IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6224 of 2015

Ravindra Pralhadrao Khare
residing at Beturkar Pada,
Golden Park, Everest Bldg, E-1,
Flat No.715, Kalyan (W),
District Thane .. Petitioner

Versus

1 The State of Maharashtra
through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai 32.

2 Scheduled Tribe Certificate Scrutiny
Committee through its Deputy
Director and Member Secretary,
Konkan Division, Vedant Complex
Opp. Kores Company, Thane 400606.

2A Scheduled Tribe Certificate Scrutiny
Committee at Amravati through its
Deputy Secretary and Member
Secretary, having office at Amravati,
District. Amravati ..

3 Mumbai Municipal Corporation through
its Dy.Chief Fire Brigade Officer,
(Circle 6), Mumbai Fire Brigade,
having its office at Vikhroli Fire Brigade
Centre, LBS Marg, Opp Godrej Gate,
Vikhroli (West), Mumbai 400079. .. Respondents

…

Tilak

Mr.R.K. Mendadkar for the petitioners.

Ms.Rupali Shinde, APP for the respondent State.

CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.

RESERVED ON : 11th JULY, 2019

PRONOUNCED ON : 26th JULY, 2019

ORAL JUDGMENT : (Per Smt.Bharati Dangre, J)

1 By an order passed on 13th November 2017, we had remanded the claim of the petitioner to the Scrutiny Committee and directed the Scheduled Tribe Scrutiny Committee at Amravati to examine the claim of the petitioner since the petitioner hail from the said region and the Vigilance Enquiry in the earlier round was carried by the Vigilance Officer at Amravati. It is noted that the learned Advocate General appeared before us and we had invited his attention to the approach of the Scheduled Tribes Scrutiny Committees throughout the State, in dealing with the claim of Thakur Scheduled Tribe. We invited his attention to the numerous orders passed by various Scrutiny Committees confronted with the claim of candidates belonging to “Thakur” and the learned

Advocate General assured this Court that the Scrutiny Committee to whom the matter is being remanded to, would examine the claim of the petitioner in the backdrop of the law as settled by the Hon'ble Apex Court and this Court, and will not be prejudiced by the observations made by the Committee in its earlier order. On this assurance, the petition was kept pending and the matter was relegated to the Scheduled Tribe Scrutiny Committee, Amravati Division, Amravati.

2 We are now confronted with an order dated 14th December 2017 passed by the Scheduled Tribe Scrutiny Committee at Amravati, by which the claim of the petitioner as belonging to 'Thakur Scheduled Tribe' has again been invalidated and the certificate obtained by him from the Deputy Collector, Thane district dated 6th June 2007 has been cancelled.

Mr.Mendadkar, the learned counsel for the petitioner has assiduously asserted that the impugned order which he has brought on record by way of amendment is reflective of the attitude of the Committee and no matter even

if the learned Advocate General assures the Court that the Committee would follow the binding precedents, the Committee are hell bent upon throwing the decisions of this Court as well as the Apex Court in air and have once again depicted that they are not bound by the said decisions.

With the assistance of the learned counsel Shri Mendadkar and the learned AGP, we have perused the order dated 14th December 2017. We have also asked the learned AGP to produce the record pertaining to the matter and accordingly, the learned AGP has tendered before us the record of the Scheduled Tribe Certificates Scrutiny Committee at Amravati since the matter was remanded to the Committee at Amravati.

3. Perusal of the impugned order would disclose that the Committee has framed some more issues apart from their usual three issues i.e. proof by way of documentary evidence – affinity test, Area restriction and now in the present decision, they have formulated four more issues. We are rather

astonished with the approach of the Committee which has penned down 31 pages, reiterating its earlier view and we are very carefully using the word “reiterate” since after reading of the impugned order, what we have noted is only an attempt on the part of the Committee to further dissect our earlier orders and to find out a way to overcome the said orders. The Committee has, in the earlier round, taken into consideration the pre-constitutional documents on which the petitioner had placed reliance and this included the two documents i.e. the first page of service book of the petitioner's father Pralhad where the date of birth is recorded as 3rd April 1943 where the caste is recorded as 'Thakur'. Another document is the death extract in respect of the grand father of the petitioner Bhaurao Gangaram dated 27th October 1947 and the third document is the extract of the School Admission Register of the uncle of the petitioner Dada Bhaurao Thakur dated 11th March 1935 and another extract of school admission register of Rambhau Bhaurao Khare, another uncle of the petitioner dated 9th April 1940 where the caste is recorded as Thakur. In the earlier round of litigation, the petitioner has relied upon the very same

documents of his father and grand father of the year 1947 and 1948 respectively. The Committee has reasoned its finding in relation to the said documents by observing that the entry therein is only 'Thakur' and it is not clear whether that denote “Thakur Scheduled Tribe” or 'Thakur – Non Tribal Group'. In our earlier order dated 12th October 2017, we have *prima facie* recorded that the said reasoning appear to be strange and in pre-constitutional documents there cannot be an entry of “Thakur Scheduled Tribe”, as “Thakur” itself came to be recognized as Scheduled Tribe after the Constitution came into force and, therefore, in any pre-constitutional document, it would be difficult to find an entry “Thakur Scheduled Tribe”. We had also observed that the Committee had held that the said documents cannot be treated as conclusive and therefore, it then fell back on the affinity issue. The observations of the Committee as regards the “wholesale fraud” played by the petitioner was also referred to by us in our order in the following paragraph :-

> “We are constrained to make these observations because we find that the Committee terms this request

> of the petitioner as wholesale fraud. The Committee feels obliged to observe that Thakur is a common surname even amongst Marathas. Therefore, every person for better facilities and with the same surname jumps into the fray and desires to obtain a certificate, certifying him as Thakur – Scheduled Tribe. In other words, as observed by the Hon'ble Supreme Court there are certain persons who are out to grab the benefits means for genuine tribes. These are very sweeping remarks and made by the Committee without reference to any material."

4 After a strenuous exercise, we examined the order passed by the Committee on 13th November 2017 and after taking into consideration the plethora of decisions on the said issue, we had recorded a finding about "Thakur" as a Scheduled Tribe and why the entry cannot be recorded as "Thakur - Scheduled Tribe". In great detail, we have referred to the area restriction issue with reference to Act No.108 of 1976 and also observed that the issue of area restriction has now been put to rest in the light of the decision of the Hon'ble Apex Court in case of ***Jaymal Dilip Pawar Vs. State of Maharashtra*** (Appeal No.2336 of 2011 decided on 8th March 2017). After recording

our observations, we had also sought intervention of the learned Advocate General and it is on his assurance we had remitted the matter back to the Committee instead of delivering the judgment and allowing the claim of the petitioner at that stage itself, but now we feel that the restrain shown by us in not deciding the petition appears to be erroneous and when we perused order dated 14th November 2017 by which the claim of the petitioner is rejected, we can only repent our decision.

5. The impugned order makes reference to six documents which are of pre-constitutional period and all the documents record the caste as 'Thakur'. The claim of the petitioner was referred to the Vigilance Cell for enquiry, which submitted the report on 7th December 2017. The Vigilance Cell Report referred to a document at Sr. No.7 i.e. a death extract of Bhaurao Gangaram, the grand father of the petitioner and the Vigilance Cell has recorded that the caste entry which is in a different handwriting creates a doubt and it appears that the earlier caste entry is erased. Apart from this document, the other documents at Sr.Nos. 5, 11 and 12 which are the copies

of the school leaving certificate and the extract of school admission register of the father and the two uncles of the petitioner where caste is recorded as 'Thakur' are also referred to by the Committee. The documents are rejected on the ground that they record the caste as 'Thakur' and not 'Thakur Scheduled Tribe'. Further, the Committee records that no member in the family of the petitioner has obtained validity certificate of Thakur Scheduled Tribe and the original place of living of the applicant's family was never included in the area scheduled for Thakur Tribe. We will deal with the area restriction issue at a later point of time but presently confining ourselves to the documents produced on record by the petitioner, the document at Sr.No.7 produced by the petitioner is a copy of the death extract dated 27th October 1947 in respect of the applicant's grandfather, which is disbelieved by the Vigilance Cell and the Committee therefore concludes that the document is manipulated with a malafide intention to avail the benefits of Scheduled Tribe. However, this document is not the only document which depicts the caste of the forefathers of the petitioner as 'Thakur'. The document at Sr.No.6 which is a copy

of the first page of service book in respect of the applicant's father is discarded on the ground that his father might have recorded his caste as 'Thakur' on the basis of caste certificate which is subject to scrutiny and unless and until the caste certificate is validated by the competent Scrutiny Committee, he is not eligible to get benefits of Thakur Scheduled Tribe. With this reasoning, the said document has been discarded. Coming to the document of the paternal uncles and father which are of the period 1935, 1940 and 1948 where caste is recorded as Thakur, a very strange explanation is offered by the Committee while discarding the said documents :

> "The applicant has furnished the school records in respect of his father and paternal uncles pertaining to the period 1935, 1940 and 1948, wherein their caste is mentioned as Thakur. From these records, it is evidence that the family of the applicant was well educated even prior to independence and prior to passing of first Scheduled Tribe order 1950. In fact, in the British days, the people who were living in isolated and hilly and remote areas were called as Tribes and subsequently notified. These people were backward with no educational background even during post independence period. In the instant case cousin grandfather of the applicant was admitted in the school extract in the year 1935. This fact clearly reveals that the family of the applicant was service as

> well as economically well sound even prior to independence and prior to the Presidential Order, 1950 notifying the scheduled tribes. Moreover, the ordinary place of residence of the applicant also does not fall in the hilly and forest areas or the area Scheduled for tribal people. Hence his contention is rejected".

6 This is how the Committee deals with the pre-constitutional period documents in respect of the petitioner. We had already observed in our detailed order dated 13th November 2017 that "Thakur Tribe" came to be recognized as Scheduled Tribe Order 1950. It is this Tribe which has received a recognition under the Schedule Tribe Order prepared in terms of Article 342 of the Constitution as a "Scheduled Tribe". We have not come across any entry in any caste certificate recording the caste as 'Thakur Scheduled Tribe". On the contrary, the caste which is recognized at Entry 44 of the Schedule Tribe Order, 1950 is "Thakur". We have made ourselves very clear in our order dated 13th November 2017 as to how the insistence of the Committee to have an entry being recorded as 'Thakur Scheduled Tribe' is an impossibility and in spite of this, the Committee rejects the documents relied upon

by the petitioner, specifically the one at Serial Nos.5, 6, 11 and 12 and a document at Sr.No.13 recording of daughter being born to Bhau Gangaram - grand father of the petitioner of the year 1935 on the ground that it do not reflect the caste as "Thakur Scheduled Tribe". The Committee has also come forward with a unique reasoning in this round of litigation and has recorded that the fact that the petitioner has been able to produce the documents showing the extract of school admission register in respect of his two uncles and the school leaving certificate of the petitioner's father and it derives a conclusion that the father and uncle of the petitioner were admitted in the school and this shows that they were not backward and this reveals that the family of the applicant was in service as well as economically sound even prior to independence and prior to the presidential order. It is surprising to find such an assertion in the order of the Committee since the documents which have been placed on record are in form of the school admission register of the Zilla Parishad Primary School, Warda, Taluka Manor, District Washim and it reflect that Dada Bhaurao Thakur whose date of birth is 5th March 1930 is admitted in the

school in 1st Standard on 11th March 1935. The same documents disclose that he left the school in Standard 4 and the school leaving certificate was issued on 22nd April 1941. Further, another document which is an extract of school admission register of Rambhau, uncle of the petitioner reflect that he was admitted in the school on 9th April 1940 and his date of birth is 1st July 1934 when he was admitted in 1st Standard and the same documents disclose that he left the school on 21st December 1945 when he was in 4th Standard on the ground that he was not interested in pursuing education. If the Committee considers a person who has left the school in Standard IV to be educated and further conclude that since the members of the family were educated, therefore, they were economically sound and cannot belong to a tribal community, we only express our dismay on the thought process of the Committee which is expected to discharge its duties as a quasi judicial authority. We are really surprised by the said approach of the Committee. Though the Committee has expressed its doubt and carried a Vigilance Enquiry in respect of a document at Sr.No.7 which is a death extract of Bhaurao Gangaram i.e.

the grand father of the petitioner where it has found some interpolation or change in ink and it has concluded that this creates some doubt, the Vigilance Cell did not bother to bring on record anything contrary during its inquiry except that there is a difference in the ink. Even if we keep aside the said documents, still the petitioner has in his favour the documents at Sr.No.5, 6, 11, 12 and 13 which are pre-constitutional documents and the Committee has discarded the said documents on flimsy ground and merely on the basis of assumptions. When the law has now been well settled to the effect that the pre-constitutional documents must be accorded great weightage in light of its probative value and specifically when the incumbents recording entries in the respective documents as belonging to particular caste or tribe did not take the entry with a foresight that this particular caste/tribe is going to receive a recognition and being conferred with certain facilities after the advent of the Constitution. The Committee has completely ignored the settled law on the said point in spite of an assurance given by the learned Advocate General that it would abide by the settled position of law. On the contrary, the

Committee has come up with more cryptic and amusive reasons which it did not spell out during the earlier four orders which it had passed.

7. As far as another issue in respect of the area restriction is concerned, the Committee has reformulated the issue as Issue no.3 in its order in the following manner :

> "Whether the applicant has established that he belongs to the Thakur Scheduled Tribe Community listed at Sr.No.44 of Part IX of Second Schedule of Act No.108 of 1976?"

Under this issue, the Committee makes a reference to the entry at Sr.No.44 and refer to certain old Government circulars issued in the year 1954 and 1957. It then proceeds to record that the applicant's original place of living is village Warda, Taluka Manor, District Washim which is in Vidarbha and on 1st November 1956, Vidarbha came to be merged in erstwhile Bombay State and at that time, Thakur Tribe was never recognized in Vidarbha region but after removal of area restriction in 1976, the Thakur Caste people from all over

Maharashtra have staked the claim for benefit meant for Thakur Scheduled Tribe. It makes the following observation in paragraph nos.9, 10 and 11.

> *"9. Further while deciding the applicant's claim this Committee has taken into consideration the written submission of the applicant submitted at the time of hearing dated 11.12.2017. All his contentions raised in the written submission are being discarded in view of the detailed discussions made in the various issues of this order.*
>
> *10. The applicant in his reply has contended that, all his documents show his ancestors caste entries as Thakur.*
>
> *Though his reply the applicant has tried to show that they belongs to Thakur Scheduled Tribe community. The applicant has contended that the documentary evidence pertaining to his father, uncle, grandfather and other paternal side relatives shows their caste as Thakur. Though the caste entries are found recorded as Thakur, but it cannot be concluded from these entries that the applicants are Thakur, scheduled tribe, because said caste is also found amongst Kshatriya, Rajput, Sindhi, Maratha, Bramhins etc. which are not tribal. Therefore, mere mentioning "Thakur" against the caste column in any public document would not be the sole ground to hold that the person belongs to Thakur, scheduled tribe only. As discussed in the issue no.3 of this order that there is also forward caste as Thakur and hence istead of only relying on these documents submitted by the applicant, it is also very important to verify the affinity test of the claimant who is claiming as belonging to Thakur scheduled tribe appeared at Sr.No.44 in the scheduled tribe list in the State of Maharashtra.*
>
> *11. The applicant has furnished the school records in respect of his father and paternal uncles pertaining to the period 1935, 1940 and 1948, wherein their caste is mentioned as Thakur. From these records, it is evident that the family of the applicant was well educated even prior to independence and prior to passing of first Scheduled Tribe order 1950. In fact, in the British days, the people who were living in isolated and hilly and remote areas were called as Tribes and subsequently notified. These people were backward with no educational background even during post independence period. In the instant case, cousin grandfather of*

the applicant was admitted in the school extract in the year 1935. This fact clearly reveals that the family of the applicant was service as well as economically well sound even prior to independence and prior to the Presidential Order, 1950 notifying the scheduled tribes. Moreover, the ordinary place of residence of the applicant also does not fall in the hilly and forest areas or the area Scheduled for tribal people. Hence, his contention is rejected."

The Committee then makes a reference to the order of the Apex Court in case of Chetan Yuvraj Thakur, Dattu Namdeo Thakur where the judgment of the High Court have been upheld and SLP have been dismissed. In paragraph no.14, it makes reference to Yogita Anil Sonawane to the following effect **:-**

"14. The issue of application of area restriction was under consideration of the Hon'ble Full Bench of High Court in case of Yogita Anil Sonwane bearing Writ Petition No.6103/2010. While delivering the judgment on 15.9.2016 the Hon'ble Full Bench of High Court has declared that -

> *"28. The decision rendered by the Division Bench in the matter of Dinesh Thakur, interpreting Full Bench Judgment in the matter of Shilpa Vishnu Thakur, in our considered view, lays down correct proposition. In our view, in such matters, one of the important factors, for Tribe Scrutiny Committee to consider would be to find if or not applicant proves that he or his ancestors resided or migrated from earlier*

scheduled area. In view of the issue referred for our consideration."

Thus, the Hon'ble High Court Full Bench has correctly confirmed that the Committee can apply the test of original place of residence as one of the factors to be considered in arriving at a conclusion regarding the validation of a claim of a claimant."

8 Very conveniently, the Committee do not refer to our detailed discussion on the said issue in our order dated 13th November 2017 from paragraph no.12 onwards. Preceding the said paragraphs, we had made a reference to the judgment of the Apex Court in case of Yogita (supra). We had considered the issue in great detail in reference to Act no.108 of 1976 and in paragraph no.19, made reference to the order passed by the Apex Court in case of ***Jaymal Dilip Pawar Vs. State of Maharashtra*** (supra) where the Apex Court has clearly ruled that the issue of area restriction is wholly irrelevant as the appellants have only to establish that they belong to the community belonging at Sr.No.44 of Part IX of Second Schedule of Act No.108 of 1976. The Committee has very conveniently not made a reference to the order passed by the Apex Court and feigned ignorance of the said decision. Only one conclusion can

be derived by us from this approach of the Committee is that the Committee do not wish to read the judgments passed by this Court or the Apex Court and it only continues to reproduce the relevant paragraphs from the judgments only to the extent which suit their convenience and we have taken serious note of the fact that though the learned Advocate General has assured us that the Committee would take a decision in accordance with law, the Committee has not even bothered to look into our order dated 13th November 2016, which is highly objectionable and we deprecate such an attitude of the Committee.

On the point of affinity decided by the Committee in issue no.2 of the order, the Committee has again approached the issue with a superficial approach. It had attempted to ascertain the affinity of the applicant with the "Thakur Community", by asking questions which cannot be answered by the new generation who have always stayed in cities. The questions about how the last rites are performed and whether the petitioner speaks Thakri language and not knowing this language has been observed to be a suspicious conduct.

In response to a query as to what are the traditional dances of of the community, the answer given by the petitioner is "*Dola* and *Bhowala*" dance and his inability to throw light on the steps of this dance is construed as negative factor contributing to his not being able to prove affinity.

In the earlier order also, we had specifically expressed that it is not from any knowledge collected from the books but the research officer of the Committee who should possess the knowledge of the relative traits, distinct culture of a particular tribe and then, ascertain the traits and characteristics of a particular claim. In any case, the petitioner has answered the questions about the community in the positive but since the Committee had pre-decided to reject the claim of the petitioner, it concludes that the petitioner belongs to Thakur, higher-caste and not Thakur Scheduled Tribe since he has not been able to prove his affinity.

9. Apart from the three issues, it has also framed an

issue as to whether the judgment of Apex Court in case of ***Anand Katole Vs.Committee of Scrutiny and Verification of Tribe Claims and Anr,***[1] supports the claim of the petitioner and has arrived at an absurd conclusion and makes reference to the position when the State Government had filed an SLP before the Apex Court and the Apex Court had granted stay to the order passed by the High Court. The issue as to the weightage to be accorded to the affinity test over a documentary evidence has been put to rest by the Apex Court in the case of ***Anand Vs. Committee for Scrutiny Verification of Tribe Claims and ors***. In paragraph 22, the Apex Court has observed thus :

> 22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:
>
> (i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of

1 2012(1) SCC 113

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

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

The Apex Court also observed thus :-

24. Having examined the present case on the touchstone of the aforesaid broad parameters, we are

> of the opinion that the claim of the appellant has not been examined properly. We feel that the documentary evidence produced by the appellant in support of his claim had been lightly brushed aside by the Vigilance Officer as also by the Caste Scrutiny Committee. Insofar as the High Court is concerned, it has rejected the claim solely on the basis of the affinity test. It is pertinent to note that some of these documents date back to the pre-Independence era, issued to appellant's grandfather and thus, hold great probative value as there can be no reason for suppression of facts to claim a non-existent benefit to the `Halbi' Scheduled Tribe at that point of time.

10 The aforesaid observations came to be made while dealing with a judgment of the High Court which had led stress on the affinity test as against the documentary evidence produced by the appellant which was not examined and appreciated in its proper perspective. The case came to be remitted to the Scrutiny Committee for fresh consideration in accordance with the relevant rules and the broad guidelines. Thus, by this time, it is well settled that affinity test cannot be and need not be applied as a *litmus* test but it would be put to use as a corroborative piece of evidence and would assist the claimant to a limited extent in establishing his claim. The Committee has failed to adhere due importance to the documents produced by the petitioner and specifically the pre-

constitutional documents which ought to have been assigned greater probative value in view of the fact that the particular caste or tribe by that time, had not received recognition as a Scheduled Caste or Scheduled Tribe and the entries made prior to the pre-constitutional period therefore, would be looked at with less suspicion. The Committee has disbelieved the claim of the petitioner based on a solitary document where it found certain distinct handwriting and change in ink and has failed to consider the other pre-constitutional documents produced by the petitioner about which the Committee did not have any logical explanation to exclude since they were not found to be fraudulent. The only reason cited by the Committee in not considering the said documents is that the uncles and the father of the petitioner had gone to the school at that relevant point of time, and therefore, the conclusion drawn is that they are economically well to do and could not have been backward. The Committee is all the while making a strenuous effort to search an entry referred to as 'Thakur Scheduled Tribe' and in absence of such an entry being found in any of the documents placed by the petitioner outrightly refuses to believe any other

pre-constitutional documents where the entry of caste of the fore-fathers of the petitioner is recorded as 'Thakur'.

11. In ***Palghat Jilla Thandan Samudhaya Samrakshana Samiti and another vs. State of Kerala***[2]***,*** the Apex Court had made it clear that it is not permissible to hold any inquiry or permit evidence to be lead in order to determine whether or not a particular community falls within or outside it. It has been categorically held that no action to modify the plain effect of the Scheduled Castes order except as contemplated by Article 341 is valid and it is not for the State Government or for the Court to inquire into correctness of what is stated in the report that has been made thereon or to utilise a report in effect to modify an entry. The Apex Court categorically held that until the Scheduled Caste order is amended, it must be obeyed as it reads and the State Government must treat Thandans throughout Kerala as members of the Scheduled caste and issue community certificates accordingly. What has been held in respect of Scheduled Caste Order equally holds good in respect

2 1994(1) SCC 359

of Scheduled Tribe Order. Further, this principle was again reiterated in ***State of Maharashtra Vs. Milind,***[3] when the Constitutional Bench of the Apex Court held that it is not permissible to hold an inquiry whether a particular group was part of the Scheduled Tribe as specified in the Scheduled Tribe order. In paragraph no.11 and 12, the Apex Court observed thus :

> 11 ..... In other words, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under Clause (1) of the said Articles. In including castes and tribes in Presidential Orders, the President is authorized to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them could be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. States had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to entire State or parts of State. It appears that the object of Clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/ tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of the Constitution. Whether a particular caste or a

3 2001 (1) SCC 4

> tribe is Scheduled Caste or Scheduled Tribe as the case may be within the meaning of the entries contained in the Presidential Orders issued under clause (1) of Articles 341 and 342 is to be determined looking to them as they are. Clause (2) of the said Articles does not permit any one to seek modification of the said orders by leading evidence that the caste / tribe (A) alone is mentioned in the Order but caste / tribe (B) is also a part of caste / tribe (A) and as such caste / tribe (B) should be deemed to be a scheduled Caste / Scheduled Tribe as the case may be. It is only the Parliament that is competent to amend the Orders issued under Articles 341 and 342. ..... If that be so, no enquiry is permissible and no evidence can be let in for establishing that a particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included in the Orders. Since any exercise or attempt to amend the Presidential Order except as provided in clause (2) of Articles 341 & 342 would be futile, holding any enquiry or letting in any evidence in that regard is neither permissible nor useful."

12. Another issue, which is framed in the impugned order in form of issue no.6, reads thus :

> "Whether the applicant has approached before the competent authority as well as this quasi-judicial forum with clean hands while obtaining his tribes certificate of Thakur Scheduled Tribe and while submitting his proposal for Scrutiny of his tribe claim?

Again picking up from some paragraphs from the

judgment of the Apex Court and High Court, the Committee arrives at a conclusion that the petitioner has not approached the Committee with clean hands.

To support its absurd conclusion, it frames issue no.7 which is totally unconnected with the claim of the petitioner in the following way :

> "Whether the trend of giving up the claim of Thakur Scheduled Tribe claimants helps the Committee to arrive at a concrete conclusion while deciding the present applicant's claim?

Under this issue, the Committee enlist the names of the applicants who have given up their claims of Thakur Scheduled Tribe. We fail to understand how the said information is of any use since it is the duty of the Committee to examine every claim on its own merit and it is because some of the members of the community has given claims do not make the claim of the applicant doubtful.

13 The present impugned order passed by the Committee fails to take into consideration the settled position

of law by catena of decisions as well as in light of the parameters set out in 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 (Mah.XXIII of 2001). In absence of the said enactment, the Hon'ble Apex Court in case of ***Madhuri Patil Vs. Additional Commissioner, Tribal Development,***[4] had taken note of the fact that the benefit of reservation of seats in educational institutions and other appointments were being denied to the genuine tribals on the basis of the false caste certificates and terming such caste claims as '*pseudo tribe*", the Apex Court observed that the spurious tribes have become a threat to the genuine tribals and emphasized the need to ensure the benefit of reservation meant for backward classes should be made available only to the genuine persons who belong to the notified caste or tribes, the Apex Court had held that such claims should be judged on legal and ethnological basis. The Apex Court emphasized on the anthropological moorings and

4 1994(6) SCC 241

ethnological kinship affinity which gets genetically ingrained in the blood and express that 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 recognized by the Constitution and it expressed that this ingrained tribal traits peculiar to each tribe and anthropological features became more become relevant when the social status needs a decision. Further, in ***Director of Tribal Welfare, Government of A.P Vs. Laveti Giri & Anr,*** the Apex Court has observed that the Government of India should examine the matter in great detail and bring out a uniform legislation with necessary guidelines and rules prescribing the consequences when a claimant seeks benefit of a wrongful claim, with an object that the menace of fabricating records to gain unconstitutional advantages can be prevented. 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 (Mah.XXIII of 2001) is a step taken in compliance with the said direction of

the Apex Court and the rules framed thereunder set out in detail the procedure to be followed while validating a claim of a claimant by imposing burden upon him to adduce necessary proof in respect of his claim which would necessarily cover the documentary evidence and on part of the Committees to gather information about the claimant by conducting the enquiry from his school, home, etc. The rules are basically framed on the basis of the directions issued in ***Madhuri Patil*** (supra).

14 In light of the authoritative pronouncement of the Constitution Bench of the Apex Court, we do not find any justification for the Committee to record a finding that the petitioner though belongs to 'Thakur' caste, he is not 'Thakur Scheduled Tribe' since the petitioner has failed to produce any evidence to reflect that he belongs to 'Thakur Scheduled Tribe'. The Committee accepts that the documents produced by the petitioner establish that he belongs to Thakur caste and this 'Thakur' finds place at Sr.No.44 of the Scheduled Tribe Order and in such circumstances, it is not permissible for us or for the Committee to distinguish whether the petitioner is mere

'Thakur' or 'Thakur Scheduled Tribe' merely on the assumption that there is swell in number of 'Thakur' belonging to upper caste who are attempted to take benefit of reservation. We had negatived the said apprehension expressed by the Committee in our first order dated 12th October 2017.

In such circumstances, we have no doubt in our mind that the Scheduled Tribe Scrutiny Committee, Amravati who has issued impugned order has failed to abide by the precedents and in particular, those which are applicable to "'Thakur" Scheduled Tribe. The decision delivered by the Committee, in ignorance of the settled principles to which we have made a reference, leaves us with no alternative than to quash and set aside the impugned order passed by the Committee. However, this time, we are convinced that in the fifth round of litigation, in spite of guidance provided by us in our earlier orders, reminding the Committee of its approach and inviting attention of the Committee to the earlier precedents and in spite of the intervention of the learned Advocate General, the respondent Committee has invalidated

the claim of the petitioner and on every round of litigation, we had guided the Committee and expected it to follow the settled position of law but the Committee has failed to do so and in such circumstances, when we allow the writ petition by quashing and setting aside the impugned order dated 14th December 2017 passed by the Committee, we impose cost of Rs. 50,000/- on the Scheduled Tribe Scrutiny Committee, Amravati.

We direct the Scheduled Tribe Scrutiny Committee at Thane to issue validity certificate of "Thakur" Scheduled Tribe to the petitioner within a period of four weeks from today. We direct the Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati to pay cost of Rs.50,000/- to the petitioner within a period of four weeks. We direct that the costs be born by the members of the Committee jointly.

Writ Petition is made absolute in the aforesaid terms. As far as prayer for setting aside the order of termination dated 15th December 2017 passed by the

respondent no.3 is concerned, we grant liberty to the petitioner to assail the same separately and we make it clear that we have not gone into the merits of the said order.

(SMT. BHARATI H. DANGRE, J.) **(RANJIT MORE, J.)**

Tilak