

Ku. Yogita Vs State of Maharashtra

Court: BOMBAY HIGH COURT (AURANGABAD BENCH)

Date of Decision: Sept. 15, 2016

Acts Referred: Constitution of India, 1950 - Article 136, Article 342

Maharashtra Land Revenue Code, 1966 - Section 36

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 - Section 2(j), Section 3

Maharashtra Scheduled Castes, Schedules

Citation: (2017) 3 BCR 481 : (2017) 1 MhLJ 643 : (2017) 3 RCRCivil 7

Hon'ble Judges: R.M. Borde, AIS. Cheema and Ravindra V. Ghuge, JJ.

Bench: Division Bench

Advocate: S.R. Barlinge with Madhur A. Golegaonkar, A.S. Golegaonkar and M.S. Deshmukh, Advocates, for the Petitioner; P.S. Patil, A.G.P, for the Respondents No. 1 and 2; K.C. Sant, Advocate, for the Respondent No. 4; V.D. Hon, Senior Counsel i/by A.V. Hon, Advocat

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER,

R.M. Borde, J. - The question, that has been referred for consideration by the Division Bench is:",

Whether judgment of the Hon"ble Apex Court in the S.L.P."s (Dattu s/o Namdev Thakur v. State of Maharashtra % others), reported in",

(2012) 1 SCC 549 (SLP (C) Nos. 3314 of 2010, 3370 of 2010 and 3365 of 2010, decided on 7th December, 2011), will operate as res",

judicata only between the parties or it will be the law of land under Article 141 of the Constitution of India?"",

2. The referring order, passed by the Division Bench on 19th October, 2013, reads thus:",

Per Court:",

1. Matter was heard for quite some time on 17/10/2013 and came to be adjourned to today.,

2. Adv. Mr. Kulkarni h/f Adv. Mr. Barlinge has invited our attention to the Division Bench Judgment in case of Kashibai W/o Sanga Pawar v.,

State of Maharashtra, reported at 1993 (2) Mh.L.J. 1168 to urge that effect of 1976 Area Restriction removal is as if there never was area",

restriction. He submits that this judgment was not pointed out to the Division Bench of this Court when it decided Writ Petition No. 7813/2009,

with connected matters on 14/12/2009. According to him, in this matter, caste claim of the petitioners have been invalidated only on the ground",

that they do not hail from the area, which prior to 1976 was recognized as Scheduled Area.",

3. Learned A.G.P. For respondent No. 1 as also Adv. Mr. Bhange for respondent No. 2 oppose the petition. They state that various judgments,

have been examined on 14.12.2009, when Writ Petition No. 7813/2009 was decided. They also point out that said judgment has been maintained",

and S.L.P. No. 3314/2010 filed in the matter has been dismissed on 07/12/2011 as reported in Dattu v. State of Maharashtra 2012 (1) SCC,

549.,

4. The judgment of the Larger Bench of Hon"ble Apex Court in S.L.P. No. 3314/2010, 3370/2010 as also 3365/2010 does not show that",

Hon"ble Apex Court had granted any leave to file appeal and thus S.L.P. was admitted. Various questions arise in this background. We do not,

wish to go into that controversy at this stage. However, judgment of Hon"ble Apex Court in case of Kunhaimmed v. State of Kerala, reported",

at 2000 (6) SCC 359 can be conveniently referred to for the said purpose. Precise question will be, ""Whether judgment of the Hon"ble Apex",

Court in said S.L.P."s will operate as resjudicata only between the parties or then it will be the law of land under Article 141 of the Constitution of,

India ?""",

5. As we are satisfied that attention of the Division Bench of this Court was not invited to the judgment of Kashibai Sanga Pawar (supra) on,

14/12/2009, impact of that judgment on view taken by later Division Bench needs evaluation. Observations of the Hon"ble Apex Court in",

judgment in S.L.P. will also have importance while considering this controversy. The later Division Bench has held that even if area restriction is,

removed, a person in order to claim status as a member belonging to Scheduled Tribe, has to demonstrate that he hails from the area originally",

recognized as scheduled area i.e. recognized as such prior to 1976. Very same argument has been turned down by the Division Bench of this,

Court in Kashibai Sanga Pawar (supra).,

6. In this situation, we find that matter needs to be looked into by the Larger Bench for further appropriate consideration. Registry to process",

accordingly and place matter before the Hon"ble the Chief Justice for necessary orders.,

7. The petitioner has already appeared for final year examination. Hence her result shall be communicated to her only to enable her to appear for,

examination again or in remaining subjects again, if she has failed in it. However, no degree certificate shall be issued until further order of this",

Court in the matter.""",

3. The petitioner claims to belong to ""Thakur"" Scheduled Tribe and was possessed of the caste certificate issued by the competent authority",

certifying accordingly. The caste certificate issued to the petitioner was referred to the Scrutiny Committee since petitioner sought admission to,

professional course i.e. Bachelor of Physiotherapy in Respondent No. 3 College. The caste verification claim of the petitioner has been turned,

down by the Scrutiny Committee by an order dated 18.06.2010 and said order passed by the Scrutiny Committee is subjected to challenge in the,

petition.,

4. It appears that the petitioner, while objecting the order of the Scrutiny Committee, has contended that since the area restrictions, which were",

operative prior to 1976, have been removed, a person, who claims to be belonging to Scheduled Tribe, is not required to establish that he hails",

from the area originally recognized as Scheduled area. Reliance placed on the judgment in the matter of Kashibai wd/o Sanga Pawar and others,

v. State of Maharashtra, reported in 1993 (2) Mh.L.J. 1168, in fact, has no bearing on the issue of invalidation of the tribe claim and as such,"

failure of the petitioner to point out the judgment to the Court dealing with Writ Petition No. 7813 of 2009 (Dattu v. State of Maharashtra),

and connected matters, decided on 14.12.2009 (2010 (2) Mh.L.J. 494, is of a little consequence." ,

5. In the matter of Kashibai, the question, that arose for consideration in the Letters Patent Appeal, is in respect of interpretation of Section 3 of",

the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short, ""Restoration Act""). The expression ""tribal"" is defined in Section",

2(j) of the Restoration Act. Section 2(j) reads thus:

2(j): ""Tribal"" means a person belonging to a Scheduled Tribe within the meaning of",

Explanation to section 36 of the Code, and includes his successor-in-interest. Explanation to Section 36 of the Maharashtra Land Revenue Code,"

1966 (for short, ""the Code""), reads thus:"

Explanation : For the purposes of this section, ""Scheduled Tribes"" means such tribes or tribal communities or part of, groups within such tribes or",

tribal communities as are deemed to be Scheduled Tribes in relation to the State of Maharashtra under Article 342 of the Constitution of India (and,

persons, who belong to the tribes or tribal communities, or part of, or groups within tribes or tribal communities specified in Part VIIA of the",

Schedule to the order (made under) the Article 342, but who are not resident in the localities specified in that Order who nevertheless need the",

protection of this section and section 36A (and it is hereby declared that they do need such protection) shall for the purposes of those sections be,

treated in the same manner as members of the Scheduled Tribes).,

On reading the explanation below subsection (4) of Section 36 of the Code, it is clear that it defines the expression ""Scheduled Tribes"" with",

reference to the Scheduled Tribes Order, 1950 issued under Article 342 of the Constitution of India. However, it is pertinent to see that although",

originally the said Explanation was strictly restricted to ""Scheduled Tribes"" as defined in Part VIIA of the Schedule to the Scheduled Tribes Order",

issued under Article 342, there was amendment made in the said Explanation by section 2(3) of the Maharashtra Land Revenue Code and",

Tenancy Laws (Amendment) Act, 1974 (for short, the ""Maharashtra Act No. 35 of 1974"") by which the words, ""but who are not resident in the",

localities specified in that Order who nevertheless need the protection of this section and section 36A (and it is hereby declared that they do need,

such protection) shall for the purposes of those sections be treated in the same manner as members of the Scheduled Tribes"", have been added.",

By virtue of Section 1(2) of the Maharashtra Act No. 35 of 1974, the said Act is deemed to have come into force with effect from 06.07.1974,"

on which date, the Ordinance was issued. The amendment incorporated in the Scheduled Tribes Order, 1950, directing removal of area restriction",

was introduced in the Parliament in 1976 and the amendments to the Constitutional Order were enforced after enforcement of the Amending Act,

of 1976 whereby definition of ""Scheduled Tribes"", as recorded in the Maharashtra Land Revenue Code, Section 36 Explanation was amended,"

thereby removing area restrictions so far those relate to tribal communities. It is, thus, clear that after its amendment, definition of the expression",

Scheduled Tribes"" given in the Explanation in Section 36 of the Code, is intended to cover ""Scheduled Tribes"" enumerated in Part VIIA of the",

Schedule to the Scheduled Tribes Order, 1950, residing in any part of the State irrespective of area restrictions contained therein in order to offer",

all of them protection of Sections 36 and 36A of the Code. By adopting said definition of the expression, ""Scheduled Tribes"" given in the",

Explanation in Section 36 of the Code for the purposes of Restoration Act by its incorporation in the definition of expression ""tribal"" given in",

Section 2(j) of the Act, the benefits under the said Act are also sought to be conferred upon all the Scheduled Tribes covered under Part VIIA of",

the Schedule to the Scheduled Tribes Order, 1950, irrespective of the question, whether they reside in the area specified therein or not.",

6. In paragraph 18 of the judgment, the Division Bench has observed thus:"

18. It is thus clear that the definition of the expression ""Tribal"" under section 2(j) of the Restoration Act incorporates the definition of the",

expression ""Scheduled Tribes"" given in the Explanation in section 36 of the Code as amended by Maharashtra Act No. 35 of 1974. The",

expression ""tribal"" used in the Restoration Act would therefore mean a Scheduled Tribe listed in Part VIIA of the Scheduled Tribes Order, 1950",

but without any area restriction. The expressions ""Non-tribal"", ""Tribal-transferor"" and ""Non-tribal transferee"" used in the said Act will have to be",

therefore construed accordingly. """,

7. On reading the judgment in the matter of Kashibai, it is clear that the expression ""tribal"" has been defined independently in the Maharashtra Land",

Revenue Code. The expression ""Scheduled Tribes"" defined in Explanation to Section 36 of the Code does have applicability so far as provisions",

of Restoration Act are concerned in view of Section 2(j) of the said Act. The tribal residing anywhere in the State of Maharashtra, whether his",

origin finds place in the Scheduled area or not, irrespective of the place of his residence, he i.e. the tribal is entitled to claim protection and benefits",

under the Restoration Act as well as the beneficial provisions contained in Sections 36 and 36A of the Code. The amendments to the Code have,

been enforced prior to removal of area restrictions in Para VIIA of the Scheduled Tribes Order, 1950 by virtue of Amending Act of 1976. The",

definition of ""tribal"" in the Restoration Act or in the Maharashtra Land Revenue Code is applicable for claiming relief of restoration of land by a",

tribal while claiming enforcement of the provisions under the Restoration Act or while taking recourse to the remedies, as provided under Sections",

36 and 36A of the Land Revenue Code. The judgment delivered in Kashibai's matter does not have any relevance so far as the issues relating to,

verification of tribe claim under the provisions of Maharashtra Scheduled Tribes, Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta",

jatis), Nomadic Tribes And Other Backward Classes and Special Backward Classes Category (Regulation of Issuance And Verification of) Caste",

Certificate Act, 2000 (herein after referred to as the ""Cast Certificate Act, 2000""). The failure in pointing out the said judgment to the Court",

dealing with Writ Petition No. 7813 of 2009 is of no consequence and would not have laid any impact on the decision. On careful scrutiny of the,

judgment delivered by the Division Bench in Writ Petition No. 7813 of 2009 (Dattu Namdev Thakur v. State of Maharashtra), decided by",

the Division Bench on 14.12.2009 (2010 (2) Mh.L.J. 494, it is noticed that the Division Bench has turned down claim of the petitioners mainly",

on the ground that the documents tendered by the petitioners therein do not conform to the claim and correctness of the Scheduled Tribes. It is,

observed by the Division Bench in the order that a mere fact that the documents produced by the petitioner or petitioner Dattu's father Namdev",

referred as ""Thakur"" or surname is referred as Thakur synonymous to the caste Thakur, is not sufficient to indicate that the petitioners belong to a",

Scheduled Tribe. It was requirement for petitioners to demonstrate to be member of the Scheduled Tribe. The Committee evaluated the,

documents and traits and characteristics, the answers given by the petitioners and the Committee did not approve that they meet requirement to",

satisfy, to be belonging to Thakur (Scheduled Tribe). The Division Bench has recorded a finding that the petitioner has failed to satisfy rigid test of",

traits, characteristics and customs for indicating his association with Thakur Scheduled Tribe. In para 15 of the judgment, the Division Bench has",

recorded thus:,

15 The Thakur community, belonging to Scheduled Tribe, indeed was restricted to 25 tehsils of five districts, i.e. Ahmednagar, Kolaba, Nasik,"

Pune and Thane of State of Maharashtra. However, the said area restriction, which was in operation from 1.11.1956 to 26.7.1977 is no more in",

force. The consequence flowing from such removal of area restriction by itself would not allow a person to stake claim to be belonging to Thakur,"

Scheduled Tribe, unless such person established that his forefathers have migrated from hilly area/tribal area or that they form group of tribals in the",

particular area. This requirement has been necessitated as Thakur is referred universally for recognition of various castes, and need not be",

restricted to Thakur, as Scheduled tribe. In the light of this situation, needless to add, mere reference of caste as Thakur in the caste column in any",

school record by itself should not be a sole criterion to define a person to be belonging to Thakur, scheduled tribe.""",

8. The Division Bench has recorded a finding on appreciation of the judgments of Full Bench in the matter of Shilpa Vishnu Thakur v. State of,

Maharashtra % others, reported in 2009 (3) Bom.C.R. 497, so also in the matter of Pandurang Rangnath Chavan v. State of",

Maharashtra % others, reported in 1998 (2) Mh.L.J. 806. The observations of the Full Bench in the matter of Shilpa have been quoted in",

paragraphs no.11 and 12 of the judgment by the Division Bench.,

9. The judgment of the Division Bench in the matter of Dattu Namdev Thakur v. State of Maharashtra (Writ Petition No. 7813 of 2009),

was taken to the Supreme Court in SLP No. 3314 of 2010, which came to be dismissed on 07.12.2011. The Hon"ble Apex Court, while",

disposing of SLPs presented by Dattu, his son and daughter did not grant leave to file appeal nor the SLP was admitted. As is evident from the",

order in the matter of Dattu % others, the Hon"ble the Supreme Court did not advert to the merits of the matter. The Hon"ble Supreme Court,"

taking note of intervening developments during the period of nine years between issuance of caste certificate and cancellation thereof, proceeded to",

dispose of the petitions by confirming the benefits derived by them during the intervening period. Petitioner Dattu was allowed to continue in,

service by virtue of the order passed by the High Court, whereas, other two petitioners did continue their studies and even completed degree",

course. It was pointed out to the Hon"ble Supreme Court that Amol, son of Dattu Thakur, appeared for B. Pharmacy examination and his result",

was not declared, whereas, his daughter Pratibha appeared for B.Ed. examination and her result is also not declared. While disposing of the",

petitions, the Supreme Court has held that, irrespective of dismissal of the SLPs, the petitioners shall not be deprived of the benefits which they",

have already enjoyed. In paragraph 9 of the judgment, it is observed thus:",

9 Accordingly, while dismissing all the three Special Leave Petitions, we direct that whatever advantage the three petitioners in the three Special",

Leave Petitions, may have derived on the basis of their "Caste Certificates", shall not be disturbed and the cancellation of their respective "Caste",

Certificates" will not deprive them of the benefits which they have already enjoyed. However, we also make it clear that none of the three",

petitioners in the three respective Special Leave Petitions, will be entitled to take further advantage of reservation in future, either for studies or for",

employment. Following the judgment in Swati's case, we also direct that if the petitioners in the 2nd and 3rd Special Leave Petition, have obtained",

any concession by way of reduction in fees, as a reserved candidate, they will have to make good the same by paying the difference in fees that is",

being paid by general candidates. Such payment has to be made within a period of six months and in default of such payment, this order will cease",

to have any effect."",

10. As has been recorded above, the decision of the Division Bench in Kashibai's matter, has little relevance for rendering decision in respect of",

caste status of an individual and as such, failure to notice the aforesaid decision by the Court dealing with Writ Petition No. 7813 of 2009 is of little",

consequence.,

11. Apart from this, the Apex Court, dealing with the SLPs presented by Dattu, did not advert to the merits of the matter and proceeded to",

dispose of the SLPs by protecting the benefits which were availed of by the petitioners during the intervening period.,

12. The question formulated by the Division Bench for consideration in the matter, in fact, stands answered in the judgment of Kunhaimmed v.",

State of Kerla, reported in 2000 (6) SCC 359. The Hon"ble Supreme Court, in the matter of Kunhaimmed, in para 14 of the judgment, has",

recorded two distinct stages referable to petition seeking Special Leave to appeal and the appeal itself, though both dealt with Article 136 of the",

Constitution. The legal position, which emerges is as under:",

(1) While hearing the petition for special leave to appeal, the Court is called upon to see whether the petitioner should be granted such leave or not.",

While hearing such petition, the Court is not exercising its appellate jurisdiction; it is merely exercising its discretionary jurisdiction to grant or not to",

grant leave to appeal. The petitioner is still outside the gate of entry though aspiring to enter the appellate arena of the Supreme Court. Whether he,

enters or not would depend on the fate of his petition for special leave;,,

(2) If the petition seeking grant of leave to appeal is dismissed, it is an expression of opinion by the Court that a case for invoking appellate",

jurisdiction of the Court was not made out;,,

(3) If leave to appeal is granted the appellate jurisdiction of the Court stands invoked; the gate for entry in the appellate arena is opened. The,

petitioner is in and the respondent may also be called upon to face him, though in an appropriate case, in spite of having granted leave to appeal,"

the Court may dismiss the appeal without noticing the respondent.,

(4) In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought",

for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree",

or order appealed against is put in jeopardy though it continues to be binding and effecting between the parties unless it is a nullity or unless the,

Court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge."""

13. The conclusions are drawn in paragraph no.44 of the judgment by the Hon"ble the Supreme Court, which reads thus:"

44. To sum up, our conclusions are:"

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such",

superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the",

superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.",

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special,

leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an,

appeal.,

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the,

superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The,

superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the",

Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not",

while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to,

the former and not to the later.,

(iv) An order refusing special leave to appeal may be a nonspeaking order or a speaking one. In either case it does not attract the doctrine of,

merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the,

Court was not inclined to exercise its discretion so as to allow the appeal being filed.,

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications.",

Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the",

Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which",

would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the",

Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has",

stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order,

binding as res judicata in subsequent proceedings between the parties.,

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract,

the doctrine of merger; the order may be of reversal, modification or merely affirmation.",

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the,

jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 Order 47 CPC. """,

14. The issue raised in the matter stands addressed in view of para (v), as quoted above.",

15. In the referring order, it is observed that the later Division Bench i.e. the Division Bench dealing with Writ Petition No. 7813 of 2009 has held",

that even if area restriction is removed, a person, in order to claim status as a Member belonging to Scheduled Tribe, has to establish that he hails",

from the area originally recognized as Scheduled Tribe i.e. Act of 1976. The very same argument has been rejected by the Division Bench.,

16. As has been recorded above, judgment in the matter of Kashibai, has no relevance to the issue relating to determination of status of a person",

as a member of the Scheduled Tribe by the Scrutiny Committee in exercise of powers under the provisions of Act of 2000. However, since the",

Division Bench has expressed opinion that the matter needs to be looked into by the Larger Bench for appropriate consideration, we may refer to",

the issue raised by the Division Bench.,

17. According to us, the issue raised in respect of relevance of the investigation in respect of original place of residence, as one of the factors to be",

considered in arriving at a decision of validation claim of the claimants, stands answered in view of pronouncement of law by the Full Bench in the",

matter of Shilpa Vishnu Thakur v. State of Maharashtra, reported in 2009 (3) Bom.C.R. 497. Part IX of the Third Schedule to the",

Amending Act specifies Scheduled Tribes for the State of Maharashtra. Those are:,

(1) Mahadev Koli, Malhar Koli, Tokre Koli (Entries No. 28, 29 and 30);",

(2) Dhanwar (Entry No. 14),

(3) Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar (Entry No. 44)",

(4) Mana (Entry No. 18),

(5) Mannervarlu (Entry No. 27),

(6) Halba, Halbi (Entry No. 19)",

18. Over a period of time, it is revealed that the persons belonging to non tribal communities claim tribal status taking benefit of the nomenclature of",

the caste synonymous with a tribal group, as specified in the notification. The Hon"ble Supreme Court has termed it as a ""pseudo status"". In the",

matter of Madhuri Patil v. Additional Commissioner, Tribal Development, reported in (1994) 6 SCC 241, the Supreme Court has",

observed thus:,

It is common knowledge that endeavour of States to fulfill constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by",

providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by",

unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in,

fact disentitled to such status. The case in hand is a clear instance of such pseudo status.""",

19. The objects and reasons of the Enactment Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes, (Vimukta Jatis), Nomadic",

Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, also",

make a mention to this menace. It reads thus:

It has been brought to the notice of the Government that the incidents of procuring false Caste Certificates, in respect of Scheduled Castes,"

Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category have reached",

alarming figure. Such false Caste Certificates not only enable the ineligible persons to avail of the concessions and reservations in the matter of,

securing employment or admission in the educational institutions or contesting for or being elected to any of the elective offices reserved for the,

benefit of the aforesaid Castes, Tribes and Classes, but also result in depriving the genuine members of the said Castes, Tribes and Classes of the",

said concessions and reservations, thereby defeating the very purpose of such concessions and reservations."

2. The Hon^{ble} Supreme Court in its judgment dated 18th April 1995, in the case of (Director of Tribal Welfare, Government of Andhra",

Pradesh v. Laveti Giri and another), 1995 (4) SCC 32 has also desired that ""the Government of India should have the matter examined in",

greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the,

Constitution and corner the benefits reserved for the real tribals, etc. so that the menace of fabricating the false records and to gain unconstitutional",

advantage by plain/spurious persons could be prevented.,

3. As the existing instructions issued by Government, from time to time, are found to be inadequate, to curb this menace, it has been decided to",

undertake a suitable legislation for regulating the issue of the Caste Certificate and verification of such certificate and also providing for deterrent,

punishment for those who indulge in such illegal activity.""",

20. The question as regards relevance of sociological and anthropological traits for determination of caste status of an applicant belonging to,

Scheduled Caste or Tribe has been dealt with by the Supreme Court in the matter of Madhuri Patil. The Supreme Court, in para 5, has observed",

thus;

Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over.",

The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some,

extent may have modernised and progressed but they would not be oblivious to or ignorant of their customary and cultural past to establish their,

affinity to the membership of a particular tribe.""",

The Supreme Court has emphasized the need of consideration of the entire material while determining status claim of an applicant including,

sociological, anthropological and ethnological perspectives. It is observed that:",

The anthropological moorings and ethnological kinship affinity gets genetically ingrained in the blood and no one would shake off from past, in",

particular, when one is conscious of the need of preserving its relevance to seek the status of Scheduled Tribe or Scheduled Caste recognised by",

the Constitution for their upliftment in the society. The ingrained tribal traits peculiar to each tribe and anthropological features all the more become,

relevant when the social status is in acute controversy and needs a decision. The correct projectives furnished in proforma and the material would,

lend credence and given an assurance to properly consider the claims of the social status and the officer or authority concerned would get an,

opportunity to test the claim for social status of particular caste or tribe or tribal community or group or part of such caste, tribe or tribal",

community. It or he would reach a satisfactory conclusion on the claimed social status. The father of the appellant has failed to satisfy the crucial,

affinity test which is relevant and germane one. """,

21. In the matter of Raju Ramsingh Vasave v. Mahesh Deoras Bhivapurkar, reported in (2009) (1) Mh.L.J. 1, the Supreme Court has",

observed that:,

Before a person can obtain a declaration that he is a member of a Scheduled Tribe, he must be a member of a tribe. """,

22. So far as relevance of affinity test, in order to determine as to whether the applicant belongs to Scheduled Tribe, various decisions rendered by",

the Division Bench have answered in affirmative and underlined importance of the affinity test. In the matter of Ashwini Anil Chavan v. State of,

Maharashtra, reported in 2006 (4) Mh.L.J. 415, it was held that, the Scrutiny Committee was justified in applying the affinity test to decide as",

to whether the applicant therein belongs to Scheduled Tribe; and it was further observed that, in such a case, there was no question of going",

behind an entry in the Presidential Order issued under Article 342(1) of the Constitution. It is observed by the Division Bench, thus:",

The Scrutiny Committee is justified in taking the view that merely because the documents which have been produced contain a reference to the",

petitioner or his relatives belonging to the Thakur Community that would not in itself be sufficient to demonstrate that she actually belongs to the,

Thakur Scheduled Tribe. Reference to the question of affinity is perfectly justified for the reason that the individual must be shown on evidence to,

belong to the Scheduled Tribe concerned. In such a case, there is no question of going behind an entry in the Presidential Order issued under",

Article 342 (1) of the Constitution. The exercise is to determine whether the individual belongs to a Scheduled Tribe. This is perfectly justifiable,

and for that, recourse to the affinity test is legitimate."",

23. In the matter of Murlidhar Ramkrishna Gathe v. State of Maharashtra, reported in 2007 (3) Bom.C.R. 176, the Division Bench has",

observed thus:,

This Court has judicially recognised, that the word or surname ""Thakur"" is shared by both forward and backward communities. The burden of",

proving that the person belongs to a S.T./S.C./O.B.C. lies heavily on the person seeking the certificate. The role of the Vigilance Committee is to,

conduct an enquiry to ascertain and verify the material produced by the candidate including as to traits and characteristics claimed. If the material,

and information on traits, characteristics, customs, deities and other information did not relate to Thakur S.T., further verification of that material",

normally would be uncalled for. The law, as declared in Madhuri Patil (supra) would require verification of the information given. If that information",

was associated with the Thakur S.T., then to rule out that the information given was based on bookish knowledge, the vigilance enquiry is required",

to be conducted to establish that the evidence produced is genuine. Once the committee with whom are associated experts, conversant with the",

anthropological and ethnological traits and other characteristics of the community, rule out the association of the petitioner to that community, the",

burden is on the petitioner to establish otherwise. That burden has not been discharged."",

24. The Full Bench, in the matter of Shilpa, referring to the above quoted passage, has observed:",

Tribal communities, Non tribal communities

1 Mahadeo Koli, Tokre Koli, Malhar

Koli", "Koli (including Son Koli, Suryawanshi Koli, Vait

Koli, etc.);

2 Dhanwar, Dhargar

3 Thakur/Thakar Ka-Thakur/Ka- Thaka

Ma-Thakur/ Ma Thakar", "rThakur (including Bhat, Brahmabhat, Thakur,

Kshatriya Thakur, Rajput Thakur, Sindhi Thakur,

Maratha Thakur, Pardeshi Thakur);

,

,

4 Gond Gowari, Gowari

5 Mannerwarlu, Munnurwar/Mannerwar/Mannawar

6 Halba/Halbi, Koshti/Halba Koshti