



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6498 OF 2019

WITH

INTERIM APPLICATION NO.9318 OF 2025

Avinash s/o.Bharat Ahire

Age – 29 years, Occ. Service,

R/o. Type-2, B-1158, a/P Ojhar Township,

Tq. Niphad, Dist. Nashik

...Petitioner

Versus

1. The State Of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32.
Through its Secretary
 2. The Scheduled Tribe Certificate Scrutiny
Committee, Nashik Division, Nashik
Through its Member Secretary.
 3. The Special Sales Tax Commissioner,
Maharashtra State,
3rd Floor, H-Wing, Sales Tax Bhawan,
Mazgaon, Mumbai – 400010.
 4. The Deputy Sales Tax Commissioner (Estt)-4
Maharashtra State,
3rd Floor, 323, H-Wing , Sales Tax Bhawan,
Mazgaon, Mumbai-400010.
- ...Respondents

AND

WRIT PETITION NO. 6499 OF 2019

Tushar s/o.Bharat Ahire

Age – 36 years, Occ. Service,

R/o. Type-2, B-1158, a/P Ojhar Township,

Tq. Niphad, Dist. Nashik

...Petitioner

Versus

1. The State Of Maharashtra

Department of Tribal Development,
Mantralaya, Mumbai – 32.
Through its Secretary

2. The Scheduled Tribe Certificate Scrutiny
Committee, Nashik Division, Nashik
Through its Member Secretary.
3. The Chief Manager (P & A)
Hindustan Aeronautics Limited,
Aircraft Division, Nashik
Ojhar Township P.O.422207,
Tq.Niphad, Dist. Nashik ...Respondents

Mr. Sahil Chaudhari i/b. MR. Sushant C. Yeramwar, for Petitioners in both WPs.
Mrs. Savita A. Prabhune, AGP for Respondent -State.

**CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.**

**RESERVED ON: 03 FEBRUARY 2026
PRONOUNCED ON: 20 FEBRUARY 2026**

Judgment (Per:- Aarti Sathe, J.)

1. These two Petitions are filed under Article 226 of the Constitution of India challenging the decision dated 4th May 2019 (hereinafter referred to as the “*impugned order*”) of the Caste Scrutiny Committee, rendered in respect of the Petitioner and his brother, Tushar Bharat Ahire. Since both Petitions arise out of the common impugned order and involve identical issues, they are being disposed of by this common judgment.

2. By the impugned order passed by the Scrutiny Committee, the Tribe claims of the Petitioners as belonging to “Thakur – Scheduled Tribe” have been invalidated by the Caste Scrutiny Committee. This is stated to be affecting the

appointment of Petitioner Avinash Bharat Ahire as Sales Tax Inspector which was taken on a reserved post on the basis of the said Tribe claim. The prayers made in both the Petitions are also common. For convenience, the reliefs as prayed for in the first Writ Petition No. 6498 of 2019, (Avinash S/o. Bharat Ahire Vs. The State of Maharashtra & Ors.) are reproduced hereinbelow:

(A) To grant rule and allow this petition;

(B) To quash and set aside the impugned decision and order of the Committee dated 4.5.2019 (Exhibit-S) invalidating Tribe Claim of the Petitioner and declare that Petitioner belongs to Thakur - Scheduled Tribe' by issuing appropriate writ, orders, or directions as the case may be;

(C) To direct the Respondents No. 3 & 4 not to take any coercive action against the Petitioner on the basis of impugned decision of the Committee dated 4.5.2019 invalidating his Tribe Claim (Exhibit-S) and allow him to work on the post of Sales Tax Inspector pending final adjudication of the present Writ Petition; by issuing appropriate writ, orders, or directions as the case may be;

(D) To grant stay to the impugned decision and order of the Committee dated 4.5.2019 invalidating Tribe Claim of the Petitioner (Exhibit-S) and direct the Respondents No. 3 & 4 not to take any coercive action against the Petitioner on the basis of impugned decision of the Committee invalidating his Tribe Claim and allow the Petitioner to work as Sales Tax Inspector pending hearing and final disposal of the present Writ Petition;

(E) To grant ad-interim relief in terms of prayer clause;

(F) To grant any other relief to which the Petitioner is entitled for;

3. Briefly, the facts are as follows:

i) The Sub-Divisional Officer (SDO), Malegaon, issued a Caste Certificate in favour of the Petitioner on the basis of documentary evidence submitted by him, certifying that he belongs to "Thakur" Scheduled Tribe (ST).

ii) On 10th November 2005, the Petitioner submitted his Tribe Claim for verification before Respondent No. 2, i.e., the Caste Scrutiny Committee, Nashik,

through the college authorities. In support of his Tribe Claim, the Petitioner produced the following documents:

- a) School record of the Petitioner's grandfather, Supdu Vitthal Ahire, dated 1st August 1917, wherein his caste is recorded as "Thakur". Copies of the school admission extract and the school leaving certificate of the Petitioner's grandfather were submitted.
- b) School leaving certificate of the Petitioner, wherein his caste is recorded as "Thakur" since his admission in primary school.
- c) School record of the Petitioner's real brother, Tushar Bharat Ahire, wherein his caste is recorded as "Thakur".
- d) Caste Validity Certificate dated 27th June 2005 issued in favour of Dnyaneshwar Bharat Ahire, the real brother of the Petitioner.
- e) School record of the Petitioner's father, Bharat Supdu Ahire, certifying his caste as "Thakur" from the time of his admission in the first standard on 26th June 1963.
- f) Caste Validity Certificate dated 3rd September 1999 issued by the Nashik Scrutiny Committee in favour of the Petitioner's cousin brother, Rajendra Nanaji Ahire, along with his affidavit disclosing genealogy (family tree) to establish his relationship with the Petitioner.
- g) Affidavit of the Petitioner disclosing his genealogy (family tree).

4. On 23rd April 2010, the Scrutiny Committee at Nashik conducted a Vigilance Inquiry, pursuant to which the Vigilance Officer submitted his report of even date to the Committee. The Vigilance Officer visited the Petitioner's school

and personally verified the school records of the Petitioner, his real brothers, his father, his paternal cousin uncle, and his real grandfather. Upon verification, it was observed that the caste of all the aforesaid relatives of the Petitioner was recorded as “Thakur”.

5. The Vigilance Officer also recorded the statement of the Petitioner’s father with regard to the traits and characteristics of the “Thakur” ST community. Further, the Vigilance Officer noted that the Petitioner’s real brother, Dnyaneshwar Bharat Ahire, and cousin brother, Rajendra Nanaji Ahire, had been issued Caste Validity Certificates by the competent Scrutiny Committees, and that their relationship with the Petitioner was duly established by affidavits disclosing their genealogy. Despite such material on record, the Research Officer, without considering the documentary evidence, the information furnished by the Petitioner’s father regarding the traits and characteristics of the Thakur community, and without taking into account the Caste Validity Certificates issued in favour of the Petitioner’s real brother and cousin brother, recorded remarks to the effect that the Petitioner was not a resident of an area specified for tribals prior to the year 1976.

6. It is the Petitioner’s case that further, the Scrutiny Committee, i.e., Respondent No. 2, without considering the documentary evidence available on record dating back to the year 1917 and the Caste Validity Certificates issued in favour of the Petitioner’s real brother and cousin brother, invalidated the Tribe Claim of the Petitioner by an order dated 29th January 2011 on the grounds of Affinity Test and area restriction.

7. Being aggrieved by the aforesaid decision of the Scrutiny Committee

dated 29th January 2011, the Petitioner preferred Writ Petition No. 3987 of 2011 before this Court.

8. This Court, by its order dated 28th February 2014 passed in Avinash Bharat Ahire vs. State of Maharashtra and ors. Writ Petition No. 3987 of 2011, quashed and set aside the impugned decision of the Committee dated 29th January 2011 considering the decision of this Court in *Madhuri Nitin Jadhav vs. State of Maharashtra & Others*, Writ Petition No. 7343 of 2013, against which the Supreme Court in *State of Maharashtra & Ors. vs. Madhuri Nitin Jadhav*, Special Leave Petition (C) No. 25000 of 2014, dismissed the Special Leave Petition. This Court had directed the Scheduled Tribe Certificate Scrutiny Committee, Nashik, to decide the Tribe Claim of the Petitioner afresh. The operative part of the said order reads as under:

ORDER

- a) *Impugned order of Scrutiny Committee dated 29 January 2011 is quashed and set aside.*
- b) *The matter is remanded back to the Scrutiny Committee, for reconsideration.*
- c) *The Scrutiny Committee to re-consider every aspect, by giving an opportunity to all the parties.*
- d) *Liberty is granted to the Petitioner/parties to apply before the Scrutiny Committee for filing additional evidence, oral as well as, documentary material.*
- e) *The Petitioner/parties to appear before the concerned Scrutiny Committee, on 18 March 2014. Thereafter, the Committee to fix the date and schedule of hearing accordingly with an endeavour to dispose of the matter as early as possible and preferably within four months from the date of receipt of Judgment/Order.*
- f) *In case, Scrutiny Committee passes an adverse order against the Petitioner/Claimant, the same should not be given effect to and/or acted upon for four weeks thereafter from the date of communication of the order.*
- g) *Rule made absolute in the above terms.*
- h) *All the parties to cooperate.*

i) There shall be no order as to costs.

j) The interim protection, if any, granted by this Court in Writ Petition/Civil Application to continue until the decision and four weeks thereafter. No question of claiming any equities.

k) The parties to act upon the authenticated copy of this Judgment/order.

9. Insofar as the Petitioner is concerned, on 14th August 2015, the Petitioner was appointed as a Sales Tax Inspector against a post reserved for the Scheduled Tribe category by an order issued by Respondent No. 3, subject to the condition that the Petitioner would submit his Caste Validity Certificate within a period of six months from the date of his appointment. Thereafter, on 20th August 2015, the Petitioner submitted an undertaking to Respondent No. 3 stating that in the event his certificate was found to be false, his appointment as Sales Tax Inspector may be cancelled.

10. Between September 2016 and April 2018, letters dated 27th September 2016 and 3rd April 2018 were issued to the Petitioner calling upon him to submit his Caste Validity Certificate within six months from the date of his appointment order.

11. As the Petitioner failed to submit his Caste Validity Certificate within the prescribed time, a Show Cause Notice was issued to him directing him to submit the said Certificate within fifteen days from the date of the Show Cause Notice.

12. In the aforesaid circumstances in the year 2018, the Petitioner filed Writ Petition (St.) No. 28264 of 2018 before this Court seeking a direction to the Scrutiny Committee to expeditiously decide the Tribe Claim of the Petitioner. By an order dated 9th October 2018, this Court allowed Writ Petition (St.) No. 28264

of 2018 and directed the Scrutiny Committee to decide the Tribe Claim of the Petitioner on or before 28th February 2019. By the said order, this Court further directed that no coercive steps be taken by the employer against the Petitioner until the decision on his Tribe Claim.

13. Pursuant thereto, on 23rd October 2018, the Petitioner appeared before the Scrutiny Committee and submitted a detailed representation in support of his Tribe Claim. During the period between 2018 and 2019, the Petitioner made several representations to the Scrutiny Committee as the Committee was not taking an expeditious decision on his Tribe Claim.

14. On 25th February 2019, the Petitioner submitted a further representation along with additional documentary evidence, which included a Caste Validity Certificate issued in favour of his cousin brother, Jitendra Nanaji Ahire, an affidavit disclosing genealogy to establish his relationship with the Petitioner; and a 7/12 extract pertaining to tribal land belonging to the Petitioner's father, indicating restrictions on transfer in accordance with Sections 36 and 36A of the Maharashtra Land Revenue Code, 1966.

15. On 27th March 2019, in pursuance of the Vigilance Inquiry conducted in the year 2014, on which the Research Officer had recorded his remarks dated 4th August 2015, the Vigilance Report of the year 2014 was served upon the Petitioner. The Petitioner submitted his reply to the said Vigilance Report on 1st April 2019.

16. In the year 2019, as the Tribe Claim of the Petitioner was still not decided by the Scrutiny Committee despite the earlier directions of this Court, the

Petitioner filed Contempt Petition (St.) No. 7690 of 2019 in Writ Petition (St.) No. 28264 of 2018.

17. By an order dated 25th April 2019, this Court disposed of Contempt Petition (St.) No. 7690 of 2019 on the basis of the statement made by the learned Assistant Government Pleader on behalf of the Scrutiny Committee to the effect that the Scrutiny Committee would decide the Tribe Claim of the Petitioner within a period of ten days.

18. By the impugned order dated 4th May 2019, Respondent No. 2 – Scrutiny Committee invalidated the Tribe Claim of the Petitioner on the grounds of failure of the Affinity Test and area restriction, as held in the said impugned order.

19. Being aggrieved by the impugned order dated 4th May 2019, the Petitioner has preferred the present Writ Petition seeking quashing and setting aside of the said order. By an order dated 24th May 2019, this Court granted ad-interim relief in terms of prayer clause (d) of the Petition which reads thus:-

(d) To grant stay to the impugned decision and order of the Committee dated 4.5.2019 invalidating Tribe Claim of the Petitioner (Exhibit-S) and direct the Respondents No. 3 & 4 not to take any coercive action against the Petitioner on the basis of impugned decision of the Committee invalidating his Tribe Claim and allow the Petitioner to work as Sales Tax Inspector pending hearing and final disposal of the present Writ Petition;

Thereafter, by an order dated 4th February 2020, this Court admitted the present Petition.

20. Subsequent to the filing of the present Petition, the Petitioner's cousin, namely Alishan Shivaji Ahire, also filed Writ Petition No. 870 of 2021 before this

Court challenging the order invalidating her Tribe Claim. This Court by its order dated 24th January 2024, passed on the said Writ Petition set aside the order of invalidation in the case of Alishan Shivaji Ahire, and remanded the matter back to the Scrutiny Committee for fresh consideration. On 15th July 2024, in remand proceedings, the Scrutiny Committee issued a Caste Validity Certificate in favour of the Petitioner's cousin, Alishan Shivaji Ahire. Thereafter, on 30th August 2024, the Scrutiny Committee also issued a Caste Validity Certificate in favour of Vidya Nanaji Ahire.

21. On 2nd May 2025, the Petitioner submitted an application to his employer seeking the benefit of permanency and inclusion of his name in the seniority list for promotion upon completion of ten years of service. In response to the said application, by a communication dated 8th May 2025, the employer directed the Petitioner to submit his Caste Validity Certificate in order to avail of the aforesaid benefits.

22. Aggrieved by the communication dated 8th May 2025, the Petitioner filed Interim Application No. 9318 of 2025 on 16th June 2025, inter alia, seeking quashing of the letter dated 8th May 2025 and a direction to the Petitioner's employer to grant the aforesaid benefits. The said Interim Application is pending adjudication and is listed alongwith this Petition.

23. It is in the backdrop of the aforesaid facts that the issue which falls for consideration before this Court is whether the Scrutiny Committee, by the impugned order dated 4th May 2019, erred in invalidating the Tribe Claim of the Petitioner as belonging to the "Thakur" ST community.

24. We have heard learned counsel, Mr. Sahil Chaudhari, on behalf of the Petitioner, and learned Assistant Government Pleader, Ms. Prabhune, on behalf of the Respondent-State. With their assistance, we have also perused the record and the impugned order in question.

ANALYSIS & FINDINGS

25. At the outset, we may observe that the Petitioner, in order to substantiate his caste validity claim had submitted the following documents which established that the Petitioner belong to the Thakur (ST) Community:-

- i) School leaving certificate of the Petitioner,
- ii) School leaving certificate of Petitioner's grandfather Supdu Vitthal Ahire,
- iii) School record of the Petitioner's real brother, Tushar Bharat Ahire, showing that he belongs to the Thakur Community.
- iv) Caste Validity Certificate dated 27th June 2005 issued in favour of Dnyaneshwar Bharat Ahire, the real brother of the Petitioner certifying that he belongs to the Thakur (ST) Community.
- v) School record of the Petitioner's father, Bharat Supdu Ahire showing that he belongs to the Thakur Community.
- vi) Caste Validity Certificate dated 3rd September 1999 issued by the Nashik Scrutiny Committee in favour of the Petitioner's cousin brother, Rajendra Nanaji Ahire, certifying that he belongs to the Thakur (ST) Community, along with his affidavit disclosing genealogy (family tree) to establish his relationship with the Petitioner.

- vii) Certificate of validity dated 15th May 2000 of Jitendra Nanaji Ahire, cousin brother of the Petitioner certifying that he belongs to the Thakur (ST) Community.
- viii) School records of Dadaji Supdu Ahire, paternal uncle of the Petitioner showing that he belongs to the Thakur Community showing that he belongs to the Thakur Community.
- ix) School records of Nanaji Supdu Ahire, paternal uncle of the Petitioner showing that he belongs to the Thakur Community.
- x) School records of Shivaji Supdu Ahire, paternal uncle of the Petitioner showing that he belongs to the Thakur Community.
- xi) School records of Ramesh Supdu Ahire, paternal uncle of the Petitioner showing that he belongs to the Thakur Community.
- xii) 7/12 extract of the tribal land belonging to Bharat Supdu Ahire, the father of the Petitioner.
- xiii) Affidavit of the Petitioner disclosing his genealogy (family tree).

However, the impugned order without considering the aforesaid documents , only on the basis of certain rituals and traditions followed by the Thakur Community invalidated the Petitioner's tribe claim, thereby bypassing the established principles of law while deciding caste claims.

26. The impugned order has also wrongly held that, because instances exist where the surname "Thakur" is associated with higher castes, the Petitioner has not conclusively established that he belongs to the ST community. In doing so,

the Committee has completely overlooked the documents supporting the Petitioner's claim.

27. Further, the impugned order has erroneously concluded that the Petitioner has not been able to establish cultural authenticity in respect of his claim of belonging to the Thakur ST community. In our opinion, such a conclusion could not reasonably have been reached by the Scrutiny Committee, particularly in light of the documentary evidence referred to in paragraphs 3 and 25 of this order, which clearly establishes that the Petitioner belongs to the Thakur ST community.

28. As fairly not disputed (as it could not be) by the learned AGP Ms. Savita Prabhune, the impugned order also failed to take into consideration a crucial piece of evidence i.e. the school record of the Petitioner's grandfather, dating back to 1917. This pre-independence record establishes that the Petitioner's grandfather belonged to the Thakur ST community. By ignoring this documentary evidence, the impugned order is vitiated by non-appreciation of facts and law. It is a settled principle of law in *Madhuri Patil V.s. Commissioner, Tribal Development*¹ that documents of the pre-constitutional period showing the caste of the applicant and their ancestors have significant probative value. The impugned order further does not record any finding of fraud or misrepresentation in respect of the validity certificates issued in favour of the Petitioner's cousins and real brother. The impugned order by simply ignoring the validity of the documents and merely by relying on the affinity test has erred in invalidating the tribe claim of the Petitioner.

29. In this view of the matter and on perusal of the impugned order, we

1 (1994) 6 SCC 241

are of the opinion that the Scrutiny Committee was not correct and lawful in invalidating the Tribe Claim of the Petitioner and has failed to appreciate the substantial documentary evidence submitted in support of the Petitioner's claim. We are further of the view that the impugned order has erroneously concluded that the Petitioner has failed to prove that he belongs to the Thakur ST community. The Committee misdirected itself in holding that the mere submission of documents in support of the claim cannot justify the Petitioner's entitlement.

30 Our aforesaid observations are also supported by the decision of the Supreme Court in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti v. State of Maharashtra and Others*², wherein it has been held that the affinity test is not conclusive either way and does not constitute a litmus test for deciding a caste or tribe claim. The Supreme Court has further held that the affinity test is not an essential component in the process of determining the correctness of a caste or tribe claim in every case. The Supreme Court has also categorically held that the caste scrutiny committee should not, in every case, mechanically refer the matter to the Vigilance Cell for continuation of the inquiry, including the affinity test. Such reference ought to be made only if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant. The relevant paragraphs of the Supreme Court judgment are reproduced below:

22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil's case or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must

2 (2023) 16 Supreme Court Cases 415

ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of Kumari Madhuri Patil, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by [Section 9\(d\)](#) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.

23. In a given case, the Scrutiny Committee may be satisfied that the caste validity certificate relied upon by the applicant has been issued after making a lawful enquiry. But if the Scrutiny Committee is of the view that the applicant has not clearly established that the person to whom caste validity certificate produced on record has been granted is his blood relative, in terms of subrule (2) of Rule 12 of the ST Rules, the Caste Scrutiny Committee will have to refer the case for conducting an enquiry through Vigilance Cell. In such a case, the Vigilance Cell can be directed by the Scrutiny Committee to conduct an enquiry limited to the relationship claimed by the applicant with the person in whose favour the caste validity certificate has been issued. If, on the basis of the report of the Vigilance Cell, the Scrutiny Committee is satisfied that the person in whose favour caste validity certificate has been issued is a blood relative of the applicant and lawful enquiry has been conducted before issuing the validity certificate, the Scrutiny Committee will have to issue validity certificate even if the applicant does not satisfy the affinity test. For example, if it is established that the father or grandfather of the applicant has been given a caste validity certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee cannot hold that the grandfather or father of the applicant, as the case may be, belongs to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established, the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.

24. As provided in subrule (7) of Rule 12 of the ST Rules, the Vigilance Cell's report is not conclusive. If on the basis of the report of the Vigilance Cell and other evidence on record, the Scrutiny Committee comes to a conclusion that the caste claim is genuine, a caste validity certificate can be issued. Only on the ground that the report of vigilance cell is in favour of the applicant, validity certificate cannot be mechanically granted without application of mind. If the report of the Vigilance Cell is against the applicant, his caste claim cannot be rejected only on the basis of the report of the Vigilance Cell without providing a copy of the report to the applicant and without giving him an opportunity of being heard on the report. After giving an opportunity to the applicant to make submissions on the report, the Scrutiny Committee may reject the caste claim. In a given case, the Scrutiny Committee can also record a finding that the caste claim is genuine. It all depends on the facts of each case. AFFINITY TEST

25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of Kumari Madhuri Patil¹ it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant.

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27. Before we go into the decisions in the cases of Vijakumar³ and Anand⁴, we need to deal with an argument made by one of the interveners that the Scrutiny Committee is not a quasijudicial authority. The said submission is based on a decision of coordinate Bench of this Court in the case of Dayaram. In paragraph 35, the decision in the case of Dayaram holds thus:

“35. The Scrutiny Committee is not an adjudicating authority like a court or tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative

authorities, the orders of the Scrutiny Committee are also open to challenge in proceedings under Article 226 of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this Court wanted to eradicate. As this Court found that a large number of seats or posts reserved for the Scheduled Castes and Scheduled Tribes were being taken away by bogus candidates claiming to belong to Scheduled Castes and Scheduled Tribes, this Court directed the constitution of such Scrutiny Committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding SCs/STs status. This entire scheme in Madhuri Patil [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259] will only continue till the legislature concerned makes an appropriate legislation in regard to verification of claims for caste status as SC/ST and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.”

(emphasis added)

31. Further, a co-ordinate Bench of this Court, of which one of us (G.S. Kulkarni, J.) was a member in the case of ***Krishna Balaji Kolewad v. State of Maharashtra and Others***³ and referring to the decision of this Court in *Apoorva Vinay Nichale v. Divisional Caste Scrutiny Committee No. 1 and Others*⁴, set aside the order of the Scrutiny Committee whereby the caste certificate of the Petitioner therein was invalidated on specious grounds. This Court, in the said decision, held that where validity certificates had been issued in favour of the relatives of the Petitioner and the same were not shown to have been obtained by fraud, the Petitioner’s claim could not be invalidated. The relevant paragraphs of the decision in ***Krishna Balaji Kolewad v. State of Maharashtra and Others*** (supra) are reproduced below:

5. Having heard the learned counsel for the parties and having perused the impugned order, we are of the opinion that Scrutiny Committee has misdirected itself while passing the impugned order.

3(WP No.10303/2017)

4 2010 (6) Mh.L.J. 401

There was no material on record to discard the entire material as placed on record by the petitioner including the material on the basis of which two validity certificates were granted to the said relatives. The documents in that regard have remained undisputed. Further the fact that the Petitioner's cousin uncle as also the Petitioner's real sister has been granted caste validity certificate was material and could not have also been overlooked when there was no finding of any fraud, misrepresentation in issuing the said validity certificate. It is also not the case that these validity certificates were issued by the Committee having no jurisdiction. Thus, only on a stray ground that the original school register had become old in respect of one document pertaining to the Petitioner's father as noted above, the Scrutiny Committee could not have discarded the other undisputed material which was placed on record.

6. In these facts and circumstances, in our opinion, the present case is clearly covered by the law laid down by the Division Bench of this Court in the case of Apoorva Vinay Nichale v/s Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010(6) Mh.L.J. 401 wherein the Division Bench has in paragraphs 7 and 9 observed thus :

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.

9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of Petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the

change of caste has been one illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent cast claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the Petitioner.”

7. Thus in our considered view, the reason assigned by the Scrutiny Committee for rejection of the Petitioner's claim for validation of his caste certificate belonging to “Mannervarlu (S.T.)” cannot be sustained as it runs contrary to the view taken by the Division Bench of this Court in the case of Apoorva Nichale (supra).

32. Further this Court in another decision of *Sneha Digambar Mochewad Vs. The State of Maharashtra & Ors.*⁵ held as follows:-.

5. Learned counsel for the petitioner submits that the Committee has

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*committed error in discarding the vital documents i.e. four validity certificates issued in respect to the petitioner's father, three uncles as also committed error in ignoring the pre- constitution documents in respect of her grandfather. In support of his contention, the petitioner has relied on judgment of this Court in the case of **Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and Others** 2010 (6) Maharashtra Law Journal, 401, as also in the law laid down by the Supreme Court in the case of **Raju R. Vasave vs. M.D. Bhivapurkar** (2008) 9 SCC, 54.*

6. *From the aforesaid judgments, it is clear that in the absence of any fraud, misrepresentation, order being without jurisdiction or there is ignorance of any vital documents while granting previous validity certificate, the validity certificate of near relatives of the claimant cannot be discarded.*

7. *Learned counsel for the petitioner has pointed out that the reliance of the Committee on the two documents about the petitioner's third cousin namely Laxman Vitthal Koli is of no consequence as though his name is shown in genealogy, but he belongs to a different branch of the family and in respect of the petitioner had not submitted any vigilance certificate. Learned counsel for the petitioner placed reliance on Form "F" read with Rule 11(2)(a) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of), Certificate Rules, 2003 to contend that the genealogical tree is to be submitted for showing the relations with the relatives, whose validity certificates are enclosed to the application and mentioned therein.*

8. *On the other hand, learned AGP has supported the impugned order passed by the Committee.*

9. *We have perused the Vigilance Report dated 26 August 2017 produced before us by the learned AGP. On a close scrutiny of the same, it is clear that the only two documents have been referred by the Vigilance Cell, which are relating to third cousin of the petitioner, namely Laxman Vitthal Koli and Vyankat Vitthalvao Koli. These documents are of the year 1977 and 1966 of Zilla Parishad School, Talegaon. These documents are not pre- constitution documents, whereas the petitioner, in support of her claim had submitted not only three pre-constitution documents but also four validity certificates in respect of her close relatives including father. It is also clear from the report of the Vigilance Cell that Vigilance Cell has not disputed the documents produced by the petitioner but has referred in respect of two documents in which the entry of 'Koli' is recorded. In the circumstances, in our view on the basis of some stray entries in respect to the distant branch of the petitioner, the vital documents,*

which the petitioner had produced for validation of her claim cannot be brushed aside and overlooked.

10. In the circumstances, in our considered view, the findings recorded by the Scrutiny Committee are contrary to the law laid down by the Division Bench of this Court as also Supreme Court in the case of Apoorva d/o Vinay Nichale and Raju R.Vasave vs. M.D. Bhivapurkar (supra).

33. Thus, in our considered view, the reasons assigned by the Scrutiny Committee in the impugned order for invalidating the Petitioner's tribe claim—namely, that the Petitioner belongs to 'Thakur' ST community cannot be sustained, as it runs contrary to the consistent view taken by the Division Bench of this Court in *Apoorva Nichale (supra)*, *Krishna Balaji Kolewad (supra)*, and *Sneha d/o Digambar Machewad (supra)*. In this view of the matter, we deem it appropriate to pass the following order, which will meet the ends of justice.

34. It is agreed between the parties that the second Writ Petition also can be disposed of in terms of the aforesaid observations and the orders:

ORDER

- a) Both the Writ Petitions are allowed by the impugned order(s) being set aside.
- b) Respondent No. 2 – Scrutiny Committee is directed to issue a Caste Validity Certificate to the Petitioner(s) forthwith upon receipt of an authenticated copy of this order.
- c) As a consequence to the aforesaid relief, Petitioner Shri Avinash Bharat Ahire is entitled to continue as a Sales Tax Inspector in the employment as a candidate appointed on the reserved post belonging to Thakur – Scheduled Tribe upon submission of the Validity Certificate issued by the Scrutiny Committee.

d) Both the Petitions are allowed in the aforesaid terms. No order as to costs.

e) The Interim Application also stands disposed of in the aforesaid terms.

Rule made absolute in both the Petitions in terms of the above.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)