



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2687/2021

Vidya s/o Bhanudas Ingle,
Aged about 45 years,
Occupation Service,
R/o Santoba Nivas,
Near Sanskrutik Bhavan,
Mahsul Colony, Jalgaon Jamod,
Tehsil- Jalgaon Jamod,
District Buldhana.

....PETITIONER

...VERSUS...

1. The Vice-Chairman/
Member-Secretary
Scheduled Tribe Caste Certificate
Scrutiny Committee,
Chaprashipura, Amravati.
2. The Chief Executive Officer,
Zilla Parishad, Buldhana.

...RESPONDENTS

WITH

WRIT PETITION NO.4997/2021

Ravindra S/o Bhanudas Ingle
Aged about 50 yrs, Occ. Nil,
R/o Ganesh Nagar, Dabki Road,
Akola, Distt. Akola

....PETITIONER

...VERSUS...

The Vice-Chairman/
Member-Secretary
Scheduled Tribe Caste Certificate
Scrutiny Committee,
Chaprashipura, Amravati.

...RESPONDENT

Ms Preeti Rane, Advocate for petitioners
Mrs. Shamsi Haider, AGP for respondent/State
Mrs. Vaishali Khadekar, Advocate for respondent No.2 in WP No. 2687/2021

**CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ..**

DATE OF RESERVING THE JUDGMENT: 27/09/2024
DATE OF PRONOUNCING THE JUDGMENT: 15/10/2024

JUDGMENT (PER SMT. M.S. JAWALKAR, J.)

Rule.

2. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

3. Writ Petition No. 2687/2021 is filed by Vidya Bhanudas Ingle whilst Writ Petition No. 4997/2021 is filed by Ravindra Bhanudas Ingle. Both the petitioners are real brother and sister.

Since Writ Petition No. 2687/2021 is taken as lead petition, the facts and contentions of the said Writ Petition are referred herein below for deciding the issue involved in both the Writ Petitions.

4. The present petition raises question to the order passed by the Scrutiny Committee invalidating the claim of the petitioners belong to 'Thakur' Scheduled Tribe. Petitioners submit that they belong to 'Thakur' Schedule Tribe which is enlisted at Serial No.44 of the Scheduled Tribe (Constitutional Order) 1950. It is submitted that Tribe certificate dated 18/07/1990, was issued to the petitioner by the competent authority. The petitioner came to be selected on merits as 'Assistant Teacher' by the respondent employer and to that effect appointment order dated 29/07/1997 came to be issued to the petitioner. Therefore, the employer forwarded his proposal to the Scrutiny Committee along with necessary documents. The Scrutiny Committee forwarded the claim to the Vigilance Cell for inquiry, the report was completely

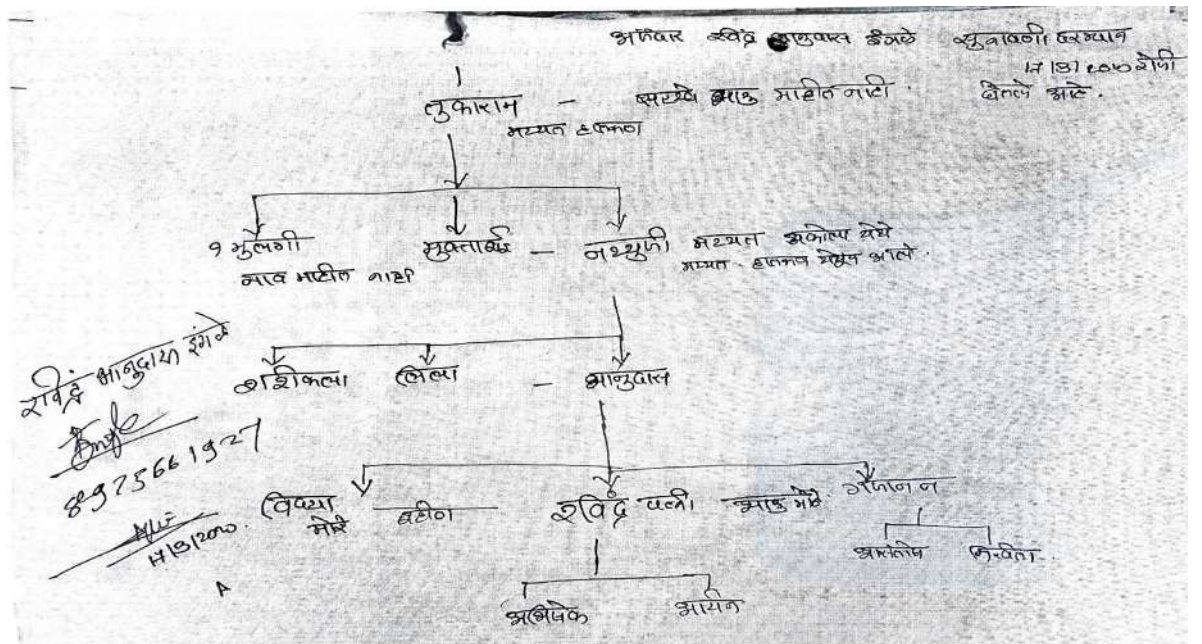
favorable to the petitioner. The Vigilance officer of the Committee conducted second inquiry in case of petitioner in the year 2019 and accordingly the said vigilance report favors the case of the petitioner. On affinity part, the finding of the research officer is negative. The Scrutiny Committee vide order dated 01/07/2021, (posted on 02/07/2021), and received by the petitioner on 05/07/2021. The tribe claim of the petitioner came to be invalidated on the grounds viz. the documentary evidence, affinity and area restriction. Hence, the present petition. This is the forth round of litigation.

5. The petitioner has filed the following documents before the Scrutiny Committee :-

Name	Relation	Document	Date of Document	Caste
Bhanudas Natthu Ingle	Petitioner's father	School Leaving Certificate Std. (IV)	DOB mentioned as 01.07.1945	Thakur
Bhanudas Natthu Ingle	Petitioner's father	School Leaving Certificate Std. (V)	DOB mentioned as 01.07.1945	Thakur
Bhanudas Natthu Ingle	Petitioner's father	Extract of Land Record	22/03/1948	Thakur

Bhanudas Natthu Ingle	Petitioner's father	Extract of Revenue Record	1950	Thakur
Narayan Raghu	Petitioner's uncle	School Leaving Certificate	DOB mentioned 12.10.1913 and admission in school dated 15/06/1921	Thakur
Yamuna Raghu D/o	Petitioner's paternal aunt	School Leaving Certificate	1926, 1934, 1941	Thakur
Son of Natthu Tukaram	petitioner's grandfather	Birth certificate	1944	Thakur
Ku. Suman Narayan Ingle	Petitioner's cousin sister	School Leaving Certificate	1947	Thakur

6. The genealogy tree is as under:



7. Learned Counsel for the petitioner contended that the Vigilance Cell so also the Committee deliberately arrived at an adverse finding and failed to give any substantial reasons for rejecting the entries of 'Thakur' and moreover not even making a whisper of the same in its proper perspective in the impugned order. Therefore, the impugned order passed by the Committee is liable to be quashed and set aside being illegal, bad in law and unreasonable.

8. Needless to mention here that after her appointment as Assistant Teacher, the proposal for verification was forwarded in the year 2005 along with all relevant documents and caste certificate dated 18/07/1990. The Vigilance Officer had initially conducted Vigilance Enquiry in respect of petitioner's caste claim way back in the year 2007, that report was not served to the petitioner which was completely in favour of petitioner. Even finding of Research Officer was in consonance with the petitioner's claim. The same was dated 28/12/2007 (Annexure 11).

The Vigilance Officer again conducted second enquiry in the year 2019, which was in favour of the petitioner, however, so far as the document's part is concerned, on affinity part it was negative. The said Vigilance Report is dated 03/04/2019 (Annexure 12). The said Vigilance Report was duly replied by the petitioner. The Scrutiny Committee invalidated caste claim of the petitioner on the ground of documentary evidence, affinity and area restrictions. In the said decision for the first time the Scrutiny Committee had concluded that the tribe certificate of the petitioner is not authentic. It is the contention of the petitioner that the Scrutiny Committee failed to appreciate that the genealogy placed by the applicant is not at all contrary to the genealogy produced by other relatives before the Scrutiny Committee. Doubting the relationship of the petitioner with Vikas, Narayan, Prakash is erroneous as Prakash also relied on similar documents placed by the petitioner. It is contended that the Scrutiny Committee have not given due weightage to the old documents of the pre

independence period. The finding of the Scrutiny Committee that the entries as shown is 'Thakur' and not 'Thakur' Scheduled Tribe is misconceived and illegal. The only entry in the Constitution Scheduled Tribe Order is 'Thakur'. It is settled law that entry of a tribe in the list of Scheduled Tribe has to be read as it is and no authorities including any Court, can add or subtract anything from such entry. Even the Scrutiny Committee have not followed the guidelines while applying affinity test.

9. Learned Counsel for petitioner relied on following citations:

- 1) *Anand Vs. Committee for Scrutiny and Verification and Tribe Claims and others* 2011(6) Mh.L.J. 919,
- 2) *Chairman and Managing Director, FCI and others Vs. Jagdish Balaram Bahira and others*, AIR 2017 Supreme Court 3271,
- 3) *Mah. Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others*, reported in 2023 SCC

OnLine SC 326,

10. Learned Assistant Government Pleader for the respondent supported the order passed by the Scrutiny Committee and submitted that the caste certificate which was placed on record by the petitioner as informed by the Tahasil Office that it was not issued by the said office. In view thereof, it is concluded by the Scrutiny Committee that the said certificate was not authentic one and accordingly passed an appropriate order which needs no interference, accordingly, prayed for the dismissal of the present petition.

11. Learned Assistant Government Pleader relied on following citation :

***1) Bhubaneswar Development Authority Vs.
Madhumita Das & others***

12. Heard both the parties at length. Perused record and

proceedings of the Caste Scrutiny Committee. During the hearing, this Court found it necessary to call the record from Tahsil Office as one of the reason for rejection is that the caste certificate itself is doubtful, since it does not bear MRC number. Thus, on 10/07/2024, to remove the confusion, it was directed to produce both the relevant original registers and also to explain about MRC No. 81, which has been referred in the letter of Tahsildar dated 02/08/2008. In the meantime, both the petitioners have obtained and produced the caste certificate in Form -C, issued by the SDO Balapur. The Committee was directed to submit the report in respect of caste certificate in Form-C, produced by the petitioners. This Court observed in order dated 20/09/2024, that the report dated 06/08/2024, submitted by the Committee is not in consonance with the order dated 22/07/2024, which directed the Committee to verify the certificate and submit a report about it, as the report does not speak about consideration about the documents relating to the tribe claim of the petitioner and the

opinion of the Committee regarding the genuineness of the certificate. Report is merely based upon the rejection of the tribe claim of Gajanan Bhanudas Ingle, when all that was required to be considered by the Committee was to give an opinion regarding the genuineness of the claim of the petitioner based upon the certificates now presented to it and the documents filed by the petitioner in support of such claim. Therefore, this Court has not accepted the report as it was not in consonance with the direction and deemed it appropriate for the petition to be decided on merit. Considering the documents and Vigilance Report, there is no doubt that there are as many as eight pre independence entries showing tribe of the forefathers of the petitioner as 'Thakur'. There is no adverse entry found by the Vigilance Cell also. As such, there is documentary evidence on record to establish that the forefathers of the petitioner were belonging to 'Thakur' Community.

13. So far as objection regarding the certificate placed on

record by the petitioner is concerned, the Caste Scrutiny Committee concluded that it is bogus as it does not bear MRC number. The letter issued by the authority is relied on by the Caste Scrutiny Committee. It is the contention of the Caste Scrutiny Committee that the certificate even does not bear name of the issuing authority and therefore, it was treated as not genuine and is a fraudulent certificate.

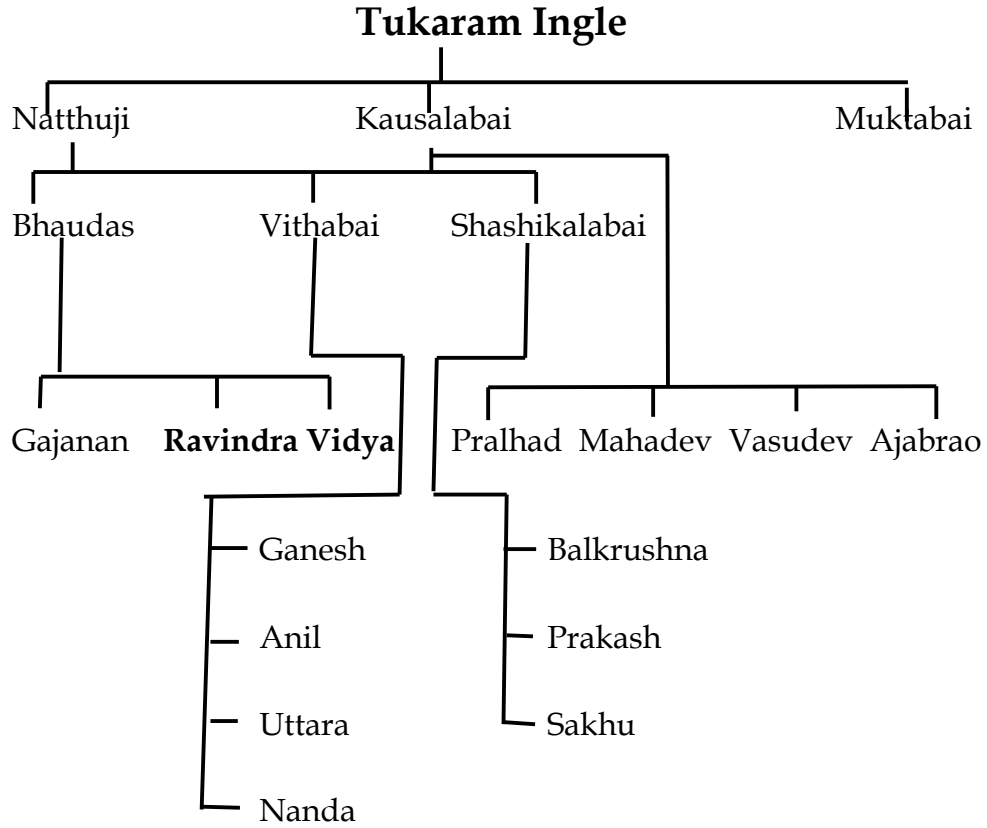
14. Learned Counsel for petitioner placed on record one order passed by the Caste Scrutiny Committee itself, where there was some technical deficiencies in the certificate issued in favour of Shri Subhash Mitharam Baiskar, as belonging to Scheduled Tribe which was declared as technically illegal and the said certificate was confiscated and cancelled, however, liberty was granted to that applicant that he can produce the certificate in prescribed form as per Act and Rules and to resubmit his claim. Now question here is that though petitioner pointed out that the

then Tahsildar Shri Vinayak Trimbakrao Pandharikar, who issued the certificate made an endorsement on the certificate that it is issued by him when he was holding the office of Tahsildar, and, mistakenly MRC number remained to be entered into. Similarly, affidavit of that Tahsildar is also placed on record of the Caste Scrutiny Committee. Though, this exercise is of no help to the petitioner but Scrutiny Committee ought to have confiscated the certificate in question and ought to have granted liberty to place on record the certificate in proper format. The question here is not that whether certificate is in compliance with the Act and Rules governing the same. There is no doubt, the Caste Scrutiny Committee ought to have proceeded on to decide the tribe claim on the basis of documents placed on record or affinity test. The order which was relied on by the petitioner in respect of Subhash Baiskar, which is passed by the Scheduled Tribe Certificate Verification Committee, Amravati, on 21/08/2016, as such, same course ought to have been adopted by the respondent Committee.

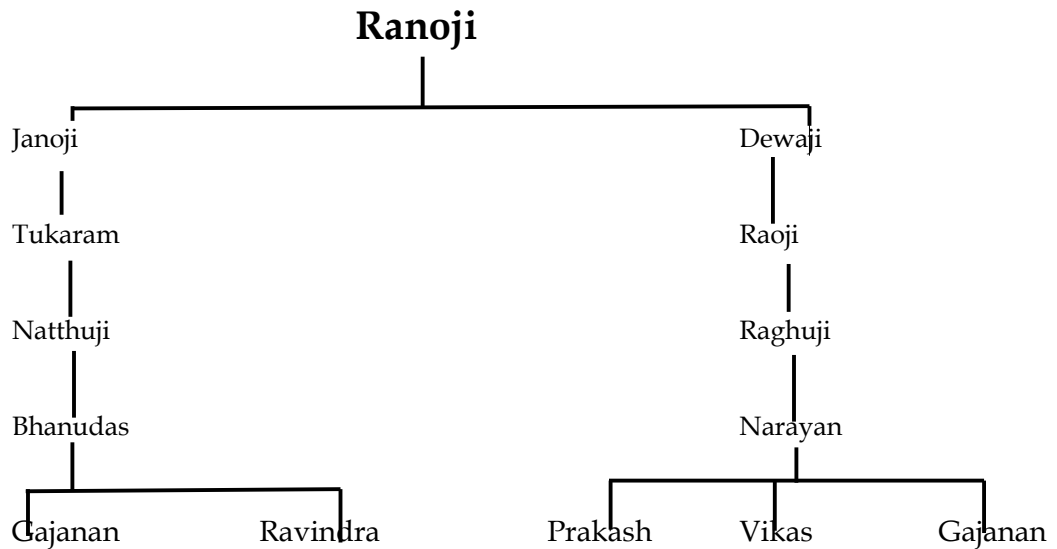
Instead of that the Committee went on to decide the claim on merit, in view of the fresh certificate in Form-C, obtained by the petitioner, this Court directed the Scrutiny Committee to verify its genuineness and submit the report. However, it appears that the report submitted is not in consonance with the direction. The Vigilance Report clearly states that the certificates which were sent to the Scrutiny Committee to verify its genuineness were issued by SDO, Balapur. The Caste Scrutiny Committee again informed in the report that the tribe claim of real brother Shri Gajanan Bhanudas Ingle, was also invalidated by the Committee on 31/07/2013, on the basis of bogus caste certificate and this order is not seemed to be challenged. If order in Gajanan Ingle's matter passed the by Scrutiny Committee dated 31/07/2013, is perused, it was not decided on the documentary evidence, but as certificate is concluded by the Committee as not genuine and suspicious, the same was rejected. As per report given by the Vigilance after direction of this Court to verify genuineness of the document is in

favour of petitioner. Now question remains only to consider the decision of the Caste Scrutiny Committee while invalidating the caste claim on the basis of documentary and other evidence. The enquiry in respect of documents is duly conducted by the Caste Scrutiny Committee and even if a fresh certificate in the proper format issued by the Competent Authority is produced, the decision of the Committee in respect of the documents and affinity will remain the same. As such, we have decided the matter on merits.

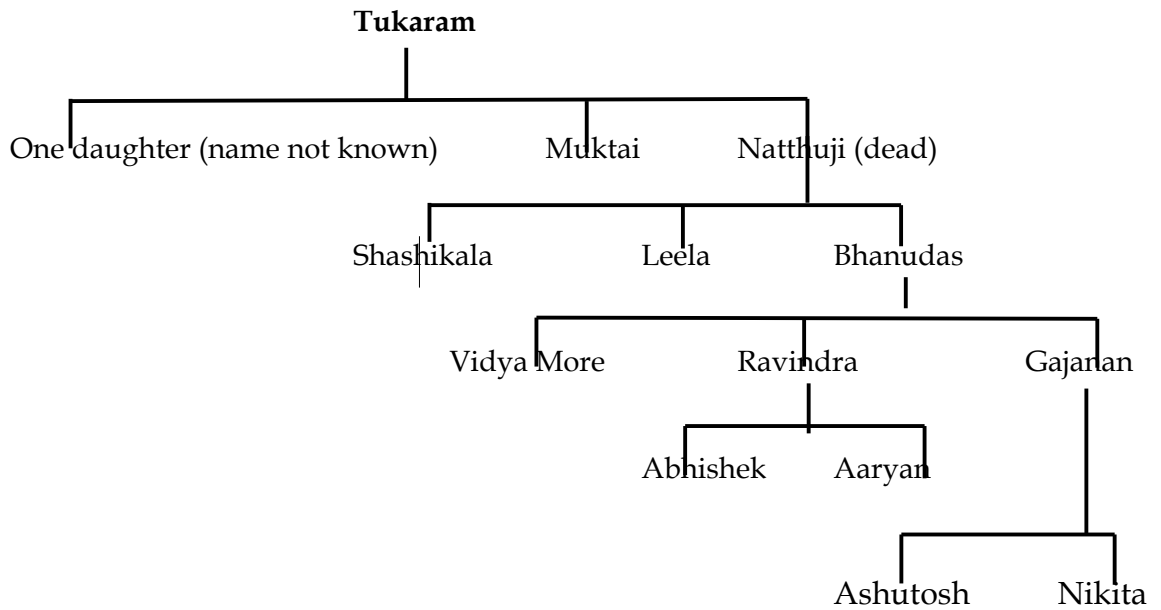
15. The Scrutiny Committee discarded the genuine documents including school leaving certificate, school admission register extract, birth record, on the ground that the petitioner and her real brother submitted different genealogy by including different name related to her forefathers which create doubt. The genealogy given by applicant's father during the vigilance enquiry, in case of applicant Ravindra dated 31/05/2003 is produced as under:



16. The genealogy given by the applicant's brother Ravindra dated 08/03/2003, is as under:



17. The genealogy given by the applicant during Vigilance Enquiry in her case on 12/12/2017, is as under:



18. If this genealogy given by parents of Ravindra and Vidya as well as given by Vidya and Ravindra are perused, it appears that the parents stated the genealogy upto Tukaram that is great grandfather only, whereas, Ravindra gave genealogy upto great great grandfather. However, in the said genealogy also from Tukaram, the name which are appearing, are also appearing in the

genealogy given by the parents. Even genealogy given by applicant's brother Ravindra during hearing in his case on 17/03/2020, if seen, the entries up to Tukaram are existing in the genealogy given by the parents. Thus, if any relative give genealogy upto his grandfather and not up to the great grandfather, that cannot be a reason to discard the whole claim, specifically when, these eight documents including two, collected by the Vigilance Cell are duly verified and they are pre independence documents and found to be genuine by the Vigilance Cell. It is surprising that though Natthu Tukaram Thakur, is appearing in the genealogy showing child born to Natthu on 06/11/1944, is discarded on the ground that he is resident of Akkalkot and therefore not related to the applicant's family, the Committee itself observed that the ordinary place of residence is Akola. The petitioner relied on notification dated 31/08/2016, wherein, Akkalkot is included in Municipal Corporation of Akola. In fact, when the area restriction is removed

by the Amendment Act of 1976, the finding recorded on the basis of such reasons is erroneous.

19. As such, in our considered opinion, the Caste Scrutiny Committee has recorded perverse and erroneous finding to discard the claim of the petitioner. So far as Gajanan Bhanudas Ingle's claim is concerned, the same was rejected only on the ground that the certificate is not in compliance with the Act and Rules, and therefore, it is treated as unauthenticated. However, his claim was not decided on merits nor any documents were considered in his claim except the cast certificate issued by Competent Authority. Even if, this judgment is not challenged by Gajanan, that will not come in any way in deciding claim of the petitioner as it was not decided on merits. The Caste Scrutiny Committee considered many irrelevant material for no reason, whereas, the Caste Scrutiny Committee ought to have verified the claim of the petitioner independently on the basis of the whole

documents placed on record by the petitioner. There are as many as three Vigilance Report on record of 28/12/2007, 03/04/2019, 11/09/2020 and 23/09/2020. In all the Vigilance Report the genuineness of the documents have been duly verified and they appear to be genuine. As such, only on the basis of some erroneous reasons, the claim of the petitioner cannot be rejected. Even if, caste certificate which was issued does not bear MRC number, there is no reason to consider it as fraudulent, so long as, there are sufficient material, documentary evidence on record to substantiate that the petitioner belongs to 'Thakur' Scheduled Tribe. In view of the fresh certificates duly verified by the Vigilance Cell, in our considered opinion, only aspect remained to be tested is that whether Cast Scrutiny Committee rightly appreciated the documents and evidence placed on record.

20. Learned Assistant Government Pleader relied on *Bhubaneswar Development Authority Vs. Madhumita* (supra),

however, the facts are distinguishable from the facts involved in the present matter, wherein, respondent joined services against a post reserved for women belonging to Scheduled Caste on the basis of caste certificate issued by Tahsildar. The appellant requested the Sub Collector to enquire into the veracity of the caste certificate on the ground that the high school certificate and provisional marksheet of the first respondent at the 12th standard examination revealed that she was 'Brahmin'. The Tahsildar issued a notice to show cause to the first respondent, in her response the first respondent stated that she was born into 'Brahmin' family, however, she claimed to have attain the status of a Scheduled Caste upon her marriage to a person belonging to a Scheduled Caste. In view of that matter, the Hon'ble Apex Court upheld the cancellation of certificate and order of conducting a disciplinary enquiry. In the present matter, though Scrutiny Committee raised doubt over the genuineness of the certificate, however, proceeded to pass order on merit by appreciating the

evidence on record. In our considered opinion, the evidence and documents placed on record including pre-independence document, there is no doubt that the petitioner and her forefathers belong to 'Thakur' Scheduled Tribe. As such, even if, there is some deficiency or error in the certificate issued, the same will never preclude the petitioner to obtain fresh certificate as per Act and Rules.

21. Learned Counsel for the petitioner relied on *Chairman and Managing Director of FCI and others* (supra), in support of her contention that even if, there is any mistake or error in the certificate that does not preclude her from obtaining certificate as per provisions of law and to establish her claim that she belongs to 'Thakur' Scheduled Tribe category. Therefore, even though the certificate is cancelled, she ought to have been granted opportunity to furnish fresh certificate on the basis of documentary evidence, which was duly supplied by her and duly

established, therefore, there is no fraudulent intention to secure job on the basis of false certificate or false tribe claim.

22. So far as the affinity is concerned, petitioner relied on *Anand V. Committee for Scrutiny and Verification of Tribe Claims*, (2012) 1 SCC 113, wherein it is held as under:

“22.

(i)

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

customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

23. Learned Counsel for petitioner also placed reliance on *Mah. Adiwasi Thakur Jamat Swarakshan Samiti (supra)*, wherein the Hon'ble Apex Court held that:

*"(b) for the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and
(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case."*

24. In view of this position, we are inclined to allow the petition. As such, the second petition of real brother of petitioner No. 1 is also required to be allowed as claim is established on the basis of same documents supplied in

evidence. Accordingly, we proceed to pass following order:

ORDER

(i) Writ Petition No.2687/2021 and Writ Petition No.4997/2021 are allowed.

(ii) The impugned communication in Writ Petition No.2687/2021 dated 01/07/2021 in case No. DD/TCSC/Amt/VBI/194/05-06, issued by respondent No.1, the Scheduled Tribe Certificate Scrutiny Committee, Amravati, is hereby quashed and set aside and the impugned communication dated 16/10/2020, in Case No.5-ST/2009/13798, issued by respondent the Scheduled Tribe Certificate Scrutiny Committee, Amravati, is also quashed and set aside.

(iii) The respondent-Scrutiny Committee is directed to issue tribe certificate of 'Thakur' Scheduled Tribe to

both the petitioners within a period of four weeks from the receipt of the copy of this judgment.

25. Both the Writ Petitions are disposed of as above.

No Costs.

JUDGE

JUDGE

Jayashree....