in the matter, there being neither consideration, nor discussion nor decision arrived at on the said point by the Full Bench, the said point has passed "sub silentio" and the said decision cannot be said to lay down any binding proposition of law on the said point.

It is thus clear from the decision of the Full Bench that the points relating to the competency of the Court to prescribe a fixed time limit for referring the caste claim for verification by the scrutiny committee, as also to prescribe a uniform fixed period as a reasonable period were not addressed to nor dealt with nor decided and therefore, the decision of the Full Bench does not contain any proposition of law on those points.

The Division Bench has further observed that the decision of the Apex Court in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, clearly ruled out that mere delay in the matter of reference of the caste claim for verification does not create any right in favour of the employee to the post to which he has obtained the appointment when the post is meant for reserved category and in fact, the candidate does not belong to such category.

14. In view of the pronouncement of the Apex Court in the matter of R. Vishwanatha Pillai (cited supra), the contention of the petitioner regarding reference being belated one is required to be rejected.

15. That so far as the documentary evidence in the form of school admission extract pertaining to petitioner is concerned, the Scrutiny Committee has refused to place reliance on the said document and has held against the petitioner on the ground that corrections are made in the basic school record by the school authorities without proper authorisation. It is observed by the Committee that the petitioner has manipulated the school record to grab opportunities of real scheduled tribe persons.

16. Learned Counsel for the petitioner vehemently contended that procedure is laid down in the Secondary School Code to carry out corrections in the original school record. Learned Counsel places reliance on Clause 26.4 of the Secondary School Code and contends that there is a power vested in the school authorities to correct the mistakes. Clause 26.4 of the Secondary School Code reads as below:

26.4 Application for change or correction of date of birth, name, surname, caste, etc. as entered in the General Register shall be entertained from or on behalf of a pupil who is attending a school. Such application shall not be entertained from or on behalf of a pupil, who has left the school, as the same amounts not only to a

change in the entries in the General Register but also to a change in the School Leaving Certificate. However, for the purposes like an admission to another educational institution the School Leaving Certificate is relied upon as an evidence for name, surname, caste, date of birth, etc., and hence in bona fide cases where wrong spelling of a word or an obvious mistake of the type mentioned in Sub-rule 3 above is noticed any time after issue of the School Leaving Certificate and the same is required to be corrected so as to be consistent with the corresponding entries in the General Register of the school or those in the School Leaving Certificate issued by the previous school, such applications shall be entertained. The procedure to be followed in such cases is laid down in Appendix Six.

17. On bare reading of the above mentioned clause, it would reveal that the procedure, which is required to be followed for effecting corrections in the entries in respect of date of birth, name, surname, caste, shall have to be followed as laid down in Appendix Six. The relevant paragraphs in Appendix Six, in relation to change in caste or sub-caste (in respect of B.C. pupils only) are paragraphs 12, 13 and 14, which are reproduced as below:

(12) For making changes in caste or sub-caste of Backward Class pupils the guardian of the pupil shall make an application in Form No. 3 accompanying these rules.

(13) Permission may be given to change the entries in the General Register of the school in respect of "caste" or "sub-caste" of Backward Class pupils in the following circumstances.

(i) due to wrong entries made initially;

(ii) due to change in religion;

(iii) if the caste previously treated as non-backward was subsequently declared by Government as Backward or vice-versa.

(iv) due to adoption;

(v) due to inter-caste or inter-religion marriage;

(14) For this purpose, the necessary certificates from the following authorities must accompany the application for change of caste or sub-caste:

(a) For Reasons (i), (ii) and (iii) above:

In Greater Bombay:

(a) The Chief Presidency Magistrate or the Presidency Magistrate authorised by him; or

(b) Justice of Peace; or (deleted).

(c) Social, Welfare Officer, Greater Bombay, Bombay.

another areas:

(d) The District Magistrates or Executive Magistrates authorised by them; or

(e) Honorary Magistrates; or (deleted)

(f) The Social Welfare Officer of the district concerned.

(b) Due to adoption: to adoption to adoption:

The original adoption-deed or a certified copy of that deed or a certificate from stipendiary Magistrate showing the changes in name (if any) and the caste or sub-caste changed as a result of adoption should accompany the application for change in caste or sub-caste.

(c) to inter-caste or inter-religion marriage.

A declaration by the parent or guardian attested by two witnesses and the student himself/herself or certified copy of the certificate or registration of marriage should accompany the application for change in caste or sub-caste along with the certificate from the concerned competent authority mentioned in (a) above showing that the caste or sub-caste has changed as a result of the marriage.

(d) Due to any other reason: to any other reason: to any other reason:

Any affidavit made before a stipendiary Magistrate by the parent or guardian should accompany the application for change in caste or sub-caste.

N.B. : The term "Backward Class" means and includes the following categories.

1. Scheduled Castes and As per Scheduled Castes and Scheduled Caste Scheduled Tribes Lists converts to Buddhism. Modification Order, 1956, as adopted for Maharashtra State. 2. Scheduled Tribes Vide Part VII-A of the Seventh including those outside and Eighth Schedule of the Bombay specified areas. Reorganisation Act, 1960 and orders issued by Government in this behalf from time to time. 3. Denotified Tribes and As per Government Resolution, Nomadic Tribes. Education and Social Welfare Deptt. No. CBC.1361-M, dated the 21st November 1961 and from time to time. 4. Other Backward Classes Castes which have been declared as belonging to the other Backward Classes by Government from time to time.

It would thus be clear on perusal of relevant provisions contained in Secondary School Code that for effecting change in the entries in relation to caste, a specific procedure has been laid down and such changes can be effected only for the reasons recorded in paragraph 13(i) to (v) of Appendix Six.

18. In the instant case, obviously for effecting change in the school register, no procedure, as laid down in Secondary School Code, was followed, nor there was any apparent reason for effecting such change, as laid down in para 13 of Appendix Six of the Secondary School Code. The entry appears to have been

changed on the basis of a certificate issued by Taluka Executive Magistrate. It is quite clear that the Taluka Executive Magistrate does not possess any authority to certify the caste for the purposes of effecting change in the basic school record, so also school authorities are not possessed of any authority to effect change in the basic school record without observing the procedure as laid down under the Secondary School Code. Any change, which is effected without following procedure, as laid down in Secondary School Code, would have to be considered as an interpolation and fabrication of the original record without due authorisation and shall not be taken note of. In the instant matter, it cannot be said that the inference drawn by the Committee for rejecting the documentary evidence in the form of basic school record pertaining to petitioner, to be erroneous. The change which has been effected in the original school record, without observing the procedure as laid down in the Secondary School code, cannot be taken note of and no evidenciary value can be attached to such entries, which are taken in violation of the procedure prescribed in that behalf.

19. The petitioner has also placed reliance on an entry recorded by the Village Panchayat in respect of birth of father of the petitioner. The certificate produced by the petitioner, which is signed by the Sarpanch and the Development Officer of Village Panchayat records the date of birth of petitioner's father as 13.04.1933 and in column No. 6 of the said extract, caste of the person is recorded as "Chhatri". Relying upon the said document, learned Counsel for the petitioner contends that the said document has a great evidenciary value and the Committee ought not to have brushed aside the same.

20. While appreciating the documentary evidence in the form of birth extract in respect of father of the petitioner, produced on record, one has to consider whether the extract has been issued in consonance with the rules regulating such business. The entry in respect of birth or death is required to be recorded in accordance with the provisions contained in the Registration of Births and Deaths Act, 1969. Chapter III of the Act lays down the procedure in respect of registration of births and deaths. Section 8 of the Act casts an obligation on the persons specified in the said Section to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under Sub-section (1) of Section 16.

21. In the instant case, on perusal of the relevant record, it appears that the date of birth of father of the petitioner is recorded as 13.04.1933, whereas entry in that respect appears to have taken on 21.03.1998. In case of delayed registration of births and deaths, the procedure, as prescribed in Section 13 of the Act, reads as under:

13. Delayed registration of births and deaths:- registration of births and deaths:-
registration of births and deaths:

(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other office authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action.

The birth certificate is required to be issued by the Registrar under Maharashtra Births & Deaths Registration Rules, 1976 in Form No. 11 prescribed under Rule 13. On perusal of Form No. 11, prescribed under Rule 13, it would appear that there are in all 25 columns prescribed in the said form and none of the column prescribes recording of caste of a person. Although columns 12 and 17 are in respect of religion, there is no column prescribed in the said form which necessitates recording of an entry in respect of caste of a person. On perusal of the certificate annexed by the petitioner at page 21, it would be observed that the certificate issued by Village Panchayat is not in Form No. 11 prescribed under Rule 13 of the Rules. Any certificate which is not in the prescribed form and which is not issued by following the procedure, as prescribed under the Rules, it cannot be taken note of. Such certificate has no evidenciary value. The certificate, annexed by the petitioner at page 21, is not as per the form prescribed under the Rules of 1976, nor does it appear that while securing the certificate, procedure prescribed under the Rules has been followed.

22. There is one more hurdle in the way of the petitioner and that is, the factum of birth of the year 1933 could not have been recorded by the Registrar without observing the procedure as laid down u/s 13 of the Registration of Births and Deaths Act, 1969. The procedure as laid down u/s 13 prohibits recording of delayed information without there being a written permission of the prescribed authority, on payment of prescribed fee and production of affidavit made before a Notary Public or any other officer authorised in that behalf by the State Government. Any birth or death, which has not been registered within one year of its occurrence, can be registered only on receipt of an order made by the Magistrate of First Class or Presidency Magistrate after verifying the correctness of death or birth and on payment of prescribed fee. In the instant matter, such

procedure does not appear to have been followed. The evidence placed on record by the petitioner, in the form of birth extract of his father, which, according to him, is a best evidence in his favour, cannot be taken note of.

23. In this respect, it would be appropriate to refer to the observations made by this Court in the decision delivered in the case of Gangadhar Tadme Vs. Trimbak Akingire and Others, . The Division Bench of this Court has observed that:

In order to give presumptive value to the entries made in the register of birth, the condition specified under Sub-section (1) of Section 22 of the Births, Deaths and Marriages Registration Act has necessarily to be satisfied. It is a mandatory provision and non-compliance thereof will result in the registration to be treated as not the one done under the said Act. If the registration ceases to be the one under the said Act, any certificate issued in relation to such entries cannot have legal sanctity. Any certificate issued without compliance of the mandatory requirement u/s 22(1) of the said Act, cannot be considered as a certificate issued under the provisions of the said Act and any such certificate, therefore, will not carry presumptive value u/s 114 of the Evidence Act.

The Division Bench was considering the provisions of Act 6 of 1886, whereas by virtue of provisions of Act 18 of 1969, it is clarified that nothing in this Act (i.e. Act 18 of 1969) shall be construed in derogation of Births, Deaths and Marriages Act, 1886. The analogy which is derived on construction of provisions of Act 6 of 1886 is equally applicable in the instant case while considering provisions of Act 18 of 1969.

24. Considering the resume of documentary evidence placed by the petitioner before the Committee, it would be clear that the basic entry in the form of admission register pertaining to petitioner records caste "Chhatri", which is believed to be interpolated and wrongly recorded in place of original entry "Shimpi". The basic document, on which reliance is placed by the petitioner, therefore, cannot be relied upon. The very foundation of the claim put forth by the petitioner is, therefore, shaken. Another document, on which strong reliance is placed by the petitioner, in the nature of an entry in respect of birth of petitioner's father, which is stated to be of the year 1933, is also not worth consideration, for the reasons recorded above. Other documents, on which petitioner has placed reliance, are of recent origin and the Committee has refused to place reliance on those documents. We do not find any infirmity in the reasoning adopted by the Committee in that regard.

25. So far as the affinity test is concerned, it is observed by the Committee that the petitioner and his family members do not even possess basic knowledge of traits, characteristics, customs and culture of "Chhatri", scheduled tribe. We have also an advantage of perusing the report tendered by the vigilance officer wherein it is specifically observed that petitioner is not conversant with the peculiar traits and characteristics of "Chhatri", scheduled tribe. The vigilance cell inquiry transpires that the petitioner does not belong to "Chhatri" scheduled

tribe, however, is a member of "Shimpi" caste. The petitioner, as such, has failed to answer affinity test and could not prove his ethnic linkage towards "Chhatri" - Scheduled tribe.

26. The petitioner has placed reliance on the judgment of Division Bench of this Court in the case of Hanmant Shankar Wadulwad v. The State Maharashtra and Anr. delivered in Writ Petition No. 2372/2006, decided on 4th September 2007. Placing reliance on the said judgment, petitioner contends that a private document executed between the parties, if it is of ancient origin, can be relied upon. There cannot be any dual opinion about this proposition.

27. Learned Counsel for Respondent-Committee has placed reliance on the judgment of the Apex Court in the matter of State of Maharashtra and Ors. v. Ravi State of Maharashtra and Anr. reported in AIR 2006 SCW 6093 wherein it is observed that:

The makers of the Constitution laid emphasis one quality amongst citizens. Constitution of India provides for protective is crimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution.

It is contended by the learned Counsel for Respondent-Committee that the petitioner has failed to substantiate his status claim and as such has wrongfully derived benefits which are meant for disadvantaged class. The petitioner, as such, is not entitled to any protection in the matter of employment.

28. Taking overall resume of the material placed before us and considering the reasoning recorded by the Scrutiny Committee and on consideration of the arguments advanced before us, we are of the considered opinion that the petitioner has wrongfully derived benefits meant for disadvantaged class. The petitioner has utterly failed to substantiate his claim. Petition is devoid of substance and hence is liable to be rejected.

29. Writ Petition No. 6490 of 2005 stands rejected. Ad interim relief stands vacated.

30. At this stage, learned Counsel appearing for the petitioner prays that the interim orders, which are passed by this Court, be continued for a further period of four weeks so as to enable the petitioner to approach the Apex Court. We find from the record that by an order dated 14th September 2005, while notice before admission was issued, this Court had granted interim relief in terms of prayer Clause (D), thereby restraining the respondents from taking any adverse action against the petitioner on the basis of impugned judgment and order dated 07.07.2005, passed by the Scrutiny Committee.

31. Considering the request made by learned Counsel for the petitioner, to which learned Counsel appearing for Respondent-Committee - Shri Deshmukh has raised vehement opposition, we find it appropriate to continue the interim relief for a period of further four weeks from today.