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

**WRIT PETITION NO. 07 OF 2014**

Motial S/o. Namdeo Pawar,  
age: 48 Yrs., Occ. Service,  
R/o. Plot No. 2, Khodenagar,  
Pakhal Road, Wadala, Nashik  
Tq. & Dist. Nashik.

... Petitioner.

V/s.

1. Scheduled Tribe Certificate Scrutiny  
Committee, Nashik, Gadkari Chowk,  
CBS Road, Nashik, Dist. Nashik.  
Through its Member Secretary.

... Respondents.

2. Executive Engineer, Public Works  
Department, Nashik, Untwadi Road,  
Dist. Nashik.

3. Executive Engineer, North Division,  
Public Works Department, Nashik,  
Untwadi Road, Green Building,  
Infront of Dekshinmukhi Maroti Mandir,  
Nashik, Tq. & Dist. Nashik..

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Ms. Prachi Tatke, Advocate i/by Mr. Vaibhav Sugdare,  
Advocate for the Petitioner.

Mr. B. V. Samant, AGP for the State.

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**CORAM : S. C. DHARMADHIKARI AND  
SMT.BHARATI H. DANGRE, JJ.**

**DATE : 22<sup>nd</sup> DECEMBER, 2017**

**(Judgment Reserved on : 06.12.2017)  
( - “ - Pronounced on : 22.12.2017)**

**JUDGMENT : (Per Smt.Bharati H. Dangre, J.)**

1           The present writ petition is one in the series where Respondent No.1, Scheduled Tribe Certificate Scrutiny Committee (for short, hereinafter referred to as the Respondent No.1 Committee), on verification of the claim of “Thakur” Scheduled Tribe, has rejected the claim of the Petitioner on the grounds which have been found to be unsustainable by this court in a series of judgments.

The petitioner claims to be belonging to “Thakur”, Scheduled Tribe and he claims that he is resident of Anturli, Taluka Bhadgaon, Dist. Jalgaon and since the year 1960, the father of the petitioner has shifted to Nashik for service purpose. The petitioner obtained a certificate on 04.03.1989, to be belonging to the “Thakur”, Scheduled Tribe. On the basis

of the said certificate, the petitioner came to be appointed on the post of “Driver”, reserved for Scheduled Tribe, in the Respondent No.2 Department, by appointment order dated 10.12.1991. Subsequent to his appointment, his claim as belonging to Scheduled Tribe was forwarded to the Respondent No. 1- Scheduled Tribe Certificate Scrutiny Committee at Nashik, for verification. As on the date, the petitioner has rendered 22 years of service and according to the petitioner his service record is clean and unblemished.

The grievance of the petitioner relates to the order passed by Respondent No.1-Committee on 22.11.2013 on verification of a certificate issued by the Sub- Divisional Officer, Nashik Division, Nasik City, Nashik. On examination of the claim of the petitioner, the respondent no.1-Committee, by a detailed order has arrived at a conclusion that though in the school records of the applicant, his father etc.. the caste is recorded as “Hindu Thakur” and /or “Thakur”, the applicant has failed to fit himself in the entry appearing at Serial No. 44 i.e. Thakur, Scheduled Tribe. Respondent No.1-Committee

has further concluded that the appellant has failed to establish his affinity and ethnic linkage towards the “Thakur”, Scheduled Tribe community appearing at serial no. 44 and therefore, the claim of the applicant / the petitioner, as belonging to Thakur, Scheduled Tribe, is not sustainable and is declared as invalid. Resultantly, the caste certificate issued to the petitioner by the Sub-Divisional Magistrate, Nashik City, Nashik dated 04.03.1989 is also canceled and confiscated. It is this order which is assailed before us.

2 We have perused the impugned order. The order runs into 33 pages. Perusal of the impugned order reveals that it is nothing but a repetition of the grounds which, the Respondent No. 1-Committee usually tenders, while rejecting the claims referred to it, as belonging to “Thakur”, Scheduled Tribe. The Committee before referring to the documents furnished by the applicant / petitioner in support of his claim, categorized the documents which included the school leaving certificate in respect of the applicant's father - Shri Namdev

Sakharam Pawar issued by the Head Master, Zilla Parishad Prathmik Vidya-Mandir, Anturli Bk., Tal. Bhadgaon, Dist Jalgaon, wherein the caste of applicant's father is recorded as “Thakur” and the date of the admission is reflected as 02.07.1942. Another document, the Respondent No.1 Committee has referred to as furnished by the applicant, is the xerox copy of general school admission extract of his father – Namdev Sakharam Pawar issued by the Head Master, Zilla Parishad Prathmik vidya Mandir, Anturli Bk., Tal. Bhadgaon, Dist Jalgaon, wherein the caste is recorded as “Thakur” and date of admission is 02.07.1942. Another document is the school leaving certificate in respect of one Kashiram Supdu Thakur, issued by the Head Master, Zilla Parishad Prathmik Vidya Mandir, Anjanvihire, Tal. Bhadgaon, Dist Jalgaon, wherein the caste is recorded as “Thakur” and the date of the admission is 01.02.1920.

These are some of the documents which have been relied upon by the applicant and those are pre-constitutional,

wherein the caste of the near relatives of the petitioner, has been recorded as “Thakur”.

3 The Respondent No.1-Committee then proceeds to frame three issues namely : (i) whether the tribe claim of the applicant is proved by way of documentary evidence, (ii) whether the applicant has established ethnic linkages towards “Thakur”, scheduled tribe community, and, (iii) whether the applicant has established the affinity towards “Thakur”, scheduled tribe appearing at serial no. 44.

The issues framed by the Committee in the impugned order are identical to the issues which are usually framed by the Committee, while deciding any claim belonging to any Scheduled Tribe category. Perusal of the impugned order reflects an interesting reading; as far as issue no. 1 is concerned, the Committee has dealt-with the documents produced by the petitioner / applicant before it individually. As regards the documents pertaining to the year 1942, the Respondent No.1 Committee has observed that in all the

documents the caste is recorded as “Hindu Thakur” and/ or “Thakur”. The Committee further proceeded to observe that as the claimants were claiming themselves as belonging to Scheduled Tribe, the Committee cannot solely rely upon the documentary evidence such as school record, birth record or other revenue records etc., where the caste is reflected as “Hindu Thakur” or “Thakur” because so far as “Thakur” is concerned, the said caste is also found in other communities also. For the said proposition, the Committee then makes a reference to the judgment of this court in **writ petition no. 1953 of 2007** (Dipika Subhash More vs. State of Maharashtra & Ors. ) and in particular to para 8 of the said judgment. In para 8 this court has observed that :

“8. Mere mentioning of the name “Thakur” against the caste column in any public document cannot be a sole ground to hold that person belongs to Thakur, Scheduled Tribe. As Thakurs are found amongst Kshatriya, Rajput, Sindhi, Maratha, Bramhins etc... In the said circumstances, as indicated above, the affinity text becomes crucial .....”.

The reference is also made by the Scrutiny Committee to the observations made by this Court at Bench at Aurangabad in **Writ Petition No. 2791 of 2011** (Chetan Yuvraj Thakur vs. State of Maharashtra & Ors.), in particular paras 8 and 11 of the same, which read thus :

... “8. The next of the submission of the learned counsel was that the document regarding grandfather of the petitioner right from 1929 would show that he belonged to Thakur Community, which fact has not been appreciated in proper perspective by the respondent no. 2 Committee. However, the respondent no. 2 Committee has, in fact, appreciated the said document as could be seen from internal page no. 15(d) of the impugned judgment. The Committee has pointed out that the said document does not show that the grandfather of the petitioner belonged to Thakur Scheduled Tribe.”

“... 11. In the circumstances, the Committee rightly observed that “Thakur” caste is also found in non-tribal communities such as Kshtriya Thakur, Rajput Thakur, Pardeshi Thakur, etc., and unless



the Petitioner established ethnic linkage and affinity test to prove that he belongs to Thakur Tribe, the certificate cannot be validated.”.

Based on this, the Committee sets out that since the caste “Thakur” is also found in other communities, merely relying on the documentary evidence can benefit the pseudo claimants who intend to take benefit of their caste entries as “Thakur” in the school records and other records and due to mass awakening, such claimants are trying to grab benefits meant for the weaker sections by taking advantage of similarity of nomenclature and pass themselves as “Thakur”, Scheduled Tribe. Respondent No.1-Committee observe that it would be imperative to rely upon the affinity test to verify whether the claimant is really belonging to Thakur, Scheduled Tribe or not and that the applicant will have to establish his affinity and ethnic linkages towards “Thakur”, scheduled tribe community at serial no. 44. As regards the validity certificate, on which the petitioner, has placed reliance in respect of the one Sunildatta Dattatraya Pawar, issued by the Scheduled Tribe

Caste Certificate Committee at Nashik dated 28.08.2000. The Committee observed that the validity holder has not filed any affidavit and /or nor produced any documentary evidence to establish his blood relation with the applicant and it also further observed that the said certificate was issued by the Committee on the basis of the law laid down by the High Court in writ petition nos. 2746 of 1998, 5454 of 1998 and 856 of 1989 and the law laid down by the High Court at that relevant time was based on the judgment of the Apex Court in the case of **Palghat Jilla Thandan Samudhaya Samrakshana Samithi and Anr. Vs. State of Kerala and Anr.** (1994 (1) SCC 359). The Committee further concludes that while deciding the case of **Sunil Murlidhar Thakur**, the Apex Court has observed that the view taken by the High Court was not right and that the High court was not justified in disposing of the writ petition by merely making reference to the decision of the Apex Court in **Palghat Jilla Thandan Samudhya Samrakshan Samithi & Ors..** The Committee therefore, did not attach any importance to the said validity

certificate. Then the Committee very boldly observed in para 21 as under :

“21. We reiterate that to fulfill the constitutional norms, a person must belong to a tribe before he can stake his claim to be a member of a notified Scheduled Tribe. When an advantage is obtained by a person in violation of the constitutional scheme, a constitutional fraud is committed.”

It is further most respectfully submit that in following similar cases wherein the certificate of validity was granted to the relatives of the concerned applicants though Scrutiny Committee has rejected their tribe claim on the basis of affinity test, the findings made by the Scrutiny Committee in such matters were upheld by the Hon'ble High Court.

1. Writ Petition No. 2153 of 2007 Nita Diwan Bhamare vs. State of Maharashtra and others;
2. Writ Petition No. 1968 of 2007 Shamkant Kailas Thakur vs. State of Maharashtra and others;
3. Writ Petition No. 2151 of 2007 : Hitendra Raghunath Mahale vs. State of Maharashtra and others;

4. Writ Petition No. 2152 of 2007 : Jaiwant Dilip Pawar vs. State of Maharashtra and others, and In a very recent judgment of Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in Writ Petition No. 9627 of 2011 : Dinesh Ramesh Thakur & Ors. vs. State of Maharashtra.

The documents listed at Sr. No. 3 and 16 are affidavits of applicant. So far as affidavit made by the applicant which is enlisted at Sr.No. 3 is concerned, the committee observes that this affidavit is made by the applicant on 04.03.2004 and submitted to Scrutiny Committee along with his proposal. In the said affidavit neither the applicant has mentioned that the tribe claim of his so called cousin Sunildatta has been validated by the Scrutiny Committee nor has he furnished any genealogical tree showing the blood relation with the said so called validity holder. But later on the applicant has filed another affidavit dated 05.09.2013 stating that the said validity holder viz. Sunildatta Dattatraya Pawar is his cousin brother and also produced a genealogical tree.”

4 As regards issue no. 2 - “Whether the applicant has established ethnic linkages towards “Thakur”, scheduled

tribe”, the Committee took note of the fact that the petitioner is ordinary resident of village Anturli, Tal. Bhadgaon, Dist. Jalgaon. The impugned order then makes a reference to the constitution (Scheduled Tribe) Order 1950 and the subsequent Scheduled Caste and Scheduled Tribe Order (Amendment) Act, 1956, where the list of scheduled tribes in then State of Bombay, the “Thakur”, Scheduled Tribes was restricted in respect of 25 Tahsils of 5 Districts, namely, Ahmednagar, Kulaba, Nasik, Pune and Thane. The Committee then observes that it is clear that the applicant was not ordinary resident of the area, which was dwelling place of “Thakur”, scheduled tribe community. Then the Committee offers interesting comment on the Scheduled Caste and Scheduled Tribe Order (Amendment) Act, 1976, which was published on 18<sup>th</sup> September, 1976, by which the area restriction is removed. The Committee makes following observations in this regard and reproduce the same. -

“The background is that the said area restriction was removed basically for the election purpose, in as much as a person coming from a particular restricted area in which a particular tribal community was found to be inhabiting. There was always a possibility of such tribal having migrated from that area and inhabiting in an area outside the said restricted area (as shown by the Presidential Order prior to the year 1976). This clearly means that even after the migration, if a person is a tribal and by his migration, he should not cease to be a tribal and should not be deprived from getting the advantages of his being tribal. The area restriction however, did not mean that any person who claims to be a tribal outside the said area where a particular community was not found earlier, his claim to be accepted merely on the face of it. In fact, what is required to be done is that if any person who is at the relevant time residing in an area where

there is no original inhabitation of that Scheduled Tribe. If he/she desires to make good his/ her claim about a person belonging to that particular tribe, for example, persons coming from “thakur” community will have to establish that they or their predecessors have migrated from such an area and at present are residing in an area where they were not residing prior to area restriction removal notification of the Presidential Order.

As a result of removal of area restriction for certain tribal communities, many non-tribal communities having similar nomenclature staying outside the tribal area and also the communities, which belong to entirely different ethnic stocks but having similarity of nomenclature, started claiming the status of those Scheduled Tribes which were confined to their original habitat in tribal pockets. This trend has become more serious and cognizable and sizeable number of such claimants

is making endeavour to claim the benefit of constitutional reservations.”.

5           The Committee then further observes that the applicant's father was admitted in the school in the year 1942 and it is reflected by the fact that his family was well aware of the importance of education and they were educationally well sound even prior to independence and prior to the Presidential Order, 1950 but the applicant's family is not ordinary resident of the restricted area habitated by “Thakur”, scheduled tribe community. The Committee then makes reference to the judgment of this court in the case of **Murlidhar Ramkrishna Ghate vs. State of Maharashtra in writ petition no. 2748 of 2000**, delivered by the Division Bench, comprising of Hon'ble Justice F. I. Rebello and Hon'ble Justice R. V. More, wherein the Hon'ble Division Bench has made observations about the population figures of scheduled tribe, including “thakur” and it has found enormous increase in the figures in the census of 1981 as compared to preceding



census of 1971. These Committees in turn concluded that the petitioner was not an ordinary resident of the habitated area of Thakur community and, therefore, he cannot be said to be belonging to “Thakur”, scheduled tribe.

6           Coming to Issue no. 3 – viz. “whether the applicant has established affinity test towards “Thakur”, scheduled tribe appearing at serial no. 44”; the Committee relied on the observations made by the Hon'ble Full Bench of the High Court at Bombay in the case of **Shilpa Thakur** to set out that it is indispensable for the Scrutiny Committee to take into consideration the affinity test while deciding the tribe claims of the claimants. The committee then proceeds to make certain observations on the basis of personal hearing which it offered to the applicant and the information supplied by him during the course of hearing in reference to dialect, family deity, festivals, surnames of the applicant's relatives, etc.. The committee then observes that on perusal of the information furnished to the Committee by the applicant and his father, the

information furnished is not consistent with “Thakur”, scheduled Tribe community which appears at serial no. 44. So it is also revealed that neither the applicant nor his family is ordinary resident of the area of habitat-ed scheduled tribes “Thakur”. Then the Committee in its usual stride extracts observations from various judgments of the Hon'ble Apex Court and this court, and derives a conclusion that the school record of the applicant reveals that the caste recorded of his father is “Hindu Thakur” and/or “thakur” but the applicant has failed to show that he belongs to “thakur”, scheduled tribe, an entry at serial no. 44 in the scheduled tribe order and also the applicant has failed to establish the affinity and ethnic linkages towards the “Thakur” scheduled tribe community.

7 We do not find that the committee while rejecting the claim of the applicant had adopted any subjective approach to the claim of the petitioner. We had an occasion to deal with several writ petitions, challenging the orders passed by the respondent no.1-committee so also other committees,

empowered to verify the claims of the scheduled tribe in different parts of the State, particularly “Thakur”, the scheduled tribe. We have noticed that the reasoning adopted by the Committee in rejecting the claim of the persons belonging to “Thakur” Scheduled tribe are almost identical and the claims are scrutinized mostly under three heads namely (i) sufficiency of documentary evidence (ii) existence of area restrictions with the effect “Thakur”, who were original residents of 5 districts, as mentioned in Scheduled Tribe Order (1956), being entitled to claim themselves as “Thakur” scheduled tribe and (iii) affinity test, which would connect claimants to “Thakur” Scheduled Tribe.

We have had an opportunity to peruse various orders passed by the Scrutiny Committee, dealing with the verification of “Thakur” Scheduled Tribe and we found that the whole premise around which the order of the Committee revolves and the pivotal ground on which the Committee rejects the claim of persons claiming to be “Thakur, Scheduled Tribe, is that though the entries may be pre-constitutional era,

which shows the caste “Thakur”, it is not a conclusive proof of the said “Thakur, being the “Thakur, Scheduled Tribe”, which is the entry at serial no. 44. According to the Committee “Thakur” is also a caste which is found in other communities and therefore, they expected a claimant to prove that a person, who claims to belong to the “thakur, scheduled tribe” to have an entry recorded in pre- constitutional document as “thakur, scheduled tribe” and not merely “thakur”. We are always astonished of the said reasoning adopted by the Committee. We, therefore, perused the entry no. 44 of the Scheduled Tribe Order as it stood in Scheduled Tribe Order of 1950 and the entry no. 44 as it stands today which reads as follows :

“44. Thakur, Thakar, Ka Thakur, Ka Thakar,  
Ma Thakur, Ma Thakar.”

The entry is “Thakur”, which is recognized as the Scheduled Tribe amongst other scheduled tribes in the State of Maharashtra. The entry at serial no. 44 is not the “Thakur, the

scheduled tribe”. The Scrutiny Committee is, therefore, required to ascertain on the basis of the documentary evidence, whether the person is “Thakur” which is recognized as “Thakur”, scheduled tribe. As long as our experience goes, we have not come across any entry in the documents which are of the pre-constitutional period recording the caste entry as “Thakur scheduled tribe”. Even in the scheduled tribe order made in the year 1950, the entry plainly reads as “Thakur”. The scheduled tribe order recognizes existing tribes in the country and enlisted those tribes as scheduled tribes, after obtaining the necessary inputs by issuance of a Notification, recognizing some of tribes in existence as scheduled tribes. Therefore, it is unfathomable to believe that prior to enactment of the Scheduled Tribe Order of 1950, any entries would have been recorded as “Thakur scheduled tribe”. This expectation of the Committee that the entries ought to have been recorded as “Thakur, scheduled tribe”, is too much to expect, since that was never the purport of recognition to be granted to the existing tribes as Scheduled Tribe. The

person, who claims to be belonging to “Thakur scheduled tribe” did not foresee that their caste is going to be recognized as the scheduled tribe on the Constitution of India being brought into effect and therefore, they should record their entry as “Thakur, scheduled Tribe”. We have noted other entries made in respect of the property dealings, mutation entries, documents in the form of agreement to sale, sale deeds, where it was normal practice to mention the name of the person, his place of residence and to mention his caste. We have not come across any entry in such pre-constitutional documents also reflecting the caste as “Thakur, scheduled tribe”, but entry “Thakur”, which is a recognized Scheduled Tribe. The reasoning adopted by the Committee is, therefore, completely fallacious and such reasoning is put-forth by the committee in cases after cases while rejecting the pre-constitutional documents recording caste as “Thakur”, on illusory reason that the entry recorded is not “Thakur, scheduled tribe” but is only “Thakur”.

8            This court had an occasion to deal with the matters where the verification committee have invalidated the claims of “Thakur” and such orders were assailed in writ petitions before this court.

9            This court had delivered considerable number of Orders/ Judgments, touching these three issues and tested the invalidation orders passed by the committee on more than one touchstone. As far as the existence of the documentary evidence is concerned, though it is noted that, as in the present case, that the petitioner has heavily relied upon two documents which are of the pre-constitutional period, the committee has recorded a finding in the impugned order that the entry of caste in these documents is mentioned as “Thakur” but it is not mentioned as “Thakur scheduled tribe”. We fail to understand the said stand of the committee, as the entry in the scheduled tribe order is “Thakur” and a person has to establish his claim as belonging to caste “Thakur” as finds place in the scheduled tribe order, for the first time

introduced in the year 1950 and the “Thakur” came to be recognized as a scheduled tribe only for the first time in 1950. As such, in the year 1947-48 there could have been no entry as “Thakur scheduled tribe”. Even as on today, the caste certificates are not issued as “Thakur' scheduled tribe” by the competent authority but the caste certificates mentions the caste as “Thakur” which is recognized as scheduled tribe since the caste “Thakur” finds place in the scheduled tribe order. Since the scheduled tribe order has come into effect in the year 1950, the documents in existence prior to the inclusion of the caste “Thakur” in the scheduled tribe order, therefore, have attained great significance to establish the genuineness, with a specific object that the claimant has not manipulated the entries intentionally so as to avail benefit of being a “Thakur”. It is for this reason that the pre-constitutional documents are given weightage. However, to reject the claim of the claimant like the petitioner on the ground that though the caste is mentioned as “Thakur”, it is not mentioned as “Thakur scheduled tribe”, is nothing but an



endeavor to defeat the claim of the persons belonging to said caste. Another common ground on which the committee usually reject the claims is that the claimant is not able to establish the affinity test. The Hon'ble Apex Court in the case of **Anand vs. Committee of Scrutiny and Verification of Tribe Claims & Anr.**, reported in 2012 (1) Supreme Court Cases 113, has categorically held that the genuineness of the caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also by applying the affinity test, which would include the anthropological and ethnological traits. Further the Apex Court also observed that it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. However, the Apex Court has also cautioned that while applying the affinity test, a cautious approach has to be adopted, since 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, modernization and contact with the other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of a tribe and therefore, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a scheduled tribe.

10 The Apex Court has also observed that the claimant cannot be denied benefit of being belonging to scheduled tribe on the ground that his present traits do not match with that of his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies etc., and thus the affinity test can only be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim.

11 As regards the issue of affinity is concerned, from the impugned order, it appears that the petitioner was granted personal hearing on 06.09.2013 and certain information was

elicited from the petitioner. It is reflected from the order that the applicant has furnished the following information :

- “a) The applicant is ordinary resident of Anturli Tal. Bhadgaon, Dist. Jalgaon.
- b) The dialect and mother tongue of their community is “Impure Marathi” and “Ahirani”.
- c) “Mari Aai” is their family deity.
- d) Shimga, Akhaji, Diwali, Dasra are their festivals.
- e) Wagh, Pawar, Jadhav, Surwadkar, Deore, Saindane etc., are the surnames of applicant's relatives.”

The Committed in the impugned order observed that on perusal of the information furnished by the applicant, the respondent no.1-committee has come to the conclusion that the information furnished is not consistent with “Thakur”, scheduled tribe community appearing at serial no. 44 and he fails to establish the affinity and ethnic linkages towards “Thakur”, scheduled tribe appeared at serial no. 44. The

Committee then refers to series of judgments wherein the Hon'ble High Court as well as the Hon'ble Apex Court have laid emphasis on the conduct of the affinity test when the claimant claims to be belonging to "thakur", scheduled tribe. This is the only reasoning given by the Committee in arriving at a conclusion that the applicant has failed to establish the affinity and ethnic linkages. We are aghast at the observations made by the Committee.

12           The Hon'ble Apex Court in the case of Madhuri Patil laid down great emphasis on the ethnological and anthropological traits which are peculiar to a tribe and while constituting the committee, mandated an inclusion of Research Officer, who has intimate knowledge in identifying the tribal community / group of tribes or tribal communities. The research officer is not merely expected to match the traits etc. sought by the applicant, but is expected to investigate the community's social status claim by finding out as to what is his place or his origin, whether he is migrated from his original

place and to collect all other information by throwing light on his social status including peculiar traits / customs, etc.. What is expected is the scrutiny from an expert viewpoint. The research officer is expected to have intimate in depth knowledge in identifying the tribes or tribal communities. However, we find that it is completely lacking in the exercise carried out by the scrutiny committee. The committee looks at the claim with great suspicion as if the claimant is approaching the committee to obtain validity and he is spurious claimant not a genuine scheduled tribe. In some cases, the committee has observed that if the applicant and his forefathers were genuine scheduled tribe then why they did not avail benefits of numerous schemes implemented by the tribal development department, as if every scheduled tribe is aware of such schemes and has obtained the benefit of such schemes. The committee, therefore, determines this factor as a distinct and distinguishing factor, distinguishing the genuine “Thakars” / “Thakurs” from the pseudo “Thakurs”. The said approach of the Committee goes totally contrary to the spirit of the whole

process of verification laid down under the Madhury Patil's case and the degree of the scrutiny which is expected to be carried out under the Act of Maharashtra Act No. 23 of 2001.

13 Another ground on which the claim of the petitioner and most of the “Thakurs” claiming to be scheduled tribe is rejected is that the claim is not from the area where the “Thakurs” were found in namely, 25 tahsils and 5 districts. This court in the case of **Dinesh Ramesh Thakur vs. State of Maharashtra**, reported in 2012 (4) Mh.L.J.396 has laid down that the Scrutiny committee is competent to inquire, interalia, in the original place of residence and particularly, persons who claims to be a member of the Scheduled Tribe and as such an enquiry is not prohibited. While making the said observations, the court has placed reliance on the judgment of this court in the case of Deepika Subhash More vs. State of Maharashtra & Ors., wherein the division bench has observed that removal of area restrictions by the Act of 1976 meant that the persons coming from “Thakur” community would

have to establish on oath or by proper procedure that they migrated from Sahyadri Region after the removal of area restrictions. The said issue was referred to the full bench and the full bench in the case of **Yogita d/o. Anil Sonawane vs. State of Maharashtra & Ors.**, reported in 2017 (1) Mh.L.J. 643 has held in para 27 as follows :

“27. The relevance of demonstrating as to whether petitioners or their ancestors, who claim the status of Thakur Caste, a Scheduled Tribe, who migrated from the area for which the Thakur tribe and other sub-tribes of Thakur were declared as Scheduled Tribe before the removal of area restriction by Act No. 108 of 1976, was a matter of consideration before the Division Bench in the matter of **Dinesh Ramesh Thakur vs. State of Maharashtra and others**, reported in 2012 (4) Mh.L.J.396 = 2013(3) Bom. C.R. 463. The Scrutiny Committee has held that the removal of area restriction by Act No. 108 of 1976 would not enable any person belonging to any tribe/community to claim the status of Thakur Scheduled Tribe, and he will have to establish that he or his predecessors have migrated from the earlier prescribed area. The

decision of the Scrutiny Committee, in the aforesaid matter, was under challenge before the Division Bench. The Division Bench, on consideration of various judgments of other Division Benches, dealt with the issue, and relying upon Full Bench judgment decision in the matter of Shilpa Vishnu Thakur, has drawn conclusions in para 37 of the judgment, which reads thus :

“37. We need not dilate over the issue as, in our view, upon removal of the area restriction by the amending Act of 1976, the persons belonging to a particular Scheduled Tribe, though residing in different areas than earlier specified or migrated from the said area, can also claim to be belonging to the same Scheduled Tribe. In our view, however, the respondent Tribe Scrutiny Committee is not prohibited from applying the test of original place of residence as one of the factors to be considered in arriving at a decision of validation of the claim of the claimant in view of the clear pronouncement of law in Full Bench decision of this court in Shilpa Vishnu Thakur vs. State of Maharashtra and others, quote (supra).”



14                   A careful perusal of the Constitution (Scheduled Caste and Scheduled Tribes Orders, 1950) would reflect that the said order is published in exercise of the powers conferred by clause (1) of Article 342 of the Constitution, by the President after consultation with the Governors of the said State. Article 342 of the Constitution of India empowers the President to specify by public notification, the tribes or tribal communities or parts of or groups within the tribes or tribal communities which shall for the purposes of the Constitution, be deemed to be Scheduled Tribes. Article 342 reads as follows :

“342 Scheduled Tribes – (1) The President [may with respect to any State [or Union territory], and where it is a State [\*\*\*], after consultation with the Governor [\*\*\*] thereof], by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a

notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

Article 340 of the Constitution empowers the President of India to appoint a Commission, consisting of such persons, as he may think fit, to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendation of such steps that should be taken by the Union or any State to remove difficulties and improve their conditions. On recommendations of the Commission, the President is authorized to specify such of the tribes or tribal communities which shall be deemed to be Scheduled Tribes in relation to the State or the Union territory as the case may be. Further it is only the parliament which is authorized by law either to include or exclude any tribe from the list so published.

The Scheduled Tribe Order issued by the President of India only identifies certain tribes which are already in existence in the territory of the State, to be Scheduled Tribes, who in turn are entitled for availing of the benefits which are conferred under Part XVI of the Constitution. The Scheduled Tribes Order does not create 'Tribes' but only enlists the tribes on a detailed study by the Commission appointed under Article 340 of the Constitution of India in relation to the backwardness of such tribes as 'Scheduled Tribes' of a particular State so that certain benefits are conferred upon them by the State in exercise of its enabling powers.

The Constitution (Scheduled Tribes Orders, 1950) relating to the State of Maharashtra included entry no. 44 in relation to the “Thakur” tribe. The Scheduled Castes and Scheduled Tribes Orders, came to be amended by Act No. 63 of 1956 on 25<sup>th</sup> September, 1956. By the said amendment, the entry in respect of the “Thakur” tribes came to be amended and entry no. 6 of the Scheduled Tribes Order (Amendment), 1956, pertaining to Bombay State (Part- III) reads as follows :

“6.(a) In Ahmednagar district - Akola, Rahuri and Sangamner talukas		
(b) In Kolaba district - Karjat, Khalapur, Pen, Panvel and Sudhagad talukas and Matheran		
(c) In Nasik dstrict Igatpuri, Nasik and Sinner talukas		Thakur or Thakur including Ka
(d) In Poona district Ambegaon, Junnar, Khed and Mawal talukas		Thakur, Ka Thakar, Ma Thakur and Ma Thakar.
(e) In Thana district - Thana, Kalyan, Murbad, Bhivandi Bassein, Wada, Shahapur, Palghar, Jawhar and Mokhada talukas		

Thus, by the Act of 1956, the Constitution (Scheduled Tribes) Order, 1950, came to be amended. The said Act No. 63 of 1956, by section 5 provided, that where the list of Scheduled Castes and Scheduled Tribes in relation to any State was varied by the Amending Act, the population, as at the last Census of the Scheduled Castes or of the Scheduled Tribes in that State shall be ascertained or estimated by the Census Authority in such manner, as may be prescribed and shall be notified by that Authority in the Gazette of India. The change

effected in the scheduled appended to Orders of 1950 by the Amendment Act was necessarily by specifying the areas as to whether the enlisted tribe, where the tribes notified throughout the State was recognized as such or tribal population residing in a particular area was declared to be Scheduled Tribes.

The Scheduled Castes and Scheduled Tribes Orders 1950 underwent an amendment by Act No. 108 of 1976, enacted on 18<sup>th</sup> September, 1976. It would be gainful to reproduce the statement of objects and reasons of the Act No. 108 of 1976, which resulted in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The same is reproduced as below :

#### “STATEMENT OF OBJECTS AND REASONS

Under the Scheduled Castes and Scheduled Tribes Orders some communities have been specified as Scheduled Castes or as Scheduled Tribes only in certain areas of the State concerned and not in respect of the whole State. This has been causing difficulties to members of these communities in the areas where they

have not been so specified. The present Bill generally seeks to remove these area restrictions. However, in cases where continuance of such restrictions were specifically recommended by the Joint Committee on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967, no change is being effected. The Committee had also recommended exclusion of certain communities from the lists of Scheduled Castes and Scheduled Tribes. These exclusions are not being made at present and such communities are being retained in the lists with the present area restrictions. Such of the communities in respect of which the Joint Committee had recommended exclusion on the ground that they were not found in a State are, however, being excluded if there were no returns in respect of these communities in the censuses of 1961 and 1971.

(underlining is ours)

On perusal of the above SOR, it can be noticed that the existing order, specifying certain communities as scheduled castes or scheduled tribes only in certain areas of the State and not in respect of the whole State, was causing difficulties to members of these communities in the areas where they have not been so specified. With this background, the area

restrictions criteria which was introduced in the Scheduled Castes and Scheduled Tribes (Amendment) Order, 1956 was done away with. With the result that the tribe identified as Scheduled tribes in the Scheduled Tribes Order of 1950, as amended by the Act of 1956, came to be recognized as “Scheduled Tribe” throughout the said State, in contrast to they being confined to a particular area of the State. In fact by removal of the area restrictions, the tribe or caste, if it is recognized as a scheduled caste or scheduled tribe in the State was entitled to avail the benefits irrespective of the places where they were normally traced to since the tribes normally dwelled in clusters and mostly found in certain hilly areas. However, by the amendment of 1976, the restriction of “thakurs” being hailing from the districts specified in 1956 Order was completely done away with.

15 Perusal of Article 342 makes it aptly clear that the tribes or tribal communities specified by the President, in consultation with the Governor of a State, are deemed to be

scheduled tribes in relation to that State. Once, such tribe or group of tribes is enlisted in the scheduled tribe order, the said particular tribe or group of tribes is deemed to be “scheduled tribe” for that entire State since the scheduled tribe order notified by the President of India is “in relation to that 'State’”; there is no intention to sub-divide, classify or discriminate these tribes based on their place of residence or place of their origin and it would rather create class of tribes within the same “tribe” in a particular State. That surely is not the intention flowing from the scheme of the Constitution.

The reasoning adopted by the Committee that even after removal of area restrictions, it is incumbent upon the Committees to find out as to from which place the ancestors of the claimant have migrated is, therefore, of not of much significance. We also observe so in the backdrop of a precious fundamental right conferred on every citizen in the form of Article 19 (d) and Article 19 (e) of the Constitution of India, namely to move freely throughout the territory of India and right to reside and settle in any part of the territory of India.



In any case, imposition by the Amendment Act (1956), the area restriction could not have curtailed the said fundamental right, guaranteed upon the citizens of the country and in identifying the tribes it was never the intention to deprive them of the said fundamental right and could not restrain the advancement of these tribes.

16 The petitioner has placed reliance on the validity certificate in favour of the second degree cousin of the paternal side, namely - Sunildatta Dattatray Pawar, issued by the Scrutiny Committee at Nashik on 28.08.2002. The petitioner has also submitted an application in Form "F" along-with the genealogy. The petitioner has also submitted a detail response to the police verification report and he re-affirmed on an affidavit filed before the Scrutiny Committee that Sunildatta Dattatray Pawar is second degree cousin of paternal side i.e. son of his second degree uncle Shri Namdev Sakharam Pawar and Dattatray Sampat Pawar, as the first degree cousin on paternal side. He also stated that Supadu

Pawar is common ancestor between himself and the validity holder namely, Sunildatta Dattatray Pawar and he has demonstrated so from the genealogy tree, which he has placed on record. The Scrutiny Committee in its usual stride has brushed aside the said document on evasive ground and did not pay any adherence to the principles of law laid down by this court from time to time in cases where the claimant beings on record validity certificate granted in favour of his close relative.

17 We have expressed our anguish in various orders passed by us in respect of the approach of the committees for verification of the scheduled tribe, particularly, examining the claim of “Thakur”, scheduled tribe. The Committee is unmindful of the onerous duty cast on it to verify the claims referred to it, misdirects itself by observing that the Committee has to examine the claims and to ensure that the pseudo claimant, who claims to be belonging to “Thakur, scheduled tribe, do not take benefit meant for the genuine

scheduled tribe. The Scrutiny Committee and its members in-spite of several rulings in favour of the claimants belonging to the “Thakur”, scheduled tribe, deliberately brush aside the binding judgments of this court and on umpteen number of times has discarded the validity certificates granted in favour of the close relatives of the claimant on the ground that every case needs to be decided on its own merits or some time on the ground that the certificate of validity produced is issued without any adjudication on merits. We can just be hopeful that the observations made by us, as above, and in various other judgments of this court at times, making stern observations on the Committee's approach would bear some positive changes.

18 As far as the present case is concerned, we do not find that the impugned order dated 22.11.2013 passed by the Respondent No.1 Committee is sustainable in law, as the reasoning, in rejecting the claim of the petitioner, is totally

perverse and erroneous and is unsustainable in the light of the earlier pronouncements by this court.

19 Writ Petition is allowed. The impugned order is, therefore, liable to be set aside. The Respondent No.1 Committee is directed to forthwith issue the validity certificate in favour of the petitioner, as belonging to “Thakur, Scheduled Tribe, at the earliest and in any case, not beyond the period of four weeks from the date of the receipt of this order.

(SMT.BHARATI H.DANGRE,J.) (S.C.DHARMADHIKARI,J.)

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