

Mah.Adiwasi Thakur Jamat Swarakshan ... vs The State Of Maharashtra on 24 March, 2023

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Bench: Abhay S. Oka, Sanjay Kishan Kaul

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2502 OF 2022

MAH. ADIWASI THAKUR JAMAT
SWARAKSHAN SAMITI

...APPELLANT(S)

v.

THE STATE OF MAHARASHTRA & ORS.
WITH

...RESPONDENT(S)

CIVIL APPEAL NO. 2772 OF 2022
CIVIL APPEAL NOS. 2536-2537 OF 2022
CIVIL APPEAL NO. 2533 OF 2022
CIVIL APPEAL NO. 2532 OF 2022
CIVIL APPEAL NO. 2534 OF 2022
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CIVIL APPEAL NO. 2540 OF 2022
CIVIL APPEAL NO. 2539 OF 2022
CIVIL APPEAL NO. 2503 OF 2022

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CIVIL APPEAL NO. 2514 OF 2022
CIVIL APPEAL NO. 2519 OF 2022
CIVIL APPEAL NO. 2524 OF 2022
CIVIL APPEAL NO. 2510 OF 2022
CIVIL APPEAL NO. 2506 OF 2022
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CIVIL APPEAL NO. 2513 OF 2022
CIVIL APPEAL NO. 9335 OF 2013
AND
CIVIL APPEAL NO. 2515 OF 2022

J U D G M E N T

ABHAY S. OKA, J.

PRELUDE

1. Pursuant to Article 342 of the Constitution of India, a list of Scheduled Tribes was notified by the Constitution (Scheduled Tribes) Order, 1950 (for short ‘the ST Order’). By an Act of Parliament of 1976, the ST Order was amended. Part IX of the Third Schedule to the 1976 Act contains a list of notified Scheduled Tribes for the State of Maharashtra. At Entry no.44 in the Maharashtra List, the following castes have been notified as Scheduled Tribes: □“Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar”.

2. Various issues concerning the procedure to be followed for the determination of caste claims arose in a large number of cases. In the case of Kumari Madhuri Patil and Another v. Addl.Commissioner, Tribal Development & Others¹, this Court noted that it was necessary to streamline the procedure for issuance of social status certificates, their scrutiny and their approval. The need to lay down procedural guidelines was felt as several cases were noticed where candidates on the basis of false social status certificates obtained admissions to educational institutions which necessarily had the effect of depriving admissions to genuine candidates belonging to Scheduled Castes or Scheduled Tribes. There was no law in force at that time laying down the procedure for 1 (1994) 6 SCC 241 the verification of caste status. Therefore, very exhaustive guidelines were laid

down in paragraph 13 of the said decision. The relevant part of Paragraph 13 of the said decision reads thus:

“13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

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 Directorate concerned.
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 department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, 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 of 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 overall 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 should also 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 pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned 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 educational institution concerned 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/Additional Secretary as Chairperson 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-à-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.

10.

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.” (emphasis added)

3. The aforesaid guidelines were formulated obviously in the exercise of jurisdiction under Article 142 of the Constitution as this Court found that there was no legislation operating in the field. So far as the State of Maharashtra is concerned, with effect from 18 th October 2001, 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 (for short ‘the 2000 Act’) was brought into force. The 2000 Act contains a very elaborate mechanism for regulating the issue and verification of caste certificates to persons belonging to various categories of backward classes. A two-level mechanism was provided. The first level is of the Competent Authority issuing a caste certificate which is valid only subject to verification and grant of validity certificate by the Scrutiny Committee constituted under the 2000 Act. Power is vested in the Scrutiny Committee constituted under Section 6 to verify the correctness of the caste certificates issued by the Competent Authority. Section 9 confers powers on the Competent Authority and the Scrutiny Committee of a civil court of summoning and enforcing the attendance of witnesses, requiring the discovery and inspection of documents, receiving evidence on affidavits, requisitioning any public record or a copy thereof from any Court or office and issuing Commissions for the examination of witnesses or production of documents. Rule-making power under the 2000 Act was exercised by framing the Maharashtra Scheduled Tribes (Regulation of Issuance and verification of) Certificate Rules, 2003 (for short “the ST Rules”). Similarly, the Maharashtra Scheduled Castes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short ‘the SC Rules’) were framed. Elaborate provisions for the constitution of the Scrutiny Committee as well as the procedure to be followed by the Competent Authority, and the Scrutiny Committee have been laid down by the Rules applicable to both categories. Rule 10 and Rule 12 of the ST Rules provide for the constitution of Vigilance Cells to assist the Scrutiny Committees for Scheduled Castes and Scheduled Tribes respectively for conducting an enquiry. The Vigilance Cell established under ST Rules consists of a Senior Deputy Superintendent of Police, Police Inspectors, Police Constables to assist the Police Inspector and a Research Officer. The SC Rules specifically provide for the Vigilance Cell to conduct affinity test. There is some controversy about whether the vigilance cell constituted under the ST Rules has a power to conduct affinity test. We are dealing with the said issue. The Vigilance Cell is required to enquire about anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, method of disposal of dead bodies etc. by the castes or tribes or tribal communities concerned. As a part of

the affinity test, a candidate who has obtained a caste certificate from Competent Authority is tested to ascertain whether he has knowledge about the aforesaid factors pertaining to the particular caste/tribe.

CONTROVERSY

4. By the order dated 24th March 2022, the present group of cases was referred to a larger Bench. The challenge in the lead case (Civil Appeal No. 2502 of 2022) is to a decision of a Full Bench of the Bombay High Court in the case of Shilpa Vishnu Thakur v. State of Maharashtra². The Full Bench of the Bombay High Court has interpreted the provisions of the 2000 Act as well as ST Rules. The impugned judgment discusses and lays down various procedural aspects to be followed by the Scrutiny Committee. The Full Bench of the Bombay High Court has held that the affinity test is an integral part of the determination of the correctness of the caste claim. In the order dated 24th March 2022, a Bench of this Court noted that there was a conflict of views expressed in two decisions of coordinate Benches of this Court. The first case is of Vijakumar v. State of Maharashtra & Ors.³ and the second case is of Anand v. Committee for Scrutiny and Verification of Tribe Claims & Ors.⁴. In paragraph 9 of the decision in the case of 2 2009 (3) Mh.LJ (F.B) 995 3 (2010) 14 SCC 489 4 (2012) 1 SCC 113 Vijakumar³, this Court held that if a candidate fails the affinity test at any stage, a caste validity certificate cannot be granted to him. In the case of Anand⁴, it was held that the affinity test is not the only criteria for deciding a caste claim based on a caste certificate issued by a Competent Authority. It was held that it can be used to corroborate the documentary evidence. The question to be decided is whether paramount importance should be given to the affinity test while adjudicating upon a caste claim on the basis of a caste certificate issued by a Competent Authority. In other words, the question is whether the affinity test is a litmus test for deciding a caste claim.

CONTENTIONS OF THE PARTIES

5. Main submissions have been made on behalf of the appellants in Civil Appeal No. 2502 of 2022 by Shri Shekhar Naphade, learned senior counsel. He has taken us through the 2000 Act and ST Rules. Relying upon the decision in the case of Kumari Madhuri Patil¹, he urged that the documents which pertain to the pre-Constitution period have the greatest probative value. He submits that if such documents in support of caste claim are presented before the Scrutiny Committee, and if the same are found to be relevant and genuine, there is no occasion for the Scrutiny Committee to order an enquiry through Vigilance Cell. Similarly, if blood relatives of the person applying for verification before the Caste Scrutiny Committee have been granted caste validity certificates, no further enquiry by the Scrutiny Committee is called for. In both cases, it is the duty of the Caste Scrutiny Committee to validate the caste certificate. He invited our attention to Rule 12 of the ST Rules which lays down the procedure to be followed by the Scrutiny Committee. He pointed out that sub-rule (2) provides that only if Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it can order enquiry through Vigilance Cell. He pointed out that the question of the conduct of the affinity test arises only after the case is forwarded to the Vigilance Cell after the Scrutiny Committee comes to the conclusion that the documents produced by the applicant are not sufficient to prove the caste claim. He submitted that the Scrutiny Committee could not mechanically refer a case to the Vigilance Cell without recording satisfaction that the documents

produced by the applicant were not sufficient to validate the caste claim.

6. He relied upon a decision of the Bombay High Court in the case of Apoorva d/o Vinay Nichale v. Divisional Committee 5. He submitted that if an applicant successfully establishes his caste claim on the basis of documents relating to the pre-Constitution period or documents having probative value or a caste validity certificate granted to his blood relative, it is not necessary to apply the affinity test. In short, his submission is that the affinity test is not a litmus test. He submitted that the view taken by this Court in the case of Anand⁴ is based on the interpretation of the 2000 Act and the ST Rules. He pointed out that Vijakumar's³ case has been decided by this Court before the ST Rules came into force. He would urge that there are no reasons recorded in the decision to suggest that the affinity test in every case is mandatory. The learned counsel pressed into service a decision of this Court in the case of District Collector, Satara & Anr. v. Mangesh Nivrutti Kashid 6. 5 2010 (6) Mh.LJ page 401 6 (2019) 10 SCC 166 He pointed out that this Court clearly stated that Vigilance Cell's assistance is not required to be taken in every case but only when the Scrutiny Committee is not satisfied with the documents produced by the applicant. He also pointed out that an applicant who is a member of a Scheduled Tribe and who has been staying in an urban area may not be conversant with the traits, characteristics, ceremonies, and deities of the tribe. Learned senior counsel also relied upon a decision of the Bombay High Court in Writ Petition No.4198 of 2005 dated 1 st August 2018, which holds that in view of the decision of this Court in the case of Anand⁴, the impugned judgment in the case of Shilpa Vishnu Thakur² stands impliedly overruled. He would, therefore, submit that the impugned judgment calls for modification and it must be held that the affinity test is not of paramount importance while deciding a caste claim in accordance with the 2000 Act and the ST rules.

7. Smt. V. Mohna, learned senior counsel appearing in a connected case heavily relied upon a decision of this Court in the case of Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. v. State of Kerala⁷. She submitted that the State Government or Scrutiny Committee cannot hold any enquiry to determine whether or not some particular community falls within the ST order. She submitted that the State Government cannot make an effort to indirectly modify the Third Schedule under the ST Order as the modification can be carried out only in accordance with Article 341 of the Constitution. Her submission is that in a given case if the documents having probative value show that the applicant belongs to the Thakur caste or belongs to any other caste notified in the Third Schedule to the 1976 Act, there is no question of holding any affinity test.

8. Shri Shyam Divan, the learned senior counsel appearing for the State of Maharashtra pointed out that it is judicially recognised that the surname Thakur is shared by both forward and backward class communities. He placed reliance on the decision in the case of State of Maharashtra & Ors. v. Ravi Prakash Babulalsing Parmar & Anr.⁸ He pointed out that even in the impugned judgment, this 7 (1994) 1 SCC 359 8 (2007) 1 SCC 80 factual aspect has been elaborately dealt with. He pointed out that under the provisions of the 2000 Act, an inquiry is required to be made at three stages. The first is an inquiry by a Competent Authority for ascertaining the genuineness of the claim of the applicant on the basis of documents produced by him. If prima facie, the Competent Authority is satisfied with the documents, it has to issue a caste certificate which is subject to verification. The second stage is of domestic and school enquiry to be conducted by Vigilance Cell which will include an affinity test

and the third stage is of verification and scrutiny by the Scrutiny Committee which is a quasi-judicial authority.

9. In the written submissions filed by him, he has contended that even if validity certificates have been issued by the Scrutiny Committee in case of near relatives of the applicant, the Scrutiny Committee has to apply an affinity test as an integral part of the process of assessing the entire evidence again to ensure that illegality is not perpetuated. He submitted that there are cases where a validity certificate is issued to a near relative by mistake or fraud or without holding an enquiry as contemplated by law or without recording any reasons. A submission is made that the Scrutiny Committee can also go into the question whether the earlier validity certificate has been issued based on an erroneous order of the High Court. The submission canvassed is what is held in paragraph 22.1 in the decision in Anand's case⁴ is erroneous.

10. It is submitted on behalf of the State Government that in a given case, the applicant may not be fully conversant with the traits, religious ceremonies of the tribe or deities etc. Therefore, the Vigilance Cell is required to examine even the parents of the applicant. The State Government urged that in the case of Scheduled Tribe Thakur, a different test will apply as persons with this surname belong even to forward classes. Therefore, in the case of the tribe claim of Thakur, pre-Constitution documents containing the candidate's surname as Thakur are of no consequence. Therefore, in the case of the tribe claim of Thakur, an affinity test has to be applied. The submission of the State is that the view taken in the case of Vijakumar³ is correct and necessary clarifications will have to be issued regarding findings rendered in the case of Anand⁴ in paragraph 22.

11. Shri Ravi K. Deshpande, the learned senior counsel appearing in one of the connected matters urged that the Scrutiny Committee constituted under the 2000 Act is not a quasi-judicial authority. He submitted that in the case of Dayaram v. Sudhir Batham & Ors.⁹, this Court held that Scrutiny Committee is not a quasi-judicial authority but it is an administrative authority. He also urged that the decision in the case of Dayaram⁹ has been followed by this Court in the case of J. Chitra v. District Collector & Chairman, State Level Vigilance Committee, Tamil Nadu & Ors.¹⁰ He submitted that the finding of the High Court that the affinity test is an integral part of an enquiry by the Scrutiny Committee has no legal basis at all. His submission is that Anand's case⁴ has been correctly decided and to that extent, the impugned judgment in the case of Shilpa Vishnu Thakur² will have to be modified. One of the interveners also relied upon the provisions of the SC Rules and 9 (2012) 1 SCC 333 10 (2021) 9 SCC 811 submitted that though the same specifically empower the Vigilance Cell to conduct affinity tests, such a provision is absent in the ST Rules.

OUR VIEW

12. We have already made a reference in detail to the directions issued by this Court in the case of Kumari Madhuri Patil¹. A co-ordinate Bench in the case of Dayaram⁹, in paragraph 35 of its decision, held that the directions issued by this Court in paragraph 13 of Kumari Madhuri Patil's case¹ were issued as there was no statute governing the field of verification of caste claims of Scheduled Castes, Scheduled Tribes, Nomadic Tribes and Other Backward Classes. Therefore, it was held that the directions issued in the case of Kumari Madhuri Patil¹ would apply only until

appropriate legislation is enacted. Hence, after the 2000 Act came into force, only the provisions of the said enactment will prevail.

13. Therefore, we will have to interpret the provisions of the 2000 Act. The 2000 Act came into force on 18 th October 2001. As can be noticed from the title, the 2000 Act deals with the regulation of issuance and verification of caste certificates in respect of persons belonging to Scheduled Tribes, De-notified tribes, Nomadic Tribes, Other Backward Classes and Special Backward Category. Under the scheme of the 2000 Act, an application for the grant of caste certificates is to be made to the Competent Authority as defined under Section 2(b). The Competent Authority is mandated to follow the procedure prescribed by the Rules. After following the procedure prescribed, if the Competent Authority is satisfied that the claim made by the candidate is genuine, it can issue a caste certificate in a prescribed form. Sub-section (1) of Section 4, for good reasons, specifically provides that if the application is rejected, the reasons for the rejection must be recorded. As an order rejecting the application for the grant of a caste certificate is made appealable under sub-section (1) of Section 5, the appellate authority should have the benefit of the reasons for rejection.

14. Under Section 9, the Competent Authority, Appellate Authority and Scrutiny Committee have been granted powers of Civil Court under the Code of Civil Procedure, 1908 of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any documents, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office and issuing commissions for the examination of witnesses or documents. However, the nature and extent of the inquiry which is required to be made by the Competent Authority and by the Scrutiny Committee differ. The 2000 Act has introduced a two-tier system for the verification of caste claims. In view of the express language used by sub-section (2) of Section 4, the caste certificate issued by the Competent Authority does not conclusively establish the caste claim of the applicant. The person to whom the caste certificate is granted by the Competent Authority cannot claim that his caste status has been established. The caste certificate issued by Competent Authority becomes conclusive evidence of the caste stated therein only after a detailed enquiry as contemplated by the 2000 Act and rules framed thereunder is made by the Scrutiny Committee and the certificate is validated. Therefore, when an application made under Section 3 for the grant of a caste certificate is considered by the Competent Authority, very detailed scrutiny of material produced by the applicant is not contemplated. What is contemplated is prima facie satisfaction of the genuineness of the caste claim and on the basis of such satisfaction that a caste certificate as contemplated by sub-section (1) of Section 4 can be issued. Therefore, sub-section (1) of Section 4 specifically requires the Competent Authority to record reasons for rejecting the application but there is no such requirement incorporated of giving reasons while granting a caste certificate. However, the Caste Scrutiny Committee is expected to record reasons both for validating and not validating the caste certificate. Sub-rule (6) of Rule 4 of the ST Rules provides that the Competent Authority shall verify the documents produced by the applicant with the original documents and if satisfied with the correctness of the information, documents and evidence furnished by the applicant, it shall issue a Scheduled Tribe certificate within 15 days from the date of receipt of the application. The time limit fixed under the said Rule is also a pointer which suggests that the enquiry to be made by the Competent Authority is a summary enquiry and a detailed enquiry is not contemplated. The mandate of issuing caste certificates within 15 days cannot be

accomplished if the Competent Authority is to hold a detailed enquiry on par with the one which is required to be held by the Scrutiny Committee.

15. The law contemplates very detailed scrutiny of the caste claim by the Scrutiny Committee. If both the Competent Authority and the Caste Scrutiny Committee were to make the same degree of scrutiny and detailed enquiry into caste claims, the very object of the two-tier scrutiny will be frustrated. Section 8 provides that the burden of proving a caste claim before the Competent Authority and the Scrutiny Committee is on the applicant. For discharging the said burden before the Competent Authority, it is enough if the applicant produces prima facie material to show that his caste claim is genuine. The burden put by Section 8 on the applicant to prove his caste status before the Scrutiny Committee is much higher than the burden which he is required to discharge before the Competent Authority.

16. Sub-section (1) of Section 10 contemplates that if an applicant, on the basis of a caste certificate issued by the Competent Authority obtains any benefit such as employment or admission to an educational institution, on cancellation of the caste certificate by the Scrutiny Committee, the admission secured to the educational institution or employment is required to be cancelled forthwith. The scheme of Section 10 is that applicant cannot hold on to any benefit received by him on the basis of a caste certificate issued by the Competent Authority which is subsequently cancelled by the Scrutiny Committee.

17. Section 6 deals with the procedure to be followed by the Caste Scrutiny Committee for verification of caste certificates. Sub-section (4) of Section 6 lays down that the Scrutiny Committee shall follow the procedure as laid down by the Rules framed under the 2000 Act. Rule 4 of the ST Rules lays down the procedure to be followed by the Competent Authority. We must note that under Rule 10, a provision has been made for constituting a Vigilance Cell to assist the Scheduled Tribes Caste Scrutiny Committee in conducting an enquiry. As noted earlier, the Vigilance Cell consists of Police Officers of three different ranks as provided therein and a Research Officer. Rule 11 provides details of the documents the applicant must submit to verify the Scheduled Tribes certificate. Sub-rules 2 and 3 of Rule 11 read thus:

“11.(1).....

(2) The applicant shall submit the following documents with his application for verification of his Scheduled Tribe Certificate :—

(a) Original documents.—

(i) the original Scheduled Tribe Certificate of the applicant alongwith one attested copy,

(ii) an affidavit in Form F;

(b) Documents of which, only attested
copies are to be submitted in respect of

applicant—

- (i) Primary School leaving certificate.
 - (ii) An extract of school admission register.
 - (iii) An extract of birth register.
- (c) Documents in respect of father,—
- (i) An extract of birth register.
 - (ii) Primary school leaving certificate.
 - (iii) Extract of school admission register.
 - (iv) Scheduled Tribe Certificate.
 - (v) If a father is in service, the extract of the pages of the service record (book) which contain religion and tribe entry.
 - (vi) If a father is illiterate, the primary school leaving certificate of the real elderly blood relatives of the paternal side of the applicant and extract of school admission register.
- (d) Other documents,—
- (i) Revenue record like, birth register, extract of 7/12, Sale Deed etc.
 - (ii) Any other relevant documents in support of his Scheduled Tribe claim.
 - (iii) Affidavits of the near relatives whose Validity Certificates are submitted in support of the Scheduled Tribe claim of the applicant.

(3) The applicant shall submit original

certificates and documents for verification whenever required by the Scrutiny Committee.”

18. Rule 12 lays down the procedure to be followed by the Scrutiny Committee. It contains a provision regarding forwarding a case to the Vigilance Cell to hold an enquiry. Rule 12 reads thus:

“12. 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".

19. Sub-rule (2) of Rule 12 clearly provides that only if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other enquiry. Therefore, in every case, as a matter of routine, the Scrutiny Committee cannot mechanically forward the application to Vigilance Cell for conducting an enquiry. When sub-rule (2) of Rule 12 contemplates that only if the Scrutiny Committee is not satisfied with the documents produced by the applicant that the case should be referred to Vigilance Cell, it follows that the Scrutiny Committee is required to pass an order recording brief reasons why it is not satisfied with the documents produced by the applicant. Before referring the case to the Vigilance Cell, application of mind to the material produced by the applicant is required and therefore, the application of mind must be reflected in the order sheets of the Scrutiny Committee.

20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil¹. It lays down that the documents of the pre-Constitution period showing the caste of the applicant and their ancestors have got the highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the pre-Constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all.

21. In the impugned judgment in Civil Appeal No. 2502 of 2022 (Shilpa Vishnu Thakur's case²), the Full Bench of the Bombay High Court has noted that people having the surname "Thakur" belong to both forward castes and various backward castes. Therefore, the Full Bench may be right in saying that in every case, only on the basis of the surname Thakur, it cannot be concluded by the Scrutiny Committee that the applicant belongs to Scheduled Tribe Thakur notified in the Entry 44 of the Maharashtra list. However, we must note that in the case of a person having the surname Thakur, there may be evidence in the form of entry of the name of the caste as a Tribe or Scheduled Tribe in the land records, school or college records or any official records concerning the applicant or his ancestors. Only on the ground that the persons having the surname Thakur may belong to a forward caste as well, it is not necessary that in every case, the Scrutiny Committee should send the case to Vigilance Cell. It all depends on the nature of the documents produced before the Caste Scrutiny Committee and the probative value of the documents. Therefore, whenever a caste claim regarding Thakur Scheduled Tribe is considered, the Caste Scrutiny Committee in every case should not mechanically refer the case to the Vigilance Cell for conducting an enquiry including affinity test. The reference to the Vigilance Cell can be made only if the Scrutiny Committee is not satisfied with the material produced by the applicant.

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 case¹ or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must 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 Patil¹, 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 sub-rule (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 sub-rule (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.

26. There is an argument made that as far as SC Rules are concerned, clause (d) of Rule 13 specifically provides for Vigilance Cell conducting an affinity test and there is no such pari materia provision in the ST Rules. We are unable to accept this submission as sub-rule (4) of Rule 12 of the ST Rules enjoins the vigilance officer to collect facts about the social status of the applicant or his parents, as the case may be. Therefore, sub-rule (5) provides for the examination of the applicant and his parents. For verification of social status as contemplated by sub-rule (4) of Rule 12 of the ST Rules, in a given case, affinity test can be resorted to by the Vigilance Cell.

WHETHER CASTE SCRUTINY COMMITTEE PERFORMS QUASI-JUDICIAL FUNCTION

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 quasi-judicial authority. The said submission is based on a decision of coordinate Bench of this Court in the case of

Dayaram⁹. In paragraph 35, the decision in the case of Dayaram⁹ 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)

28. We must note here that this Court was dealing in the said decision with a case arising from the State of Madhya Pradesh where there was no statute in existence which covered the field occupied by *Kumari Madhuri Patil*’s case¹. Therefore, the observations made in the said decision are in the context of powers of the Scrutiny Committee ordered to be created under the decision in the case of *Kumari Madhuri Patil*¹. In the cases of *Dayaram*⁹ and *Jay Chitra*¹⁰, this Court has not dealt with the 2000 Act or a similar enactment applicable to any other State. On a conjoint reading of the 2000 Act as well as ST and SC Rules framed thereunder, it is impossible to conclude that the Scrutiny Committee discharges only administrative functions. The Scrutiny Committee under the 2000 Act has been entrusted with various powers of the Civil Court under the Code of Civil Procedure, 1908. The powers include a power to enforce the attendance of any witness, to receive evidence on affidavits, to issue commissions for the examination of witnesses or documents etc. The scheme of the 2000 Act and both SC and ST Rules provides for the Scrutiny Committee holding an enquiry on the caste claim of the applicant, if necessary, after examining the applicant on oath, recording evidence of witnesses and calling for documents and records etc. The Scrutiny Committee is expected to record reasons for granting and rejecting the prayer for issue of caste validity certificates. Thus, the Scrutiny Committee has all the trappings of a quasi-judicial authority.

DECISIONS IN THE CASES OF VIJAKUMAR & ANAND

29. Now, we come to the decision in the case of *Vijakumar*³. A perusal of the decision in the case of *Vijakumar*³ shows that a Bench of two Hon’ble Judges dealt with issue of a tribe claim arising from the State of Maharashtra. A careful perusal of the decision shows that there is not even a reference to the ST Rules in the said decision. The attention of the Court was not invited to sub-rule (2) of Rule 12, which lays down that the case can be referred to the Vigilance Cell only if the Scrutiny Committee is not satisfied with the material produced by the applicant. Without referring to the

provisions of the 2000 Act as well as SC and ST Rules, in paragraph 9 of Vijakumar's case³, it is held that: "9. Having heard the learned counsel for the parties, we are of the considered opinion that there is hardly any merit in the contentions raised on behalf of the appellant. The affinity test was completed by the Vigilance Officer as well as by the Scrutiny Committee. The certificate has to be validated only after it proves factually and legally correct at the two stages; firstly, at the stage of issuance and secondly, at the stage of verification. If it fails the affinity test at either of these stages, the validity of the certificate cannot be sustained." Hence, in view of the fact that the 2000 Act and Rules were not considered, the decision in the case of Vijakumar³ is certainly not a binding precedent for the proposition that in every case, the Scrutiny Committee is required to take recourse to the affinity test by referring the case to the Vigilance Cell.

30. The decision in the case of Anand⁴ in paragraphs 4 and 5 specifically refers to Rule 11 and 12 (2) of the ST Rules. In paragraph 22, this Court held thus:

"22. It is manifest from the aforeextracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

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

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, 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.” (emphasis added) We have recorded similar reasons earlier for coming to the conclusion that affinity test will not always be mandatory and/or conclusive.

31. Paragraph 19 of the decision in the case of Anand⁴ reiterates the position that Vigilance Cell enquiry can be ordered only when the Scrutiny Committee is not satisfied with the materials produced by the applicant. On this aspect, we may make useful reference to a decision of this Court in the case of District Collector, Satara⁶. This decision is penned down by one of us (Sanjay Kishan Kaul, J.) which makes an in-depth analysis of the ST Rules and in particular, Rule 12. In paragraph 9, this Court held thus:

“9. A reading of the aforesaid Rules shows that the role of the Vigilance Cell was restricted as compared to the role envisaged under Madhuri Patil case [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] , inasmuch as the assistance to be provided to the Scrutiny Committee was not in every case, but only if the Scrutiny Committee was not satisfied with the documentary evidence produced by the applicant.” (emphasis added)

32. Therefore, as observed earlier, the decision in the case of Vijakumar³ cannot be read as a binding precedent laying down a legal principle that in every case of verification of caste claim, the Caste Scrutiny Committee is under a mandate to refer the case to the Vigilance Cell. As under the scheme of ST Rules, affinity test is to be conducted by the Vigilance Cell, it follows that question of conducting of affinity test will arise only when a case is made out for referring the case to Vigilance Cell. If the Scrutiny Committee, after holding an enquiry is satisfied with the material produced on record, without referring the case to the Vigilance Cell, the Caste Scrutiny Committee is under a mandate to grant validity to the caste certificate. As noted earlier, in a given case, the Scrutiny Committee can order a limited inquiry by the Vigilance Cell. For example, if an applicant is relying upon a caste validity certificate granted to his blood relative and the Scrutiny Committee, after finding that the certificate is issued after due inquiry entertains a doubt about the relationship pleaded, it can direct the Vigilance Cell to make inquiry only about the relationship.

33. Now we come to the impugned Judgment in Shilpa Vishnu Thakur’s case². The questions framed for consideration by the Full Bench are in paragraph 4 which reads thus:

“(i) Should the paramount consideration in determining the caste claim of a person be documentary evidence or, as the Supreme Court held, “anthropological moorings and ethnological kinship”; and is the “crucial affinity test” relevant and germane for such a decision?

(ii)(a) In cases where the documents produced by a person claiming to be belonging to a particular caste satisfy the requirement, for example, in the case of “Thakur”, if all the documents produced/filed and relied upon by a candidate denote his caste as “Thakur” then, without validating the caste claim with reference to the “crucial affinity test”, should the caste claim be validated or not?

(b) In a case where a person is not in possession of any document to meet the requirements of a particular caste claim can the claim be scrutinized on the basis of the “crucial affinity test”, and a validity certificate be issued?

(c) Where a person who claims to belong to a particular caste has some documents in his favour and/or partially satisfies the crucial affinity test, can the claim be certified and is the candidate entitled to his caste certificate being validated?” *

34. The conclusions of the Full Bench have been recorded in paragraph 40. In clause (i) of paragraph 40, the Full Bench of the High Court records that under Rule 12(2), the Scrutiny Committee, if it is not satisfied with the documentary evidence produced, has to forward the application to Vigilance Cell for holding a school, home and other enquiry. The Full Bench does not lay down that in every case where the Scrutiny Committee is dealing with a Scheduled Tribe claim, a reference must be made to the Vigilance Cell. In clause (ii) (a) of paragraph 40, the Full Bench records that the Scrutiny Committee must have regard to the entire body of evidence, including on the question as to whether the applicant has satisfied the affinity test. As held earlier, the question of taking recourse to the affinity test will arise only if the case is referred to Vigilance Cell. In fact, in clause (b) of paragraph 40, the Full Bench holds that even if an applicant does not have any documentary evidence it will not ipso facto result into invalidation of the caste claim. The reason is that in such a case, sub-rule (2) of Rule 12 will apply and the Vigilance Cell will have to hold an enquiry including affinity test. Even in such a case, affinity test will not be conclusive either way as held in clause (2) of paragraph 20 in Anand’s case⁴. In clause (c) of the same paragraph, the Full Bench of the High Court also holds that even if the applicant partially satisfies the affinity test, depending upon the nature of the evidence on record, the Scrutiny Committee has power to validate the claim. Thus, even clause (c) proceeds on the footing that the affinity test is not conclusive.

35. Reading paragraph 40 of the impugned judgment as a whole, we cannot conclude that a finding has been recorded by the full Bench about the conclusive nature of the affinity test. The finding cannot be understood to mean that reference to the Vigilance Cell and conduct of affinity test is mandatory in every case. However, we make it clear that for the reasons we have recorded in this judgment, we do not approve the observation in the impugned judgment that “the affinity test is an integral part of the determination of the correctness of the claim” CONCLUSIONS

36. Thus, to conclude, we hold that:

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell.

While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(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.

37. We direct the Registry to place the appeals/SLPs before the appropriate Bench for deciding the same in the light of the reference answered by us.

.....J. (SANJAY KISHAN KAUL)J. (ABHAY S. OKA)
.....J. (MANOJ MISRA) New Delhi;

March 24, 2023.