Anand Vs The Scheduled Tribe Caste Certificate Scrutiny Committee

Court: Bombay High Court (Nagpur Bench)

Date of Decision: April 4, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 11
Constitution of India, 1950 â€" Article 15(3), 341(1), 342(1)
Criminal Procedure Code, 1973 (CrPC) â€" Section 125
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 â€" Section 2(b), 3, 4, 8

Citation: (2014) 6 ABR 58 : (2014) 5 ALLMR 181

Hon'ble Judges: A.S. Chandurkar, J; A.B. Chaudhari, J

Bench: Division Bench

Advocate: M.G. Bhangde, Senior Advocate and S.N. Tapdiya, Advocate for the Appellant; S.V. Manohar, Senior Adv., V.A., N.V. Gangal, S.W. Deshpande, S.S. Sanyal, R.N. Badhe and Vikas Kulsange, Advocate for the Respondent

Final Decision: Allowed

Judgement

A.B. Chaudhari, J.
By the present Writ Petition, the petitioner Anand Katole has put to challenge the order dated 17th April, 2013 passed

by the respondent No. 1 Scheduled Tribes Caste Certificates Scrutiny Committee, Amravati, with a further prayer to declare that the petitioner

Anand belongs to Halba/Halbi, a Scheduled Tribe. Heard learned Senior Adv. Mr. S.V. Manohar for the applicant-intervener in Civil Application

No. 2459 of 2013, and learned Adv. Mr. Vikas Kulsunge for applicants-interveners in Civil Application No. 658 of 2014. Considering the

reasons stated in both the Civil Applications, the Civil Applications are allowed and disposed of.

FACTS:

2. The present litigation has a chequered history. The Petitioner is B.E., and was appointed by order dated 16th March, 1998 as a Field Officer in

the category of Scheduled Tribe on the establishment of the Maharashtra Pollution Control Board, and was ultimately confirmed in service. On 4th

November, 2003, his employer issued a notice of termination for failure to produce the Caste Validity Certificate of he belonging to Halba/Halbi,

Scheduled Tribe. The petitioner filed Writ Petition No. 4688 of 2003 and by order dated 2nd December, 2003, this Court allowed the Writ

Petition and directed the respondent No. 1 Committee to decide his tribe claim within eight weeks, and, in the meanwhile, the termination order

was kept in abeyance. The respondent No. 1 - Committee thereafter on 20th March, 2004, decided the tribe claim of the petitioner and rejected

it. The petitioner filed Writ Petition No. 1687 of 2004 in this Court, and by Judgment and Order dated 5th May, 2004, this Court dismissed the

Writ Petition and confirmed the order passed by the respondent No. 1

Committee. The petitioner went ahead and filed an appeal in Supreme Court vide Civil Appeal No. 6340 of 2004. The Apex Court decided the

said Appeal by Judgment and Order dated 8th November, 2011, and set aside both, the Judgment of this Court as well as the order of Scrutiny

Committee and remitted the matter to the respondent No. 1 Scrutiny Committee for a fresh decision. The Committee, after taking sufficient time,

finally took the decision by the order, which is impugned in the present petition and rejected the tribe claim of the petitioner. Hence this Writ

Petition again.

ARGUMENTS:

3. Learned Senior Adv., Mr. M.G. Bhangde appearing for the petitioner made the following submissions:-

[a] The counsel for the respondent Scrutiny Committee had raised the Preliminary objection before this Court in the present Writ Petition seeking

dismissal of this Writ Petition on the Preliminary objections, which were heard by this Court, and this Court recorded an order on 30th January,

2014, holding in para 18 of the said order that the Preliminary objection, as raised by the Committee, was overruled being without any substance

and was, thus, rejected. The respondent went to the Apex Court against the said order dated 30th January, 2014 and the Apex Court dismissed

the SLP and hence according to Mr. Bhangde, the order rejecting the Preliminary Objection stands confirmed and cannot now be reopened and

this Court will have to proceed with hearing of the petition on merits.

[b] Turning to the merits of the case, the learned Senior Adv., for the petitioner submitted that after remand of the matter from the Apex Court to

the Respondent No. 1

Scrutiny Committee, a fresh Vigilance Cell Report was called by the Committee, which was served on the petitioner along with a Showcause-

Notice dated 13th December, 2012. The petitioner filed his reply to the said report vide reply dated 12th February, 2013. Thereafter, the

petitioner was never called for any hearing or for asking any explanation and almost after two months, the impugned order came to be passed.

[c] The petitioner was granted conditional Validity Certificate on 30th June, 1990, which was then issued because of pendency of the main matter

before the Apex Court, i.e., Milind''s case and as a matter of policy, pending decision of Milind''s case, such conditional Validity Certificates were

issued to students, employees etc. Fact, however, remains, according to Mr. Bhangde, that the Caste Certificate on which the conditional validity

was issued on 30th June, 1990, was never verified as per the procedure laid down after the commencement of the Act, namely Maharashtra

Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward

Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000 (Act No. 23 of 2001) and coming into force of the Rules. But a

stand has been taken by the Committee that on 15th March, 2004, pursuant to the directions of the Govt., after decision of the Supreme Court in

the case of Milind against Milind, the conditional validity was cancelled, about which the petitioner was never made aware. He, therefore,

submitted that the petitioner has challenged the same accordingly by amending the Writ Petition.

[d] The Committee under the impugned order framed as many as six Issues. Issue Nos. 1 and 4 are the connected Issues. Perusal of the reasons in

answer to Issue Nos. 1 and 4 clearly show that the reasons bristle with the reasons occurring in the Supreme Court judgment, so also this Court in

so far as the issue about the sub-caste is concerned. It was not expected of the Committee to have recorded conflicting reasons not only in relation

to Issue Nos. 1 to 6 framed by it, but also on the other aspects, so also the Affidavits-in-Reply filed in this Court to the present Writ petition,

which are bordering the contempt. The Committee relied on the judgments of this Court in relation to the Thakur caste which cannot have any

application, since the nomenclature, namely ""Thakur"", as found in all those decisions of the Bombay High Court pertain to the upper class Thakur

and the Scheduled Tribe Thakur which is not the case in so far as Halba/Halbi or Halba Koshti/Halbi Koshti etc., is concerned. On the contrary,

the Supreme Court rejected the theory of sub-caste of Halbi as Halba Koshti and held that there is no such caste as Halba Koshti. With reference

to the status as Scheduled Tribe as proclaimed by the relevant Notification, the Committee has referred to certain Certificates showing the caste as

Koshti vide Clause 15(d)[i] to [v] of the impugned order and held that the petitioner''s ancestors and relatives are having sub-caste Koshti and,

therefore, they are not the primitive Halbas. But, as a matter of fact, none of these persons are related to the petitioner, nor there is any evidence to

that effect and the said conclusion drawn by the Committee is perverse and one-sided.

[e] As regards Issue Nos. 2 and 3 discussed by the Committee, learned Senior Adv. Mr. Bhangde submitted that the reasons given by the

Committee are contrary to the remand order made by the Supreme Court. That apart, the comparative analysis shown by the Committee is also

factually wrong, since the grandfather of the petitioner was admittedly never examined. Secondly, reliance has been placed on the alleged statement

of the father, which was never recorded in the fresh Vigilance enquiry after the remand order was made by the Supreme Court. The statement of

father recorded earlier appears to have been relied upon by the Committee, but then the said statement also does not reflect what is stated in the

impugned part of the order in answer to Issue Nos. 2 and 3.

[f] The learned Senior Counsel then went on to argue that the petitioner does not dispute the position that the affinity test is relevant. But according

to him, as indicated in the Judgment of the Supreme Court itself, the affinity test cannot be all and end all of the matter and at any rate cannot be

conclusive to adjudicate the caste claim. He then argued that there are no reasons why the Committee has rejected the claim on the affinity test,

and by merely saying that there is no match as to the affinity test for the caste claim of the petitioner, there was nothing to reject the caste claim on

that ground.

[g] The learned Senior Adv., for the petitioner then argued with reference to Issue No. 5 that the petitioner cannot and does not dispute the

position of law that the Validity Certificates issued to the relatives of the petitioner ipso facto cannot be the only reason for declaring the claim of

the petitioner as valid. But then according to him, the Vigilance Report or the order of the Committee ought to show the distinction for not

validating the caste claim of the petitioner on that ground which has not been shown in the instant case. On the contrary, the blood relatives of the

petitioner by name Vikram and Rupali, who are the children of real brother Rajeshwar of the father of the petitioner have been given the Caste

Validity Certificates as Halba and no reason is forthcoming as to why the petitioner should not be given the same benefit. Mr. Bhangde cited some

decision of this Court on this proposition.

[h] According to learned Counsel in patriarchal society, the caste is determined by the caste of the father as held by this Court in the case of Hira

Shalikram Mundharikar Vs. Scheduled Tribe Caste Certificate Scrutiny Committee (2010 (6) Mh. L.J. 274) : (2010 ALL MR (Supp.) 468).

Elaborating the said aspect, Mr. Bhangde then argued inviting our attention to the Maharashtra Scheduled Tribes (Regulation of Issuance &

Verification of) Certificates Rules, 2003 framed under Act No. 23 of 2001, that Rules 2(f), 3(3)(a)(i)(ii) and (iii) and (d), Rule 11(c)(vi), (d)(iii)

and Form-F-20(d)(2)(3), in terms, show that what is relevant is the caste of the paternal side or the paternal relatives. The foundation of the

impugned order, however, shows that the Committee dug out the certificates or the documents in relation to alleged relatives on maternal side and

some alleged relatives with surname ''Katole'' with whom the petitioner has no concern, and the averments to that effect on page 15 of the petition

have not been traversed, in which their caste was said to have been mentioned as ""Halba Koshti."" This was wholly irrelevant and further the

petitioner was never offered an opportunity to explain anything, nor was supplied the document on that aspect. The reasons given by the

Committee are, therefore, perverse.

[i] The counsel for the petitioner in relation to Issue No. 6 then submitted that the attempt of the respondents to buttress the principles of res

judicata or estoppel is wholly wrong and unjustified. According to him, the said principles have no application, because there was no final

adjudication in respect of the Caste Certificate dated 27th January, 1989 issued by the Executive Magistrate, Khamgaon, and cancellation of the

Conditional Validity Certificate by another order dated 15th March, 2004, which has also been challenged by amendment to the petition, and it

was never communicated to the petitioner and, therefore, the said order cannot be utilized against the petitioner. At any rate, the said order of

Committee dated 15th March, 2004 is also under challenge in the present petition and does not show any reasons for invalidating the caste claim

of the petitioner. The question of obtaining the second certificate does not arise, since the Act of 2000 came into force and thereafter the certificate

from the place of origin was obtained. The allegations about the suppression of facts in relation to obtaining of first certificate or the cancellation by

order dated 15th March, 2004 by the Committee are all misconceived and, therefore, according to him, the validity of the Caste Certificate

obtained from the Sub-Divisional Officer, Pusad on 2nd January, 2002, has wrongly been denied by the Committee.

Finally, to substantiate his contentions, learned Senior Adv. Mr. Bhangde cited the following decisions:-

[a] Bhanu Kumar Jain Vs. Archana Kumar and Another,

[b] Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medican Education and Research, Govt. of

Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences,

[c] Heera Shalikram Mundharikar Vs. Scheduled Tribe Caste Certificate Scrutiny Committee & others (2010 (6) Mh. L.J. 274) : (2010 ALL MR

(Supp.) 468),

[d] Smt. Sangita Sahebrao Bhalerao Vs. State of Mah. & others [Writ Petition No. 6744 of 2011 decided on 12th December, 2013] Coram

V.M. Kanade & M.S. Sonak, JJ.

[e] Sajjadanashin Sayed Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai Ummer and Others,

[f] Syed Yakoob Vs. K.S. Radhakrishnan and Others, and

[g] Union of India and Others Vs. Dinanath Shantaram Karekar and Others,

SUBMISSIONS MADE BY THE RESPONDENTS:

4. Learned Adv. Mr. V.A. Gangal for the Committee of the respondents meticulously made his submissions in all details. He made the following

submissions:-

[1] The case at hand is required to be considered with utmost caution and care, since the petitioner has played a fraud and it amounts to fraud on

the Constitution. The petitioner had earlier obtained a Caste Certificate on 27th January, 1989 from Executive Magistrate, Khamgaon, showing his

caste as Halba, and since the litigation was pending in the Supreme Court, the State Govt. had issued a Govt. Resolution due to the pressing

demand for issuing conditional Validity Certificates, and accordingly the petitioner was also issued such Conditional Validity Certificate on 30th

June, 1990. After the decision of Supreme Court in the case of Milind Katware, the Committee passed an order on 15th March, 2004 cancelling

the said conditional Validity Certificate, and it was sent to the petitioner on his last known address. But then he did not challenge that order of

cancellation or rejection of his caste claim at that time and as late as in 2013, he filed amendment application to challenge the said order of

cancellation dated 15th March, 2004, which is wholly impermissible. That apart, the petitioner never disclosed about passing of the said order

dated 15th March, 2004 to this Court in the present Writ Petition and obtained interim orders from this Court by suppressing the material facts

and, therefore, the petition deserves to be dismissed on that count alone. Mr. Gangal then argued that the Act and the Rules do not contemplate

more than one Caste Certificate and, therefore, the petitioner is guilty of commission of fraud by taking a chance of obtaining first Caste Certificate

dated 27th July, 1989 and having realized that the same was invalidated, by suppression, obtained another Caste Certificate from the Sub-

Divisional Officer, Pusad, on 2nd January, 2002. Such a course was not open to the petitioner and, therefore, the petition deserves to be

dismissed on the ground of fraud. According to Mr. Gangal, the learned counsel, the Preliminary Objections to the petition also ought to be

decided by this Court afresh in the light of the specific and clear observations made by the Supreme Court while not entertaining the SLP against

this Courts order dated 30th January, 2014 rejecting those preliminary objections.

[2] Mr. Gangal then argued relying on several decisions of this Court that the extraordinary writ jurisdiction of this Court does not extend to

hearing of the Writ Petition like an appeal and, therefore, the parameters of the jurisdiction of this Court being limited, this Court may not be able

to make or embark into a detailed enquiry against the findings of facts recorded by the Committee which consists of the experts and, therefore, this

Court should not interfere with the findings of facts recorded by the Committee. The earlier certificate obtained by the petitioner was also issued by

the then competent authority and, therefore, petitioner was not justified in obtaining second certificate, since, as per Section 2(b), the earlier

certificate was valid and there is no contemplation of obtaining two certificates.

[3] That, the submission made by learned counsel for the petitioner about issuance of Validity Certificate automatically to the petitioner because of

the issuance of such Validity Certificates to his near relatives is equally misconceived according to Mr. Gangal. The said legal position is no more

res integra in the light of the decisions in the case of Ku. Madhuri Patil, Parmar, Raju Ramsingh Wasave etc., and various judgments of this Court

also. He also argued that despite removal of area restriction, the place of the origin of the person is most relevant for finding out the claim for tribe

and cannot be ignored. This has been consistently held by this Court in several decisions, including a decision rendered by one of us [A.B.

Chaudhari, J. at Aurangabad Bench] in Writ Petition No. 4386 of 20112 in the case of Somreshwar Waman Thakur, decided on 23rd October,

2012 and Writ Petition No. 7813 of 2009 [Dattu Namdeo Thakur].

[4] As regard the affinity test, Mr. Gangal, the learned counsel for the respondents, invited our attention to the charts prepared and considered by

the Committee clearly showing how there is no proof of affinity or the Caste Certificate showing Halba Koshti etc. The Counsel took us through

the voluminous record and argued that the burden of proof about affinity test is certainly on the petitioner and cannot be shifted on the Committee

as per Section 8 of the Act and the petitioner failed to discharge the burden.

[5] Mr. Gangal then argued that merely because there are some pre-independence and post-independence documents showing the caste as

Halba/Halbi, the same is not the end of the matter as held by the Supreme Court and Division Benches of this Court at various benches. That being

the position, the submission that pre-independence documents submitted by the petitioner were enough to validate his caste is misconceived.

[6] Mr. Gangal then argued that the petitioner and his father had made a statement that the marriage in their family were solemnized only in their

caste. Based on that statement, enquiry was made by the Vigilance Cell which found that many relatives in the family of the petitioner had married

and even the wife of the petitioner who was married to him belonged to Koshti caste because grandparents and the mother''s parents and other

ancestors records clearly showed that they belonged to Koshti and, therefore, there was nothing wrong in relying upon those certificate indicating

caste as Koshti.

[7] As to the submissions about the validation of claim of the blood relatives of the petitioner, Mr. Gangal submitted that in case of Rajeshwar

Maroti Katole, who is the real brother of petitioner''s father, his caste was never determined on merits, nor was adjudicated, but was accepted as

a special case. All subsequent validity certificates of other relatives spoken of by the petitioner were based on the affidavit made by Rajeshwar

Maroti Katole, so also in cases of Vikram Katole, Harish Katole and Sanket Katole and the Special Leave Petitions are pending in respect of

both cases.

[8] Refuting the contention about nonsupply of Vigilance Report and the documents therewith, learned Adv. Mr. Gangal argued that in fact all the

documents were duly supplied to the petitioner and if at all he was not in receipt of those documents, he could have applied to the Committee for

obtaining the same and the petitioner is lately making such a false claim of not having an opportunity, which cannot be accepted.

To support his arguments, learned Adv. Mr. Gangal relied on the judgment of this Court in Raju Burde Vs. Establishment Officer (III-B),

Maharashtra State Electricity Board and Another, . Finally, he prayed for dismissal of the Writ Petition with heavy costs.

5. Mr. S.S. Sanyal, Mr. Vikas Kulsange and Mr. Sunil Manohar, Senior Advocate with Mr. R.N. Badhe, Adv., for interveners, opposed the

petition and claimed dismissal thereof while supporting the stand taken by the respondents.

CONSIDERATION:

6. It would be necessary for us to first take up the issue raised by learned Adv. Mr. V.A. Gangal for the respondent No. 1, who, relying on the

Supreme Court order dated 3rd March, 2014 in SLP Nos. 3894-3895/2014 that was filed against the Order dated 30th January, 2014 in the

present petition for challenging the said order rejecting the Preliminary Objection raised by Mr. Gangal before hearing of the petition on merits,

submitted that despite the said order dated 30th January, 2014 made by the Division Bench of this Court, to which one of us [A.S. Chandurkar,

J.] was a party, the respondent No. 1 is entitled to re-argue the issue about Preliminary Objection to the Writ Petition. It would be also necessary

for us, at this stage, to decide in case of an eventuality of necessity to make further remand to the Caste Scrutiny Committee or to refrain from

doing so. We have already noted the submissions made by learned Sr. Adv., Mr. M.G. Bhangde for the petitioner on this aspect, that the order on

the Preliminary Objection made by this Court on 30th January, 2014 has put to rest the argument about the Preliminary Objection sought to be

again raised because the Supreme Court has dismissed the SLP confirming the said order dated 30th January, 2014 and the further observations in

the order of the Supreme Court would not enable this Court or the counsel for the respondents to rake up the Preliminary Issue over and again.

We have repeatedly perused the order on Preliminary Issue made by this Court on 30th January, 2014. The order demonstrates consideration of

detailed submissions made by counsel for the rival parties on the Preliminary Objections and also indicate detailed well thought reasons for not

agreeing with the Preliminary Objections raised by Mr. Gangal, learned counsel for the respondent No. 1, and further as a sequel, rejecting the

Preliminary Objections. The order dated 3rd March, 2014 of the Supreme Court reads thus:-

Permission to file SLP is granted.

We are not inclined to interfere at the interlocutory stage. The SLP is, accordingly, dismissed.

We are sure that the High Court will consider all the submissions made before it by the concerned parties.

Having due and respectful regard to the observations made by the Supreme Court while dismissing the SLP against the said order dated 30th

January, 2014, we are of the view that we are not required to, nor we would be justified in ignoring the said order dated 30th January, 2014 on

Preliminary Objection, since, in our opinion, it would not be adhering to the judicial discipline. Judicial discipline and comity is the hallmark of this

Institution. For enhancing the majesty of the Court and for orderly administration of justice, practicing discipline would be essential which we do

here and, therefore, hold that the Preliminary Issue decided under Order dated 30th January, 2014 cannot be raked up again and again by the

respondent No. 1 in the light of dismissal of SLP against the said order made by this Court, to which one of us [A.S. Chandurkar, J.] is a party.

7. Having disposed of the aforesaid contention raised by Mr. Gangal as above, we then find, and as it appeared from the arguments raised by

counsel for both sides, that again the remand order to the Committee should be made or not is another concern for this Court, all the more so

because of the contentions raised by the petitioner about the Committee not affording an opportunity of being heard to the petitioner or the

Committee not giving an opportunity to the petitioner to explain certain things or the stand taken by the Committee that it was for the petitioner to

ask for certain documents or inspection thereof and make submissions thereafter. In the instant case, the litigation commenced in the year 1990,

and due to the pendency of the case of Milind Katware for number of years before the Apex Court, the lis remained pending. Even after the

decision of Milind Katware''s case by the Apex Court in the year 2000, by now fourteen years have passed and the litigation continues. We do not

want to say that even second remand order cannot be made if the circumstances so warrant. But then, if this Court is satisfied that the evidence

brought on record and all the material and relevant aspects are clinching, this Court would like to bear in mind principle namely interest republicae

ut sit finislitum it concerns the State that there should be an end to lawsuits.

8. Though we have held that the Preliminary Objections again raised before us by Mr. Gangal, learned counsel for the respondent No. 1, cannot

be re-opened, we feel in the light of different colours given to the arguments made before us that it would be appropriate to make some further

comments.

The admitted facts are that the petitioner and his ancestors originally belong to Dhanki, Tq. Umarkhed, District - Yavatmal. While the petitioner''s

father was at Khamgaon for service, the petitioner had obtained a Caste Certificate dated 27th January, 1989 from the Executive Magistrate,

Khamgaon, and it was submitted for obtaining a Validity Certificate as per the then existing Govt. Resolutions. Litigation about Halba, Halba

Koshti, Halbi commenced in the Nagpur Bench of the Bombay High Court on 4th September, 1985 when the Division Bench of this Court

delivered the Judgment in the case of Milind Katware, that Halba Koshti is the sub-caste of Halba/Halbi and is a Scheduled Tribe. The State of

Maharashtra filed SLP No. 16372 of 1985, in which on 14th July, 1986, Supreme Court granted leave and made an interim order that ""Halba

Koshtis will be entitled to admission to the seats reserved for Scheduled Tribes."" On 8th January, 1988, thereafter when Milind Katware''s case

came up for hearing, it was referred to the Constitution Bench. Since the certificates were being forwarded in large number to the Tribal Research

& Training Institute, Pune, for verification, and since the Supreme Court had made another order as above, the State of Maharashtra issued a

Govt. Resolution asking the Department to issue Provisional Validity Certificates of Halba-Scheduled Tribe, subject to the Constitution Bench

decision of the Apex Court. Accordingly, the petitioner was also given a Conditional Validity Certificate dated 30th June, 1990.

On 28th November, 2000, the Constitution Bench decided Milind Katware''s case, and held that it is not open to hold that any caste/tribe not

mentioned in the Presidential Order is subtribe/caste of the tribe Halba Koshti cannot be treated as a sub-tribe of Halba/Halbi within the meaning

of Entry No. 19 of the Order of 1950. On 18th October, 2001, State of Maharashtra issued a Govt. Resolution to act upon the Constitution

Bench Judgment of the Supreme Court and to cancel the Conditional Validity Certificates. Pausing here, it would be necessary to refer to the

judicial and legislative history. In the year 1994, the Supreme Court decided the case of Madhuri Patil, and after making a detailed survey,

rendered a studious judgment holding that there was no proper, legal and correct methodology for finding out the genuine scheduled tribes and,

therefore, the Supreme Court laid down several parameters in Madhuri Patil [1] and Madhuri Patil [2] for finding out the genuine scheduled tribes

for issuing Caste Validity Certificates of Scheduled Tribes. It also held that the adjudication, as required by the said Judgment of the Supreme

Court in Madhuri Patil''s case, would be the prerequisite for holding whether a person is scheduled tribe or not. The State of Maharashtra

thereafter started following the parameters laid down by the Apex Court in the case of Madhuri Patil and asked the Committees to decide the

matters accordingly. This went on and went on in the absence of any crystallized legislation, and finally the State Legislature passed Maharashtra

Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward

Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000 (Act No. 23 of 2001) and also framed the Maharashtra

Scheduled Tribes (Regulation of Issuance & Verification of) Certificates Rules, 2003. The Act came into force with effect from 18th October,

2001, while the Rules came into force with effect from 4th June, 2003. Now, testing the submission made by Mr. Gangal, learned Counsel for the

respondent No. 1 in the above factual background, it is clear that the Conditional Validity dated 30th June, 1990 issued to the petitioner by the

Tribal Research and Training Institute, Pune, was a mere ''Conditional Validity'' dependent on the fate of the lis pending in the Supreme Court. Can

the principles of ''Res Judicata'' or rule of estoppel have any application when the Validity Certificate dated 30th June, 1990 was not treated as

''final'' by the respondents themselves, but was treated as ''conditional'' dependent on the result of the lis? Our firm answer is '' No. ''

It is well known that the doctrine of res judicata is codified in Section 11 of Code of Civil Procedure. Section 11 generally comes into play in

relation to civil suits. But apart from the codified law, in the light of principles of good conscience and equity and as a public policy, the doctrine

has been applied in various other kinds of proceedings and situations by Courts in India and other countries. However, the first principle for its

application is the rule of conclusiveness of judgment or a finality attached to it. An order made conditional on the fate of the decision which would

be pronounced by the Apex Court cannot be called a ''conclusive'' or ''final.'' That apart, it has not at all been proved that the petitioner was, in

fact, or by any presumption, served with the cancellation order dated 15th March, 2004 till he came across it recently and then has challenged it by

amendment. Admittedly, order dated 15th March, 2004 was passed without any notice to the petitioner and must be held to be illegal.

Next, the rule of estoppel is based on the maxim ''allegans contractor non est audiendus'' i.e., a party is not to be heard to allege the contrary. A

person cannot approbate and reprobate. In the case at hand, the Tribal Institute/Committee itself represented that the validity given to him was not

final and conclusive, but was dependent on something. Hence he cannot be held guilty of the said vice.

The terra firma of the submissions made by the respondent No. 1, thus, does not exist in law and, therefore, the construction of the argument

thereon and then raising of Preliminary Objections repeatedly, that too by the State of Maharashtra and its instrumentalities is certainly in

contravention of the said principle, namely ''interest republicae ut sit finislitum - it concerns the State that there should be an end to lawsuits.''

There is one more reason for rejecting the submissions made by the Committee before us. The reason is that the original place or native place of

the petitioner and his ancestors is not Khamgaon where from the Certificate dated 27th January, 1989 was obtained, against which Conditional

Validity Certificate dated 30th June, 1990 was issued by the Tribal Research & Training Institute, Pune. On the contrary, it is an admitted fact that

the original place of residence of the petitioner and his ancestors is Dhanki, Tq. Umarkhed, Distt. Yavatmal. Therefore, a Certificate issued by

Executive Magistrate, Khamgaon, or the Conditional Validity Certificate based on the said Certificate, both do not have any significance or a place

in law. This is fortified by the provisions of the Act and the Rules which clearly show that a person, who claims a Caste Certificate for claiming the

status as a Scheduled Tribe must produce the Certificate from the place of origin of himself and his ancestors and a Certificate issued from some

other place than the place to which he originally belongs [unless specified otherwise] is not a Certificate which can be examined for issuance of

Validity Certificate under the Act and the Rules. Section 4 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta

Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates

Act, 2000, reads as follows:-

4. (1) The Competent Authority may, on an application made to it u/s 3, after satisfying itself about the genuineness of the claim and following the

procedure as prescribed, issue a Caste Certificate within such time limit and in such form as may be prescribed or reject the application for reasons

to be recorded in writing.

(2) A Caste Certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued

by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee.

Section 2(b) of the said Act reads thus:-

2. In this Act, unless the context otherwise requires,-

(a) ....

(b) ""Competent Authority"" means a officer or authority authorized by the Government, by notification in the Official Gazette, to issue a Caste

Certificate, for such area or for such purposes as may be specified in the said notification and shall include all the Competent Authorities already

designated by the Government before the coming into force of this Act, having jurisdiction over the area or place to which the applicant originally

belongs, unless specified otherwise;

The relevant Rules, namely Rules 3(2)(c), 4(1)(2), 12(3)(4) and (5) of the Maharashtra Scheduled Tribes (Regulation of Issuance & Verification

of) Certificates Rules, 2003, read thus:-

3. Procedure for obtaining Scheduled tribe certificate from the Competent Authority.

(2) The applicant shall file with the application an affidavit in Form A-1 duly sworn before the authorized Officer or a Court, mentioning,-

(a) ....

(b) ....

(c) the place from which he originally hails.

4. Procedure to be followed by Competent Authority for grant of Certificate or rejection of application for Scheduled Tribe Certificate.

(1) The Competent Authority shall have jurisdiction to issue Scheduled Tribes Certificate in respect of an applicant who himself or whose

father/grand father was ordinarily residing within the territorial jurisdiction of that Competent Authority on the date of notification of the Presidential

Order scheduling that particular Tribe.

(2) In case the applicant or his father/grand father was not ordinary resident of any place within the jurisdiction of that Competent Authority,

temporary residence of applicant for the purposes of service, employment, education or confinement in jail etc., within the territorial jurisdiction of

the Competent Authority shall not confer jurisdiction on that Competent Authority to issue Scheduled Tribe Certificate.

12. Procedure to be followed by Scrutiny Committee.

(1) ...

(2) ...

(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.

The reason for insistence for a Caste Certificate of the place of origin of the candidate or his father, grand-father is that the claim for the status of

''Backward Class'' can best be verified with reference to documents and other evidences from such a place to which he originally belongs. To

repeat, the Certificate dated 27th January, 1989 issued by the Executive Magistrate, Khamgaon, and the conditional validity dated 30th June,

1990 both become wholly irrelevant and on the contrary, the Certificate obtained by the petitioner for whatever reason on 2nd January, 2002 from

the Sub-Divisional Officer, Pusad, within whose jurisdiction the place to which the petitioner originally belongs, namely village Dhanki, Tq.

Umarkhed, Distt. Yavatmal falls, is the only relevant certificate for examination of validity thereof. For all these reasons, therefore, the various

submissions made by Mr. Gangal about the alleged conduct of the petitioner in obtaining two certificates and deceiving the Govt., or playing fraud

on the Govt., or on the Constitution or for suppression of facts must be rejected which we do.

9. Having, thus, dealt with the aforesaid preliminary matters, we now propose to examine the validity of the impugned order made by the Caste

Scrutiny Committee. Before entering into the arena on merits, we must carefully refer to the Judgment of the Supreme Court in the present case

which asked the Committee, after making remand, to decide the case of the petitioner again with reference to the specific observations made by

the Apex Court in its Judgment. Upon reading of the Judgment dated 8th November, 2011 of the Apex Court by which the Committee was asked

to examine the matter, we had asked Mr. V.A. Gangal, learned counsel for the respondent No. 1 as to whether the Committee could or even this

Court can travel beyond the findings recorded by the Apex Court on the facts and material available on record of the case in the absence of any

specific liberty given by the Apex Court to the Committee to go ahead on recording the findings without being influenced by, or ignoring, any

findings on facts and material on record, Mr. Gangal, learned counsel for the respondent No. 1, fairly stated that no such liberty was sought by the

respondent No. 1 before the Apex Court, nor the same was granted. It is in this background now we advert to the decision of the Supreme Court.

The Supreme Court referred to the fact in para. 7 of its judgment that the petitioner was claiming his status as Halbi - Scheduled Tribe. In para. 8

then Supreme Court quoted the observations of the High Court against which it was hearing the appeal, and in para. 9, it was stated that the High

Court had held that unless ethnic linkage with Scheduled Tribe was established, the caste claim could not be accepted merely on the strength of

documentary evidence. The Supreme Court then examined the validity of the proposition made by the High Court as aforesaid and in para. 17,

referred to the observations in the cases of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and

Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, and in para. 18, it referred to the Maharashtra

Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward

Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000. In para. 19 thereafter, the Apex Court referred to Rules 11(2),

12, and 12(3), and thereafter in para. 22, the Apex Court held that it is manifest from the afore extracted paragraphs 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. Thereafter, the Supreme Court laid broad parameters to be

kept in view while dealing with the caste claim in the said paragraph 22. Now, in so far as the case of the petitioner is concerned, the Apex Court

examined the documents which were on record and recorded the following findings:-

24. Having examined the present case on the touchstone of the aforesaid broad parameters, we are of the opinion that the claim of the appellant

has not been examined properly. We feel that the documentary evidence produced by the appellant in support of his claim had been lightly brushed

aside by the Vigilance Officer as also by the Caste Scrutiny Committee. Insofar as the High Court is concerned, it has rejected the claim solely on

the basis of the affinity test. It is pertinent to note that some of these documents date back to the pre - Independence era, issued to the appellant''s

grandfather and thus, hold great probative value as there can be no reason for suppression of facts to claim a nonexistent benefit to the ""Halbi

Scheduled Tribe at that point of time.

25. From the documents produced by the appellant, it appears that his near paternal relatives had been regarded as belonging to the ""Halbi

Scheduled Tribe. The Vigilance Officer''s report does not indicate that the documents produced by the appellant in support of his claim are false. It

merely refers to the comments made by the headmaster with reference to the school records of the appellant''s father''s maternal brother and his

aunt, which had been alleged to be tampered with, to change the entry from Koshti Halba to Halba and nothing more. Neither the headmaster was

examined, nor any further enquiry was conducted to verify the veracity of the headmaster''s statement. It is of some importance to note at this

juncture that in similar cases, involving the appellant''s first cousin and his paternal uncle, the High Court, while observing non-application of mind

by the Caste Scrutiny Committee, had decided a similar claim in their favour.

26. We are convinced that the documentary evidence produced by the appellant was not examined and appreciated in its proper perspective and

the High Court laid undue stress on the affinity test. Thus, the decision of the Caste Scrutiny Committee to cancel and confiscate the caste

certificate as well as the decision of the High Court, affirming the said decision is untenable. We are, therefore, of the opinion that the claim of the

appellant deserves to be reexamined by the Caste Scrutiny Committee. For the view we have taken on facts in hand, we deem it unnecessary to

refer to the decisions cited at the Bar.

27. Resultantly, the appeal is allowed; the decisions of the Caste Scrutiny Committee and the High Court are set aside and the case is remitted

back to the Caste Scrutiny Committee for fresh consideration in accordance with the relevant Rules and the aforesaid broad guidelines....

10. After the remand order was made by the Apex Court as aforesaid, a fresh Vigilance Cell report was called. But then the fresh Vigilance

Report also did not indicate that documents showing entry ''Halbi'' right from 1899 produced by the petitioner in support of his claim were false.

The Vigilance Cell or the Committee did not examine the Headmaster, nor did conduct any further enquiry as observed in paragraph 25. Finally, in

paras 26 and 27, the Apex Court asked the Committee to re-examine the petitioner''s case for fresh consideration. We have a serious doubt as to

whether the Committee could have endeavored to overreach any of the findings recorded by the Apex Court above in the absence of liberty in the

very same judgment to do so. Assuming that there was any such liberty due to the Apex Court saying that the matter should be reexamined, we

have carefully considered the reasons given by the Scrutiny Committee under the impugned order for consideration of the documentary evidence of

pre-independence period and we must express in clear terms that the Scrutiny Committee has unnecessarily rejected the voluminous documentary

evidence which is of pre-independence era and which has not been found to be tampered or otherwise polluted even remotely. The documentary

evidence, that was seen by the Apex Court, as mentioned in paragraph 25 of the Judgment and the documentary evidence we have before us and

seen by us with the assistance of the learned counsel for the parties is from the paternal side of the petitioner right from the years 1899 and 1916,

i.e., birth extracts of sons born on 28th November, 1916, 5th February, 1920 and in the year 1924 to Gangaram Katole, Tq. Mahagaon, Distt.

Yavatmal. These documents clearly show the entry as ""Halbi"" and the Vigilance Cell has not found the same to be tampered or doubtful. Not only

that there are other documents which were also seen by the Apex Court and which we have carefully seen immediately after 1950. The reason

given by the Committee for rejecting these old documents showing the caste "Halbi" must be rejected outright. These a re eight documents

pertaining to the pre-independence period, namely 4th November, 1924, 8th April, 1929, 20th February, 1932, 21st June, 1933, 15th June,

1948, 7th October, 1948, 2nd July, 1949, 2nd July, 1949 and one birth extract of sons born on 28th November, 1916 and 5th February, 1920

and above all, entry of August, 1899 in relation of Gangaram Halbi, with all entries showing caste as "Halbi." Can these documents not alleged to

be incorrect by the Vigilance Cell or even the Committee be ignored? We say " No. " The reason given is they are the residents of village Dhanki,

while the area where Halbis/Halbas were present does not mention village Dhanki. It is stated in the impugned order that the area of residence of

Halba/Halbi-Scheduled Tribe was confined to Lohara, Yavatmal, Godani, Talegaon Bari, Dhamani, Patsangra, Hatbapipri etc. Village Dhanki also

falls in Umarkhed Taluka of Yavatmal district. The reason [Para. 12(b) and (c)] given in the order that members of sub-caste Halba Koshti of

Halbi caste were residing earlier at Dhanki, Phulsawangi and, therefore, the petitioner must be belonging to Halba Koshti is baseless, wholly

irrational and without any material on record. At Sr. No. 523 on pages 557(126) and 556(127), at Sr. No. 523, name of Gangadhar Satwa with

caste "Halbi" and father"s occupation is mentioned as "Weaver" in the year 1899 and the entry on page 557(126) is that he had undertaken the

job as labour due to drought. Similar is the case with Dhondu Laxman at Sr. No. 530 with caste Halbi, but occupation ''Wesver.'' But at Sr. No.

532, Narayan Fakira is ''Halbi'', but occupation is ''Patilki'', i.e., ""Village Head having lands."" Looking to these entries for the year 1899 and

nearby years, we are afraid the finding that ''Weaving'' is a taboo [prohibited by social system] among Halbas-Scheduled Tribe cannot be for sure

correct. This is supported by R.V. Russell in the Tribes and Castes of the Central Provinces of India, Vol. III, Page-II, page 187, in the following

extracted portion:-

.....The name Halba might be derived from hal, a plough, and be a variant for harwaha, the common term for a farmservant in the norther

Districts. This derivation they give themselves in one of their stories, saying that their first ancestor was created from a sod of earth on the plough of

Balaram or Haldahra, the brother of Krishna; and it has also the support of Sir G. Grierson. The caste includes no doubt a number of Gonds,

Rawats (herdsmen) and others, and it may be partly occupational, consisting of persons employed as farm servants by the Hindu settlers. The

farmservant in Chhattisgarh has a very definite position, his engagement being permanent and his wages consisting always in a fourth share of the

produce, which is divided among them when several are employed. The caste have a peculiar dialect of their own, which Dr. Grierson describes as

follows:

Linguistic evidence also points to the fact that the Halbas are an aboriginal tribe, who have adopted Hinduism and an Aryan language. Their

dialect is a curious mixture of Uriya, Chhattisgarh and Marathi, the proportions varying according to the locality. In Bhandara it is nearly all

Marathi, but in Bastar it is much more mixed and has some forms which look like Telugu."" If the home of the Halbas was in the debateable land

between Chhattisgarh and the Uriya country to the east and south of the Mahanadi, their dialect might, as Mr. Hira Lal points out, have originated

here. They themselves give the ruined but once important city of Sihawa on the banks of the Mahanadi in this tract as that of their first settlement;

and Uriya is spoken to the east of Sihawa and Marathi to the west, while Chhattisgarh is the language of the locality itself and of the country

extending north and south. Subsequently the Halbas served as soldiers in the armies of the Ratnapur kings and their position no doubt considerably

improved, so that in Bastar they became an important landholding caste. Some of these soldiers may have migrated west and taken service under

the Gond Kings of Chanda, and their descendants may now be represented by the Bhandara zamindars, who, however, if this theory be correct,

have entirely forgotten their origin. Others took up weaving and have become amalgamated with the Koshti caste in Bhandara and Berar.

There are additional documents dated 4th November, 1924, 8th April, 1929, 20th February, 1932, 21st June, 1933, 15th June, 1948, sale-deed

dated 7th October, 1948, sale-deed dated 2nd July, 1949 and another sale-deed dated 2nd July, 1949 all showing the caste as "Halbi."

11. After removal of the area restriction and keeping in mind the fact about migration of the people in large number, in our opinion, such a reason

for rejecting the caste claim as Scheduled Tribe in the wake of very strong documentary evidence in the form of pre-constitution documents dating

back to the years 1899, 1916 showing the caste as Halbi would be preposterous. By making references to report of J.V. Ferreira Expert

Committee Report and so on and so forth, the Committee has made general observations and, therefore, we find that the reasons for rejecting the

important documentary evidence, which was also considered by the Apex Court is perverse. Thus, the documentary evidence pertaining to the

pre-independence period is so overwhelming that the Committee could not have rejected the same in the manner that has been done. We do not

approve of the approach of the Committee.

12. Having, thus, disposed of the issue about the firm, sound and solid documentary evidence in favour of the petitioner, we proceed to examine

the reasons and answers to the other issues about affinity test etc., recorded by the Committee in order to reject the caste claim of the petitioner.

At the outset, we find that the Committee relied on the alleged statement of the petitioner dated 22nd December, 1989, and also relied on the

comparative analysis for allegedly providing different information and different statements from 20th October, 1989 till 26th November, 2012. We

have carefully perused the comparative analysis shown by the Committee in the impugned order. It is stated by the Committee in the first place that

the earlier statement dated 22nd November, 1989 referred by the Committee is of the petitioner. That is factually wrong, since that statement is of

his father and on left side, signatures of the petitioner and one more person are seen. The fact, however, remains that the statement is of his father

and not of the petitioner. The further statement in the impugned order that petitioner''s father''s statement and grand-father''s statement were

recorded during the course of hearing is also wrong, because petitioner''s father and grand-father''s statement were never recorded during hearing

by the committee either after remand from the Apex Court or before it. Thus, at one place the Committee says that the statement of the petitioner

was recorded on 22nd November, 1989, while it is stated that during the course of hearing, his father''s and grand-father''s statements were

recorded. In fact, the father and grand-father were never examined by the Committee as stated. Perusal of the record shows that there is a

statement of the father of the petitioner recorded on 22nd November, 1989, i.e., prior to remand in the initial stages and the said statement does

not show any serious deviation from the affinities of the tribe Halba as stated in the reasons part of the order. The Committee has, thus, made a

total confusion as to evidence for rejecting the claim on the affinity test. It clearly appears from the record that after remand, the Vigilance Cell

collected documents, recorded statements of petitioner on 21st December, 2011, Revati Bakde on 18th February, 2012, joint statement of

petitioner and his father Nilkanth on 26th November, 2012, Vatsalabai Parate and Arun Katde on 5th December, 2012. But all these statements

appeared to be of no significance to the Committee on the affinity test. The Committee has given general reasons by reading something about the

statement dated 22nd November, 1989 which is also wrongly ascribed to the petitioner. This clearly shows that the Committee did not seriously

and carefully apply its mind as to whose statement it was, i.e., the one dated 22nd November, 1989 and by recording that it was of the petitioner,

it made a factual error. We, thus, find that the Committee has given undue and unnecessary importance to the wrong facts to conclude that the

affinity test was not proved by the petitioner. It is true that the burden of proof would be on the petitioner. Even assuming that the father of the

petitioner in his statement dated 22nd November, 1989 expressed one or the other discrepant or non-existing traits, the question is while deciding

the claim in the wake of overwhelming, undoubted, infallible pre-independence documentary evidence right from 1899, 1916 showing the caste as

''Halbi'', upon keeping in mind the concept of preponderance of probabilities and preference to the documentary evidence as compared to oral

evidence, should the caste claim be rejected outright? We do not think so. The duty of the Committee would be to have all types of evidences in

juxtaposition and take a prudent, unbiased view to come to a conclusion. In the instant case, as observed by the Apex Court and by us as well,

petitioner produced overwhelming documentary evidence on record from his paternal side to prove that he belongs to Halbi-Scheduled Tribe.

13. It is now interesting to consider the enthusiasm of the Vigilance Cell and the Committee. The Vigilance Cell and the Committee picked up a

thread from the statement of the petitioner that the petitioner''s family members or the petitioner himself did not have any inter-caste marriage. With

this preface, the Vigilance Cell as well as the Committee went out to find out the documentary evidence in respect of the grandmother, mother and

the wife of the petitioner and a 2011 booklet of Kosti Samaj about which petitioner was not confronted. Having collected those documents, the

Vigilance Cell as well as the Committee found that those documents indicated the caste of the wife of the petitioner and the other maternal side

relatives of the petitioner as ""Koshti."" On this background, the Committee went ahead and held that these documents clearly outweigh the claim of

the petitioner that he belongs to Halbi-Scheduled Tribe and that is, in fact, the justification which has been also given in the Affidavit-in-Reply by

the respondent No. 1.

14. It is a trite law that in a patriarchal society, caste is determined by the caste of the father. Obviously, therefore, the enquiry into the candidate''s

caste can best be made by examining the father or others from the paternal side, such as uncles etc. This view was taken by the Division Bench of

this Court in Heera Shalikram Mundharikar Vs. Scheduled Tribe Caste Certificate Scrutiny Committee & others (2010 (6) Mh. L.J. 274) : (2010

ALL MR (Supp.) 468) with the following observations:-

4. .....According to the learned Counsel for the petitioner, there was no reason why the Vigilance Cell and the Caste

Scrutiny Committee overlooked examining her father. The learned Counsel also relied on sub-rule (5) of Rule 12 of the Maharashtra Scheduled

Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 which reads as follows:-

(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.

We find that the order of the Scrutiny Committee is vitiated due to non-compliance of sub-rule (5) of Rule 12. The Rule requires the Vigilance Cell

to examine the parents or guardians of the applicant. The word ""Parents"" implies both the father and the mother. The need for examining the father

as well as the mother cannot be undermined in a case of this nature. It is well-known that in a patriarchal society, caste is determined by the caste

of the father. An enquiry into the candidate''s caste can be best made by examining the father or others on the paternal side, such as uncles. We do

not see how it is possible to produce a correct result in scrutiny without examining the father or such other relatives on the paternal side as are

available. We accordingly hold that subrule (5) of Rule 12 which requires the Vigilance Cell to submit a report only after examining both the

parents is mandatory. We, therefore, hold that the Vigilance Cell has acted contrary to the Rules in holding the enquiry and submitting the

report....

We respectfully follow the said view. In fact, Mr. Gangal, learned counsel for the respondent-Committee fairly stated that in India, the caste is

determined on the basis of the caste of the father. But then the explanation tendered by Mr. Gangal on the above aspect is that the Vigilance Cell

as well as the Committee went to find out the documents from the maternal side of the petitioner, because he stated that no intercaste marriage was

performed by him or any of his relatives and that was the only reason for undertaking the exercise. We are astonished at the way the Vigilance Cell

and the Caste Scrutiny Committee conducted itself when determination of caste on the basis of the documents of the maternal relatives, i.e.,

mother, grand-mother or the wife of the petitioner. A three - Judge Bench of the Supreme Court in Sobha Hymavathi Devi Vs. Setti Gangadhara

Swamy and Others, relied upon the Division Bench Judgment in the case of Mrs. Valsamma Paul Vs. Cochin University and others, rendered by

the Supreme Court while dealing with the claim for backward class when made upon marriage/intercaste marriage, in which it observed thus:-

30. It would thus be seen that the institution of marriage is one of the sound social institutions to bring harmony and integration in social fabric. The

Shastric law among Hindus has undergone sea change, in the rigidity of Shastric prescriptions. In relation to intestate succession of property,

marriage, adoption and maintenance amongst Hindus, they are brought under statutory operation appropriately underpinning the rigid Shastric

prohibitions, restrictions to operate in harmony with the Universal Declaration of Human Rights and Constitutional Rights. The right to divorce

which is unknown to Hindu law is made feasible and an irretrievable breakdown of the marriage is made a ground so as to enable the couple to

seek divorce by mutual consent. The Hindu Marriage Act, 1956 and Special Marriage Act, 1954 made the marriage between persons belonging

to different castes and religions as valid marriage. Even local amendments in Section 7-A to the Hindu Marriage Act, 1956 like in Tamil Nadu,

removed the rigidity of celebrating the marriages in accordance with Shastric prescription like Kanyadan and Saptapadhi being not mandatory,

recognized social marriage as valid. Right to maintenance from the divorced husband is provided under the Hindu Adoption and Maintenance Act,

1956 and Section 125 of the Code of Criminal Procedure, 1973 so long as she remains unmarried. Under Hindu Minority and Maintenance Act,

she is entitled to maintenance from father-in-law. Similar gender equality is available to other citizens consistent with human rights and under Article

15(3) of the Constitution. The march of law lays emphasis on the rights of the individual for equality. The form of marriages is relegated to back

door as unessential. These are matters of belief and practice and not core content. Trying Tali is a must and without it marriage is not complete in

South India among all Hindus and in some parts among Harijan Christians, while exchange of rings would do in North India. Ritualistic celebration

of marriage would be considered by some as valid, while most people in other sections think that factum of marriage is enough. When in Tamil

Nadu such marriage is statutorily valid, would it become invalid in other parts of the country? The answer would, obviously and emphatically be,

''NO''. Inter-caste marriages and adoption are two important social institutions through which secularism would find its fruitful and solid base for an

egalitarian social order under the Constitution. Therefore, due recognition should be accorded for social mobility and integration and accordingly its

recognition must be upheld as valid law.

31. It is well-settled law from Bhoobum Moyee Debia v. Ram Kishore Acharj Chowdhry that judiciary recognized a century and a half ago that a

husband and wife are one under Hindu law, and so long as the wife survives, she is half of the husband. She is ''Sapinda'' (sic) husband as held in

Lulloobhoy Bappoobhoy Cassidass Moolchand v. Cassibai. It would, therefore, be clear that be it either under the Canon law or the Hindu law,

on marriage the wife becomes an integral part of husband''s marital home entitled to equal status of husband as a member of the family. Therefore,

the lady, on marriage, becomes a member of the family and thereby she becomes a member of the caste to which she moved. The caste rigidity

breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself

transplanted.

32. The immediate question arises: Whether recognition of the community is a pre-condition? Though it was consistently held that recognition is a

circumstance to be taken into consideration, marriage, being personal right of the spouses they are entitled to live, after marriage, openly to the

knowledge all the members of the community or locality in which they live and by such living they acquire married status. In the light of the

constitutional philosophy of social integrity and national unity, right to equality assured by the human rights and the Constitution of India, on

marriage of a man and a woman, they become members of the family and are entitled to the social status as married couple recognition per se is

not a pre-condition but entitled to be considered, when evidence is available. It is common knowledge that with education or advance of economic

status, young men and women marry against the wishes of parents and in many a case consent or recognition would scarcely be given by either or

both the parties or parents of both spouses. Recognition by family or community is not a pre-condition for married status.

Thereafter, in a concurring judgment separately written by S.B. Sinha, J. in the case of Punit Rai Vs. Dinesh Chaudhary, paras 26 to 36 and para.

41 said thus:-

26. Caste has been defined in Collins English Dictionary as ""any of the four major hereditary classes, namely, the Brahman, Kshatriya, Vaisya and

Sudra into which Hindu society is divided"".

27. The caste system in India is ingrained in the Indian mind. A person, in the absence of any statutory law, would inherit his caste from his father

and not his mother even in a case of intercaste marriage.

28. In The Caste System in India - Myth and Reality by Dr. Rajendra Pandey, the different attributes of the caste as unit mentioned by various

writers has been stated thus:

1. Basic (pivotal) attribute: Endogamy.

2. Sufficiently relevant attributes:

(i) Membership by birth.

(ii) Common occupation.

(iii) Caste Council.

3. Peripheral attributes:

(i) Name.

(ii) Diacritical signs.

Following the same pattern of attribute hierarchy, the attributes that characterize caste as system have been drawn up and set in as follows:

1. Basic attribute: Plurality of interacting endogamous groups.

2. Sufficiently relevant attribute: Hierarchy.

3. Peripheral attribute: Traditional division of labour.

Besides these, Ghurye among others, has also mentioned segmental division of society, hierarchy, restriction on feeding and social intercourse, and

civil and religious disabilities and privileges of the different sections as characteristics of the caste. Above them all, Nagendra has made mention of

the principle of individual freedom as one of the attributes of the caste, which seems to have been omitted by most of the authors.

In summary, then, hierarchy, restricted commensality and connubiality, hereditary occupation and a clear-cut differentiation of functions, ritual

observance, and the principle of individual freedom are characteristics of the caste system till today.

29. In Caste in Modern India and other Essays by M.N. Srinivas at p. 3, it is stated:

A sociologist would define caste as a hereditary, endogamous, usually localized group, having a traditional association with an occupation, and a

particular position in the local hierarchy of castes. Relations between castes are governed, among other things by the concepts of pollution and

purity, and generally, maximum commensality occurs within the caste.

30. In Caste and the Law in India by Justice S.B. Wad at p. 30 under the heading ""Sociological Implications"", it is stated:

Traditionally, a person belongs to a caste in which he is born. The caste of the parents determines his caste but in case of reconversion a person

has the liberty to renounce his casteless status and voluntarily accept his original caste. His caste status at birth is not immutable. Change of religion

does not necessarily mean loss of caste. If the original caste does not positively disapprove, the acceptance of the caste can be presumed. Such

acceptance can also be presumed if he is elected by a majority to a reserved seat. Although it appears that some dent is made in the classical

concept of caste, it may be noticed that the principle that caste is created by birth is not dethroned. There is also a judicial recognition of caste

autonomy including the right to outcaste a person.

31. If he is considered to be a member of the Scheduled Caste, he has to be accepted by the community. (See C.M. Arumugam v. S. Rajgopal

and Principal, Guyntur Medical College v. Y. Mohan Rao).

32. A Christian by birth when converted to Hinduism and married a member of the Scheduled Caste was held to be belonging to her husband''s

caste on the evidence that she had not only been accepted but also welcomed by the important members, including the President and Vice-

President of the community. (See Kailash Sonkar v. Maya Devi).

33. In the instant case there is nothing on record to show that the respondent has ever been treated to be a member of the Scheduled Caste. In

fact evidence suggests that he has not been so treated. He as well as his brothers and other members of his family are married to persons belonging

to his own caste i.e. ""Kurmi"".

34. There was no attempt on the part of the respondent herein to bring on record any material to the effect that he was treated as a member of the

Pasi"" community. Furthermore, no evidence has been brought on record to show that the family of the respondent had adopted and had been

practising the customary traits and tenets of the ""Pasi"" community.

35. The question as to whether a person belongs to a particular caste or not has to be determined by the statutory authorities specified therefore.

36. In B. Basavalingappa v. D. Munichinnappa a Constitution Bench of this Court considered the scope of Articles 341(1) and (2) [which is in

pari materia with Articles 342(1) and (2)], and held it is not open to any person to lead evidence to establish that the caste to which he belongs to

is the same as and/or part of another caste, which is included in the Constitution (Scheduled Castes) Order. It was observed: (AIR p. 1271, para.

6)

6. It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A

alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A. It may also be

accepted that wherever one caste has another name it has been mentioned in brackets after it in the order: [See Aray (Mala), Dakkal (Dokkalwar)

etc.] Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is

part of caste A notified in the order.

41. Determination of caste of a person is governed by the customary laws. A person under the customary Hindu law would be inheriting his caste

from his father. In this case, it is not denied or disputed that the respondent"s father belonged to a ""Kurmi"" caste. He was, therefore, not a member

of the Scheduled Caste. The caste of the father, therefore, will be the determinative factor in absence of any law....

It is, thus, clear that in the customary Hindu law, a person, in the absence of any statutory law, would inherit his caste from father and not from his

mother, even in case of intercaste marriage. We are fortified by the aforesaid Judgments of the Apex Court that the documents from the maternal

relatives, i.e., mother, grand-mother or the wife of the petitioner, were not determinative of the caste status of the petitioner.

The documents from the side of the father of the petitioner right from 1899, 1916 consistently indicated the caste as "Halbi" which is Scheduled

Tribe. There is not a single document from the paternal side of the petitioner contradicting the said documentary evidence, or indicating any mixture

of caste Halba or Koshti, or as the case may be. The Vigilance Cell as well as the Committee, thus, went tangent by resorting to the collection of

documentary evidence from the side of the wife or the maternal side of the petitioner, resulting into a futile exercise not acceptable in law, since

what is relevant is the caste derived by a son from his father and ancestors from the paternal side. The Act of 2000 and the Rules framed

thereunder also amplify the aforesaid legal position and we must respect and applaud the wisdom of the Legislature in enacting so. The following

Rules clearly indicate the position that what is relevant is the paternal side and not the maternal side:-

2. ""Definitions"".

(f) ""Relative"" means a blood relative from paternal side of the applicant;

3. Procedure for obtaining Scheduled tribe certificate from the Competent Authority.

(3) The applicant shall furnish the attested copies of the following documents with his application for obtaining the Scheduled Tribe Certificate and

shall produce the originals thereof, on demand, by the Competent Authority:-

(a)(i) Extract of the Birth Register in respect of applicant, his father or elderly relatives from paternal side;

(ii) extract of the Primary School Admission Register of the applicant, his father or grand father, if available; and

(iii) Primary School leave certificate of the applicant and his father;

Perusal of the above clearly shows the scheme of the act and the Rules that what is relevant is the documentary evidence from the paternal relatives

or paternal side. We, therefore, do not approve of the Vigilance Cell as well as the Committee in collecting documents from the maternal side or

the documents from the side of the wife, merely because a statement was made that there are no intercaste marriages in the family. The Committee

is under an obligation and has a duty to act according to law and follow the rule of law. It cannot divest itself from its original function of finding out

the caste as ordained by law. However, in the instant case, it went tangent and collected irrelevant evidence somehow to repel the case of the

petitioner or the documentary evidence establishing the case of the petitioner from paternal side.

In para. 15(d) of the impugned order, the Committee has stated that petitioner relied on Caste Certificates and Validity Certificates of relations,

and that they show the caste as ''Koshti''. The document at Sr. No. (v) of 18th August, 1899 [Gangaram] was relied by the petitioner about which

we have already made the discussion, but the documents (i) to (iv) or the persons named against them are not the relatives of the petitioner, nor he

filed those documents. This is clear from the following portion at page 15 of the petition, and those averments are not denied in para. 34 at page

556 which is the Affidavit-in-Reply of Respondent No. 1:-

20. .....Further, the respondent No. 1 - Committee has referred to certain caste certificates/validity certificates alleging that they

are the relatives of the petitioner and are Koshti by caste and their traditional occupation is Vinkari/weaving. In this behalf, the petitioner submits

that firstly, the documents mentioned at Sr. No. (i), (ii) & (iv) are not supplied to the petitioner. Moreover, those persons are not related to the

petitioner. As regards the document at Sr. No. (iii) though copy of this document is supplied to the petitioner, the name of the said gentleman does

not appear in family tree disclosed by petitioner and his father. As regards the document at Sr. No. (v) which is the document written in modilipi,

the caste of great grandfather of the petitioner has been clearly recorded as ""Halbi"" and, therefore, merely because his occupation is recorded as

Vinkari"", it is wholly erroneous on the part of the respondent No. 1 - Committee to hold that the petitioner does not belong to Halbi Scheduled

Tribe.....

It clearly appears that the Committee went by the same surname "Katole" in these documents, without asking the petitioner to confront or

contradict those persons or supplying related documents to him. Common surnames cannot be determinative in such matters.

15. The next question is about the blood relatives having been issued Caste Validity Certificates and the legal position thereabout. Rajeshwar is the

real brother of the father of the petitioner. The Committee has issued a Caste Validity Certificate to the daughter of Rajeshwar, namely Rupali

Rajeshwar Katole as Halba vide Sr. No. 098637 dated 27th June, 2008. The Certificate is produced at Annexure-16-G with the petition. It is not

in dispute that no appeal has been filed by the Committee or the State against the decision dated 18th February. 2008 in Writ Petition No. 2053 of

2007 till this date; but the Validity Certificate was issued. In view of the fact that in the case of Rupali, the Judgment was rendered on 18th

February, 2008 and yet it has not been put to challenge and on the contrary the Validity Certificate was issued in her favour, we should have no

difficulty in holding that the said decision has become final and conclusive. Rupali, who is the blood relative of the petitioner, has been recognized

as Scheduled Tribe by the Committee itself. The submission by Mr. Gangal that Rupali"s decision made by this Court was based on a special

concession given by the Govt. Pleader in the case of Ramchandra Katole, other brother of the father of the petitioner, does not appeal to us. The

reason is that in the said Judgment, this Court, after referring to the concession given by the learned Govt. Pleader in respect of Ramchandra, made

the following observations in the said judgment of Rupali:-

It is apparent from the above long order that has been passed by Scrutiny Committee, the documents at serial Nos. 14, 18 to 21 and the High

Court orders which were passed on concession of the respondent and their active stand that they wish to withdraw the order cancelling the

certificate issued in favour of the petitioner and/or uncle of the petitioner, this apparently shows non-application of mind. Once the authorities

choose to withdraw their orders without any qualification or condition, they must bear the consequences arising from such withdrawal of the

concession. The State or the Committee is not expected to act in a arbitrary manner and keep on taking inconsistent stands, one after the other.

Fairness in State action is expected and every State action should be free of arbitrariness or discrimination. They have opted to create an

anomalous situation, inasmuch as the father of the petitioner even as on today as per the orders of the Courts is a person belonging to Halba tribe

while the daughter would lose that character despite being that she is still unmarried and lives with her family.

This Court criticized the inconsistent stand or creation of anomalous situation between the blood relatives and the Committee having acceded to the

said position till date, we do not find any merit in the submission made by the learned counsel for the respondent No. 1.

16. In so far as the case of Vikram Ramchandra Katole, the other cousin of the petitioner, is concerned, we find that in Writ Petition No. 4016 of

2010, by order dated 4th March, 2011, the Judgment of this Court followed the decision in the case of Apoorva Nichale Vs. Divisional Caste

Certificate Scrutiny Committee No. 1, The Director, Medican Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt.

Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences, and held that the blood relatives cannot be given

different treatment when one of them got the Caste Validity Certificate unless case of want of jurisdiction or playing of fraud is established. At this

stage, we would like to quote the following observations from the decision in the case of Apoorva:-

5. The Division Bench of this Court in Mahesh Pralhadrao Lad vs. State of Maharashtra, 2069 (2) Mh. L.J. 90 has observed that in the absence

of any power under the Rules conferred on the Government to issue a Govt. Resolution, the Govt. Resolution cannot be said to be binding on the

committee nor the committee in exercise of its jurisdiction is bound to follow the same. The Division Bench further observed that the Government

Resolution may be considered in the context of Rule 12 of the Rules and if the committee while exercising jurisdiction is satisfied that the caste

validity certificate issued to a blood relative is genuine then instead of calling the Vigilance Cell Report it may proceed to issue the caste validity

certificate. We are in respectful agreement with the view taken by the Division Bench. We would further add that the committee would be entitled

to refuse to follow the caste validity certificate granted to a blood relative if it appears to the committee that the earlier caste certificate has been

scrutinized by a Committee without jurisdiction or the validity order is obtained by committing fraud on the Committee.

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 done 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 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 caste 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 addition initiate proceedings for cancellation of the earlier order. In this view 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 caste validity certificate to the petitioner.

The Committee accordingly issued Validity Certificate to Vikram as well. The counsel for the respondent No. 1 at the bar did not advance any

case on behalf of respondent-Committee about fraud or the jurisdictional error of the then Committee in the matter of grant of validity to Rupali

and Vikram who are the blood relatives of the petitioner. Therefore, in the light of the view taken by this Court as above in the case of Apoorva,

we have no hesitation in holding that the petitioner cannot be differently treated or no different yardstick can be applied otherwise than in the cases

of Rupali and Vikram, apart from the fact that independently as discussed by us above, the petitioner proved on the basis of voluminous

documentary evidence on record that he is Halbi-Scheduled Tribe. We, therefore, hold that the decision of the Committee not to apply the blood

relationship principle about issuance of Validity Certificate in the instant case for the reasons given by us above is wholly illegal. The submission that

the Certificates were obtained on the strength of concession given by the Govt. Pleader in the case of Ramchandra Katole must be, in the light of

the above discussion, held to be unacceptable by virtue of the own conduct of the Committee. The consequences of declaring a blood relative as

Scheduled Tribe and another blood relative as non-Scheduled Tribe are far serious and as held in the case of Apoorva, such a course cannot be

and should not be adopted by the Committee unless there are well recognized reasons like fraud, misrepresentation, lack of jurisdiction, against the

public policy and so on and so forth. But on those aspects, no material has been shown to us, nor it is even the case of the respondents. To sum

up, we declare that the petitioner belongs to ''Halbi'' which is a Scheduled Tribe.

17. In view of the detailed discussion made by us above, we are of the view that the other submissions or other various decision cited before us by

the counsel for the parties need not be referred to.

18. The upshot of the above discussion that we must make the following order:-

ORDER

[i] Writ Petition No. 2512 of 2013 is allowed.

[ii] Rule is made absolute in terms of Prayer Clause [1] of the petition so also amended prayer clause in prayer clause [1].

[iii] The respondent No. 1 - Committee shall issue Validity Certificate to the petitioner, within a period of three months from today.

In the circumstances of the case, no order as to costs.