



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

WRIT PETITION NO.853 OF 2012

Shri.Mangesh Nivrutti Kashid.

.. Petitioner

V/s

The District Collector, Satara & Ors.

.. Respondents

**WITH
WRIT PETITION NO.76 OF 2012**

Mrs.Sarika Ramesh Kamble.

.. Petitioner

V/s

Mrs.Shobha Sheetal Kamble & Ors.

.. Respondents

**WITH
WRIT PETITION NO.201 OF 2012**

Sonia Rajesh Mayekar

.. Petitioner

V/s

Mahendra Ananda Kamble @
Mahendra Anant Kamble & Ors.

.. Respondents

**WITH
WRIT PETITION NO.279 OF 2012**

Smt.Manisha Vasant Kamathe.

.. Petitioner

V/s

State of Maharashtra & Ors.

.. Respondents

**WITH
WRIT PETITION NO.447 OF 2011**

The State of Maharashtra through the Secretary,
Tribal Development Department.

.. Petitioner

V/s

Shri.Dada Somnath Gaikwad & Ors.

.. Respondents

**WITH
WRIT PETITION NO.455 OF 2011**

The State of Maharashtra through the Secretary,
Tribal Development Department.

.. Petitioner

V/s

Shri.Prasad Sonaba Gaikwad & Ors.

.. Respondents

**WITH
WRIT PETITION NO.477 OF 2012**

Pandurang Dagadu Parthe.

.. Petitioner

V/s

State of Maharashtra & Ors.

.. Respondents

**WITH
WRIT PETITION NO.649 OF 2012**

Sou.Shivani Bajirao Khade.

.. Petitioner

V/s

The Divisional Caste Certificate,
Scrutiny Committee No.2, Kolhapur & Ors.

.. Respondents

**WITH
WRIT PETITION NO.650 OF 2012**

Sou.Bharati Shahaji Patil.

.. Petitioner

V/s

The Divisional Caste Certificate,
Scrutiny Committee No.2, Kolhapur & Ors.

.. Respondents

**WITH
WRIT PETITION NO.654 OF 2012**

Pramod Ramchandra Gaikwad. .. Petitioner
V/s
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.657 OF 2012**

Shri.Ashok Jyotiram Mane. .. Petitioner
V/s
The Divisional Caste Certificate,
Scrutiny Committee no.2, Kolhapur & Ors. .. Respondents

**WITH
WRIT PETITION NO.658 OF 2012**

Smt.Manisha Ashok Patil. .. Petitioner
V/s
The Divisional Caste Certificate,
Scrutiny Committee No.2, Kolhapur & Ors. .. Respondents

**WITH
WRIT PETITION NO.659 OF 2012**

Shri.Atul Balasaheb Bondre. .. Petitioner
V/s
The Divisional Caste Certificate,
Scrutiny Committee No.2, Kolhapur & Ors. .. Respondents

**WITH
WRIT PETITION NO.755 OF 2012**

Pramod Ramchandra Gaikwad. .. Petitioner
V/s
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.757 OF 2012**

Pramod Ramchandra Gaikwad. .. Petitioner
V/s
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.758 OF 2012**

Pramod Ramchandra Gaikwad. .. Petitioner
V/s
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.869 OF 2012**

Mr.Abdul Rashid Bhola Gujar Khan .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.870 OF 2012
alongwith
CIVIL APPLICATION NO.271 OF 2012**

Shri.Rahebar Siraj Khan. .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.871 OF 2012**

Mr.Mahemood Adam Dalvi. .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.873 OF 2012**

Shri.Narayan Sitaram Lohar. .. Petitioner
V/s
District Collector, Satara, (Chairman,
District Caste Scrutiny Committee, Satara) .. Respondents

**WITH
WRIT PETITION NO.874 OF 2012**

Chandsab Faridsab Lalkot. .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.1315 OF 2012**

The State of Maharashtra through the Secretary,
Tribal Development Department. .. Petitioner
V/s
Shri.Kishor Ramchandra Made & Ors. .. Respondents

**WITH
WRIT PETITION NO. 1317 OF 2012**

The State of Maharashtra through the Secretary,
Tribal Development Department. .. Petitioner
V/s
Smt.Sulochana Ganpat Made & Ors. .. Respondents

**WITH
WRIT PETITION NO.1319 OF 2012**

The State of Maharashtra through the Secretary,
Tribal Development Department. .. Petitioner
V/s
Shri.Rajesh Sadanand Made & Ors. .. Respondents

**WITH
WRIT PETITION NO.1323 OF 2012**

Bilal Salam Don. .. Petitioner
V/s
Shri.Sulekh Anees Ahmad Don & Ors. .. Respondents

**WITH
WRIT PETITION NO.1392 OF 2012**

Durukumar Totaldas Khatri. .. Petitioner
V/s
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.1426 OF 2012**

The State of Maharashtra through the Secretary,
Tribal Development Department. .. Petitioner
V/s
Miss Surekha Ramchandra Made @
Smt.Surekha Rangrao Kankure & Ors. .. Respondents

**WITH
WRIT PETITION NO.1475 OF 2012
alongwith
CIVIL APPLICATION NO.793 OF 2012**

Shri.Basavraj Sidramappa Yernale. .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.1978 OF 2012**

Dr.Vaishali Ghodekar (Londhe). .. Petitioner
V/s
Pimpri-Chinchwad Municipal Corporation & Ors. .. Respondents

**WITH
WRIT PETITION NO.2095 OF 2012**

Apasara Zakeer Pathan. .. Petitioner
V/s
Sou.Uma Uday Hingamire & Ors. .. Respondents

**WITH
WRIT PETITION NO.2143 OF 2012**

Sau.Ratna Anil Gaikwad. .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.2301 OF 2012**

Seema Krishna Tirlotkar. .. Petitioner
V/s
The State of Maharashtra through its Secretary,
Social Welfare Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2310 OF 2012**

Mrs.Sanjivani Sanjay Nate. .. Petitioner
V/s
The State of Maharashtra through its Secretary,
Social Welfare Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2311 OF 2012**

Meenakshi Suresh Patil. .. Petitioner
V/s
The State of Maharashtra through its Secretary,
Social Justice Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2312 OF 2012**

Sheetal Vijay Sutar. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Social Justice Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2313 OF 2012**

Jyoti Mahendra Vaity. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Social Justice Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2314 OF 2012**

Nanda Prabhakar Kamble. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Social Welfare Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2315 OF 2012**

Ammit Narendra Sakharkar. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Social Justice Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2316 OF 2012**

Jagadish Ranchhoddas Patel. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Social Justice Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2317 OF 2012**

Abdul Kayyum Tamboli.

.. Petitioner

V/s

State of Maharashtra through its Secretary,
Social Justice Department & Ors.

.. Respondents

**WITH
WRIT PETITION NO.2406 OF 2012**

Madhukar Gopal Yalgar.

.. Petitioner

V/s

Vishnupant Motaba Kesarkar & Ors.

.. Respondents

**WITH
WRIT PETITION NO.2467 OF 2012**

Mrs.Shraddha Subhash Ruke @
Kum.Suchitra Jaising Salvi.

.. Petitioner

V/s

1.State of Maharashtra through its Secretary,
Social Welfare Department & Ors.

.. Respondents

**WITH
WRIT PETITION NO.2468 OF 2012**

Mr.Moreshwar Dnyaneshwar Shedge & Ors.

.. Petitioners

V/s

Shri.Sandeep Gulabrao Chinchwade & Anr.

.. Respondents

**WITH
WRIT PETITION NO.2718 OF 2012**

Mrs.Arati Prashant Salunke.

.. Petitioner

V/s

State of Maharashtra through its Secretary,
Social Justice Department & Ors.

.. Respondents



**WITH
WRIT PETITION NO.2770 OF 2012**

Toufik Ismail Shaikh. .. Petitioner
V/s
Harun Abdul Gafur Sayyed & Ors. .. Respondents

**WITH
WRIT PETITION NO.2914 OF 2010**

Naresh Mahadev Bokade. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Tribal Development Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.3795 OF 2010**

Kalpana Somnath Gaikwad. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Tribal Development Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.5417 OF 2011**

Shri.Dhiresb Rajesh Made. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Tribal Development Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.9138 OF 2011**

Prafulla Krishna Patil. .. Petitioner
V/s
1.Sou.Rasika Ajit Mithe @
Rasika Janardhan Bhoir & Ors. .. Respondents

**WITH
WRIT PETITION NO.10706 OF 2011**

Ganesh Manikrao Thate. .. Petitioner
V/s
Tejashree Akash Sable @ Tejashree
Balkrishna Mate & Ors. .. Respondents

**WITH
WRIT PETITION NO.10881 OF 2011**

Dr.(Mrs) Sunita Vijay Mhatre. .. Petitioner
V/s
State of Maharashtra through its Secretary,
Social Welfare Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2842 OF 2012**

Sunita Ragunath Parkar. .. Petitioner
V/s
1.State of Maharashtra through its Secretary,
Social Justice Department & Ors. .. Respondents

**WITH
WRIT PETITION NO.2922 OF 2012
(NOT ON BOARD)**

Smt.Padminiraje Mohite Patil. .. Petitioner
V/s
1.Pimpri-Chinchwad Municipal Corporation & Ors. .. Respondents

**WITH
WRIT PETITION NO.2944 OF 2012
(NOT ON BOARD)**

Mrs.Aruna Balasaheb Bhujbal. .. Petitioner
V/s
1.Smt.Chandani Bharat Dulani & Ors. .. Respondents

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LODG) NO.160 OF 2012

Mohammed Waris Innanullah .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION (ST) NO.224 OF 2012

Bhavna Bhavin Jobanputra @ Bhavna Rajesh
Patadia Parmar .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION (ST.) NO.229 OF 2012

Ms.Bhaveshri D/o.Gordhan Chauhan .. Petitioner
V/s
1.The State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO.492 OF 2012

Rukhsana Saeed Ahmad Ansari. .. Petitioner
V/s
Brihanmumbai Municipal Corporation & Ors. .. Respondents

WITH
WRIT PETITION NO.682 OF 2012

Mrs.Vanita Satish Acharya & Anr. .. Petitioners
V/s
Miss.Suprada Prakash Phatarpekar & Ors. .. Respondents

Mr.Anil V.Anturkar alongwith Mr.S.B.Deshmukh, Advocates for the Petitioners in Writ Petition nos.853/12, 873/12, 1978/12, 2468/12 & O.S. WP No.682/12.

Mr.R.K.Mendadkar alongwith Mr.C.K.Bhangoji & Mr. Kuldeep Pawar, Advocates for the Petitioners in Writ Petition Nos.279/12, 477/12, 2842/12, 1392/12, 2301/12, 2310/12 to 2317/12, 2467/12, 2718/12, 2914/10, 3795/10, 5417/11, 10706/11, 10881/11 and for Applicant in CA 271/12 in WP 870/12, and for Respondent No.1 in WP Nos.201/12, 447/11, 455/11 & for Respondent Nos.1 & 7 in WP No.682/12.

Mr.Sanjeev Sawant, Advocate for the Petitioners in WP(St.) Nos.8383/12 & 8293/12.

Mr.A.M.Saraogi, Advocate for the Petitioners in OS WP(Lodg) No.160/12, WP(st) No.224/12, WP(st) No.229/12.

Ms.Yashashree Sutrale, Advocate for the Petitioners in WP No.492/12.

Mr.V.A.Gangal, Special Counsel with Mr.S.R.Nargolkar, Addl.Govt.Pleader, Mr.V.S.Gokhale, AGP & Mr.C.R.sonawane, AGP, for Respondent Nos.1 & 2 in WP 853/12.

Ms.Nivedita Pawar, Advocate for Respondent No.3 in WP 870/12 and for Respondent Nos. 1&2 in WP 492/12 and for BMC in rest of the matters.

Mr.Prakash Wagh, Advocate for Petitioners in WP 76/12.

Mr.C.G.Gavnekar, Advocate for Petitioners in WP Nos.201/12 & 9138/11.

Mr.Ashutosh Kulkarni, Advocate for Petitioners in WP 2770/12.

Mr.P.D.Dalvi, Advocate for Petitioners in WP 2406/12.

Mr.M.S.Karnik, Advocate for Petitioners in WP 2143/12, 871/12, 869/12.

Mr.Umesh Mankapure, Advocate for Petitioners in WP 2095/12.

Ms.Madhavi Kulkarni, Advocate for Applicants in CA 793/12 and for petitioners in WP 1475/12.

Mr.Sachin Chavan, Advocate for Petitioners in WP 1323/12.

Mr.Prashant Bhavke, Advocate for Petitioners in WP 649/12, 650/12.

Mr.Shrishail Sakhare, Advocate for Petitioners in WP 654/12, 755/12, 757/12, 758/12, 874/12.

Mr.Abhijit Adagule, Advocate for Petitioners in WP 657/12, 659/12.

Mr.S.R.Ganbavale, Advocate for Petitioners in WP 658/12.

Mr.Rampal Kohli, Advocate for Petitioners in WP 870/12.

Mr.C.R.Sonawane, AGP for Petitioners in WP 447/11, 455/11, 1315/12, 1317/12, 1319/12, and for Respondent No.2 in WP 76/12, & for Respondent Nos.1 to 3 in WP Nos.649/12, 650/12, 654/12, 657/12, 658/12, 659/12, 755/12, 757/12, 758/12, 5417/11, 10881/11, and for Respondent Nos.1 to 4 in WP Nos.869/12, 871/12, 874/12, and for Respondent Nos.1 & 2 in WP Nos.870/12, 873/12, and for Respondent Nos.1, 2 & 4 in WP Nos.2914/10, 3795/10, and for Respondent Nos. 2 & 3 in WP 9138/11, and for State in rest of the matters.

Mr.R.J.Mane, AGP for Respondent Nos.1 & 3 in O.S. WP(Lodg) No.160/12, for Respondent Nos.3 to 6 in WP 492/12.

Mr.Uma PalsuleDesai, AGP for Respondent Nos.3 & 4 in WP (St) No.224/12 & for Respondent Nos.3 & 4 in WP(St) No.229/12.

Mr.S.V.Kotwal, Advocate for respondent No.5 in WP 2313/12.

Mr.Anand Shalgaonkar i/b. S.B.Shetye, for State Election Commission in all matters & for Respondent No.7 in WP 201/12.

Mr.S.P.Nalavade with Ms.Nanda Kuble, for Respondent No.3 in WP 2314/12.

Mr.P.M.Arjunwadkar, Advocate for Respondent No.1 in WP 76/12.

Mr.Samir Kumbhakoni, Advocate for Respondent No.4 in WP 757/12.

Mr.N.R.Bubna, Advocate for Respondent No.5 in WP 869/12, 871/12.

Mr.S.P.Shinde, Advocate for Respondent No.6 in WP 1392/12.

Mr.Deepak More, Advocate for Respondent No.1 in WP 1978/12.

Mr.D.B.Savant, Advocate for Respondent No.8 in WP 2301/12.

Mr.Nitin Deshpande, Advocate for Respondent No.3 in WP 3795/10.

Mr.Pradeep Patil, Advocate for Respondent No.1 in WP 9138/11.

Mr.A.A.Garge, Advocate for Respondent No.5 in WP 10881/11.

Mr.Vinay Bhate, Advocate for Respondent No.3 in WP 2317/12.

Mr.Yogesh Dalvi i/b. Sanjay Patil, Advocate for Respondent No.6 in WP 1392/12.

**CORAM: A.M.KHANWILKAR &
N.M.JAMDAR, J.**

JUDGMENT RESERVED ON 28TH MARCH, 2012.

JUDGMENT PRONOUNCED ON 4TH MAY, 2012.

JUDGMENT: (Per N.M.Jamdar, J.)

1. These petitions arise from the proceedings undertaken for validation of Caste Certificates. The two points that we have framed for our consideration are common in all these petitions and thus, these petitions are grouped together and are disposed of by this common judgment.



2. The two points that arise for consideration are:

A) Whether the composition of the Scrutiny Committees constituted by the State of Maharashtra by Government Notification dated 30.07.2011 for verification of caste certificates, is in consonance with the judgment of the Apex Court in the case of **Madhuri Patil (I), 1994 (6) SCC 241 and Madhuri Patil (II), 1997 (5) SCC 437** and what is the legal status of the validity certificates granted by these Committees.

B) Whether it is mandatory for the Scrutiny Committees to call for a field inquiry report from the Vigilance Cell constituted under the provisions of the Act and Rules, before granting validity certificates to the candidates and what is the legal status of the validity certificates granted without conducting a vigilance cell inquiry.

3. The leading writ petition as well as other writ petitions relating to the grant of validity certificates to the candidates were placed before us on 31.01.2012 on the advent of elections to local self Government in the State in February, 2012. Some of the writ petitions were filed by the candidates desirous of contesting elections and who were not issued caste validity certificates prior to the election. Those candidates, because they could not

produce the validity certificates within stipulated time, were denied nomination forms by the election authorities. The other set of cases are where validity certificate have been issued by the Committee constituted vide Notification dated 30-7-2011 and also without complying the requirement of obtaining Vigilance Cell report in a span of day or so after the presentation of the applications. While examining the validity certificates granted to such parties, it was revealed that the Scrutiny Committees had granted validity certificates to large number of applicants within a very short span from the date of the applications, and in some cases even within one day. The exercise of verifying the caste certificates by calling for field report from the Vigilance Cell was obviously not done in such cases.

4. Upon enquiring with the Assistant Government Pleader as to how validity certificates were issued in such a summary manner, without calling for the vigilance cell report, the Court was informed that the scrutiny committees specially constituted for the purpose of elections in past few months have granted several such validity certificates to thousands of persons without any inquiry at all. Thus, it was clear that such candidates may contest the elections on the basis of validity certificates issued in

summary manner, and further the validity certificates so obtained could be used by the candidates for all other purposes as well. The relatives of each of such candidates could use them as evidence in furtherance of their claim of entitlement to the benefit of reservation policy.

5. This Court, considering the scale and urgency of the issue, especially the impending election to local self Governments, decided to take up the matters pertaining to Caste claims on priority basis. The cases were grouped in three sets. The first set of the petitions was of those petitioners who intended to participate in the ensuing elections of the local Government, even though they did not have caste validity certificates, prayed for relaxation of the condition to produce validity certificate at the time of scrutiny. The second set of the petitions related to those petitioners whose caste certificates were invalidated by the Scrutiny Committees and they sought to challenge the said decisions coupled with a direction to the returning officer to allow them to participate in the ensuing election. The third set of petitions related to those petitioners who have challenged the caste validity certificates granted to the Respondents on the ground that the said certificates were obtained by fraud with further prayer that the Election Commission should reject the nomination papers of such candidates.

6. This Court on 31.01.2012 heard the petitions at length. In the first and second set of petitions, this Court did not grant any interim relief to the petitioners. While dealing with the third set of petitions this Court observed in paragraph Nos.10 to 16 of the order dated 31.01.2012 as under:-

"10. One interesting feature has been noticed in all these petitions and some of the petitions which were listed before us yesterday. It has been noticed that application for issuance of validity certificate was filed by the candidate and on the same day validity certificate came to be issued by the concerned Scrutiny Committee without obtaining vigilance report regarding the caste claim. In this context, we called upon the learned A.G.P. Appearing in the concerned matters to explain as to how validity certificate can be issued within one day that too, without undergoing the formalities such as inviting vigilance report in respect of caste claim of the concerned. The Apex Court in the case of *Madhuri Patil* 1995 S.C.94, has made it abundantly clear that the State must not only adhere to the constitution of the Scrutiny Committee but, the Committee duly constituted is obliged to follow the procedure spelt out in the said judgment for verification before issuance of caste validity certificate. That procedure is indispensable and is made mandatory. In other words, it is mandatory to follow the norms specified in *Madhuri Patil's* case before issuance of validity certificate by the concerned Scrutiny Committee. Thus, in cases where certificate has been issued without complying with the specified formalities, it would necessarily follow that the concerned validity certificate(s) will have to be treated as one which is not issued in accordance with the procedure prescribed in the Act of 2000 and the same will be non-est and nullity. As the vigilance report is the core of investigation and inquiry procedure to be followed by the Scrutiny Committee before issuance of validity certificate, in cases where that procedure is not followed, the Caste Validity Certificate issued will have no legal basis and is a nullity in the eye of law. The Returning Officer/Election Commission ought to examine at the time of scrutiny of nomination as to whether the caste validity certificate accompanying the nomination

form of the concerned candidate has been issued by the Scrutiny Committee after following the procedure prescribed by the Apex Court in *Madhuri Patil's* case and requirements of the Act of 2000 and in particular whether it has been issued after obtaining vigilance report about the caste claim. In absence thereof, concerned validity certificate(s) will be of no legal value and cannot be acted upon in law being nullity.

11. The A.G.P. was at pains to point out that the State Government had constituted 35 District Committees keeping in mind mass applications received for issuance of validity certificates throughout the State due to impending elections of local authorities. The learned A.G.P. Brought to our notice that such committees were constituted by the State of Maharashtra in exercise of powers under section 6 (1) of the Act of 2000 under Notification dated 30.7.2011.

12. He also invited our attention to the notification dt .8.1.2012 which has amended earlier notification by insertion of para 3A. Our attention was also invited to Government Resolution dated 17.10.2011. What is relevant to note is that, none of the aforesaid notifications or government circular have dispensed with the procedure to be observed by the Scrutiny Committee before issuance of validity certificate which ought to be in conformity with the decision of the apex Court in *Madhuri Patil's* case. The procedure specified in the Act of 2000 for constitution of the Scrutiny Committee as per section 6 (1) of 2000 and exercise of that power by the State Government is one thing but, the manner in which the said Committee has issued validity certificates presumably to undeserving persons is a matter which is not only the concern of the candidates participating in the elections, the voters of the constituency but also that of the State. For the simple reason that the certificates so issued will be used in future for other purposes, besides the ensuing elections. It is possible that most of the applications may have been filed before concerned 35 District Committees constituted under the notification dt 30.7.2011 to secure Caste Validity certificate without following mandatory procedure prescribed in *Madhuri Patil's* case or Act of 2000. Thus, the certificates so issued are and will have to be considered as nullity.

13. We call upon the State to produce the break up of the number

of applications received district wise and number of validity certificates issued by the concerned District Committees constituted in terms of notification dt 30.7.2011 and also further break up as to how many persons who had secured such validity certificates have in fact filed their nomination forms in the ensuing elections for local authorities. The information to be furnished by the State should also disclose the time span within which the Scrutiny Committee issued the validity certificate day wise. For example, number of validity certificates issued on the same day or otherwise.

14. That information be furnished on an affidavit to be filed by an officer not below the rank of Deputy Secretary. The information shall also disclose as to in how many cases before issuance of caste validity certificate the concerned committee have followed the norm specified in *Madhuri Patil's* case in particular of inviting vigilance report on case to case basis.

15. At this stage, Mr.Sonawane learned A.G.P. Submits that the break up of number of persons who have filed nomination on the basis of caste validity certificate issued in the recent period by the concerned Scrutiny Committee, can be furnished by the Election commission. We have no manner of doubt that the Principal Secretary who is present in court will inter act with the concerned office of the Election commission before filing of the affidavit in this court.

16. Counsel appearing for the Election commission assures that instructions will be issued to all the Returning Officers forthwith to ensure that caste validity certificate accompanied with nomination form and which are not issued after following procedure under the Act of 2000 and the norms specified in *Madhuri Patil's* case in particular of obtaining vigilance report those caste validity certificate will have to be discarded being nullity.”

The Assistant Government Pleader pointed out that the State Government had constituted 35 District Committees by a Government Notification dated 30.07.2011, keeping in mind the filing of large number of applications for



issuance of validity certificates due to impending elections to the local authorities. This Court called upon the State to produce the break-up of number of applications received District-wise and the number of validity certificates issued by the concerned District Committees constituted in terms of the Notification dated 30.07.2011. This Court came to a prima facie conclusion that requirement of vigilance cell inquiry is a must before issuing a validity certificate. At the time of hearing, the counsel for the Election Commission assured the Court that the instructions will be issued to all the returning officers to ensure that the caste validity certificates accompanying the nomination forms, which were not issued after following the procedure under the Act and the norms prescribed by the *Madhuri Patil's* case, will be discarded.

7. Thereafter, on the next date, two civil applications; one by the State of Maharashtra and the other by Indian National Congress were moved for keeping the directions given by this Court in the order dated 31.01.2012 in respect of rejecting the nomination papers of those candidates whose validity certificates were not as per the procedure, in abeyance. This Court was informed by the learned Advocate General appearing for the State that in 10 Districts where the elections are likely to be held to constitute the

local Government, 7334 applications were received for issuing the validity certificates by the concerned Scrutiny Committees. As per the record produced by the State in more than 96% cases the concerned Scrutiny Committees issued validity certificates without calling the vigilance cell report. Out of 7334 applications in 6336 cases the validity certificates were issued without vigilance cell report and only in 249 cases the procedure of obtaining vigilance report was undertaken. Upon being pointed out to the learned Advocate General that these certificates will be used in perpetuity by the concerned persons as well as their family members, the learned Advocate General submitted that necessary instructions will be issued to ensure that the said validity certificates will be used only for the purpose of elections. The learned Advocate General contended that apart from the merits of the case the directions to reject the nomination forms at the time of scrutiny which was to be held on the next day was practically impossible to implement. This Court, considering the large scale departure from the settled norms and its impact of depriving the rightful candidates belonging to backward class, declined to recall the directions in respect of rejection of nomination papers of such candidates.

8. The State of Maharashtra, thereafter filed the Special Leave Petition

before the Apex Court in which, on 02.02.2012 the Apex Court stayed the direction given by this Court regarding verification by the returning officers of the caste validity certificates issued by the Scrutiny Committees. The Supreme Court in paragraph 4 of the order directed as under:

“We also direct that the direction given by the High Court regarding verification by the Returning Officer of the validity certificates issued by the Scrutiny Committee, shall remain stayed.”

9. As there was no order by the Apex Court staying further hearing of the petitions on merits, by an order dated 28.02.2012 the petitions were clubbed together and at the request of the Assistant Government Pleader, the matter was deferred till 05.03.2012. By order dated 28.02.2012 this Court directed as under:-

“ Since wider issues arise for consideration in all these matters about the manner in which the specially constituted 35 District Committees under Notification dated 30th July, 2011 have discharged their duty of either rejecting the caste validity claim of the concerned persons or acceptance thereof, without any enquiry in respect of large number of applicants, we deem it appropriate that all the matters involving similar grievance will have to be proceeded together.

2. Mr. Sonawane appearing for the Government submits that, considering the seriousness of the matters, he would be requesting the Advocate General to appear in the matters. At the request of Mr. Sonawane, hearing is deferred till 5th March, 2012 - 1st on Board. ”

10. On 05.03.2012 the Government Pleader again sought time on the basis that the information to be furnished to the Court as per the directions

given earlier, was still being collated and accordingly the petitions were adjourned to 19.03.2012 by observing as under:-

“The learned Assistant Government Pleader submits that the information to be furnished to the Court is being collated and it may take two weeks time to complete that process. As a result, we defer hearing of these matters to 19.3.2012 to be taken First on Board. ”

11. The petitioner in the Writ Petition No.853 of 2012 amended the petition and challenged the validity of the Government Circular dated 30.07.2011 under which the State constituted 35 Special Scrutiny Committees on the ground that they have been constituted contrary to the dicta of the Apex Court in the case of *Madhuri Patil*. On 19.03.2012 when the petitions were taken up for hearing, learned AGP sought time and by way of indulgence the petitions were adjourned to 22.03.2012 by observing in paragraph Nos.2, 3 and 4 as under:-

“2 According to the petitioners, as per the dictum of the Apex Court in the case of **Kumari Madhuri Patil & Anr. vs. Addl. Commissioner, Tribal Development & Ors. reported in (1994) 6 SCC 241**, in particular, paragraph 13(4), the State Government is obliged to constitute Committee of specified Officers. The petitioners assert that 35 specially constituted Committees do not conform to the said requirement. In that sense, the decision of the State Government to establish those Committees is without authority of law. If this contention is accepted, it would necessarily follow that all steps taken by the said Committees will have to be treated as non- est in the eyes of law being nullity. This opinion is likely to impact at least 27,000 odd Validity Certificates issued by the Caste Scrutiny Committees, specially constituted across the State during the election period. As a result, we cannot agree to the request of the learned A.G.P. to adjourn the matter

for a longer time. These questions, in our opinion, cannot brook delay and will have to be decided at the earliest as it will have cascading effect on other activities and reservations provided for Scheduled Castes, Scheduled Tribes and Other Backward Classes, including for admission to different courses.

3. Accordingly, we defer these petitions to 22nd March, 2012 by way of indulgence. To be listed at 3.00 p.m.

4. It is made clear that no request for adjournment or keeping back these matters will be entertained on any count.”

12. On 22.03.2012 when the petitions were taken up for hearing, learned Special Counsel Mr.V.A.Gangal appearing on behalf of the State Government sought further time. The Court adjourned these matters to 28.03.2012 by observing in Paragraph Nos.1 & 2 as under:

“.....In spite of sufficient opportunity given to the State, the information is not forthcoming for the reasons best known to the authorities concerned. We are told that the Secretary is present in Court. Although senior officers have been present during the hearing in the past, the situation is no different even today. The State is responsible for delay in the present proceedings and in deciding the serious issue that arises for consideration.

2. We would only impress upon the State to take the proceedings in right earnest and furnish necessary information to the Court as has been ordered in the past. Failure to do so would only mean that the State wants to be party to the illegalities committed by the specially constituted Committees of the State in issuing validity certificates to undeserving persons. Considering the public importance of the issue that we need to address, lest it is said that the State did not get sufficient opportunity, as has been argued by the special counsel appearing before us, by way of indulgence, we keep these matters on 28th March 2012 to be taken up first on board at 11.00 a.m. We make it clear that whether any affidavit is filed or not, disclosing the information as directed in the

previous orders, we would proceed with the hearing of the two broad legal questions involved in the matters, as already adverted in our previous orders. No request for adjournment or keeping back the matters at the instance of any counsel will be entertained on that date.

Thus, by way of last chance, the group of matters was adjourned to 28.03.2012, making it clear that it will be heard peremptorily on that date.

13. Accordingly, the matters were heard at length on 28.03.2012. All the Advocates appearing for the parties were called upon to address us on the two issues framed. Mr.S.B.Deshmukh led the arguments in support of the proposition that the Vigilance Cell Report is mandatory and the composition of specially constituted committees is not as per the law. He was supported by Mr.Anturkar, Mr.R.K.Mendadkar, Mr.C.G.Gavnekar and Mr.Sandeep Shinde. Mr.V.A.Gangal, Special Counsel alongwith Mr.C.R.Sonawane appeared for the State and advanced submissions in respect of the points framed. Mr.S.V.Kotwal supported the stand of the State.

14. Before we proceed to enumerate the arguments of the counsels, we would like to advert to the material placed before us by the State Government pursuant to the orders of this Court. The State has produced a chart on affidavit, which shows that the details of number of cases where

the validity certificates were issued without calling for the Vigilance Cell reports and in how many days the validity certificates were issued. The chart reads thus:

PRAPATRA - B									
NECESSARY INFORMATION RELATING TO WRIT PETITION NO. 853/2012 IN THE HIGH COURT, BOMBAY.									
Sr. No	Name of the Committee/ District	Total number of Validity Certificates issued relating to election	Validity certificates verified by the Vigilance Cell	Validity certificates <u>not</u> verified by the Vigilance Cell	Number of candidates contesting the election to whom validity certificates are issued	Number of validity certificates stamped only for election purpose	The validity certificates in which decision is given in one day.	The validity certificates in which decision is given in two days	The validity certificates in which decision is given in three or more days.
1	2	3	4	5	6	7	8	9	10
1	Pune (Mun. Corporation/ Z.P.)	1769	122	1647	466	0	0	36	1733
2	Satara	746	10	726	169	0	0	26	720
3	Pune (Pimpri Chincwad)	1932	141	1791	940	0	0	0	1932
4	Solapur	2159	40	2119	821	0	220	72	1867
5	Kolhapur	809	53	756	0	0	0	0	809
6	Sangli	588	53	535	119	162	0	0	588
	Pune Division	8003	419	7584	2515	162	220	134	7649

7	Mumbai City	236	29	207	53	0	3	3	230
8	Mumbai Suburban	504	81	423	131	0	8	2	494
9	Thane	1018	9	1009	190	0	64	1	953
10	Sindhudurg	268	3	265	88	0	0	0	268
11	Ratnagiri	250	11	239	0	250	0	0	250
12	Raigad	677	15	662	66	677	8	2	667
	Mumbai Division	2953	148	2805	528	927	83	8	2862
13	Nagpur	2035	5	2030	1203	0	0	0	2035
14	Wardha	624	0	624	0	0	0	0	624
15	Gondia	69	69	0	25	0	0	0	69
16	Bhandara	37	0	37	37	0	0	0	37
17	Chandrapur	241	5	236	0	13	0	0	241
18	Gadchiroli	322	5	317	205	322	0	70	252
	Nagpur Division.	3328	84	3244	1443	335	0	70	3258
19	Amaravati	2936	0	2936	0	0	0	0	2936
20	Yavatmal	2703	5	2698	0	0	0	0	2703
21	Akola	668	45	623	71	0	0	0	668
22	Vashim	321	7	314	0	321	0	0	321
23	Buldhana	2941	0	2941	1220	0	0	0	2941
	Amarati Division	9569	57	9512	1291	321	0	0	9569
24	Nashik	1747	33	1714	0	0	0	0	1747
25	Ahmadnagar	1342	50	1292	43	0	0	0	1342
26	Dhule	122	35	87	31	0	0	0	122
27	Jalagaon	1156	334	822	562	0	34	0	1122
28	Nandurbar	86	9	77	38	0	0	0	86
	Nashik Division	4453	461	3992	674	0	34	0	4419
29	Aurangabad	1023	86	937	0	0	0	29	994

30	Jalna	817	36	781	723	222	0	0	817
31	Beed	1207	15	1192	0	0	0	0	1207
32	Parbhani	1096	97	998	204	0	27	21	1048
	Aurangabad Division	4143	234	3908	927	222	27	50	4066
33	Latur	1062	0	1062	0	800	0	0	1062
34	Usmanabad	575	-	575	0	0	24	28	523
35	Nanded	2110	20	2090	286	1592	0	0	2110
36	Hingoli	733	0	733	0	0	0	0	733
	Latur Div.	4480	20	4460	268	2392	24	28	4428
	Total Maharashtra	36929	1427	35505	7664	4359	388	290	36251

It appears from the said chart that in Pune Division, out of 8003 validity certificates issued, the Vigilance Cell reports were called for only in 419 cases. In Mumbai Division, out of 2953 validity certificates that were issued, only in 148 cases the Vigilance Cell reports were called for. In Nashik Division, out of 4453 validity certificates that were issued, only in 461 cases the Vigilance Cell reports were called for. In the State of Maharashtra totally out of 36,929 validity certificates issued by the said specially constituted Committees, shocking number of 35505 validity certificates were issued without calling for the reports from the Vigilance Cell. Out of these, in 388 cases the validity certificates were granted in one day of making the applications. In 290 cases, the validity certificates were issued within two days of the making of such applications and in 36251

cases the validity certificates were issued within three or more days of making of such applications. The figures in the chart itself show the gravity of the issue at hand.

15. The machinery for verification of the caste certificates by conducting vigilance cell inquiry is required to be set up to find out fraudulent claims which is to protect the claim of genuine members of the backward class. It is shocking that in almost 95% of cases the procedure was abandoned. It is unfortunate that the State Government, inspite of this Court repeatedly pointing out that the rights of genuine members of backward class citizens are at stake, instead of taking immediate action to rectify the situation, has chosen to contest these petitions and justify the large scale deviation from norms.

16. The State of Maharashtra, initially had set up an administrative machinery for grant of caste validity certificates and its verification. The Caste certificates were issued by the concerned Tahasildars and the verification of those caste certificates was done by the Committees constituted by a Government Resolution. The ascertainment of the claim of the candidates, at both; the caste certificates and the validity certificates

level, was far from satisfactory. The persons belonging to the backward class were unable to assert their rights, which led to the large scale fraudulent cases based on tampered and fabricated documents. Many undeserving candidates sought for and were granted validity certificates without due verification. Once the validity certificate was granted to one member of the family, the other members relying on the same also obtained the validity certificates thus setting up a chain of fraudulent cases. This social evil went on unabated until the Apex Court in the case of **Madhuri Patil V/s.Additional Commissioner, Tribal Development, Thane, 1994**

(6) SCC 241, [for short '*Madhuri Patil (1)*'] took measures to check the phenomenon. The Apex Court observed:

“9. The Preamble to the Constitution promises to secure to every citizen social and economic justice, equality of status and of opportunity assuring the dignity of the individual. The Scheduled Tribes are inhabitants of intractable terrain regions of the country kept away from the main stream of national life and with their traditional moorings and customary beliefs and practices, they are largely governed by their own customary Code of Conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos. The Constitution guarantees to them who are also Indian citizens of equality before law and the equal protection of law. Though Articles [14](#) and [15\(1\)](#) prohibits discrimination among citizens on certain grounds, Article [15\(4\)](#) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled Tribes. Article [16\(1\)](#) requires equality of opportunity to all citizens in matters of appointments to an office or a post under the Union or a State Govt. or public undertakings etc. But Article [16\(4\)](#) empowers the State to make provision for reservation of appointments or posts in favour of classes of citizens not adequately represented in the services under the State.

Article [46](#) enjoins the State by mandatory language employed therein, to promote with special care the educational or economic interest of the Scheduled Tribes and Scheduled Castes and to protect them from 'social injustice' and 'all forms of exploitation'. Article [51A\(h\)](#) enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and reform. Again Article [51A\(h\)](#) requires every citizen is strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It is, therefore, a fundamental duty of every citizen to develop scientific temper and humanism and spirit of inquiry to reform himself in his onward thrust or his strive to improve excellence in all spheres of individual and collective activity. Since the Scheduled Tribes are a nomadic class of citizens whose habitants being generally hilly regions or forests, results in their staying away from the main-stream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for development of their scientific temper, educational advancement and economic improvement so that they may achieve excellence, equality of status and live in dignity. Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and economic justice apart from other economic measures. Hence, the tribes, by reason of States' policy of reservation, have been given the exclusive right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota. For Availment of such exclusive rights by citizens belonging to tribes, the President by a Notification specified the Scheduled Tribes or tribal communities or parts or groups of tribes or tribal communities so as to entitle them to avail of such exclusive rights. The Union of India and the State Governments have prescribed the procedure and has entrusted duty and responsibility to Revenue officers of gazetted cadre to issue social status certificate, after due verification. It is common knowledge that endeavour of States to fulfill 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 person entitled to such status while in fact disentitled to such status. The case in hand is a clear instance of such pseudo status. Kolis have been declared to be OBC in the State of Maharashtra being fishermen, in that their avocation is fishing and they

live mainly in the coastal region of Maharashtra. Mahadeo Kolis are hill tribes and it is not a sub-caste. Even prior to independence, the Maharashtra Govt. declared Mahadeo Koli to be criminal tribe as earlier as May 29, 1933 in serial No. 15 in List II thereof. In 1942 resolution in serial No. 15 in Schedule B of the Bombay resolution Mahadeo Koli tribe was notified as a Scheduled Tribe. It was later amended as serial No. 13. In the Presidential Scheduled Castes/Scheduled Tribes Order 1950, it was reiterated. A slight modification was made in that behalf by the Presidential Notification dated October 29, 1956. In 1976 Amendment Act, there is no substantial change except removing the area restriction. Thus Mahadeo Koli, a Scheduled Tribe continued to be a Scheduled Tribe even after independence. The Presidential Notification 1950 also does recognise by public notification of their status as Scheduled Tribes. The assumption of the Division Bench of the Bombay High Court in Subhash Ganpatrao Kabade's case, that Mahadeo Koli was recognised for the first time in 1976 under Amendment Act, 1976, as Scheduled Tribe is not relatable to reality and an erroneous assumption made without any attempt to investigate the truth in that behalf. Presidential declaration, subject to amendment by the Parliament being conclusive, no addition to it or declaration of castes/tribes or sub-castes/parts of or groups of tribes or tribal communities is permissible.”

17. The Apex Court thereafter in Paragraph 13, proceeded to lay down the procedure for issuance of social status certificates. The Apex Court laid down detailed guidelines, which are as under:-

“1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. 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 also should examine the school records, birth registration, if any. 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 proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, daiety, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice

should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chair-person who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that

behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article [226](#) of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article [136](#).

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.”

The ratio of this judgment, was followed in several cases by the Apex Court, and by the High Courts in the country. The guidelines were issued with an avowed object to secure the fundamental rights of the members of



backward class. The Apex Court in the case of *Madhuri Patil (II)*, (1997) 5 SCC 437 modified the directions given in *Madhuri Patil (I)* to the extent of composition of the scrutiny committees. The State of Maharashtra in the year 2000 enacted the **Maharashtra Scheduled Caste, 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** (for short “Act of 2000”). The Act received assent of the President on 23.05.2001 and it was brought into effect on 18.10.2001. As per the preamble of the Act, it was to provide for regulation of issuance and verification of caste certificates of the persons belonging to Scheduled Caste, Scheduled Tribes, De-notified Tribes, Nomadic Tribes, Other Backward Class and Special Backward Class. The State of Maharashtra also framed Rules titled as **the Maharashtra Scheduled Caste (Regulation of Issuance and Verification of) Certificate Rules, 2003** (for short “Rules of 2003”).

18. The issue as to whether the guidelines given in the case of *Madhuri Patil* (supra) were valid and whether it amounts to legislation was referred by the two Judges Bench of the Apex Court to a larger Bench. The reference was answered by the three Judges Bench of the Apex Court in

the case of **Dayaram V/s./Sudhir Batham, reported in 2011 (6) Mh.L.J.**

414. The Apex Court in the case of Dayaram framed three questions for consideration. The question which is relevant for the controversy at hand, reads as under:-

“(i) Whether the guidelines 1 to 15 in *Madhuri Patil*’s case are impermissible being legislative in character?.”

The Apex Court held that the directions issued in *Madhuri Patil*’s case were intrinsic to the fulfillment of the fundamental rights of the backward classes of citizens and were issued to preclude denial of such fundamental rights. The Apex Court held that as long as the State Government does not come up with an appropriate legislation to substitute the norms laid down in the case of *Madhuri Patil*, that the said directions should continue to hold the field. The Apex Court held that certain procedural aspects such as a Vigilance Cell inquiry was core requirement for the ascertainment of the claims. It was in short indicated that the State can enact law to supplement the directions given in the case of *Madhuri Patil* and not to supplant the same. In other words, the Apex Court held that though the State was free to bring in a legislative enactment governing the grant of social status certificates, the said enactment can only address the shortcomings in the

directions issued in the case of *Madhuri Patil*. It noted that the directions given in the case of *Madhuri Patil* were working satisfactorily for a period of more than one and half decades.

19. On 30.07.2011, the Social Justice and Special Assistance Department of the Government issued a notification in exercise of the powers conferred under section 6 (1) of the Act which is the subject matter of controversy at hand. The notification constituted 35 District level committees for verification of the caste certificates of the candidates who were willing to contest for the elective posts in the local authorities. The relevant clauses of the said notification/circular are as under:-

“No.CBC.10/2007/C.R.411/BCW-V.- Whereas, under the Government Notification, Social Justice and Special Assistance Department No.CBC 10/2007/C.R. 378/BCW-V, dated 14th September 2007, the Government Maharashtra in exercise of the powers conferred by sub-section (1) of Section 6 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jaties), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.XXIII of 2001), constituted Fifteen Scrutiny Committees for Verification of Caste Certificates issued by the Competent Authorities under the said Act; and specified in the Schedule appended to the said notification of the area jurisdiction of each of the Scrutiny Committee.

And whereas, the Government of Maharashtra has now decided to constitute District wise Caste Scrutiny Committees and to appoint District Collector or Additional District Collector (I.A.S.) as the Chairperson of the said Scrutiny Committees for the purpose of verification of Caste Certificate of the candidates who willing to contest

for elective post in any local authority.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of 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), the Government of Maharashtra hereby constitute Thirty-five District Caste Scrutiny Committees as specified in the Schedule appended hereto, for verification of Caste Certificates of the candidates who willing to contest for elective post in any local authority, issued by the Competent Authorities under the sub -section (1) of section 4 of the said Act.

2. Each Scrutiny Committee shall consist of the following members, namely:-

1.	District Collector/Additional District Collector (I.A.S.)	Chairpereson
2.	Divisional Social Welfare Officer	Member
3.	Research Officers/Special District Officers	Member-Secretary

3. The area of the jurisdiction of each of the said Scrutiny Committee shall be as specified on the Schedule appended to the notification.

4. The Government directs that, the Chairpersons of all the Scrutiny Committees from time to time, to earmark such days of the week to conduct business of the Caste Scrutiny Committee headed by them as may be expedient having regard to the workload of the Committee(s) and preferably should hear cases at least once in a week at the place of hearing.”

The composition of the committees thus shows that they are to be headed by the District Collector (IAS). The chairman was to have overall control over the committee. The Committees constituted under the Government Resolution dated 30.07.2011 were for specific purpose of dealing with the

applications for verification of caste certificates of the candidates desirous of contesting the elections. The duration of the committees was also for a specific period, and we are informed that the said Committees are now ceased to exist as the elections have taken place and the unprocessed applications will be transferred to the regular Committees.

20. With this backdrop, leading to the statutory enactments and the constitution of the special scrutiny committees, we may now address ourselves to the two questions that are posed for our consideration.

21. (1) Composition of Committees:-

In support of the contention that the composition of the specially constituted committees is bad in law, the arguments were advanced by Mr.Deshmukh, Mr.Anturkar, Mr.Mendadkar, Mr.Gavnekar and Mr.Shinde. It was contended that the State of Maharashtra is obliged to constitute the scrutiny committees as per the directions given by the Apex Court in the case of *Madhuri Patil (II)* reported in 1997 (5) SCC 437. According to Mr.Deshmukh, the Apex Court has made it clear that the composition of the scrutiny committees shall be such that it includes the Additional

Commissioner (Revenue) as its Chairman. It was contended that though the State of Maharashtra has enacted the Act of 2000, it has not laid down the composition of the scrutiny committees. Mr.Deshmukh thus contended that as per the ratio of *Dayaram's* case the directions given in the *Madhuri Patil's* case will continue to bind the State Government, especially in the absence of any legislative enactment covering the issue. He has further pointed out that it was at the instance of the State of Maharashtra itself that the review petition was preferred in the Apex Court and in the said review petition, the Apex Court in the case of *Madhuri Patil (II)* laid down that the Additional Commissioner (Revenue) should be the Chairman of the Committee. Mr.Anturkar, supporting the said submissions, argued that as per the provision of the Land Revenue Code, the post of Additional Commissioner (Revenue) and the District Collector, are not equivalent and thus there is clear breach of the directions of the Apex Court in the case of *Madhuri Patil*. Mr.Anturkar relied upon sections 6, 7(2), 11(2) of the Maharashtra Land Revenue Code. Thus, according to the learned counsels, the Government Resolution dated 30.07.2011 is bad in law, as it does not adhere to the norms specified by the Apex Court in the case of *Madhuri Patil (II)* in respect of the composition of the Scrutiny Committees.

22. On the other hand Mr.V.A.Gangal, Special Counsel submitted that the background in which the said committees came to be framed will have to be appreciated. When the election to the local self Government were declared in the year 2011, thousands of applications of the candidates desiring to contest the said elections came to be filed. Considering the large number of cases the State of Maharashtra decided to constitute the District level committees invoking its powers under section 6 of the Act of 2000. According to Mr.Gangal section 6 of the Act of 2000 permits the State Government to constitute as many scrutiny committees as required. He submitted that once the Act of 2000 came into force, the constitution of the committees would be governed by the provisions of the Act and not by the judgment of the Apex Court in the case of *Madhuri Patil*. This position, according to him, has been made amply clear in the case of *Dayaram* by the Apex Court. Mr.Gangal also submitted that the post of Additional Commissioner (Revenue) and the District Collector are from the cadre of Indian Administrative Service and they are liable to be transferred and posted on these posts. He relied upon the affidavit filed by Mr.Dinseh Waghmare, Secretary, Social Justice and Special Assistance, Government of Maharashtra which states this position. Mr.Gangal further submitted that even assuming that both the posts are not comparable, the Act has come

into force, some deviation from the directions given by the Apex Court is permissible. Mr.Gangal pointed out that the Division Bench of this Court in the case of Rohit Ranjeetsingh Rathod (W.P.No.2527 of 2009) decided on 20.01.2010 held that the appointment of Additional Collector as a chairman of the scrutiny committees is not in accordance with law. But said decision is a subject matter of challenge before the Apex Court in Special Leave Petition No.6003 of 2010 and by order dated 05.07.2011 the appeal is admitted and stay is granted. He submitted that since the issue is pending in the Apex Court, hearing of these petitions be deferred.

23. To appreciate the controversy a brief overview of the relevant passages from the judgment of the Apex Court and the statutory enactments will be necessary. In the case of *Madhuri Patil* in paragraph No.13 (4) the Apex Court laid down the constitution of the scrutiny committee as under:-

“13(4) All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

24. The State of Maharashtra thereafter filed the review petition in the

Apex Court bearing No.IA 3 of 1996. The State of Maharashtra prayed for modification to the composition of the committee. The Apex Court permitted the State of Maharashtra to change the Chairman of the committee from Additional/Joint Secretary/Director to the Additional Commissioner (Revenue) of the Revenue Division concerned. The Apex Court in Paragraph No.4 & 5 of *Madhuri Patil (II)*, 1997 (5) SCC 437 observed as under:-

“4. With regard to prayer (c) also, we feel that the Caste Scrutiny Committees for Social Welfare, Cultural Affairs and Sports Department should comprise of Additional Commissioner (Revenue) - Chairman of the concerned Revenue Division; Divisional Social Welfare Officer-Member; and Research Officer as a Welfare Officer-Member-Secretary to function in that behalf.

5. With regard to prayer (d), along with the Vigilance Cell, one Research Officer/Tribunal Development or Social Welfare Officer would be associated in finding the social status of eligibility of the officers.”

The State of Maharashtra thereafter enacted the above mentioned Act of 2000. Section 2(k) defines the Scrutiny Committee as under:-

“2(k) “**Scrutiny Committee**” means the Committee or committees constituted under sub-section (1) of Section 6 for the Scheduled Caste, Scheduled Tribes, De-notified Tribes, *Vimukta Jatis*, Nomadic Tribes, Other Backward Classes or Special Backward Category for verification of the Caste Certificate and to perform the function of Scrutiny Committee under this Act.”

Section 6(1) which deals with the establishment of the Scrutiny Committee, reads thus:

“6(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committees for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of Section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.”

The State of Maharashtra has also framed rules i.e. Maharashtra Scheduled Tribes, Issuance and Verification of Caste Certificates Rules. These rules are framed only in respect of Scheduled Tribes, while the Act deals with Scheduled Caste, Scheduled Tribes, Denotified Tribes, Nomadic Tribes and other backward classes and specially backward class. The State of Maharashtra has not yet framed the rules for the categories other than the Scheduled Tribes, though we are informed during the course of argument that such rules are on anvil. It is an admitted position before us that the State of Maharashtra has not passed any Act nor framed any rules as to what should be the composition of the scrutiny committees.

25. The question will be as to what should be the composition of the scrutiny committees when the Act and the Rules have chosen to remain silent. To our mind the Apex Court in the case of Dayaram has made this position amply clear. The Apex Court has laid down that the procedure in *Madhuri Patil* should continue till it is substituted by an appropriate legislation. The Apex Court has emphasised that the scheme in the case of

Madhuri Patil has been working satisfactorily for the last one and half decade. It is only if there are any shortcomings the Government can come up with appropriate legislation to substitute the same. Thus the composition of the committee laid down in the case of *Madhuri Patil* will continue to govern the field.

26. It needs to be emphasised that the guidelines given in the case of *Madhuri Patil* in respect of the composition of the Committees were not for mere administrative convenience nor were they in the nature of service rules. The Apex Court found that there were large scale fraudulent cases, which resulted in deprivation of rights of the backward classes and that the lower administrative machinery had failed to curb this menace. It is with this objective, that the Apex Court entrusted the chairmanship of the scrutiny committees with the high ranking officials such as Additional / Joint Secretaries. The State of Maharashtra thereafter moved the review application so as to point out that the State will need more than one scrutiny committees to deal with the large scale verification of the cases and if more than one committees are to be formed, then, it will be difficult for the State to have Additional/ Joint Secretaries manning the committees. The Apex Court in the case of *Madhuri Patil (II)* laid down that the State of

Maharashtra can have more than one scrutiny committees and it permitted the Additional Commissioner (Revenue), to be the chairman of the committee. The Apex Court in its directions, specifically laid down that the Additional Commissioner (Revenue) alone shall be the Chairman of the Committee. The phrase “or equivalent” is conspicuously missing from the said direction.

27. If the State of Maharashtra wanted to substitute the word “Collector/Additional Collector” in place of the “Additional Commissioner (Revenue)”, the State was obliged to move the Apex Court for clarification. The State has neither moved for clarification of the aforesaid directions nor has brought in the legislative enactment to that effect. The Apex Court has categorically mentioned a particular post for specific reason. If any deviation is to be permitted, it would, completely dilute the rigor of the requirement predicated by the Apex Court, which is presently the law within the meaning of Article 141 of the Constitution of India. Such deviation and further deviation without the backing of law made by the legislature cannot be countenanced.

28. An affidavit has been filed to place on record the stand of the State

of Maharashtra as to whether appointing the District Collector instead of Additional Commissioner (Revenue), will be in consonance with the directions given by the Apex Court. In the affidavit there is no specific averment as to whether the post of the District Collector is equivalent in all respects with that of the Additional Commissioner (Revenue). The stand taken is vague. What is stated therein is that both the posts are transferable and can be manned by IAS officers. In fact, the written submissions submitted on behalf of the State concedes that until the legislative enactment to the contrary, the deviation from the scheme laid down by the Apex Court is not permissible. Mr.Anturkar has argued that reading of Section 6, 7(2) and 11(2) of the Maharashtra Land Revenue Code will show that the Collector is an incharge of a district while the Additional Commissioner operates at the Divisional level and these posts are not comparable. The relevant sections of the Land Revenue Code are reproduced as under:-

Section 6: Revenue Officers in Division:- The State Government shall appoint a Commissioner, for each division; and may appoint in a division an Additional Commissioner and so many Assistant Commissioners as may be expedient, to assist the Commissioner.

Section 7: Revenue Officers in District:-

- (1)
- (2) The State Government may appoint one or more Additional Collectors and in each district including the City of Bombay and so many Assistant Collectors and Deputy Collectors with such

designations such as “First”, “Second”, “Super”, etc. Assistants as may be expressed in the order of their appointment, one or more Naib-Tahasildars in a taluka, and one or more Additional Tahsildars or Naib-Tahasildars therein and such other persons having such designations to assist the revenue officers as it may deem expedient.

Section 11: Subordination of Officers:-

- (1)
- (2) Unless the State Government directs otherwise, all revenue officers in a division shall be subordinate to the Commissioner and all revenue officers in a district including the City of Bombay shall be subordinate to the Collector.

Thus, considering the arguments advanced by Mr.Anturkar based on the provisions of sections 6, 7(2), 11(2) of the Land Revenue Code, we have to hold that the appointment of the District Collector will not be the same as appointment of the Additional Commissioner (Revenue) for the purpose of the scheme laid down in the case of *Madhuri Patil*.

29. There is no manner of doubt in our mind that the constitution of the special committees as far as the post of chairman is concerned, is not in consonance with the directions given in the case of *Madhuri Patil (II)*. As we have already held above that the directions given in the case of *Madhuri Patil (II)* as regards to the composition of the scrutiny committees has a valid force of law and in fact binds the State of Maharashtra, at whose instance those directions have been issued.

30. This Court in the case of **Rohit Ranjeetsingh Rathod (W.P.No.2527 of 2009)** decided on 20.01.2010 arrived at the conclusion that the composition of the scrutiny committees will have to be in consonance with the directions given in the case of *Madhuri Patil*. That judgment, in turn, relies on the judgment of this Court in the case of **Vijay Kisan Karanjkar reported in 2004(3) Mh.LJ.49**. The view taken in the aforesaid cases is now fortified by the decision of the Apex Court in the case of *Dayaram*.

31. It was argued by Mr.Gangal that the judgment in the case of **Rohit Ranjeetsingh Rathod** has been stayed by the Apex Court in S.L.P.No.6003 of 2010. He therefore argued that this Court should defer hearing of this question when it is pending before the Apex Court. We may note that the judgment of the Division Bench in the case of **Rohit Ranjeetsingh Rathod** and the grant of stay by the Apex Court, were both prior to the decision of the Apex Court in *Dayaram's* case. It appears that the stay is to the direction in that case and not to the judgment of this Court. Further, the directions in *Madhuri Patil* referred to above are still good law. The issue whether the directions in *Madhuri Patil (I)* case will continue to bind the Government till it is suitably replaced by a legislation, is now settled by

Dayaram's case. A priori, the argument of the State in this matter will not preclude us from arriving at the same conclusion as is reached by the Division Bench. This position has been made clear by the Apex Court in the case of **Kishor Kiritlal Mehta reported in 2007 (10) SCC 21**. In paragraph 11 of the said judgment, the Apex Court has observed thus:-

“11 As far as the submission that an interim order of stay, if it were to be granted by this Court, would influence the High Court or lead it into thinking that there is merit in the petitions filed before it by the plaintiff and defendants 11 to 13, the same does not give enough credit to the judicial approach a High Court has to make or to the experience and familiarity of the concerned judge with the procedure. After all, merely because this Court passes an order of stay in the circumstances of a case deviating from what the High Court has done, it cannot be expected that the High Court will suddenly find merit in the matter pending before it and it will be guided by the interim order passed by this Court. We are confident that any High Court or any judge trained in law will have no difficulty in understanding the scope of the order passed by this Court and in understanding that what it or he is called upon to do, is to decide the matter on merits uninfluenced by the fact that an interim order of stay has been granted by this Court or merely by the reasons if any, stated by this Court in an interlocutory order in a matter that has come up before it at an interlocutory stage. We therefore see no merit in the apprehension of learned Senior Counsel for the contesting respondents that a grant of stay by us would send a wrong signal to the High Court. We have no doubt that the High Court will consider the arguments of both sides on merits uninfluenced by anything we have done here and come to its own independent conclusion on merits.

Mr.Gangal also does not dispute this position, but submits that as a matter of propriety, this Court should defer the hearing. We have already pointed out that a large scale deviation from the norms has taken place while

issuing the validity certificates to the persons, perhaps undeserving, in the name of contesting the ensuing elections in the local self Government in Maharashtra. If such persons are not entitled to the benefits meant for backward class, then serious injustice will be caused to the genuine backward class persons resulting in violation of their fundamental rights and such benefit will be enjoyed by fraudulent persons and their family members in perpetuity. We therefore decided to take up these matters on urgent basis to rectify the palpable illegality committed by the State as early as possible, before the persons having received validity certificates claim any equity. We have in our earlier orders time and again noted with regret the attitude of the State Government in not taking a clear stand consistent with the settled legal position and instead protracting the matter. Notably, in some of the petitions filed by the State of Maharashtra are to question the decision of the Scrutiny Committees on the ground that the same has been issued wrongly without the mandatory vigilance cell enquiry. We shall advert to this aspect a little later while dealing with the second question.

32. The next question that would arise for consideration is as to what will be the status of the validity certificates issued by such committees,



which were not established as per law? It will not be a mere irregularity but an issue that goes to the root. The directions given in the case of *Madhuri Patil* were to serve a dual purpose. It was for upholding the fundamental rights of the backward class and in furtherance of the affirmative action enshrined in the constitution. They were issued to check the exploitation of the weaker sections of the society by the people setting up fraudulent claims. Thus these directions are directly relatable to upholding of fundamental rights of the backward class. Any procedure which is devised to ensure that fundamental rights of backward class are not defeated is an integral part of the process of the upholding and preserving of such fundamental rights. The directions were to ensure that only those citizens who are entitled to the benefits of the affirmative action derive the said benefit. These directions were necessary as the benefits of the reservation extended to the members of the backward class were limited, such as reservations in public offices and posts, education etc. If a person fraudulently obtains a validity certificate then he would not only avail the benefit he is not entitled to, but also deprives the genuine member of the backward class. Looking at the nature of these directions, it is mandatory on the State to follow them strictly. The State of Maharashtra without seeking clarification from the Apex Court have diluted the rigors of



the directions given in *Madhuri Patil*. The constitution of the Scrutiny Committee in terms of Government Resolution dated 30.7.2011, to say the least, is not backed by any law. We accordingly hold that the Government Resolution dated 30.07.2011 being in contravention of the directions contained in the judgment of the Apex Court in *Madhuri Patil (II)*, is illegal. Since the constitution of the Committees under the said Government Resolution is per se illegal, they had no authority of law to undertake the exercise of verification of the caste certificates. The validity certificates issued by such Committees, consequently, will have to be declared as void ab initio.

33. The Committees so constituted have proceeded to issue almost 37000 validity certificates. This by no stretch of imagination can be called a 'minor deviation'. This action of the State of Maharashtra is nothing short of defiance of the directions given in the case of *Madhuri Patil* which are binding on it. It is shocking that the State of Maharashtra has ventured to constitute 35 committees without adhering to the norms stipulated by the Apex Court in that regard and without even framing a law or approaching the Apex Court. We are thus constrained to hold in the circumstances that the validity certificates issued by the Scrutiny committees constituted in

terms of Government Resolution dated 30.7.2011, have no force of law and are nullity and non-est in the eyes of law.

Requirement of Vigilance Cell

34. Assuming that the issue in respect of the constitution of the Committees was to be held in favour of the State, the question in respect of the vigilance cell report will still arise, which we propose to consider now. We may first cull out the relevant passages from the *Madhuri Patil (I)* and the Act of 2000 to appreciate this issue better. The relevant directions in *Madhuri Patil* are as under:-

“5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. 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 also should examine the school records, birth registration, if any. 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 proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, daiety, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or

"doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chair-person who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

Rule 12 of the Rules of 2003 reads as under:

“Procedure to be followed by Scrutiny Committee:

(1) On receipt of the application, the Scrutiny Committee or a person authorised by it shall scrutinise the application, verify the information and documents furnished by the applicant, and shall acknowledge the receipt of the application. The Member Secretary shall register the application received for verification, in the register prescribed by the Chairman.

(2) If the Scrutiny Committee is not satisfied with the documentary

evidence produced by the applicant the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry.

(3) The Vigilance Officer shall go to the local place of residence and original place from which the applicant hails and usually resides, or in case of migration, to the town or city or place from which he originally hailed from.

(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.

(7) In case the report of Vigilance Cell is in favour of the applicant, and if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and true, the Scrutiny Committee may issue the validity certificate. The validity certificate shall be issued in Form G.

(8) If the Scrutiny Committee, on the basis of the Vigilance Cell report and other documents available, is not satisfied about the claim of the applicant, the Committee shall issue a show cause notice to the applicant and also serve a copy of the report of the Vigilance Officer by registered post with acknowledgment due. A copy shall also be sent to the Head of the Department concerned, if necessary. The notice shall indicate that the representation or reply, if any, should be made within fifteen days from the date of receipt of the notice and in any case not more than thirty days from the date of receipt of the notice. In case the applicant requests for adjournment or extension of the time-limit, reasonable time, may be granted.

(9) (a) After personal hearing if the Scrutiny Committee is satisfied regarding the genuineness of the claim, Validity Certificate shall be issued in Form G.

(b) After personal hearing, if the Scrutiny Committee is not satisfied about the genuineness of the claim and correctness of the Scheduled Tribe Certificate, it shall pass an order of cancellation and of confiscation of the certificate and communicate the same to the Competent Authority for taking necessary entries in the register and for further necessary action. The Scheduled Tribe Certificate shall then be stamped as “cancelled and confiscated” .”

35. Mr.Deshmukh, Mr.Mendadkar, Mr.Anturkar, Mr.Gavnekar and Mr.Shinde submitted that calling for the report from the Vigilance Cell before issuing of the validity certificates is mandatory. Any such certificate issued without calling for the report from the Vigilance Cell will be void. They have argued that in both the cases; viz.*Madhuri Patil*’s case as well as *Dayaram*’s case, the Apex Court has emphasized that the said requirement is an integral or core of the process of verification of the caste claims. They further argued that even in cases where the candidates relatives may be granted validity certificates, in those cases also as per the settled law since each case has to be decided on its own merits, the Vigilance Cell report will be mandatory. It has also been pointed out that in many cases since Vigilance Cell enquiry was not conducted, candidates have obtained validity certificates based on bogus documents. In some cases it is pointed out that the candidates have annexed documents belonging to other persons and in some cases there are no valid caste certificates. It has been urged



that there are large scale complaints of fraud and misrepresentations which have gone unchecked since no enquiry was held.

36. On the other hand, Mr.Gangal has submitted that calling for the report from the Vigilance Cell in each and every case is not the requirement of law. According to him, Rule 12 of the Rules of 2003 do not warrant such an interpretation. He further submits that such interpretation will not be in public interest as hundreds of cases come for validation before the scrutiny committees every year and it will not be possible to dispose of the claims in a time bound manner if every case is deferred till the receipt of the report from the Vigilance Cell. Mr.Gangal further argued that the scheme laid down in the *Madhuri Patil's* case was only to weed out the bogus claims and to streamline and expedite the procedure for validation of caste certificates. Thus, according to him, if in every case the report of the Vigilance Cell is called for much less even in cases where validity certificate is granted in favour of close blood relative of the applicant, it will be destructive of the scheme laid down by the Apex Court. He also drew our attention to the fact that if such interpretation is to be accepted, then it will have wide ramifications of invalidating thousands of certificates of the candidates who are not before the Court. Mr.Kotwal supported the



arguments of Mr.Gangal and submitted that if Rule 12 is to be interpreted to mean that every case needs to be sent to the Vigilance Cell, then the first part of the rule will become otiose.

37. The analysis of the directions in the judgment of *Madhuri Patil* would show that what was emphasized by the Apex Court was that a person may not lose his basic traits and it is only by a thorough inquiry at the native place of the claimant and by examining the parents that the caste of a person can be conclusively determined. It may not be desirable to depend only on the documents alone before issuing the validity certificates as the candidate may fabricate the documents. The Apex Court, therefore, emphasized that the Vigilance Cell consisting of a police officer who would summon the original records and verify the same and would also interview the concerned persons to find out the anthropological and ethnological traits. Thus the Apex Court emphasized that in the peculiar social situations prevailing in this Country, large scale bogus claims based on the fabricated documents were coming to the light, and it will be necessary to conduct the comprehensive inquiry before granting the validity certificates. If one validity certificate is granted, it is used by the near relatives to stake their claims, leading to a cascading effect. Thus one wrong validity certificate

has potential of inflicting mass scale deprivation of the rights of backward classes. If one wrong validity certificate has such potential to cause damage, it cannot be but emphasized that any validity certificate must be issued with a comprehensive inquiry. Therefore, the argument that calling for the Vigilance Cell report will result in delay, cannot be accepted.

38. In the case of *Dayaram*, The Apex Court has unequivocally made it clear that the Vigilance Cell report is an integral and core of the caste verification process. The Apex Court in Paragraph 22 of the judgment noted as under:-

“Each scrutiny committee has a vigilance cell which acts as an investigating wing of the committee. The core functioning of the scrutiny committee in verification of the caste certificates is the investigation carried on by the vigilance cell.”

39. Thus even if the State Government enacts a procedure to replace the directions contained in *Madhuri Patil*'s case, the procedure cannot dispense with the core requirement of obtaining vigilance cell report. If such a procedure is enacted by the State, it cannot be termed as 'proper' procedure as contemplated by the Act. It is emphasised at the cost of repetition that the directions issued in the *Madhuri Patil*'s case cannot be viewed with

pedantic approach and must be understood and employed in its true sense and spirit. The said directions are issued for the protection of the weaker section in the country and they must be employed strictly. In other words, these directions are the least the State Governments are expected to incorporate while framing a law on the subject. If the States want to employ additional safeguards to protect the rights of the backward class they are permitted to do so but it is doubtful that the State Governments can prescribe a procedure of lower standards of scrutiny than the one laid down in the case of *Madhuri Patil*. This requirement is emphasised in the decision of *Dayaram*.

40. Section 6 of Act of 2000 constitutes scrutiny committees for ‘verification’ of Caste Certificates. The underlined task of the scrutiny committees is to verify the claim of the candidate and for that purpose, the procedure is laid down in the Rule and the judgment of the Apex Court in *Madhuri Patil*, which includes vigilance cell inquiry. Rule 12 (4) mandates the vigilance officer to personally verify and collect all the facts about the social status claimed by the applicant or his parents or guardians. Thus, the true purport of the phrase “verify” or “verification” assumes importance. What is required to be done by the scrutiny committee and the vigilance



cell is to ‘verify’ the caste claim. The scope of these terms have not been defined either in the Act of 2000 or in the Rules of 2003. We may thus need to turn to the dictionary meaning of the said terms. In the Advanced Law Lexicon by P.Ramanatha Aiyar, 3rd Edition, Reprint 2007, the term **“verification”** is defined to mean **“an action of establishing or testing the truth”**. The term **“verify”** has been defined to mean **“to assent or approve to be true; to ascertain, confirm or test the truth or accuracy of”**. The Black’s Law Dictionary, 8th Edition, defines the term **“verify”** to mean **“to be proved to be true; to confirm or establish truth or truthfulness of, to authenticate”**. The term **“verify”** implies an inquisitional enquiry and conscious application of mind. It has to be a deliberate process to arrive at truth of the matter. It does not denote mere examination of the documents or the evidence. To ‘verify’ means not merely to be satisfied with the face value of the evidence so produced, but to satisfy itself about the truthfulness of the claim founded on it. Thus, what the scrutiny committee and the vigilance officer is supposed to do is not merely to ‘examine’ the claim but to ‘verify’ the same. The approach must be to arrive at the truth of the claim. The constitution of the scrutiny committees and the Vigilance Cell to assist the scrutiny committees and the procedure laid down is for the sole purpose of arriving at the truth and



genuineness of the claim. For example, if the school leaving certificate is produced before the committee in support of the claim, mere examination of the school leaving certificate will show the certificate to be in order. But if the certificate is to be verified then the process will involve checking of the original register based on which the certificate was issued. If the school register is merely examined as it is, it may be found to be in order. But if the school register is verified with an object of checking its genuineness, it may reveal that some part of the entry has been written in different ink. The headmaster of the school can be then examined by the vigilance officer, who may give his version about the manipulations. The same logic ought to apply even in cases where the scrutiny committee has already granted validity certificate in favour of the close blood relative of the applicants, with or without obtaining Vigilance Cell report. The above example is given to draw the attention to the difference between the word “**examined**” and “**verified**”, and the deliberate use of the word “**verify**” by the legislation. Each and every claim must be verified in its entirety and that is the legislative mandate as well as the mandate in the case of *Madhuri Patil*.

41. In the case of *Dayaram* (supra), the Apex Court in paragraph Nos.22



and 23 of the judgment has laid down that the procedure of investigation into the claim of a candidate on case to case basis has to be a detailed one as specified in the scheme of *Madhuri Patil*, and if the caste certificates are issued after due and proper inquiry then such caste certificates will not call for verification by the scrutiny committees. What is meant by due and proper inquiry has already been clarified in the case of *Dayaram*, as to mean one which involves the investigation by the vigilance cell. If the State of Maharashtra was to provide due and proper inquiry through the vigilance cell at the time of issuance of “Caste Certificates” itself, then the submission of Mr.Gangal that each and every case need not be examined by the scrutiny committee in detail, may have some force. But, as per the procedure laid down in Section 4 of the Act of 2000, the authority can issue the caste certificate based on the evidence placed before it alone without holding any vigilance cell inquiry. A bare reading of section 4 of the Act of 2000 would show that there is no in-depth inquiry while issuing the caste certificates and the same can be issued on the basis of the documents alone. In such a scenario, if the argument of Mr.Gangal is to be accepted, then a person may get the caste certificate on the basis of some documents alone and if the documents are found in order, the scrutiny committee will issue the validity certificate. In such a procedure there will be no “verification”



of the claim of the candidate, without there being any 'due and proper inquiry'.

42. As noted earlier, the argument of the State is per se contradictory. In one set of Writ Petitions filed by the Tribal Development Department of the State, it is contended that Validity Certificate cannot be issued by the Scrutiny Committee without obtaining the Vigilance Cell report. That is mandatory. Thus it is the case of the State of Maharashtra itself in these writ petitions that calling for the report from the vigilance cell is mandatory. The State has advanced arguments which contradicts its own stand in these petitions.

43. Rule 12 of the Rules of 2003 which deal with the requirement of calling for the vigilance cell report, does not state that it is only in those cases where the scrutiny committee is not satisfied with the documents, it will call for the report from the vigilance cell. Once the Apex Court has laid down that the vigilance cell report is core of the caste verification process, this mandatory requirement cannot be left to the whims and fancies of the members of the scrutiny committees. Rule 12 will have to be interpreted keeping in mind the judgments of the Apex Court in *Madhuri*



Patil's case and *Dayaram's* case. It is emphasised that the Rules of 2003 are only for the scheduled tribes and no other class. There are absolutely no guidelines provided in the Act or rules as to what level of satisfaction that the scrutiny committee must reach after perusing the documents so as to call for the report from the vigilance cell. Further, considering the fact that when the validation certificate is issued, there is no reasoned order that accompanies the said certificate, it is, therefore, imperative to verify the claim on case to case basis.

44. The argument of the State that whenever the validity certificate is issued to the near relative, there is no need to call for the vigilance cell report, cannot be accepted. The scrutiny committee has taken a consistent stand which has been upheld by this Court in several cases (reported and unreported) that each case will have to be decided on its own merits and merely because one relative is granted validity certificate, the certificates to others may not automatically follow.

45. In fact if such argument is upheld, then one validity certificate granted without calling for the vigilance cell report and without due inquiry would be used by the near relatives of such candidate, which will have

disastrous effect. The Apex Court in the case of **Raju Vasave v/s Mahesh Deorao Bhivapurkar and Others, (2008) 9 SCC 54**, in paragraph 27 and 28 held that the validity certificate granted to the near relative can be ignored if in the inquiry (verification) the new material comes on record which demonstrates that the vital evidence was ignored/suppressed in the earlier inquiry. Such validity certificate will not be having any force of law. The Apex Court in paragraph Nos.27 and 28 of the judgment observed as under:-

“27. We do not mean to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another committee while examining the case of other members of the family in some detail. If it is found that in granting a certificate in favour of a member of a family, vital evidences had been ignored, it would be open to the Committee to arrive at a different finding.

28. 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.

If the argument of the State that once the one relative is granted validity certificate there is no need for the vigilance cell inquiry in respect of the

other relatives, will mean that no contra material will ever come on record and the entire series of judgments will be nullified.

46. It is not the question of the power of the State to issue the validity certificate but the duty of the State to issue the validity certificate with due care. The arguments advanced before us by the State today, will result in abdicating its own duty. The State does not have discretion to grant a validity certificate without following proper scrutiny and verification. The State cannot propagate shortcut methods for verification of caste claims. The verification of validity certificates must be undertaken with seriousness and rigors of scrutiny cannot be diluted on the ground of administrative inconvenience.

47. It was also urged by Mr.Gangal on behalf of the State that the Social Justice and Special Assistance Department of State of Maharashtra had issued Circulars dated 20.09.2011, 07.10.2011 and 17.11.2011 by which the State Government had stipulated cut-off date for making applications for verification of the caste certificates. By the circulars mentioned above, the cut-off date for making applications was extended from time to time and finally it was extended till 21.11.2011. By virtue of the said cut-off

date, no applications for verification of caste certificates after specified date were entertained by the authorities. A group of writ petitions came to be filed in this Court challenging the circulars. This Court by order dated 19.01.2012 in writ petition No.547 of 2012 alongwith the connected petitions, struck down the said circulars as arbitrary and illegal. It was urged on behalf of the State by Mr.Gangal that the State had taken adequate measures to reduce the inflow of applications by providing cut-off date and since the cut-off date was struck down by this Court, the authority was flooded with the applications. Since many applications were made till few days before the last date of filing the nomination forms, the authority had to speed up the process to cope up with the workload. It is thus the contention of the State that this aspect of the matter should also be looked into by the Court, while considering the methodology adopted by the Scrutiny Committee. We are not impressed with this submission. It is true that the cut-off date was struck down, but while doing so, this Court consciously did not issue any direction to the authorities to speed up the processing of applications. At any rate, no direction was issued that such applications must be processed before the last date of filing the nomination forms and that there is no need to follow the procedure required to be followed as per law. The Court in fact made it amply clear that the Court

has not given any such direction. Clause (ii) of Paragraph 18 of the order reads as under:

“(ii) However, since the petitioners have approached the court very late and the election process has already commenced, we decline to give any consequential directions, but we do clarify that in case the Collector of the concerned district accepts any such application made under subsection (2) of section 6 of the Caste Verification Act, 2000 it is for the concerned Collector to decide whether, having regard to the paucity of time and the various election duties with which the Collector is entrusted, he would consider such applications at this stage within any time frame. Since the Collector is the Officer entrusted by the Election Commission with various onerous and emergent duties, we would not issue any further directions to the Collectors of the respective districts except that in case a Collector decides to consider any applications which he may receive for any such caste validity certificates from prospective candidates, the Collector shall consider such applications by following the rational norms and not pick and choose any application arbitrarily.”

Further, it is incomprehensible as to how the State can be heard to argue contrary to the statutory framework emanating from the Act of 2000. It mandates that the candidate has to apply for obtaining the validity certificate well in advance. The State cannot evolve a summary procedure to help the candidates who have failed to obtain validity certificates before the cut off date provided by the statutes.

48. The argument that the committees are over burdened and calling for

the vigilance cell reports would prolong the procedure cannot be a ground for adopting a summary method. Section 6 of the Act of 2000 enables the State to set up as many scrutiny committees as required. Thus the State can always counter the additional workload by creating adequate infrastructure. The solution for coping with workload certainly cannot be found in such a shockingly summary manner, as it has happened in the group of matters before us. The situation cannot be countenanced where out of 36,929 validity certificates, 35,505 have been issued without vigilance cell reports. There is absolutely no justification forthcoming from the State except a specious plea that in each and every case the vigilance cell report need not be called for. But in the cases at hand the Scrutiny Committees constituted by the State have considered to grant validity certificates without vigilance cell as a rule and calling for the reports as an exception. The figures are self eloquent as to what can happen if the interpretation of the State of dispensing with for the vigilance cell report is to be accepted or the requirement is held to be directory.

49. The directions given in the case of *Madhuri Patil* came into being because of the large scale fraudulent cases based on manipulated documents coming to the light. The entire objective of the scheme was to

stop the fraud based on documents, by going on the site for physical verification. To accept the contention that if the documents are in order the vigilance cell report need not be called for, would be going back to the position before the judgment in the case of *Madhuri Patil*.

50. The vigilance cell report is the integral and core of the verification process and if a validity certificate is to be issued to a candidate, then the requirement of calling for the vigilance cell report is must. Any deviation from this position will result in contravening the dicta of the Apex Court in the *Madhuri Patil's* case and *Dayaram's* case. According to us, Rule 12 does not dispense with calling for report from the vigilance cell. Rule 12 will have to be read in consonance with the judgments of the Apex Court in *Madhuri Patil's* case and *Dayaram's* case, and it cannot be interpreted in the manner contrary to the aforesaid judgments of the Apex Court. Thus the caste validity certificates which are issued without calling for the vigilance cell report cannot be considered as valid in the eyes of law, and suffer from jurisdictional error which goes to the root.

51. We may also note that the Advocate General during the course of hearing on earlier dates had made a statement that the instructions will be

issued that the certificates issued by the specially constituted committees under the Government Resolution dated 30.7.2011 will be restricted only for the purpose of election. But, later on, affidavit has been filed on behalf of the State contending that the use of the validity certificates issued by the specially constituted committees cannot be restricted in this manner. It is intriguing to note that the State has not only resiled from the statement of the Advocate General but is encouraging the use of such certificates for all other purposes.

52. The Apex Court while dealing with the cases of individual claims has time and again emphasized that the wrongful grant of the caste validity certificate is a fraud on the Constitution. If that be so, the action of the State of Maharashtra in constituting the committees in contravention of the mandate of the Apex Court, issuing 33,505 validity certificates without verification, refusing to take remedial measures and attempting to protract the litigation, can be no greater fraud on the Constitution.

53. We are alive to the possible consequences of our directions but in such a fact situation when the fraud on the Constitution of this magnitude is committed and allowed to be perpetuated by the State itself, the Court

cannot remain a mute spectator. The Court cannot allow any person to profit from such a fraud on the Constitution. We are therefore constrained to hold that the validity certificates granted by the specially constituted committees under the Government Resolution dated 30.07.2011 have no force of law on the basis of the conclusion reached by us on both the points framed above.

54. We clarify that all persons who had applied for issuance of validity certificates to the specially constituted Scrutiny Committees under Government Resolution dated 30.7.2011 will be free to make fresh applications for issuance of validity certificates which will be verified in accordance with law afresh.

55. In the result we direct as under:

(i) The Government Resolution dated 30.07.2011 is quashed and set aside.

(ii) It is declared that the composition of the scrutiny committees constituted by the State of Maharashtra by the Government

Resolution dated 30.07.2011 is not backed by law and is contrary to the judgment of the Apex Court in the case of **Madhuri Patil V/s. Additional Commissioner, Tribal Development reported in 1997 (5) SCC 437** and the validity certificates issued by such committees will have no force of law and are void ab initio.

(iii) It is declared that the validity certificates issued by the Scrutiny Committees without calling for the report from vigilance cell, being a mandatory requirement of law, cannot be considered as valid in the eyes of law and suffer from jurisdictional error which goes to the root.

(iv) We direct the State Government to ensure that all the original certificates issued by the specially constituted Scrutiny Committees under the Government Resolution dated 30.7.2011, are recovered from the respective persons and are destroyed forthwith. This shall be done within three months from today.

56. These writ petitions are disposed of accordingly.

57. At this stage, request is made on behalf of State Government to stay the operation of this judgment and order for a period of ten weeks from today. Accordingly, operation of the directions contained in paragraph No. 55 are stayed for a period of ten weeks from today.

(N.M.JAMDAR, J.)

(A.M.KHANWILKAR, J.)