

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5028 OF 2006**

Shilpa Vishnu Thakur  
Aged 18 years, residing at Post Nemale  
Taluka Sawantwadi, District Sindhudurg. .. Petitioner

Versus

- 1) State of Maharashtra through its  
Secretary, Tribal Development Department  
Mantralaya, Mumbai 400 032.
- 2) Scheduled Tribe Caste Certificate Scrutiny  
Committee, Konkan Division, Thane  
through its Deputy Director and Member  
Secretary having its office at 3<sup>rd</sup> Floor,  
Thane Municipal Corporation, Ward Office  
Building, Opp. Kores Company, Vedant  
Complex, Vartaknagar  
Thane (W), Dist. Thane.
- 3) Dy. Collector, Sindhudurg,  
District Sindhudurg.
- 4) District Civil Surgeon  
Chattrapati P.R. Hospital, Kolhapur.
- 5) Dy. Director of Health Services, Pune. )..Respondents

## ALONGWITH

WRIT PETITION NOS. 177 OF 2006, 452 OF 2006, 454 OF 2006, 5029 OF 2006, 5030 OF 2006, 8227 OF 2005, 2152 OF 2007, 206 OF 2003, 704 OF 2008, 1968 OF 2007, 2151 OF 2007, 2153 OF 2007, 2167 OF 2008, 3153 OF 1996, 3365 OF 2006, 3506 OF 2007, 3706 OF 2007, 3737 OF 2001, 3834 OF 2007, 5253 OF 2007, 6397 OF 2007, 7116 OF 2004, 7558 OF 2007, 9454 OF 2007 TO 9484 OF 2007, 9490 OF 2007 TO 9493 OF 2007, 9495 OF 2007 TO 9511 OF 2007, 9514 OF 2007 TO 1516 OF 2007, 9518 OF 2007 TO 9531 OF 2007, 9533 OF 2007, 9534 OF 2007, 9536 OF 2007 TO 9541 OF 2007, 9543 OF 2007 TO 9545 OF 2007, 9552 OF 2007, 9553 OF 2007, 9555 OF 2007 TO 9559 OF 2007, 9561 OF 2007 TO 9565 OF 2007, 9571 OF 2007 TO 9575 OF 2007, 9577 OF 2007 TO 9581 OF 2007, 9583 OF 2007 TO 9586 OF 2007, 9588 OF 2007 TO 9592 OF 2007, 9680 OF 2007, 9682 OF 2007, 9683 OF 2007, 9685 OF 2007 TO 9686 OF 2007, 9688 OF 2007, 9689 OF 2007, 9691 OF 2007, 9692 OF 2007, 9694 OF 2007, 9699 OF 2007, 9701 OF 2007, 9703 OF 2007, 4299 OF 2008, 4512 OF 2008, 4771 OF 2008, 4783 OF 2008, 5034 OF 2008, 5035 OF 2008, 5151 OF 2008, 5432 OF 2008, 5458 OF 2008, 5619 OF 2008, 5643 OF 2008, 5867 OF 2008, 5888 OF 2008, 7067 OF 2004, 6889 OF 2007, 8546 OF 2007, 9535 OF 2007, 9547 OF 2007 TO 9551 OF 2007, 9554 OF 2007, 9560 OF 2007, 9566 OF 2007 TO 9568 OF 2007, 9570 OF 2007, 9576 OF 2007, 9582 OF 2007, 9587 OF 2007, 9590 OF 2007, 9591 OF 2007, 9600 OF 2007, 9601 OF 2007, 9604 OF 2007 TO 9611 OF 2007, 9613 OF 2008 TO 9633 OF 2007, 9642 OF 2007 TO 9679 OF 2007, 9681 OF 2007, 9684 OF 2007, 9687 OF 2007, 9690 OF 2007, 9693 OF 2007, 9695 OF 2007, 9697 OF 2007, 9700 OF 2007, 9702 OF 2007, 9705 OF 2007 TO 9714 OF 2007, 9716 OF 2007, 9718 OF 2007 TO 9741 OF 2007, 9743 OF 2007, 9745 OF 2007, 9747 OF 2007 TO 9777 OF 2007.

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Mr. R.K. Mendadkar with Mr. H.K. Mandlik, Mr. C.K. Bhangoji and Mr. V.A. Madane for the petitioner in Writ Petition Nos.5028 of

2006, 6293 of 2006, 8227 of 2005, 177 of 2006, 974 of 2006, 452 of 2006 and other connected matters.

Mr. P.C. Madhkholkar for the petitioner in Writ Petition No.9566 of 2007 and 9604 of 2007.

Mr. R.G. Ketkar i/by Mr. R.S. Khadapkar for the petitioner in Writ Petition No.9705 of 2007.

Mr. Anil S. Golegaonkar for the petitioner in Writ Petition Nos.9683 of 2007, 5028 of 2008, 9455 of 2007, 9456 of 2007, 9457 of 2007, 9459 of 2007, 9462 of 2007, 9463 to 9466 of 2007, 9468 to 9471 of 2007.

Mr. R.S. Parsodkar for the petitioner in Writ Petition Nos.9567 of 2007, 9659 of 2007, 9663 of 2007.

Mr. Aparajit Ninawe for the petitioner in Writ Petition No.304 of 2005(Nagpur Bench).

Mr. V.A. Gangal, Senior Counsel with Mr. S.S. Deshmukh, Asstt. Special Counsel, Mr. Nitin Sambre, Government Pleader, Nagpur, Smt. S.W. Deshpande, Special Counsel, Nagpur, Mr. Mahesh Deshmukh, Special Counsel, Aurangabad and Mr. S.S. Deshmukh, Aurangabad.

Mr. V.S. Masurkar, Government Pleader in Writ Petition No.4299 of 2008.

Mr. A.V. Anturkar i/by Ms. D.M. Shende for intervenor in Application No.2065 of 2008.

Mr. R.S. Apte i/by Mr. S.S. Shah for Surajmal Shah.

**CORAM : SWATANTER KUMAR, C.J.,**  
**V.C. DAGA &**  
**DR. D.Y.CHANDRACHUD, JJ.**

7<sup>th</sup> May 2009.

**JUDGMENT (Per Dr. D.Y. CHANDRACHUD, J.)**

**THE CONTOURS OF THE CASE**

The questions that arise before the Full Bench for determination relate to the standards which have to be applied in determining whether or not an applicant belongs to a designated Scheduled Tribe. Article 342 of the Constitution empowers the President to specify caste, races or tribes or parts or groups within them which shall be deemed to be Scheduled Tribes in relation to a State or a Union Territory. The power to include in or to exclude from the lists of Scheduled Tribes specified in a notification issued by the President is vested in Parliament. Pursuant to Article 342, the Scheduled Tribes were notified by the Constitution (Scheduled Tribes) Order, 1950. This was followed by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956. In 1976 Parliament enacted the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. Part IX of the Third Schedule to the

Amending Act specifies Scheduled Tribes for the State of Maharashtra. Among the Scheduled Tribes which have been specified are:

- (1) Mahadev Koli, Malhar Koli, Tokre Koli (Entries 28, 29 and 30);
- (2) Dhanwar (Entry No.14)
- (3) Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar (Entry 44)
- (4) Mana (Entry 18)
- (5) Mannervarlu (Entry 27)
- (6) Halba, Halbi (Entry 19).

Attempts were made over a period of time by certain persons belonging to non-tribal communities to claim tribal status, on the assertion that their community is synonymous with a tribal group which is specified in the notification, or that their tribe is subsumed in a tribe which is specifically notified. The nomenclatures of the communities of such applicants were similar to those of designated Scheduled Tribes, often with a tribal prefix or suffix. For instance,

non-tribal communities include Koli (Son Koli, Suryawanshi Koli, Vaiti Koli), Dhangar, Munnurwar/Mannerwar/ Mannawar and Koshti/Halba Koshti. Decisions of the Supreme Court laid down that the entries contained in the Scheduled Caste or the Scheduled Tribes Order have to be taken as they stand and no evidence can be led either to interpret or to explain those entries. A tribe which is not specifically named as a Scheduled Tribe cannot lay claim to inclusion, either on the basis of a similarity of nomenclature or by contending that the tribe in question is subsumed within a designated Scheduled Tribe.

2. In the State of Maharashtra the State Legislature enacted the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. The Act has now made statutory provisions for the verification and scrutiny of caste claims by competent authorities and subsequently by Caste Scrutiny Committees. The Act creates offences; provides for disqualifications and for the withdrawal of benefits granted on the basis of false caste

certificates.

3. In **Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development**,<sup>1</sup> the Supreme Court laid down the procedure for the verification and scrutiny of caste and tribe claims. The procedure has now been codified into legislation in the State of Maharashtra. **Madhuri Patil's** case, while elaborating on the basis of scrutiny, accepted the relevance and importance of the affinity test. By the affinity test, the Scrutiny Committees would be entitled to verify the genuineness of the claim of an applicant on the basis of ethnicity and anthropology. The expression “affinity” is used to denote the association of the applicant with a Scheduled Tribe into which he or she has been born by the application of certain settled standards.

4. The reference to the Full Bench has been occasioned as a result of a conflict in the views expressed in Judgments of this Court on the applicability of the affinity test. The points which have been referred by the Division Bench for determination of the Full Bench ( and as reformulated) are as follows:

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<sup>1</sup> (1994) 6 SCC 241

"(i) Should the paramount consideration in determining the caste claim of a person be documentary evidence or, as the Supreme Court held, “anthropological moorings and ethnological kinship”; and is the “crucial affinity test” relevant and germane for such a decision?

(ii)(a) In cases where the documents produced by a person claiming to be belonging to a particular caste satisfy the requirement, for example, in the case of “Thakur”, if all the documents produced/filed and relied upon by a candidate denote his caste as “Thakur” then, without validating the caste claim with reference to the “crucial affinity test”, should the caste claim be validated or not?

(b) In a case where a person is not in possession of any document to meet the requirements of a particular caste claim can the claim be scrutinized on the basis of



the “crucial affinity test”, and a validity certificate be issued?

(c) Where a person who claims to belong to a particular caste has some documents in his favour and/or partially satisfies the crucial affinity test, can the claim be certified and is the candidate entitled to his caste certificate being validated?”

### **SUBMISSIONS OF THE PETITIONERS**

On behalf of the petitioners it was submitted that *firstly* the provisions of the Scheduled Tribes Order issued under Article 342 have to be applied as they stand and no enquiry can be held or evidence let in to determine whether or not some particular community falls within or outside it. Reliance is placed on the judgments of the Supreme Court in **Palghat Jilla Thandan v. State of Kerala**,<sup>2</sup> **State of Maharashtra v. Milind and others**,<sup>3</sup> and **State of Maharashtra v. Mana Adim Jamat Mandal**.<sup>4</sup> It has been

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2 1994(1) SCC 359

3 (2001)1 SCC 4

4 (2006)4 SCC 98

submitted that since “Thakur, Thakar” is a Scheduled Tribe under Entry 44 of the Second Schedule to the Amending Act of 1976, all Thakurs are entitled to the benefits due to the Scheduled Tribe of Thakur Thakar. It has been submitted that under the Scheduled Tribe Order of 1950; the area restrictions held the field but after the Amending Act of 1976, Parliament removed such restrictions. In the circumstances, it has been submitted that the application of the affinity test would not be permissible in law, Parliament having determined that for the State of Maharashtra, all Thakurs would be deemed to be Scheduled Tribes. The Entry in the Amending Act of 1976 must be construed as it stands. *Secondly*, it has been submitted that under the Legislation enacted by the State of Maharashtra, rules have been notified by the Tribal Development Department in 2003 which require that documentary evidence be considered. Reliance is placed upon the provisions of sub-rule (2) of Rule 12 to urge that it is only when the Scrutiny Committee is not satisfied with the documentary evidence that the application can be forwarded to the Vigilance Cell for conducting a school, home or other enquiry. Where the documentary evidence is of the pre-constitution period and has not been doubted, it is not open to the

Scrutiny Committee to refer the matter to the Vigilance Cell. Moreover, once the documentary evidence is genuine, the caste claim will have to be decided on the basis of such documentary evidence and oral evidence cannot prevail over it. The affinity test cannot be the sole deciding factor when there is no material before the Committee showing what are the peculiar tribal claims and characteristics. If the documents are of a pre-constitution period or before the recognition of a particular tribe as a Scheduled Tribe such claims cannot be invalidated only on the ground that the affinity test is not satisfied. Where the documentary evidence relates to the period after the presidential order and the claim has partially been proved factually, the claim has to be validated. If there is no documentary evidence and affinity is also not proved, no straight jacket formula can be applied either to reject or validate the tribe claim and what is required to be seen is the totality of the circumstances.

#### **THE PROBLEM OF FRAUDULENT CLAIMS:**

5. Two important facets are involved in the process of

verification of claims to belong to a Scheduled Caste, Scheduled Tribe, or the Other Backward Classes. *First*, persons who are genuinely entitled to the benefit of reservations under Articles 15 and 16 of the Constitution have a legitimate entitlement that the process for the certification of their claims and the verification of their status be fair and efficient. Fairness of the process ensures that genuine applicants are able to obtain certification and to seek verification in a manner consistent with the application of objective principles. An efficient process is one that does not result in harassment to the applicant and ensures that a caste claim, where it is to be allowed, is adjudicated upon with reasonable dispatch. The fairness of the process is a vital element because applicants ought not to be subjected to procedures which are cumbersome, tardy and a source of harassment. The *second* important facet is the need to ensure that the benefit of reservations is granted only to those who genuinely belong to the castes, tribes or classes for whom reservation is intended. Allowing the benefit of reservation to persons who do not belong to a caste or tribe for which a reservation has been set apart is destructive of the Constitutional value in protecting those for whom reservations are intended.

Allowing the benefit of a reserved seat – be it in education, employment or legislative bodies – to an impostor is a fraud on the Constitution. An impostor who wrongfully obtains the benefit of reservation operates to the prejudice of both the reserved communities as well as the general community. A person who wrongfully obtains a benefit to which he or she is not entitled deprives a genuine member of the caste or tribe for whom reservations are made. Such a person also steals a march over law abiding members of the general community who do not assert false claims to further their prospects in education and employment. Hence, there is a strong element of public policy in ensuring that the policy of reservations which has been so carefully crafted by the founding fathers of the Constitution is not defeated by allowing persons who do not genuinely belong to the reserved communities to seek the benefits of reservation.

6. In **Madhuri Patil v. Additional Commissioner, Tribal Development** (supra), the Supreme Court emphasized the serious problem which had confronted the State by unscrupulous attempts to claim the benefit of reservation by persons who were not entitled.

The Supreme Court termed it as a claim to a “pseudo status”:

“It is common knowledge that endeavour of States to fulfil constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to such status. The case in hand is a clear instance of such pseudo-status.”

The Supreme Court emphasized the need to ensure that the benefit of reservation is made available only to genuine persons who belong to the caste or tribe notified. The Court noted that dilatory tactics are resorted to by persons with spurious claims with a view to creating hurdles in the completion of inquiries by the Scrutiny Committee:

“The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to the office or posts under a State for want of social status certificate. The ineligible or spurious persons who

falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude.”

### **AFFINITY TEST**

7. The question as to whether sociological and anthropological traits are relevant in the determination of whether an applicant belongs to a Scheduled Caste or Tribe has been dealt with in the Judgment of the Supreme Court in **Madhuri Patil**. The Supreme Court held that sociology, anthropology and ethnology are valid elements that would go into the determination as to whether a particular applicant in fact belongs to a Scheduled Tribe. One of the arguments which was pressed in aid was that social mobility and the process of modernisation obviate the need to fulfill the affinity test. This, held the Supreme Court, was only a “convenient plea to get over the crux of the question” (para 5, page 248). The Supreme Court held thus:

**“Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may have modernised and progressed but they would not be oblivious to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe.”**

(emphasis supplied)

8. Several passages in the Judgment in **Madhuri Patil's** case emphasize that kinship and affinity to a tribe are vital in determining as to whether an applicant truly belongs to a tribe which has been designated as a Scheduled Tribe. This is evident from the following observations of the Supreme Court:

**“The anthropological moorings and ethnological kinship affinity gets genetically ingrained in the blood and no one would shake off from past, in particular, when one is conscious of the need of preserving its relevance to seek the status of Scheduled Tribe or Scheduled Caste recognised by the Constitution for their upliftment in the society. The ingrained tribal traits peculiar to each tribe and anthropological features all the more become relevant when the social status is in acute controversy and needs a decision. The correct projectives furnished in pro forma and the**



material would lend credence and give an assurance to properly consider the claims of the social status and the officer or authority concerned would get an opportunity to test the claim for social status of particular caste or tribe or tribal community or group or part of such caste, tribe or tribal community. It or he would reach a satisfactory conclusion on the claimed social status. The father of the appellant has failed to satisfy **the crucial affinity test which is relevant and germane one.**” (emphasis supplied)

The Supreme Court was of the view that the Scrutiny Committee was justified in considering the entire material together with sociological, anthropological and ethnological perspectives:

**“The finding recorded by the Committee is based on consideration of the entire material together with sociological, anthropological and ethnological perspectives which Mahadeo Kolis enjoy and of the OBC castes and sub-caste of the Kolis. The Additional Commissioner as well, has minutely gone into all the material details and found that when a section of the society have started asserting themselves as tribes and try to earn the concession and facilities reserved for the Scheduled Tribes, the tricks are common and that, therefore, must be judged on legal and ethnological basis. Spurious tribes have become a threat to the genuine tribals and the present case is a typical example of reservation of benefits given to the genuine claimants being snatched away by spurious tribes. .... In Subhash Ganpatrao Kabade case, the approach of the Division Bench of the High Court appears to be legalistic in the**

traditional mould totally oblivious of the anthropological and ethnological perspectives” (emphasis supplied)

9. The Supreme Court issued directions in **Madhuri Patil's** case, laying down the procedure that must be followed for the issuance of caste certificates for their scrutiny and approval. The procedure involves the filing of an affidavit by the parents, guardian or the candidate, as the case may be, furnishing particulars of the caste and sub-caste, tribe, tribal community or part thereof, of the place from which the candidate originally hails and other particulars as may be prescribed by the Directorate. The Supreme Court directed the constitution of a committee manned by experts and directed that the Research Officer must have an intimate knowledge in identifying tribes and tribal communities. The directions of the Supreme Court provide for the constitution of a Vigilance Cell. The vigilance inquiry entails a visit by the Inspector of Police attached to the Cell to the original place from which the candidate hails for the collection of all relevant data. The nature of the inquiry is made clear from the following directions of the Supreme Court:

**“The vigilance officer should personally verify**

**and collect all the facts of the social status claimed by the candidate** or the parent or guardian, as the case may be. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then **submit a report to the Directorate** together with all particulars as envisaged in the pro forma, **in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies** etc. by the castes or tribes or tribal communities concerned etc.”

(emphasis supplied)

These directions clearly establish that the nature of the inquiry in regard to the claim of a candidate to belong to a Scheduled Tribe is not merely to be confined to an examination of the birth and the school records and of documentary evidence but would involve an investigation of the affinity of the candidate with a tribe, or as the case may be, tribal community. Thus, the process of verification of caste claims which came to be governed by the Judgment of the Supreme Court in **Madhuri Patil** involved an inquiry not merely into the documentary materials on the basis of which the caste claim is founded but equally a verification of the claim with reference to the affinity of the candidate with a designated

Scheduled Tribe. The inquiry would comprehend within its purview anthropological and ethnological traits. The Committee would be entitled to inquire into the question as to whether the applicant has established an affinity with the tribe. The yardstick for determining such affinity includes the rituals of the tribe and its customs, worship, ceremonies associated with birth, marriage and death and the conventions followed for the disposal of dead bodies.

10. Right through the ages, in the evolution of the human race, birth, marriage and death have been considered to be milestones around which customs and rituals of communities have grown. Worship is an integral aspect of the life of a community and tribal communities are identifiable with reference to specific modes of worship. The affinity test which comprehends all these aspects is, therefore, not extraneous to the process of identifying whether the applicant is a genuine member of a tribe or is an impostor fraudulently claiming the benefits of a reservation to which he is not entitled.

**THE STATE LEGISLATION:**

11. The Legislature in the State of Maharashtra enacted the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. The Act having received the assent of the President, was published in the Gazette on 23<sup>rd</sup> May, 2001. The Act has been enacted with a view to regulate the issuance and verification of caste certificates for the reserved communities. Section 3 of the Act provides that any person belonging to a Scheduled Caste, Scheduled Tribe, De-notified Tribe, Nomadic Tribe, Other Backward Class or Special Backward Category who is required to produce a caste certificate in order to claim the benefit of reservation in public employment, for admission to an educational institution under any special provisions made under Article 15(4) of the Constitution, for contesting an elective post in any local authority or Co-operative Societies, for the purchase of land from a tribal land holder or for any other purposes specified by the Government, must apply in such form and manner as may be prescribed, to the Competent Authority for the issuance of a caste

certificate. Section 4 provides that the Competent Authority may, on an application made to it under Section 3 and after satisfying itself about the genuineness of the claim and following the procedure as prescribed, issue a caste certificate or reject it for reasons to be recorded in writing. A caste certificate issued under sub-section (1) of Section 4 is valid only subject to the verification and grant of a validity certificate by the Scrutiny Committee. Section 5 provides for an appeal against the rejection of an application under sub-section (1) of Section 4.

12. Section 6 provides for the verification of caste certificates by the Scrutiny Committee. Under sub-section (1) of Section 6 the State Government has to constitute one or more Scrutiny Committees for the verification of caste certificates, specifying the functions and the area of jurisdiction of each of such Committees. Under sub-section (2) of Section 6, after obtaining a caste certificate from the Competent Authority, a person desirous of availing of the benefits or concession of reservations, has to make an application to the Scrutiny Committee for the verification of the caste certificate and for the issuance of a validity certificate. The

Scrutiny Committee is required to follow the procedure which is prescribed for the verification of a caste certificate. Under Section 7, the Scrutiny Committee is entitled suo motu or otherwise to enquire into the correctness of the certificate issued, whether before or after the commencement of the Act, and if it is of the opinion that it was obtained fraudulently, cancel and confiscate the certificate.

13. The Act has by Section 8 provided that the burden of proof that a person belongs to a caste, tribe or class, on an application under Section 3 and in an inquiry conducted by the Competent Authority, the Scrutiny Committee or the Appellate Authority, shall be on the claimant-applicant. Section 10 of the Act provides that benefits which are secured on the basis of a false caste certificate shall be withdrawn. Sub-sections (1) to (4) of Section 10 are material and they provide as follows:

**“10. Benefits secured on the basis of false Caste Certificate to be withdrawn.**

(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational

institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Co-operative Society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrear of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate, by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, Co-operative Society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes, (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste



Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.”

14. Section 11 of the Act provides for offences and penalties for obtaining a false caste certificate by furnishing false information or filing a false statement or document or by any other fraudulent means. An offence is also created where a person not belonging to one of the reserved communities secures the benefit of an appointment in Government, a local authority or a company owned or controlled by the Government or secures an admission to an educational institution against a seat reserved for such communities or is elected to an elective office in a local authority or a Co-operative Society on the strength of a false certificate.

### **OBJECTS AND REASONS**

15. The Statement of Objects and Reasons annexed to the Bill which was introduced in the State Legislature clearly brings out that the Legislature was seized with the menace, which had reached

alarming proportions, of persons seeking benefits of reservation in employment, education and to elective offices on the basis of false caste certificates. The Act was intended to remedy the problem. The evil which the State Legislature sought to remedy finds elaboration in the Statement of Objects and Reasons thus:

“It has been brought to the notice of the Government that the incidents of procuring false Caste Certificates, in respect of Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category have reached alarming figure. Such false Caste Certificates not only enable the ineligible persons to avail of the concessions and reservations in the matter of securing employment or admission in the educational institutions or contesting for or being elected to any of the elective offices reserved for the benefit of the aforesaid Castes, Tribes and Classes, but also result in depriving the genuine members of the said Castes, Tribes and Classes of the said concessions and reservations, thereby defeating the very purpose of such concessions and reservations.

2. The Hon'ble Supreme Court in its judgment dated 18<sup>th</sup> April 1995, in the case of *Director of tribal Welfare, Government of Andhra Pradesh Versus Laveti Giri and another* has also desired that “the Government of India should 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. so that the menace of fabricating the false records and to gain unconstitutional

advantage by plain/spurious persons could be prevented.”

3. As the existing instructions issued by Government, from time to time, are found to be inadequate, to curb this menace, it has been decided to undertake a suitable legislation for regulating the issue of the Caste Certificate and verification of such certificate and also providing for deterrent punishment for those who indulge in such illegal activity.”

### **THE RULES**

16. In exercise of the rule making power conferred by Section 18 of the Act, the Government in the Tribal Development Department made the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. Rule 3 provides that a person who claims to belong to a Scheduled Tribe and desires to have a Scheduled Tribe certificate must submit an application in Form-A appended to the Rules together with an affidavit in Form A-1. Sub-rule (2) of Rule 3 is as follows:

“(2) The applicant shall file with the application an affidavit in Form A-1 duly sworn before the authorised Officer or Court, mentioning, -

(a) particulars of the Scheduled Tribe, tribal community, part or group of tribe , which he claims

to belong to;

(b) religion;

(c) the place from which he originally hails;

(d) whether he had applied for grant of Scheduled Tribe Certificate in the State of Maharashtra or in any other State;

(e) whether any Scheduled Tribe Certificate was issued or refused to any of his near relatives in the State of Maharashtra or in any other State;”

Apart from the affidavit under sub-rule (3) of Rule 3, the applicant is required to furnish copies of various documents, namely (i) Extracts from the Birth Register of the applicant, his father or 'elderly relatives' from the paternal side; (ii) Extract from the Primary School Admission Register of the applicant, his father or grandfather, if available; and (iii) Primary School Leaving Certificate of the applicant and his father. The applicant has also to submit documentary evidence in regard to the Scheduled Tribe and the ordinary place of residence prior to the date of notification of such Scheduled Tribe; an extract from the service record of the father or blood relatives who are in Government or any other services; the validity certificate, if any, issued to the father or to a

relative on the paternal side; the revenue record or the village panchayat and other relevant documentary evidence. Form-A contains a detailed proforma in which the applicant is required to disclose relevant information. The information of which disclosure is sought is intended to facilitate the process of verification of the claim of the applicant to belong to a designated Scheduled Tribe. Such information includes the present occupation, the hereditary occupation, name of the Scheduled Tribe and of the Sub-Tribe, mother tongue and the dialect spoken by the candidate. The information that is sought includes the names of the deities and Gods/Goddesses of the Scheduled Tribe and in the case of conversion to another religion, the names of the deities worshiped prior to conversion.

17. The information which is required to be disclosed under the Rules, by an applicant for the grant of a caste certificate consists both of the documentary evidence pertaining to the candidate, his ancestors and relatives on the one hand and information which would have a bearing on the affinity of the candidate to a Scheduled Tribe. The Competent Authority has to follow the procedure which

is prescribed by Rule 4 in either granting or rejecting an application for a Scheduled Tribe Certificate. Jurisdiction is conferred upon a Competent Authority in whose territorial jurisdiction the applicant himself or whose father/grandfather ordinarily resided on the date of the notification of the Presidential Order scheduling that particular tribe.

18. Upon receipt of the application, the Competent Authority has to ensure that complete information in all respects has been furnished by the candidate. The Competent Authority has to **scrutinise the claim of the applicant and to satisfy itself about the genuineness of the claim.** If the Competent Authority is satisfied about the correctness of the information, documents and evidence furnished, it shall issue a Scheduled Tribe Certificate in Form-C. If the Competent Authority is not satisfied with the claim of the applicant on scrutiny of the evidence produced, it may, after recording reasons, order a further inquiry as it deems fit. Sub-rule (12) of Rule 4 provides that after considering the evidence produced by the applicant or any other person on his behalf, and the statement of the applicant and after taking into account the

material gathered by the Competent Authority, if it is satisfied about the genuineness of the claim, it shall grant a certificate to the applicant. In the event that the Authority is not so satisfied, it may reject the application after recording reasons. Provisions for an appeal against the decision of the Competent Authority are made in Rule 8.

19. The next stage is the verification of caste certificates by the Scrutiny Committee. The Rules provide for the meetings and the quorum of Scrutiny Committee in Rule 9 and for the constitution of a Vigilance Cell in Rule 10. Under Rule 10, the Vigilance Cell is to consist of a Senior Deputy Superintendent of Police, a Police Inspector, Police Constables and a Research Officer. The process of verification of a caste certificate is provided for in Rule 11. The applicant for that purpose has to submit documentary material both in respect of himself and in respect of his father. These documents include an extract from the Birth Register, from the School Admission Register and the Primary School Leaving Certificate. Other documents including revenue records and affidavits of near relatives whose validity certificates have been submitted have to be

filed. Under Rule 12, the Scrutiny Committee has to scrutinise the application, verify the information and the documents furnished by the applicant and acknowledge the receipt of the application. Under sub-rule (2) of Rule 12, if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it has to forward the application to the Vigilance Cell for conducting the school, home and other inquiry. Sub-rule (3) requires the Vigilance Officer to visit the place of residence and the original place from which the applicant hails and usually resides. Sub-rules (4), (5) and (6) of Rule 12 provide that:

“(4) The Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or the guardian, as the case may be.

(5) The Vigilance Cell shall also examine the parents or guardian or the applicant for the purpose of verification of their Tribe, of the applicant.

(6) After completion of the enquiry, the Vigilance Cell shall submit its report to the Scrutiny Committee who will in turn scrutinise the report submitted by the Vigilance Cell.”

If the report of the Vigilance Cell is in favour of the applicant and if the Scrutiny Committee is satisfied about the claim of the applicant, it may issue a validity certificate in Form-G. If the Scrutiny



Committee on the basis of the report of the Vigilance Cell and other documents available is not satisfied about the claim of the applicant, it has to issue a notice to show cause and after receipt of a representation and a personal hearing, either issue a validity certificate or pass an order for the cancellation and confiscation of the caste certificate.

20. Form-E to the Rules elaborates upon the details which are required to be submitted by a candidate to the Scrutiny Committee when an application is made for the issuance of a validity certificate. The information on which a disclosure is sought includes the occupation of the applicant's father, the traditional occupation of the family, tribe or sub-tribe of which membership is claimed and the mother tongue and dialect of the candidate. A disclosure has to be made of the names of the Gods/Goddesses worshiped by the applicant and five surnames of the relatives/community of the applicant. A disclosure has to be made of the place of residence and of the documents on the basis of which the caste certificate was obtained. Information is required of the details of the primary, secondary and college education of the

candidate and his father and of members of the family who have been educated. Relevant documentary evidence has to be enclosed in regard to school admission, primary school leaving certificates and extracts from the Birth and Death Registers.

### **THE NATURE OF THE ENQUIRY**

21. The provisions of the Act and the Rules establish that the Legislature and the State Government as the rule making authority contemplated a broad-based inquiry into all relevant facets of the claim of an applicant to belong to a Scheduled Tribe. The inquiry is essentially in two stages: the first, when a caste certificate is issued to a candidate and the second when a caste certificate is to be verified. In the first stage, an application for the issuance of a caste certificate has to be accompanied by a disclosure not merely of documentary evidence but additional information which would have a bearing on the kinship and affinity of the applicant to the Scheduled Tribe. The Competent Authority, before it issues a caste certificate, has to satisfy itself about the genuineness of the claim. Even at the stage of the issuance of a caste certificate,

the Competent Authority has to verify the documents with the originals and it is only upon its satisfaction about the correctness of the information, documents and the evidence furnished by the applicant that a caste certificate is issued. If the Competent Authority is not satisfied with the claim of the applicant on a scrutiny of the evidence produced, it is empowered to order a further inquiry. Thereupon, it is after considering the evidence produced by the applicant, the statement of the applicant and after taking into account the material gathered by the Competent Authority that it is empowered to either grant a certificate or to reject the application. The condition precedent to the grant of a caste certificate is the satisfaction of the Competent Authority about the genuineness of the claim made by the applicant. Just as the disclosure by the candidate is not confined to documentary material alone, the satisfaction of the Competent Authority equally is as regards the genuineness of the claim. The genuineness of the claim has to be verified on the basis of the entire material including information, documents and evidence. An inquiry into kinship and the affinity of the applicant is not alien to the scheme of the Act and the Rules. On the contrary, application of the affinity test is an

integral part of the process. The process of issuing a caste certificate by the Competent Authority is not ministerial or formal. Satisfaction of the genuineness of the claim can be arrived at only through an objective enquiry. The enquiry before the Competent Authority is not confined only to an examination of documents. The Competent Authority is under a mandate to consider the information, documents and evidence. Similarly, the mandate of disclosure by the applicant is not confined only to a disclosure of documents. The process before the Competent Authority is hence an important first stage in determining the genuineness of the claim. The statutory provisions and the provisions made by the rule making authority clearly emphasize that the affinity test is not extraneous or *ultra vires*.

22. When the second stage of an application for the issuance of a validity certificate arises, the applicant has to make an application well in advance to the Scrutiny Committee. Form-E for the disclosure of information again emphasises that a disclosure is sought not merely in regard to documentary evidence but in respect of all aspects that would have a bearing on the claim of the

applicant to belong to a Scheduled Tribe. A disclosure is sought in respect of the applicant, his father and of all the members of his family. The applicant has to submit the name of the tribe or part or group of the tribe to which he or she claims to belong to, his or her mother tongue, dialect, the deities worshiped and the surnames of those belonging to the community or of the applicant's own relatives. The reason for the disclosure of such information is plain and obvious. The information is intended to provide material on the basis of which the claim of the applicant can be verified. The condition precedent to the grant of a validity certificate by the Scrutiny Committee is its satisfaction about the claim of the Applicant. Satisfaction postulates an enquiry applying objective standards for adjudication. The enquiry cannot be confined to a scrutiny of documentary evidence alone. Such an artificial reading down of the provisions will defeat the object of the Act. The constitution of a Vigilance Cell, the association of experts and the ambit of the Vigilance Report are all directed towards determining whether the Applicant in fact belongs to a Scheduled Tribe. An attempt was made to urge that ordinarily, the enquiry has to be confined to documentary evidence and Rule 12(2) contemplates a

reference to the Vigilance Cell where the Committee is not satisfied about the documentary evidence. The Rules have to be harmoniously construed as a whole. The enquiry before the Scrutiny Committee for verification of a caste certificate is preceded by the process which takes place before the Competent Authority for the grant of a caste certificate. The Scrutiny Committee must have due regard to the entire record which consists of documents, information and evidence. A wholesome power is conferred on the Scrutiny Committee to order a vigilance enquiry. The truth of the claim has to be verified. In ascertaining the veracity of the claim, nothing can be shielded away from the Scrutiny Committee, nothing suppressed. The realities of public life are startling. Judicial notice has to be taken of them. Documents are sometimes fabricated to buttress false claims. Sometimes they may be misleading. Demonstrating that a candidate belongs to a tribe is much more complex than merely finding out whether the family surname overlaps with the name of a designated tribe. To hold otherwise would be to blink at reality. Worse still, it will result in the dissipation of benefits from the real tribals and to the fraudulent acquisition of benefits by 'pseudo tribals'.

23. The provisions of the Statute and of the Rules have to be understood and interpreted in the context of the stated object that underlies the enactment of Maharashtra Act 23 of 2001. The State Legislature expressly took notice of the fact that incidents involving procuring of false caste certificates had reached an alarming figure. This had the effect of not merely enabling ineligible persons to avail of the concessions of reservations made available to reserved communities in employment, education and to elected offices but also deprived genuine persons belonging to these communities of the concessions made, thereby defeating the purpose of reservations. As the existing instructions which had been issued by the Government were found to be inadequate to curb the menace, the Legislature thought it fit to enact suitable legislation to provide for the issuance and verification of caste certificates and for imposing deterrent punishment on those who are found to engage in illegal activities. It is in that context that the burden of proof has been imposed by the Legislature on the applicant who applies for a caste certificate or caste validity certificate, as the case may be. The Legislature has provided for the withdrawal of all benefits granted

on the basis of a false caste certificate including the cancellation of admissions granted or even a degree, diploma or educational qualification obtained on the basis of such certificate. A person who has been employed on the basis of a false caste certificate is liable to be discharged. Where election to an elected office of a local authority, Co-operative Society or a statutory body has been obtained on the basis of a false caste certificate, a disqualification is provided for. Offences and penalties have been provided for in Section 11.

24. As a matter of first principle, it would be impermissible for the Court to stultify the scope of the inquiry that is contemplated for the issuance of a caste certificate in the first instance and a caste validity certificate thereafter. The object of the legislation is to ensure that only genuine persons obtain the benefit of reservations and that false and fraudulent claims are excluded. To confine an inquiry only to the verification of documentary material would defeat the very object and purpose of the inquiry. Judicial notice can be taken of the fact that documents can lie. Merely because a person produces a document reflecting his own surname as that of a



community for which reservation has been made may not necessarily establish that the person belongs to that designated tribe. It is in that context that the process of verification has to be broad-based.

25. Ever since the Judgment in **Madhuri Patil's** case, an inquiry into kinship and affinity was held to be permissible. The State Legislature while enacting the legislation has taken due note of the law laid down by the Supreme Court in **Madhuri Patil** and gave legislative form to the directions that were issued by the Supreme Court. In significant areas such as withdrawing the benefits obtained on the basis of a false caste certificate and creating offences and penalties, the Legislature has in its robust wisdom given teeth to the legislation. Imposition of deterrent penalties is intended to ward off fraudulent attempts. Experience shows that persons who come forth with fraudulent claims obtain employment or, as the case may be, educational qualifications on the strength of false caste certificates. Once employed or admitted to an educational programme, candidates adopt all kinds of dilatory tactics to prolong the inquiry and set up a plea of equity even if it

was ultimately found that the claim to belong to a Scheduled Caste or Scheduled Tribe was false. The Legislature has now stepped in by enacting deterrent legislation that does not brook sympathy for acts of dishonesty. In this legislative background, and particularly having regard to the rules which give effect to the provisions of the Act, it is impossible to hold that the application of the affinity test is alien to the purposes of the State legislation. On the contrary, we are of the view that both the Competent Authority while issuing a caste certificate and the Scrutiny Committee while issuing a caste validity certificate are duty bound to investigate into all aspects of a claim to belong to a reserved community by appreciating documentary material information and evidence which encompasses an enquiry into whether a candidate has established affinity with a scheduled tribe.

### **THE SCHEDULED TRIBE ORDERS**

26. On behalf of the petitioners, the principal submission that has been urged is that the Presidential Order designating certain tribes as Scheduled Tribes is conclusive as to the entries

contained therein. No evidence can be admitted by any Court for the purpose of inferring that a tribe which has not been specifically designated is a part of a designated tribe. Conversely, once the name of a tribe finds place in any of the entries in the Presidential Order, it would not be open to the Court to hold that a community, though named in the Presidential Order, does not fall within an entry specified therein. The submission is that by the application of the affinity test what has been done is to deny the benefit of the status of a Scheduled Tribe to a group or community whose name finds mention in the Presidential Order. This, it has been submitted, is impermissible since such an exercise is not open either to the Government or to the Court and the only recourse that is permissible is an amendment to the entries contained in the Presidential Order.

27           There is a fundamental conceptual error in the submission which has been urged on behalf of the petitioners in support of their objections to the application of the affinity test. Conceptually it is necessary to keep two different issues distinct. The first issue is as regards the entries that are contained in the

Presidential Order designating certain tribes or parts thereof as Scheduled Tribes. A Constitution Bench of the Supreme Court has held in **Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another v. State of Kerala and another** (supra) that the Presidential Order “has to be applied as it stands and no inquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it.” (para 18, page 365). The Court cannot assume the jurisdiction to hold an enquiry or let in evidence to determine whether the terms of the Presidential Order include a particular community though not specifically named. In **Palghat Jilla\_Thandan** the Supreme Court held that the Thandan community is designated as a Scheduled Caste in the entire State of Kerala and it was, therefore, not permissible for the State Government to direct, by means of a Government Resolution, that a section of the Ezhava/Thiyya community, which is called Thandan, would not be included within the terms of the Presidential Order.

28. In **State of Maharashtra v. Milind Katware and others** (supra), the same principle was reiterated by a Constitution Bench,

this time in the context of the Presidential Order relating to Scheduled Tribes. Entry 19 of Part 9 of the schedule to the Amended Act of 1976 lists Halba, Halbi as Scheduled Tribes. A Division Bench of this court had held that Halba-Kosti would also be included in Entry 19. The Constitution Bench of the Supreme Court set aside the judgment of this court and held that it was impermissible to hold that a community though not listed specifically as a Scheduled Tribe was part of a tribe which has been separately listed. The Supreme Court held that in order to gain the advantage of reservations for the purpose of Articles 15(4) or 16(4), several persons have been coming forward claiming to be covered by Presidential orders issued under Articles 341 and 342. The power to do so vested exclusively in Parliament. The Supreme Court held that it is not permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part thereof is included in the general name even though it is not specifically mentioned in the entries concerned in the Constitution (Scheduled Tribes) Order, 1950. The Supreme Court held that the Scheduled Tribes Order must be read as it is and it is not permissible to say that a tribe, sub-tribe or a part of or group of any

tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order, if it is not specifically mentioned. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by a law made by Parliament. The power to include or exclude tribes or tribal communities in or from the Order vests only in Parliament. Neither the State Governments nor the Courts can modify, amend or alter the list of Scheduled Tribes. The plain consequence is that the entries in the Scheduled Tribes Order have to be read as they stand, though the power to modify or amend the entries is exclusively vested in Parliament. Neither the State Government nor the Court can hold that a part of a tribal community, though specifically mentioned in the Scheduled Tribes Order, would stand excluded. Conversely, it would be impermissible to hold that though a tribe or tribal community is not specifically mentioned in the Scheduled Tribes Order, that other tribe is synonymous with what is specifically mentioned. Article 342 empowers the President to specify the tribes or tribal communities or parts or group within them which shall for the purpose of the Constitution be deemed to be Scheduled Tribes. Clause (2) of Article 342 empowers

Parliament to include in or exclude from the list of Scheduled Tribes specified in a notification under Clause (1).

The principle that no authority other than Parliament by law can amend the Presidential orders was reiterated by the Supreme Court in **State of Maharashtra v. Mana Adim Jamat Mandal**, (supra). Entry 18 to Part 9 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 inter alia designates the Mana Community as a Scheduled Tribe. Entry 18 designates several tribes including Gond. The Supreme Court held that each of the tribes mentioned in Entry 18 was a separate tribe by itself and not a sub-tribe of Gond. Therefore, “Mana” is not a sub-tribe of Gond but a separate tribe by itself and is a Scheduled Tribe.

29. The second conceptual issue which is distinct from the first is the question as to whether a **particular applicant** is able to establish a claim that he or she belongs to a tribe which has been designated in the Scheduled Tribes Order. This is a matter which is to be determined on the basis of all the available evidence. The burden to establish that the individual belongs to a Scheduled Tribe

is on that person, in view of the provisions of Section 8 of the said Act. The purpose of adducing evidence in such a case is not to include or exclude from the entries contained in the Scheduled Tribes Order, 1950. The object and purpose is to establish as to whether an individual who claims to belong to a Scheduled Tribe does or does not belong to that tribe. The application of the affinity test for this purpose is not prohibited. Neither the Judgment in **Thandan's** case (supra) nor the Judgments in **Milind Katware's** case (supra) or **Mana Adim** (supra) prohibit an inquiry into the question as to whether an applicant in fact belongs to a Scheduled Tribe. In fact, such an inquiry is a basic postulate before the benefits of reservation can be granted to an applicant who claims to belong to a Scheduled Tribe. In a **recent** judgment in **Raju Ramsingh Vasave v. Mahesh Deoras Bhivapurkar**,<sup>5</sup> the Supreme Court held that “**before a person can obtain a declaration that he is a member of a Scheduled Tribe, he must be a member of a tribe**” (at para 16 p.10)

30. In **State of Maharashtra & Ors. v. Ravi Prakash**

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<sup>5</sup> (2009) Mh.L.J. 1



**Babulalsing Parmar & Anr.**<sup>6</sup> the Supreme Court had occasion to consider whether it was open to the Scrutiny Committee to let in oral evidence in order to determine whether an applicant for a caste certificate does in fact belong to a Scheduled Tribe. The respondent before the Supreme Court claimed to be a member of a Scheduled Tribe, namely the Scheduled Tribe by the name of Thakur under Entry No.44 of the Presidential Order. A caste certificate was issued to the respondent and on the strength thereof he had obtained admissions and appointments into various institutions on the basis of the certificate. The Scrutiny Committee opined that the respondent did not belong to the Thakur Scheduled Tribe and that in fact, he belonged to the Kshatriya Thakur caste, upon which the Scheduled Tribe certificate was cancelled. A Division Bench of this Court had held that the Scrutiny Committee had no competence to go into the question by holding an inquiry into whether the respondent belonged to the Thakur caste of the Kshatriya category. Two separate judgments were written by the Learned Judges constituting the Division Bench. Kochar, J. held that the inquiry before the Scrutiny Committee must accord greater credence to documentary evidence as opposed to oral evidence. The Court held

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6 2006 AIR SCW 6093

that if there was a preponderance of documentary evidence, this must be accepted without any further probe or scrutiny. The Supreme Court, in an appeal by the State, recorded its disapproval of the observations of the Division Bench and to the directions issued in the Judgment of this Court. In paragraphs 12 and 13 of the Judgment, the Supreme Court held thus:

“The Caste Scrutiny Committee is a quasi-judicial body. It has been set up for a specific purpose. It serves a social and constitutional purpose. It is constituted to prevent fraud on Constitution. It may not be bound by the provisions of Indian Evidence Act, but it would not be correct for the superior courts to issue directions as to how it should appreciate evidence. Evidence to be adduced in a matter before a quasi-judicial body cannot be restricted to admission of documentary evidence only. It may of necessity have to take oral evidence....

Moreover the nature of evidence to be adduced would vary from case to case. The right of a party to adduce evidence cannot be curtailed. It is one thing to say how a quasi-judicial body should appreciate evidence adduced before it in law but it is another thing to say that it must not allow adduction of oral evidence at all.”

The Supreme Court held that it did not agree with the conclusion of this Court that no inquiry was permissible at all, once it is found

that the name of the person concerned in whose favour a certificate had been granted is synonymous with the name of a tribe notified as a Scheduled Tribe. The Court held that the Judgment in **Madhuri Patil** case is an authority for the proposition that no immunity in absolute terms can be claimed only because a claim is made by a person that he belongs to a tribe notified to be a Scheduled Tribe. The Supreme Court emphasised, in the following observations, that a person who obtains the benefit of reservation without actually belonging to a Scheduled Tribe notified in the Presidential Order, would be guilty of playing a fraud on the Constitution:

“The makers of the Constitution laid emphasis on equality amongst citizens. Constitution of India provides for protective discrimination 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. When, therefore, a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter.”

The Court held that merely because the surname of the applicant tallied with the name of the tribe which finds mention in one or the other entries of the Schedule appended to the Order, this could not be treated as sacrosanct. The High Court was held to be not justified in observing that no inquiry in relation to the correctness of the certificate could be made by the Committee. The Supreme Court held that the observations of this Court were not only contrary to the Judgments of the Supreme Court but also fell short of ground realities. Both the Judgments in **Palghat Jilla Thandan** (supra) and **Milind Katware's** case (supra) were cited before the Supreme Court in support of the submission that an inquiry into the tribal status of the applicant was prohibited. The Court noted that **Palghat Jilla Thandan** did not deal with a case where a certificate had been granted wrongly to an applicant, though he was not entitled thereto.

31. The principle that emerges from the Judgment of the Supreme Court in **Ravi Prakash Babulalsing Parmar'** scase (supra) is that in the course of verifying the correctness of a caste certificate, the Scrutiny Committee is not precluded from inquiring

into whether the applicant has in fact established his membership of a notified tribe. For this purpose, the inquiry is not confined merely to a consideration of the documentary evidence upon which reliance is placed by the applicant. The Scrutiny Committee performs a quasi-judicial function and the object of the constitution of the Committee is to prevent a fraud on the Constitution being practised by spurious claims to Scheduled Caste and Scheduled Tribe status. The Scrutiny Committee is not precluded from relying upon oral evidence in arriving at its determination.

32. In **Lillykutty v. Scrutiny Committee, SC & ST and others**,<sup>7</sup> which arose out of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996, the Supreme Court upheld the decision of the Scrutiny Committee which had found that as a matter of fact the appellant had been born and brought up as a Christian and was never accepted as a member of the Hindu Pulayan Scheduled Caste community. Mr. Justice C.K. Thakker observed thus:

“In the instant case, it is the appellant who claimed to belong to a Scheduled Caste. In view of the

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<sup>7</sup> (2005)8 SCC 283

finding of fact recorded against her that she was born and brought up as a Christian, the caste certificate was ordered to be cancelled. In view of the said finding, it is immaterial that she had obtained a certificate showing her caste to be the Hindu Pulayan Scheduled Caste. If her case was that she was reconverted to Hinduism, it was for her to put forward such claim and to prove it in accordance with law. In our opinion, Section 10 is clear and expressly enacts that when a person claims to be a member of a Scheduled Caste or a Scheduled Tribe, the burden of proof that he or she belongs to such caste or tribe is on him/her. Since the appellant was born as a Christian and continued to remain as a Christian, the order passed by the Scrutiny Committee cancelling the appellant's certificate and confirmed by the High Court cannot be said to be illegal and no interference is called for."

Mr. Justice S.B. Sinha in a concurring Judgment held thus:

"Any action by the authorities or by the people claiming a right/privilege under the Constitution which subverts the constitutional purpose must be treated as a fraud on the Constitution. The Constitution does not postulate conferment of any special benefit on those who do not belong to the category of people for whom the provision was made."

The same principle has been reiterated by the Supreme Court in **Bank of India and another v. Avinash D. Mandivikar and others**,<sup>8</sup> and **R. Vishwanatha Pillai v. State of Kerala**.<sup>9</sup> In **R.**

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8 (2005)7 SCC 690

9 (2004)2 SCC 105

**Vishwanatha Pillai** (supra) the Supreme Court held thus:

“A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. 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.”

33. It would now be appropriate to advert to some of the Judgments of this Court on the subject.

### **JUDGMENTS OF THIS COURT**

34. In a number of Judgments delivered by Division Benches of this Court, both before and after the enactment of the State Legislation, it has been held that in every case it is necessary that an

applicant who asserts a claim to belong to a Scheduled Caste, or as the case may be, a Scheduled Tribe must establish in the first place membership of that tribe. A Division Bench of this Court, as far back as in 1986, emphasised this in **Maharashtra Adivasi Thakur Jamat Seva Mandal and others v. State of Maharashtra and others**.<sup>10</sup> :

“Hence it is necessary to find out in each case as to whether the claimant belongs Scheduled Tribe or the Caste carrying the same name. By direct method or obliquely a Caste which is not included in the Schedule relating to Scheduled Tribe, cannot be equated with or conferred the status of Scheduled Tribes. It is experienced that benefits are snatched away by most vocal classes, and thus keeping the weaker among the weak always weak. This not only robs them of their share in benefits but creates further inequalities amongst the unequals. Therefore an enquiry in each case is a must”

In **Rahul Vasantrao Thakur v. State of Maharashtra & others**<sup>11</sup>, a Division Bench presided over by Chief Justice C.K. Thakker (as the Learned Judge then was) considered the correctness of the view of the Scrutiny Committee which had applied the affinity test in rejecting the claim of the applicant to belong to the Thakur Scheduled Tribe. The Scrutiny Committee had held thus:

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<sup>10</sup> 1986 Mh.L.J. 1021

<sup>11</sup> W.P.No.2869 of 2003 decided on 5<sup>th</sup> June, 2003.



“Their ancestors' profession was agricultural labour his mother tongue is Marathi. He stated that the language of his community is Marathi and he was unable to speak or tell anything about dialect of Thakur, Scheduled Tribe. He stated about the social worker and the social organisations working for their caste which are not found in Thakur, Scheduled Tribe. Munja Dev is a family and community deity of the candidate. Diwali, Dasara, Akharpakh are the festivals they observed. During hearing when asked who officiates the marriage in Thakur, Scheduled Tribe the appellant could not reply satisfactorily. It is found that appellant and his brother was totally ignorant about specific customs and traditions found in Thakur, Scheduled Tribe. Thus the information given by appellant and brother could not satisfy the Scrutiny Committee and it is found that they have no affinity and ethnic linkage with Thakur, Scheduled Tribe.”

The Division Bench held that there was no illegality in the decision of the Committee. In **Pandurang Hanmantrao Yesardekar v. The State of Maharashtra & Ors.**<sup>12</sup> Mr. Justice D.B. Bhosale, speaking for the Division Bench, noted that during the course of the personal hearing the candidate had furnished information in regard to the traditional occupation of his family, deities worshipped, surnames in the community, places of residence, mother tongue and dialect, and the attire of women. The Committee had found that the answers did not accord with the customs and practices that were known to

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<sup>12</sup> W.P. No.657 of 1997 decided on 20<sup>th</sup> December, 2005.

exist in the Thakar Scheduled Tribe. The Division Bench upheld the decision of rejection. In **Ashwini Anil Chavan v. State of Maharashtra and others**,<sup>13</sup> a Division Bench of this Court held that the Scrutiny Committee was justified in applying the affinity test to decide as to whether the applicant belongs to a Scheduled Tribe and in such a case there was no question of going behind an entry in the Presidential Order issued under Article 342(1) of the Constitution:

“The Scrutiny Committee is justified in taking the view that merely because the documents which have been produced contain a reference to the petitioner or his relatives belonging to the Thakur Community that would not in itself be sufficient to demonstrate that she actually belongs to the Thakur Scheduled Tribe. Reference to the question of affinity is perfectly justified for the reason that the individual must be shown on evidence to belong to the Scheduled Tribe concerned. In such a case, there is no question of going behind an entry in the Presidential Order issued under Article 342(1) of the Constitution. The exercise is to determine whether the individual belongs to a Scheduled Tribe. This is perfectly justifiable and for that, recourse to the affinity test is legitimate.”

**In Kavita Basantsinh Bisen v. Scheduled Tribes Caste Certificate Scrutiny Committee & others**<sup>14</sup> Mr. Justice J.N. Patel, speaking for

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<sup>13</sup> 2006(4) Mh.L.J. 415

<sup>14</sup> W.P. No.1406 of 1996 decided on 14<sup>th</sup> February, 2006.

the Division Bench, upheld the cancellation of a caste certificate on the ground that the petitioner was totally ignorant of the socio-cultural and ethnic linkage of the Thakur Scheduled Tribe. The Division Bench affirmed the view of the Scrutiny Committee by observing thus:

“The Scrutiny Committee also does not find quarrel with the documents presented by the petitioner in support of her caste claim. The question, then assumes importance, is whether the petitioner belongs to caste Thakur, which is notified as a Scheduled Tribe, or upper caste Thakur which belongs to Kshtriya Varna and, therefore, for verifying the caste claim of the petitioner, affinity test assumes importance and accordingly Caste Scrutiny Committee has put the petitioner on notice to establish her affinity towards Thakur, Scheduled Tribe. The information, which came to be furnished by the petitioner and on her behalf, has been spelt out in the impugned Order, and the Scrutiny Committee has taken into consideration the socio-cultural traits, characteristics and ethnic linkage of caste Thakur, Scheduled Tribe, and came to the conclusion that the petitioner does not belong to caste Thakur, Scheduled Tribe, as, according to the petitioner, her Gotra is Bharadwaj which is not so in the persons belonging to caste Thakur, Scheduled Tribe, and her traditional festivals are Dusshera, Rakshabandhan and Navratra, and it was stated that in the community of the petitioner, marital relations are performed with Rajput Thakur, Kshtriya Thakur and Pardeshi Thakur, and a renowned personality from her community was Maharana Pratap, who was a great and well-known King of Rajput Thakur community.”

**In Shri Murlidhar Ramkrishna Gathe v. State of Maharashtra<sup>15</sup>**  
the petitioner was employed in the Government Transport Services on the basis that he belongs to the Thakur Scheduled Tribe. The Scrutiny Committee held that from the documents it was not possible to hold as to whether the petitioner belonged to the Thakur Scheduled Tribe. The Committee applied the affinity test and came to the conclusion on the basis of the answers furnished by the applicant that he had not been able to establish affinity to the Scheduled Tribe in question. Mr. Justice F.I. Rebello, speaking for the Division Bench held thus:

“This court has judicially recognised, that the word or surname “Thakur” is shared by both forward and backward communities. The burden of proving that the person belongs to a S.T./S.C./O.B.C. Lies heavily on the person seeking the certificate. The role of the Vigilance Committee is to conduct an enquiry to ascertain and verify the material produced by the candidate including as to traits and characteristics claimed. If the material and information on traits, characteristics, customs, deities and other information did not relate to Thakur S.T. further verification of that material normally would be uncalled for. The law as declared in Madhuri Patil (supra) would require verification of the information given. If that information was associated with the Thakur S.T. then to rule out that the information

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<sup>15</sup> W.P.No. 2748 of 2000 decided on 18<sup>th</sup> January, 2007.

given was based on bookish knowledge, the vigilance enquiry is required to be conducted to establish that the evidence produced is genuine. Once the committee with whom are associated experts, conversant with the anthropological and ethnological traits and other characteristics of the community, rule out the association of the Petitioner to that community, the burden is on the Petitioner to establish otherwise. That burden has not been discharged.”

From the affidavit in reply filed by the Research Officer, the Court noted that the petitioner hailed from Khamgaon in Buldhana District. Before the area restrictions were removed in 1976, the Thakur Scheduled Tribe was restricted only to five Districts, namely (a) Ahmednagar District in Akola, Rahuri and Sangamner Taluka, (b) in Kolaba District (now Raigad), Karjat, Khalapur, Pen, Panvel and Sudhagad Talukas and Matheran (c) In Nashik District Igatpuri, Nashik and Sinnar Talukas (d) In Thane District Thane, Kalyan, Murbad, Bhiwandi, Vasai, Wada, Shahapur, Palghar, Jawhar and Mokhada talukas. It was not the case of the petitioner that his family had migrated to Khamgaon from any of these areas. The population of the Thakur Scheduled Tribes in Maharashtra increased from 1,78,805 in the year 1971 to 3,23,191 in the year 1981. Dealing with this, the Division Bench observed as follows:

“This cannot be explained as a normal reproduction process leading to the increase in the population of S.T. within 10 years. Scheduled Tribes by their very nature stay close to their original habitat unless they have migrated for work or education which very few still do. This sudden spurt, can reasonably be explained, that persons who did not belong to Thakur S.T. because they also bore a surname Thakur made false claims as belonging to Thakur S.T. though they did not belong to Thakur S.T.”

The Court observed that the Scrutiny Committee was justified in applying the affinity test. The petition was accordingly dismissed. **In Vijaykumar S/o Madhukar Ingle v. The Caste Scrutiny Committee**<sup>16</sup> a Division Bench consisting of Mr. Justice A.H. Joshi and Mr. Justice R.C. Chavan held that far from losing its importance the affinity test has “a pivotal role’ in the adjudication of a tribe claim. The Division Bench referred to the Judgments in **Madhuri Patil** and in **Gayatrilaxmi Bapurao Nagpure**<sup>17</sup> case and held that upon the enactment of the State Legislation in 2000, a claimant before the Scrutiny Committee has to prove his claim like any other fact that is required to be proved before a Court of law or Tribunal. **In Nitin Ramadas Chavan v. State of Maharashtra and**

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16 W.P. No. 731 of 2007 decided on 20<sup>th</sup> February, 2007.

17 (1996)3 SCC 685

**others**<sup>18</sup> the Division Bench came to the conclusion that the affinity test has assumed vital importance. The applicant had failed to establish affinity with the Thakar Scheuled Tribe, as is evident from the following observations:

“The petitioner stated that the re-marriage system, Pitrya-Pitri system, Umbrya Umbari system, Padekhot system, AvANJI system, Khoti system, Kothi system etc., might be prevalent in his community but he was unaware about the said systems due to migration of his family from Ramling to Shirur. He further stated that he could not state about the customs and traditions of their community.”

Mr. Justice R.M. Savant speaking for the Division Bench held that the petitioner had not been able to even mention a tradition, custom or tribe peculiar to the Thakar Community.

An affidavit dated 28<sup>th</sup> March, 2008 has been filed by Dr. Prem Singh Meena, Secretary, Tribal Development Department in which it has been stated that the main problem arises only in respect of communities where Pseudo tribals are trying to grab the benefits which the Constitution has conferred only on the deprived classes. There are a few communities like Kolis, Thakurs, Halbi

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18 W.P. No.2447 of 2007 decided on 25<sup>th</sup> April, 2007.

(Koshti), Dhanwar and Mana where an overwhelming majority of invalid claims is confined. The Scrutiny Committee has to be especially vigilant where an attempt is being made to deprive genuine tribals of the benefits given to them in the Constitution and consequently, a determination is made on the basis of (i) Information supplied in the prescribed column; (ii) Documentary evidence; (iii) The affinity test; (iv) Vigilance report; and (v) Other evidence, oral or otherwise that may be adduced. In a further affidavit dated 21<sup>st</sup> September, 2008 consolidated figures have been furnished in regard to the working of all the eight Scrutiny Committees functioning in the State of Maharashtra for the years 2003 to 2007. It has been stated that during this period, the Committees together validated 1,09,914 claims. A total of 5539 claims came to be rejected. In these circumstances, it has been stated that almost 95% of the claims have been accepted and the rate of rejection is a little over 5%. 604 claims have been rejected exclusively on the ground of lack of affinity; 90 claims have been rejected on the ground of lack of documentary evidence; 1,413 claims were rejected on the ground that the documentary and other evidence was contrary to the claim and 3209 claims were rejected



due to a combination of the aforesaid reasons. Most of the claims which have been rejected have been made by pseudo tribals from 5 communities who are trying to take disadvantage of a similarity of nomenclature viz. (i) Kolis who claim to be Mahadeo Kolis or Tokre Kolis; (ii) Rajput Thakurs, Bramhabhat Kavi Thakurs claiming to be Thakur Scheduled Tribes; (iii) Koshtis claiming to be Halbas; (iv) Dhangars claiming to be Dhanvars; and (v) Munnerwars claiming to be Munnerwalu Scheduled Tribes.

35. We have adverted to the Judgments of the Division Benches of this Court in order to emphasise that the line of reasoning that has been followed is that before an applicant can be validly regarded as being eligible to receive the benefits attached to being a member of a Scheduled Tribe, the burden lies on the applicant to establish membership of the tribe. An inquiry into whether the applicant belongs to a Scheduled Tribe is not precluded by the Presidential Order or by the Judgments of the Supreme Court in **Palghat Jilla Thandan** and **Milind Katware**. For the purposes of determining as to whether an applicant belongs to a Scheduled Tribe, the Scrutiny Committee has to be satisfied on the basis of all

the available material on the record that such is the position. The material on the record would include documentary evidence and oral evidence and comprehend the application of the affinity test.

36. Counsel appearing for the petitioners, however, urged before the Court that a contrary view had been taken in certain Division Bench Judgments of this Court. We have already noted that the contrary view that was taken by this Court in **Raviprakash Babulalsing Parmar v. State of Maharashtra and others**,<sup>19</sup> has been overruled by the Supreme Court in the appeal by the State of Maharashtra.<sup>20</sup> The Division Bench of this Court had noted that the documents that had been produced by the candidate reflected his caste as being Thakur and on that basis, this Court had held that the Caste Scrutiny Committee was bound to grant a validity certificate to the candidate. Kochar, J. had in fact held that the Scrutiny Committee must give greater credence to documentary evidence, as opposed to oral evidence. The entire approach of the Division Bench was considered to be erroneous by the Supreme Court. Reliance was placed by the Petitioners on the Judgment of a Division Bench

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<sup>19</sup> 2004(1) Mh.L.J. 177

<sup>20</sup> (2007)1 SCC 80

in **Pandurang Rangnath Chavan v. State of Maharashtra and others.**<sup>21</sup> In **Pandurang Rangnath Chavan's** case (supra), the Division Bench made a reference to the legislative history underlying the designation of Thakur as a Scheduled Tribe. Initially, by the Constitution (Scheduled Tribes) Order, 1950 only Thakur was declared to be a Scheduled Tribe under Entry 21 in Part III of the First Schedule pertaining to the erstwhile State of Bombay. Subsequently, by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956, the 1950 Order was amended and Thakur or Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar from certain Talukas in Ahmednagar District were declared to be Scheduled Tribes. Subsequently, by the Amending Act of 1976 the area restrictions were removed and consequently Entry 44 in Part IX of the Second Schedule to the Act specifically includes Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar. The State Government, however, had by a Resolution dated 8<sup>th</sup> July, 1982 declared that in an earlier G.R. of 1976, the Thakar community would be added (by Entry No.200) as an O.B.C.. The Division Bench held that in view of the Judgment in **Palghat Jilla Thandan'** case, it was for Parliament alone to specify tribes or

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21 1998(2) Mh.L.J. 806

tribal communities or parts or groups thereof to be Scheduled Tribes in relation to the State. Hence it was not open to the State Government to determine that though a community was listed as a Scheduled Tribe by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, it would be treated as an O.B.C. in the State. The Scheduled Tribes Order had to be applied as it stood. The Division Bench noted that in that case there was voluminous evidence and the documentary evidence on the record clearly showed that the petitioner belonged to the Scheduled Tribe of Thakar. **Chavan's** case therefore involved a situation where despite a Parliamentary enactment notifying a community as a Scheduled Tribe, the State Government sought to designate it as an OBC. This was a clear encroachment on the Parliamentary power under Article 342(2). **Chavan's** case does not deal with the standards to be applied in determining whether an individual has established his or her membership of a Scheduled Tribe. The Judgment of the Division Bench does not preclude an inquiry into the question as to whether a person who stakes a claim to belong to a Scheduled Tribe does in fact belong to that tribe. The decision in **Baburao Rajaram Shinde v. State of Maharashtra & others**,<sup>22</sup> follows the same line of

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<sup>22</sup> 2003(1) Bom. C.R. 401

reasoning. The Division Bench held that once the Committee answers the question as to whether the applicant belongs to a Scheduled Tribe in the affirmative, it would have to accept the claim of the applicant notwithstanding the State Government' Resolution designating the Thakar community as an O.B.C.. This is apparent from the following observations of the Division Bench:

“The claimant of such a caste has to stand on his own feet and at the first instance he is required to prove his claim that he belongs to “Thakar or Thakur” caste and therefore, such an issue is required to be framed by the Committee. In case the Committee answers it in the affirmative it has no further powers other than to accept the claim of the claimant as belonging to the Scheduled Tribes notwithstanding the State Government Resolution enlisting the said caste in the Other Backward Classes. In case the issue is answered in the negative the Committee has no further powers to give a declaration that the claimant belongs to “Thakar or Thakur” caste, a non-tribal group simply because there is another entry of the same nomenclature in the list of the Other Backward Classes as per the Government Resolution dated 8-7-1982.”

In **Chandrakant Bajirao Shinde v . State of Maharashtra and others**,<sup>23</sup> a Division Bench set aside the Judgment of the Scrutiny Committee which had found that “though the petitioner belongs to

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<sup>23</sup> 2003(2) Mh.L.J. 471

caste Thakar yet since he belongs to caste Thakar of Bhat category, he cannot be said to be belonging to Thakar Scheduled Tribe.” The Division Bench was of the view that such an approach was not open to the Scrutiny Committee in view of the Judgments of the Supreme Court in **Palghat Jilla Thandan** and **Milind Katware**. The case was remanded back to the Scrutiny Committee for a fresh decision. The Judgment of the Division Bench in **Chandrakant Bajirao Shinde** (supra) is prior to the Judgment of the Supreme Court in **Raviprakash Babulalsing Parmar** (supra). We do not read the decision in **Chandrakant Bajirao Shinde**’s case as laying down any principle to the effect that the Scrutiny Committee is debarred from considering whether a person who applies for a caste certificate is in fact a member of a Scheduled Tribe. Indeed, if the judgment is read to take a contrary view, it would stand impliedly overruled by the decision of the Supreme Court in **Parmar**. Reliance has also been placed on Division Bench Judgments in **Narendra Dhudkar Thakur v. Scheduled Tribe Certificate Scrutiny Committee & others**,<sup>24</sup> and in **Arun Bhaurao Ingale v. State of Maharashtra and another**.<sup>25</sup> Both these Judgments would now stand overruled in

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<sup>24</sup> 2004(1) Bom. C.R. 467

<sup>25</sup> 2005(1) [Mh.L.J.](#) 1081

view of the Judgment of the Supreme Court in Raviprakash Babulalsing Parmar' case. The Judgment of the Division Bench of this Court in Raviprakash Babulalsing Parmar' case has been set aside by the Supreme Court. Our attention has also been drawn to a Judgment of the Division Bench in **Shri Pravin Pandurang Ingale v. State of Maharashtra and Ors.**<sup>26</sup> The Division Bench was of the view that Chandrakant Bajirao Shinde' case precluded the Scrutiny Committee from enquiring into socio-cultural traits and ethnic linkage. The Court held thus:

“We are of the view that in view of the judgment of the Division Bench in Chandrakant Bajirao Shinde v. State of Maharashtra and others 2003 (2) **Mh.L.J.** 471 (supra), the Scrutiny Committee is not justified in proceeding to inquire on the basis of socio-cultural traits and ethnic linkage to find out that whether the Petitioner belongs to “Thakur Scheduled Tribe.” The Scrutiny Committee in unequivocal terms states that the caste of the Petitioner is “Thakur”.”

This view of the Division Bench is not reflective of the correct position in law. As we have already noted, ever since the Judgment of the Supreme Court in **Madhuri Patil's** case, the application of the affinity test is recognised as being valid in law. The State

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<sup>26</sup> W.P.NO. 3737 OF 2001 decided on 24<sup>th</sup> November, 2004.

Legislation in Maharashtra and the Rules framed thereunder also establish the same position. The Judgment of the Division Bench in **Pravin Pandurang Ingale's** case (supra), therefore, does not state the correct position in law.

In **Amol Narayan Wakkar v. State of Maharashtra**,<sup>27</sup> Mr. Justice A.P. Shah (as the Learned Judge then was) speaking for a Division Bench of this court held that the Scrutiny Committee was not justified in proceeding with an enquiry on the basis of socio cultural traits and ethnical linkage to find out whether the petitioners belonged to the Thakar Scheduled Tribe. The Division Bench held that the Scheduled Tribe Order has to be read as it is and must be applied accordingly. The observations of the Division Bench holding so run contrary to the judgment in **Madhuri Patil's** case and in any event would stand impliedly overruled by the judgment in **Parmar's** case.

In **Pragati Vasantrao Bhujade v. Scheduled Tribes Castes Certificate Scrutiny Committee**,<sup>28</sup> the petitioner claimed to

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<sup>27</sup> 2005(2) All MR 16

<sup>28</sup> W.P. 571 of 2004 decided on 13<sup>th</sup> December, 2004.



belong to the Halbi Tribe recognized as a Scheduled Tribe in Entry No.19. The petitioner contended that her family and ancestors hail from Achalpur which was in the border of Melghat identified as the area occupied by Halbi tribals even prior to the removal of area restrictions by the amendment of 1976. The petitioner submitted fourteen documents showing that her tribe was Halbi, including amongst them a School Leaving Certificate of her grand father whose caste was recorded as Halbi in 1932. The Scrutiny Committee rejected the documentary evidence and after applying the affinity test, rejected the claim of the petitioner. The Division Bench held thus-

“The Scrutiny Committee could not have applied the test of affinity when a clear case of a person belonging to Halbi tribe was established. Needless to mention that the affinity test is required to be applied in the event of doubt or in order to resolve the dispute as to whether or not the person really belongs to a particular tribe. The case in hand is a clear case establishing the fact that the petitioner belongs to Halbi tribe. Not a single document is on record to negative the case of the petitioner that she belongs to Halbi tribe. The report of the Vigilance Cell was also based on applying the affinity test. As a matter of fact, no affinity test could have been applied in a clear case wherein no other view was possible based on the documentary evidence.”

These observations of the Division Bench have to be construed in

the peculiar facts and circumstances as they appeared in that case. In that case, the Division Bench held that there was **unimpeachable documentary evidence** going back to 1932 to establish that the petitioner **belonged to the Halbi Scheduled Tribe**. It was in that context that the Division Bench held that the claim could not be invalidated purely on the basis of the affinity test. The observations of the Division Bench have to be confined to the facts as they appeared in that case. However, the position of law stated by the Division Bench that the affinity test is required to be applied in the event of doubt and that the affinity test cannot be applied where a clear case of a person belonging to a tribe is established would be no longer good in light of the interpretation placed by us on the Act and the Rules. The question as to whether it is established that a person belongs to a particular Scheduled Tribe in the first place is to be determined on the basis of the entirety of the evidence – documentary, oral and on the application of the affinity test. It would, therefore, not be correct to hold that the question of the application of the affinity test can arise only in the event of doubt. The affinity test is as much a part of the determination as indeed the documentary and oral evidence. To that extent, the observations

contained in the judgment of the Division Bench in **Bhujade's** case would not be correct.

The Judgment in **Prakash Hari Mahale v. State of Maharashtra**<sup>29</sup> was in a case in which as the Division Bench noted, the Scrutiny Committee had not recorded a finding that the petitioner did not have ethnic links with the Thakur tribe. The Scrutiny Committee, however, held that the petitioner had not proved any ethnic affinity to the Ka Thakur, Ma Thakur Tribes and on that ground could not be regarded as belonging to the Thakur Tribe. The Division Bench held that the reasoning of the Scrutiny Committee to the effect that the claimant must also prove that he had an affinity with the Ka Thakur and Ma Thakur tribes was erroneous. A person who belongs to the Thakur tribe may or may not have any ethnic link with Ka Thakur or Ma Thakur. But that would not mean that the person concerned ceases to belong to the Thakur tribe. This case is therefore one in which the applicant had established his membership of the Thakur Scheduled Tribe.

#### **ANTHROPOLOGICAL MATERIAL**

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<sup>29</sup> W.P. 6533 of 1997 decided on 24<sup>th</sup> January, 2006.

37. In the compilation that has been placed on the record by the State Government, reliance is placed on the written work of Anthropologists in support of the submission that the application of the affinity test is an invaluable aid in the determination of the question as to whether an applicant belongs to a Scheduled Tribe. A monograph by Prof. R.K. Mutatkar, Honorary Professor of Anthropology at the University of Pune, entitled '**Tribal Identity: Policy Issues**' is instructive. The monograph states that Government of India has recommended that the following broad parameters be applied in determining tribal characteristics:

- (i) Primitive traits;
- (ii) Distinct culture;
- (iii) Geographical isolation;
- (iv) Distinct dialect;
- (v) Animism;
- (vi) Clan systems;
- (vii) Shyness of nature; and
- (viii) Backwardness.

The monograph notes that due to contact with the outside world and the effort to draw tribal communities into the democratic political process, a movement towards **acculturation** has been taking place. However, the author states that **“acculturation does not destroy the hard core of culture which is manifested in their rituals, beliefs, ceremonies and festivals, in the dialect, and in music and dance.”** Prof. Mutatkar speaks of the danger of allowing caste groups with a similar nomenclature or with a tribal suffix or prefix to claim benefits which are meant for genuine members of the Scheduled Tribe:

“When a non-tribal group or a caste group with similar nomenclature or with tribal suffix or prefix to their name claim tribal status, they are not only harming the interest of a tribal group with whom they are trying to identify by putting up a tribal claim, but they are also harming the interest of all tribals in the State and the country, since the benefits of Scheduled Tribe are bestowed according to the generic category of Scheduled Tribe and not according to a specific tribal group. The pseudo-tribal group, therefore, nullifies the constitutional guarantees of all the scheduled tribes in a State and the country.”

38. Another instructive article on the subject, entitled “Pseudo-Tribalization: An Anthropological Perspective”, is written by Dr. Robin D. Tribhuwan, an Anthropologist associated with the

Tribal Research & Training Institute at Pune. The article by Dr. Tribhuwan refers to similarities of nomenclatures between tribal and non-tribal communities. This is evident from the following table:

Tribal communities	Non-Tribal communities
1. Mahadeo Koli, Tokre Koli, Malhar Koli	1. Koli (including Son Koli, Suryawanshi Koli, Vaiti Koli etc.);
2. Dhanwar	2. Dhangar
3. Thakur/Thakar Ka-Thakur/Ka-Thakar Ma-Thakur/Ma Thakar	3. Thakur (including Bhat, Brahmabhat, Thakur, Kshatriya Thakur, Rajput Thakur, Sindhi Thakur, Maratha Thakur, Pardeshi Thakur);
4. Gond Gowari	5. Gowari
5. Mannerwarlu	6. Munnurwar/Mannerwar/ Mannawar
6. Halba/Halbi	7. Koshti/Halba Koshti

The monographs of Prof. Mutatkar and Dr. Tribhuwan have emphasised that there has been a rapid rise in the growth rate of the

Scheduled Tribes between 1971 and 2001 which is not reflective of a natural biological growth but an attempt by communities which do not genuinely have an affinity to Scheduled Tribes towards pseudo-tribalization. These contributions in the written work of experts on the subject only go to emphasise the dangers of the benefits granted to the Scheduled Tribes being frittered away at their expense if unverified claims of impostors are not nipped in the bud.

39. We will now proceed to answer the questions framed for the determination of the Full Bench.

### **THE CONCLUSIONS**

40. Our answers to the questions referred are as follows:

- (i) The burden of establishing that the applicant belongs to a tribe notified as a Scheduled Tribe is on the applicant under Section 8 of the State Act. The Competent Authority which issues the

caste certificate, the Appellate Authority and the Scrutiny Committee have powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, particularly in summoning and enforcing the attendance of persons; requiring the discovery and production of documents; receiving evidence on affidavit, requisitioning any public record and issuing commissions for the examination of witnesses or for the production of documents under Section 9 of the Act. The Competent Authority before whom an application for a caste certificate is filed has to be satisfied about the genuineness of the claim under Section 4(1). The Caste Scrutiny Committee is required by Section 6 to verify each caste certificate before it issues a certificate of validity. Under the Rules, an application for grant of a certificate has to be accompanied by a full disclosure on affidavit containing information stipulated in sub-rule (2) of Rule 3



and documents referred to in sub-rule (3). Under sub-rule (9) of Rule 4, the Competent Authority, if it is not satisfied with the claim of the applicant on a scrutiny of the evidence produced, is empowered to order a further inquiry as it deems fit. After considering the evidence produced by the applicant or any other person on his behalf and the statement of the applicant and after taking into account the material gathered by the Competent Authority, the Competent Authority has to issue a certificate if it is satisfied about the genuineness of the claim. In an appeal against the decision of the Competent Authority, the Appellate Authority is empowered under Rule 8 to receive or call for further documents before passing such further orders as it deems fit. Once the caste certificate is issued, an applicant has to submit documents for verification by the Scrutiny Committee under Rule 12(2) and an affidavit in

Form-F containing full disclosure of the information relevant to the determination of the tribal status. Under Rule 12(2), the Scrutiny Committee, if it is not satisfied with the documentary evidence produced, has to forward the application to the Vigilance Cell for a school, home and other inquiry. Under sub-rule (4) the Vigilance Officer has to personally verify and collect all the facts about the social status claimed by the applicant. If the Scrutiny Committee is not satisfied about the claim of the applicant on the basis of the report of the Vigilance Cell and other documents available, a notice to show cause is issued to the candidate for a personal hearing. The Scrutiny Committee must be satisfied about the genuineness of the claim and the correctness of the Scheduled Tribe certificate. If it is not satisfied, it has to pass an order of cancellation and of the confiscation of the certificate. The Competent Authority, the

Appellate Authority and the Scrutiny Committee exercise quasi-judicial powers in arriving at a determination with reference to a claim to belong to a Scheduled Tribe. These Authorities must have regard to the entire body of evidence, including the documentary and oral evidence. The affinity test is an integral part of the determination of the correctness of the claim. As quasi-judicial authorities, each of these Authorities must apply settled principles of law in the evaluation of evidence. A claim can be allowed only where the Authority is satisfied about the genuineness and the correctness of the claim on the basis of the entire evidence on the record.

- (ii)(a)** The mere fact that the documents produced by a person reflect his surname as being synonymous with the name of a designated tribe, is not sufficient to establish

that the applicant belongs to a Scheduled Tribe. Before a person can be regarded as belonging to a Scheduled Tribe, that person must demonstrably be a member of the tribe. Allowing claims merely on the basis of an overlap between the surname of the person as reflected in the documents produced and the name of a designated tribe may result in a grave miscarriage of justice and lead to the grant of benefits to persons who are not genuinely members of a designated tribe. In order to determine whether a person genuinely belongs to a designated Scheduled Tribe, the Scrutiny Committee must have regard to the entire body of evidence including on the question as to whether the applicant has satisfied the affinity test.

- (b)** Where a person is not in possession of documentary evidence to meet the requirement

of belonging to a particular tribe, he or she must make a disclosure to that effect in the application form to be submitted to the Competent Authority in the first instance and before the Scrutiny Committee subsequently. The absence of documentary evidence does not *ipso facto* result in the invalidation of the caste claim. The claim will have to be scrutinized by the authority concerned on the basis of all the material available, including the affinity established by the applicant to a tribe. The Competent Authority or, as the case may be, Scrutiny Committee shall apply established norms in the evaluation of evidence. The applicant has to discharge the burden of establishing his or her caste claim under Section 8 of the Act. Whether the burden has been discharged is for the Competent Authority/Scrutiny Committee to decide on the facts of each case. The quasi-judicial function

must focus on all relevant aspects such as whether the absence of documentary evidence is due to poverty, illiteracy and isolation or whether it is a plea in the nature of suppression to prevent the real status of the applicant from emerging before the authority.

- (c) Where a person has some documents in his or her favour and/or partially satisfies the crucial affinity test, the question as to whether certification should be granted would depend upon the overall view which is formed by the Competent Authority in the first instance and by the Scrutiny Committee subsequently on the preponderating weight of the evidence. The nature of the documents that have been produced, the genuineness and authenticity of the documentary evidence and the weight to be ascribed to the documents produced, are matters which must be decided by the authority

concerned. If a candidate has satisfied the crucial affinity test in part, it is for the Competent Authority and the Scrutiny Committee to determine in each case as to whether, on considering the entire material on the record, the caste claim is correct and genuine. An answer in the abstract cannot be furnished. It is for the quasi-judicial authority in each case to arrive at its finding on the basis of the material on the record.

41. Before concluding, it is necessary for this Court to observe that both under the Act as well as under the Rules, the Competent Authority has to be satisfied about the genuineness of the claim. Rule 4 which lays down the procedure to be followed by the Competent Authority for the grant or rejection of an application for a certificate empowers the Competent Authority to hold an inquiry and to gather material for determining the correctness of the claim. The function of the Competent Authority is not ministerial but is a vital step in the verification of tribe claims. The Competent

Authority must be provided with a sufficient infrastructure to process and verify the claims. We are of the view that it would be necessary for the State Government to take immediate steps to provide infrastructure to the Competent Authorities in order to enable them to determine in the first instance the correctness of the caste claim before a decision is arrived at on the grant or rejection of the application. The State Government shall within a period of two months from today issue necessary administrative directions providing for infrastructure, including expert assistance and a Vigilance Cell to assist the Competent Authorities to discharge their duties. The material which is gathered by the Competent Authority under Rule 4 shall be transmitted by the Competent Authority to the Scrutiny Committee when an application is made to the Scrutiny Committee for the grant of a validity certificate. We have issued these directions in order to ensure that the process of issuing caste certificates by the Competent Authorities is not reduced to a mechanical exercise since both the Act and the Rules require the satisfaction of the Competent Authority in regard to the correctness of the claim. The benefit of the exercise which has been conducted by the Competent Authority should be made available to the



Scrutiny Committees and the entire record before the former should be hence transmitted to the latter for the purposes of the proceedings before the Scrutiny Committee. The State Government shall act on the aforesaid directions and take expeditious steps in compliance within the time schedule that has been prescribed.

42. The Reference to the Full Bench shall stand answered accordingly in the aforesaid terms. Writ Petitions shall now be listed by the Registry before the appropriate Benches at Mumbai, Nagpur and Aurangabad, as the case may be for disposal.

**CHIEF JUSTICE**

**V.C. DAGA, J.**

**DR. D.Y. CHANDRACHUD, J.**