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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

WRIT APPEAL No. 1668 of 2022

BETWEEN:-

**JAJPAL SINGH S/O SHRI GURUMEJ SINGH, AGED-58 YEARS, R/O
WARD NO.-7, VIDISHA ROAD, ASHOK NAGAR (MADHYA PRADESH)**

.....APPELLANT

**(SHRI SANJAY AGRAWAL-SENIOR ADVOCATE WITH SHRI S.S.
GAUTAM, SHRI RAHUL GUPTA AND SHRI R.S. CHAUHAN-
ADVOCATES FOR THE APPELLANT)**

AND

- 1. LADDURAM KORI S/O SHRI PHOOLCHAND, AGED-53 YEARS,
OCCUPATION: AGRICULTRIST, R/O WARD NO. 13, NEAR
BIJASEN MATA MANDIR, ASHOK NAGAR, DISTRICT ASHOK
NAGAR (MADHYA PRADESH)**
- 2. STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL
SECRETARY, DEPARTMENT OF TRIBAL WELFARE, VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 3. HIGH POWER CASTE SCRUTINY COMMITTEE THROUGH ITS
PRESIDENT, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
- 4. THE COMMISSIONER, TRIBAL WELFARE, RAJIV GANDHI
BHAWAN, SHYAMLA HILLS, BHOPAL (MADHYA PRADESH)**
- 5. THE SUPERINTENDENT OF POLICE, ASHOK NAGAR (MADHYA**

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PRADESH)

.....RESPONDENTS

(SHRI R.D. JAIN – SENIOR ADVOCATE WITH SHRI SANGAM JAIN, SHRI AJAY BHARGAVA, SHRI MAYANK PATHAK AND SHRI DIVYANSH JAIN, ADVOCATES FOR RESPONDENT NO.1;

SHRI ANKUR MODY – ADDITIONAL ADVOCATE GENERAL FOR RESPONDENT/STATE)

&

WRIT APPEAL No. 1675 of 2022

BETWEEN:-

1. STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY, DEPARTMENT OF TRIBAL WELFARE, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. HIGH POWER CASTE SCRUTINY COMMITTEE THROUGH ITS PRESIDENT, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
3. THE COMMISSIONER, TRIBAL WELFARE, RAJIV GANDHI BHAWAN, SHYAMLA HILLS, BHOPAL (MADHYA PRADESH)

.....APPELLANTS

(SHRI ANKUR MODY – ADDITIONAL ADVOCATE GENERAL FOR APPELLANTS/STATE)

AND

1. LADDURAM KORI S/O SHRI PHOOLCHAND, AGED-53 YEARS, OCCUPATION: AGRICULTRIST, R/O WARD NO. 13, NEAR BIJASEN MATA MANDIR, ASHOK NAGAR, DISTRICT ASHOK NAGAR (MADHYA PRADESH)
2. JAJPAL SINGH S/O SHRI GURUMEJ SINGH, AGED-55 YEARS, R/O WARD NO.-7, VIDISHA ROAD, ASHOK NAGAR (MADHYA PRADESH)
3. SUPERINTENDENT OF POLICE, ASHOK NAGAR (MADHYA PRADESH)

.....RESPONDENTS

(3)

(SHRI R.D. JAIN – SENIOR ADVOCATE ALONG WITH SHRI SANGAM JAIN, SHRI AJAY BHARGAVA, SHRI MAYANK PATHAK AND SHRI DIVYANSH JAIN-ADVOCATES FOR THE RESPONDENT NO.1;

SHRI SANJAY AGRAWAL -SENIOR ADVOCATE ALONG WITH SHRI S.S. GAUTAM, SHRI RAHUL GUPTA AND SHRI R.S. CHAUHAN -ADVOCATES FOR RESPONDENT NO.2.)

Reserved on : 13/07/2023
Pronounced on : 9/8/2023

These appeals having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Rohit Arya pronounced the following:

JUDGMENT

These appeals, under section 2(1) of the Madhya Pradesh (Uchcha Nyayalaya Ki Khand Peeth Ko Appeal) Adhiniyam, 2005, are directed against the impugned judgment dated 12/12/2022 passed in W.P. No.4794/2020 and, thus are being decided by this common judgment.

For the sake of convenience, reference to parties is in accordance with title of W.A. No.1668/2022.

2. The subject matter at issue relates to verification of caste certificate of appellant/respondent no.5 Jajpal Singh, a sitting MLA, who has been issued a certificate of Scheduled Caste treating his caste as “NAT” on 6.11.2008 i.e. about fifteen years ago. The NAT caste appears at S.No.41 in Madhya Pradesh as per The Constitution (Scheduled Castes) Order, 1950.

The factual matrix of the case may be summarized thus:

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(i) The appellant had obtained a caste certificate dated 2/12/1999 of “Keer” caste ; OBC in State of Madhya Pradesh and contested the election of Municipal Council, Ashoknagar.

(ii) One Baijnath Sahu filed W.P. No. 1330/2002 challenging the said caste certificate dated 2/12/1999. The writ Court disposed of the petition vide order dated 12/8/2002 with liberty to the petitioner to approach the competent forum.

(iii) Complainant Baijnath then approached High Power Caste Scrutiny Committee, *inter alia* stating that the certificate of OBC treating him to be of “Keer” caste was suspicious and deserved to be cancelled as the appellant had filed his nomination for Member, Jila Panchayat, on 13/5/1999 showing himself as “NAT (Bazigar”)/SC.

(iv) On 25/2/2004, the High Level Caste Scrutiny Committee cancelled the caste certificate dated 2/12/1999 of OBC category (“Keer” caste) on the premise that he had obtained a certificate of NAT SC caste which was used by him as Member of Jila Panchayat.

(v) The said decision dated 25/2/2004 was challenged by appellant Jajpal Singh before this Court through W.P. No.520/2004. On 3/9/2004, the order dated 25.2.2004 was set aside as the same was found to have been passed by the Committee of 4 members instead of 6 members and the case was remanded with direction to decide it in accordance with law.

(vi) On 11/11/2004, the re-constituted Committee maintained the decision cancelling the caste certificate dated 2/12/1999.

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(viii) It further appears that an FIR was registered against the appellant at Crime No. 161/10 at Police Station Ashoknagar under sections 420, 467, 468, 471, 477 and 120B of the IPC alleging fraud and mis-representation. However, the FIR was quashed by the High Court in M.Cr.C. No. 2050/2010 (Jajpal Singh Vs. State of M.P.) vide order dated 4/2/2022.

(ix) The appellant obtained caste certificate of Scheduled Caste from the Office of SDO, Ashoknagar, where his caste has been mentioned as “NAT” on 3.11.2008/6.11.2008.

(x) One Ramesh Kumar Itoriya challenged the caste certificate of appellant before the High Power Caste Scrutiny Committee (for brevity “*Scrutiny Committee*”). The aforesaid Committee appears to have conducted an enquiry through Collector and Superintendent of Police, Ashoknagar without due notice to the appellant. On 16/9/2013, the High Level Committee found that in the land records since appellant's caste was mentioned as “Sikh”, therefore “Nat” caste certificate was cancelled.

(xi) The aforesaid decision was challenged by the appellant by filing W.P. No.7047/2013 on the premise that the findings recorded are lopsided to his prejudice. Besides, neither any notice was issued nor opportunity of hearing was afforded to him to contest the challenge to his caste certificate and adduce evidence. Further, the Committee was not properly constituted as out of 4 members only 3 members had put their signatures in the order dated 16/9/2013. During pendency of writ petition, prayer for interim relief was rejected, against which appellant

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preferred W.A. No. 502/2013, wherein vide order dated 25/10/2013, the impugned order dated 16/9/2013 passed by the Scrutiny Committee was stayed upto final decision of writ peition.

(xii) In 2018, the appellant was a candidate from Congress Party to contest elections from Ashoknagar on a seat reserved for SC candidate and writ petitioner Laddu Ram Kori contested the election as candidate of BJP party. The appellant was declared elected. The writ petitioner/respondent also filed an application for intervention in W.P. No. 7047/2013.

(xiii) On 1/5/2019, the writ Court in W.P. No.7047/2013 set aside the order dated 16/9/2013 upholding the challenge thereto on twin grounds as aforesaid and remanded the subject matter of enquiry to the Scrutiny Committee to decide afresh in accordance with the procedure laid down in the case of **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and Others ((1994)6 SCC 241)** and on the basis of evidence collected after affording due opportunity to the appellant. Besides, learned Single Judge vide order dated 25/4/2019 had also framed ten questions in paragraph 70 of the order which were required to be answered by the appellant before the Committee. That apart, it was also ordered that by way of abundant caution, High Power Scrutiny Committee was directed not to get prejudiced by any of the observations made by the writ Court in the said order.

3. Before advertng to the merits of the Scrutiny Committee report dated 13/12/2019 and the order passed thereupon on 18/12/2019, it

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would be expedient to reiterate the law as propounded in **Madhuri Patil's case (Supra)** by Hon'ble Apex Court.

Para 13 of the said judgment deals with procedure for issuance of social status certificates, their scrutiny and approval by way of clauses 1 to 15. These directions (1-15) have been confirmed by a Bench of three Judges in the case of **Dayaram v. Sudhir Batham ((2012) 1 SCC 333)**, except direction no.13 which provided that where writ petition against order of Caste Scrutiny Committee is disposed of by a Single Judge of High Court no further appeal would lie against the said order (even if there existed a vested right to file such intra Court appeal or Letter Patents Appeal) and will only be subject to Special Leave Petition under Article 136; the same has been held to be unsustainable to that extent and it has been ruled that right to file appeal either in the form of intra Court appeal or Letters Patent Appeal shall be maintained.

Under clause 4, para 13 of **Madhuri Patil's case (Supra)**, all State Governments are required to constitute a Committee for the aforesaid purpose. Clause 5 provides that there should be a vigilance cell to investigate into the social status claims and further provides scope for enquiry. The same is relevant for the purpose of this appeal and is, thus, reproduced as under:

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social

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status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma.....

(Emphasis supplied)

Para 15 of the said judgment deals with scope, dimension, limit and extent of jurisdiction of the High Court under Article 226 of the Constitution while addressing a challenge made to report and recommendations of High Power Caste Scrutiny Committee. The same is also relevant for the purpose of this appeal and is reproduced as under:-

“15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts. ”

(Emphasis supplied)

With regard to status of Committee and scope of enquiry, the Apex Court in the case of **Dayaram Vs. Sudhir Batham and Others (Supra)**, has ruled as under:-

“34. Each scrutiny committee has a vigilance cell which acts as the investigating wing of the committee. The core function of the scrutiny committee, in verification of caste certificates, is the investigation carried on by its vigilance cell. When an application for verification of the caste certificate is received by the scrutiny committee, its vigilance cell investigates into the claim, collects the facts, examines the records, examines the relations or friend and persons who have knowledge about the social status of the candidate and submits a report to the committee. If the report supports the claim for caste status, there is no hearing and the caste claim is confirmed. If the report of the vigilance cell discloses that the claim for the social status claimed by the candidate was doubtful or not genuine, a show-cause notice is issued by the committee to the candidate. After giving due opportunity to the candidate to place any material in support of his claim, and after making such enquiry as it deems expedient, the scrutiny committee considers the claim for caste status and the vigilance cell report, as also any objections that may be raised by any opponent to the claim of the candidate for caste status, and passes appropriate orders.

35. The scrutiny committee is not an adjudicating authority like a Court or Tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities, the orders of the scrutiny committee are also open to challenge in proceedings under Article 226 of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this court wanted to eradicate. As this Court found that a large number of seats or posts reserved for scheduled castes and scheduled tribes were being taken away by bogus candidates claiming to belong to scheduled castes and scheduled tribes, this Court directed constitution of such scrutiny committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal

framework for proper verification of false claims regarding SCs/STs status. This entire scheme in Madhuri Patil will only continue till the concerned legislature makes appropriate legislation in regard to verification of claims for caste status as SC/ST and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.”

(Emphasis supplied)

These observations are with reference to paragraph 13.7 of **Madhuri Patil's case (Supra)**.

In the case of **Anand Vs. Committee for Scrutiny And Verification Of Tribe Claims and Others ((2012)1 SCC 113)**, the Hon'ble Supreme Court has held, in para 22, as under:

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

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

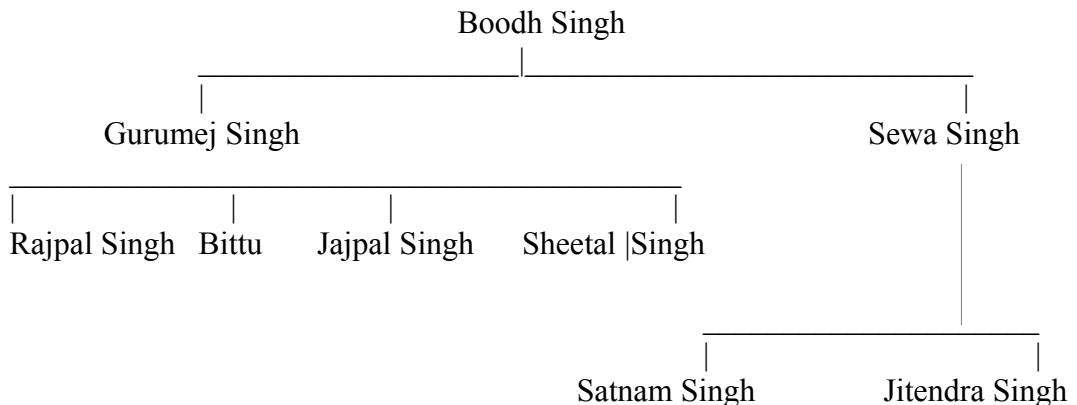
in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

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

(Emphasis supplied)

4. At this stage, it is also appropriate to unfold undisputed factual details related to appellant's lineage and his background.

Admittedly, the family tree of appellant is as under:



In this regard, the statement of Singh, father of appellant, aged about 85 years, recorded by Vigilance Officer (SDO(P) Ashoknagar) is relevant and is reproduced thus:

ने बयान मे बताया कि मै उक्त पते पर रहता हूं। आज से करीबन 90-100 साल पहले हमारा परिवार पंजाब से अशोकनगर आया था। महाराज सिंधिया का राज था। मेरे ताऊजी सूबेदार सिंह एवं पिताजी बूढ सिंह ग्राम सिंधाडा अमृतसर के पास से ग्राम सिंधाडा मे आये थे । ग्राम सिंधाडा हमारे पिताजी ने कुछ जमीन खरीदी तथा कुछ जमीन हमे राजा ने दी थी ।मेरा एवं मेरे भाई सेवा सिंह का जन्म ग्राम सिंधाडा मे ही हुआ था। मै सन् 1983 मे ग्राम सावन मे अपने परिवार सहित रह रहा हूं। छोटा भाई सेवा सिंह अपने परिवार के साथ ग्राम सिंधाडा मे रहते है। मेरे यहां चार लडके एवं पांच लडकियां है। बडा लडका स्व राजपाल सिंह, जजपाल सिंह, शीतल सिंह एवं हरपाल सिंह है। हमारे पूर्वज ग्राम खारा पिण्ड अमृतसर (पंजाब) के रहने वाले है। हमारी जाति नट बाजीगर है। अमृत चखने के बाद गुरुद्वारे से संधु उपनाम मिला है। मेरे दादाजी स्व श्री नत्था सिंह ने गुरुद्वारे मे अमृत चखा था गुरुद्वारे से ही हमारे परिवार को संधु उपनाम मिला था। हमारे परिवार मे कोई भी व्यक्ति सरकारी नौकरी मे नही है। दिनांक 10. 8.1950 को हमारा परिवार ग्राम सिंधाडा तहसील मुगावली जिला गना मे निवास करता था। मै कभी किसी स्कूल मे नही पढा हूं।

Thus, from the above, it is clear that grandfather of appellant, though resident of Punjab, had migrated to Ashoknagar about 90-100 years ago on the offer of the then Ruler of Scindia State to provide agricultural land. As such, appellant's grandfather was a resident of Ashoknagar more than 90 years back preceding the date of enquiry. Appellant's father Singh was also born in the State of Madhya Pradesh. Thus, prior to Presidential Order of 1950 both his grand father and father were residents of State of Madhya Pradesh. The appellant was born on 5/1/1963. As such, there cannot be any dispute about residential status of forefathers and father of appellant as on

10/8/1950 in Gwalior State falling within erstwhile Central Provinces and Berar and then re-organized as State of Madhya Pradesh. As a matter of fact, the learned Single Judge has also returned the finding as regards residential status of forefathers of appellant in the State of Madhya Pradesh much prior to 1950 (paragraph 41).

It is also matter of record that grandfather and father of appellant were illiterate villagers and engaged in agricultural activities to earn their livelihood since the time they migrated to Gwalior State about 90-100 years ago and were not in any kind of service either in Gwalior State or State of Madhya Pradesh. Under the circumstances, they appear to have not obtained caste certificate.

5. In the aforesaid factual matrix, now, the following questions arise for consideration:-

(i) *Whether the enquiry conducted and procedure followed by the High Power Caste Scrutiny Committee was in accordance with the guidelines laid down in **Madhuri Patil's case (Supra)** and directions issued by the State Government in this behalf?*

(ii) *Whether the impugned judgment is in excess to the scope of jurisdiction under Article 226 of the Constitution of India, as explained in paragraph 15 of **Madhuri Patil's case (Supra)** and;*

(iii) *Whether the impugned judgment is substitution of findings and recommendations recorded by High Power Caste Scrutiny Committee based upon critical evaluation of evidence/deliberations?*

6. With regard to Question No.(i) above, the report of High Power Scrutiny Committee dated 18/12/2019 pursuant to its deliberations/meeting dated 13/12/2019 deserves careful perusal.

The Scrutiny Committee consisted of four persons viz. (I) Principal Secretary, Anusuchit Jaati Kalyan Vibhaag, Bhopal as its

Chairperson; (ii) Commissioner, Anusuchit Jaati Vikas as Member Secretary; (iii) Director, Aadim Jaati Anusandhan Sanstha as Member (Caste specialist) and; (iv) Secretary, M.P.Rajya Anusuchit Jati Aayog as Member.

In pursuance of the directions of learned Single Judge issued vide order dated 1/5/2019 not to get prejudiced by any observations made in the said order and decide strictly in accordance with the evidence on record, the Scrutiny Committee, while preparing its report, has taken into consideration the following evidence which came on record:

(i) The Inspection report dated 25/7/2019 of Sub Divisional Officer, Ashoknagar filed along with communication received from Superintendent of Police, Ashoknagar dated 27/7/2019 which included statements recorded during investigation, information culled out from revenue records, School and investigation conducted at Village Tara, District Taran Taran Punjab.

(ii) Complaints made by Ramesh Kumar Itoriya, Anand Dohare, Devendra Tamrakar and respondent Ladduram Kori.

(iii) Reply of appellant to the communication of Superintendent of Police and aforesaid complaints

(iv) Reply of appellant to the ten questions formulated by learned Single Judge in his order dated 25/4/2019 (W.P. No.7047/2013).

(v) Statement of appellant with cross-examination by complainants Ramesh Kumar Itoriya, Devendra Tamrakar, Engineer Ladduram Kori, Roshanraj Singh Yadav, Gopilal Jatav, as well as, by Scrutiny Committee;

(vi) Statements of Hardeep Singh, Mahendra Singh and Balvir Singh, independent witnesses, who are residents of native place of appellant's forefathers viz. Village Khara, District Tarantaran, Punjab; and thereafter came to the conclusion that the caste certificate dated 6/11/2008 mentioning the appellant's caste as "Nat" was a valid certificate.

(I) The points contained in the **Inspection report of SDO dated 25/7/2019 filed along with communication of SP dated 27/7/2019** are briefly stated thus:

(1) As per information furnished by SDO (Revenue) in his letter dated 19/7/2019, the competent Authority to issue caste certificate is Sub Divisional Officer Revenue. The caste certificate in favour of Jajpal Singh Jajji has been issued by the competent Authority viz. SDO Ashoknagar.

(2) During investigation, land records of Shri Boodh Singh, grandfather of non-applicant Jajpal Singh Jajji from village Singhada, as well as, admission and school leaving records of Jajpal Singh Jajji were procured. In the column of caste in School Records and Revenue records, "Sikh" is mentioned. In Patwari Halka No.302, Village Khara, Tahsil Patti, District Tarantarn, Punjab, caste of Boodh Singh, grandfather of appellant is mentioned as "NAT". As per communication dated 4/7/2019 received from Tahsildar, Piprai, name of Boodh Singh, grandfather of Jajpal Singh is mentioned in the revenue records of 1950. In the column of caste therein, "Sikh" is mentioned.

(3) The certified copy of land record pertaining to PH No.28 was obtained and statements of Headmaster and Principal, Sarpanch

Village Khara Balvir Singh and an elderly person of Village Khara Shri Mahendra Singh, aged about 85 years were recorded. Verification certificate has been given by Sarpanch Balvir Singh, Nambardar Kahsmir Singh, Panchayat Members Randhir Singh, Birsa Singh and Daya Singh that they are well acquainted with Jajpal Singh S/o Gurumej Singh S/o Boodh Singh S/o Natha Singh. Their ancestors being residents of Village Khara were of "NAT" caste, who used to earn their livelihood by showing plays and acrobatic skills in villages.

(4) In the primary school entrance register 1969 of Government Middle School Singhada, Sikh is mentioned in the column of caste against the name of appellant.

(5) Shri Gurumej Singh, father of appellant stated that he has never studied in any school, but only learnt to read at home. He only knows how to sign. Therefore, no school record of Gurumej Singh is available.

(6) Shri Gurumej Singh, father of appellant and his uncle Seva Singh's statements were recorded. They stated that they and their father never obtained caste certificate as there was no such need. Gurumej Singh also stated that grandfather, brother, sister or any other family member of appellant is not in Government Service.

(7) As per information received from Dy. Collector, District Ashoknagar vide his letter dated 10/7/2019, Shri Jajpal Singh was elected as President, Municipal Council in 2009 from reserve seat. The nomination form and affidavit filed by Jajpal Singh and original record of Crime No.161/10 from PS Kotwali, Ashoknagar was seized. Jajpal Singh was elected as Member of Legislative Assembly from Congress Party from Ward NO. 32, Ashoknagar (SC) on 11/12/2018.

On examining the authenticity of caste certificate of Jajpal Singh Jajji, it was found that as per letter of Tahsildar, Piprai dated 4/7/2019 name of Boodh Singh S/o Natha Singh is mentioned as Bhumiswami as on 10/8/1950. As per said revenue record, on 10/8/1950, Boodh Singh, grandfather of Jajpal Singh was residing at Village Singhara, Tahsil Piprai, District Ashoknagar. As per letter of Sub Divisional Officer, Ashoknagar dated 19/7/2019, the competent Authority to grant caste certificate is Sub Divisional Officer (Revenue). The caste certificate of Jajpal Singh Jajji has been validly issued by competent authority SDO, Ashoknagar in Case No.6/Appeal/08-09, Ashoknagar dated 3/11/2008.

No definite opinion was given by the Superintendent of Police on the aforesaid Inspection report, which was sought for vide letters dated 31/7/2019, 19/8/2019 and 11/9/2019, in response where to the SP replied that in terms of guidelines issued in Madhuri Patil's case, the inspection report dated 27/9/2019 of SSP has been forwarded to the Committee.

(ii) Complaints were made by complainants Ramesh Kumar Itoriya, Anand Dohare, Devendra Tamrakar and Ladduram Kori against the appellant. The complaints, in essence, were to the effect that a forged SC caste certificate has been issued in favour of appellant, who has also been gaining benefit by changing his caste time and again. He had contested the last Legislative Assembly election as "NAT" SC candidate by procuring the said certificate knowing fully well that Ashoknagar seat is reserved for only SC candidates. In fact, he is a member of General category. Complainant Devendra Tamrakar, through his written statement, averred that:

- (a) In 1994, appellant had filed the nomination form of Member, Janpad Panchayat, Ashoknagar as General category candidate.
- (b) On 20/4/1999, he had filed nomination of Krishi Mandi, Ashoknagar as General Candidate.
- (c) On 13/5/1999, he had filed nomination for Member, Jila Panchayat, Guna as "NAT" SC caste candidate.
- (d) On 2/12/1999, he filed nomination for Municipal Council, Ashoknagar as "Keer" OBC caste candidate and also won the election and was elected as President, Municipal Council.
- (e) In the year 2009, he won the election of President, Municipal Council, Ashoknagar as "NAT" SC candidate, which was a general category seat.
- (f) In 2013, he filed nomination for Ashoknagar legislative assembly as "NAT" SC candidate, though lost
- (g) In 2018, he again filed nomination for Ashoknagar Legislative Assembly as "NAT" SC candidate and won.

Similar allegations have been levelled by other complainants. Besides, complainant Ladduram Kori also alleged that the Investigating Officer had found the ancestors of Jajpal Singh to be resident of Village Khara, Tahsil Patti, District Tarantaran Punjab. In the Inspection report of Collector District Ashoknagar, there is no evidence with regard to staying prior to 1967. The report received from Patwari, Village Khara is incomplete, which is of the year 1967. The Investigating Officer ought to have contacted the relatives of Jajpal Singh who are still residing in Punjab and recorded their statements and produced their caste certificates, which has not been done. Mere mentioning of "NAT" as Surname in Khasra is not

sufficient to hold that the caste was "NAT". The statements of Mahendra Singh and Balvir Singh, residents of Village Khara, are incomplete. They have not informed about relatives and family members of Jajpal Singh, contacting whom, caste certificates could have been procured. Besides, one more caste certificate of Jajpal Singh from Tarantaran, District Amritsar is in existence. Therefore, he is not entitled to reservation in the State of Madhya Pradesh.

(iii) Countering the aforesaid allegations, appellant Jajpal Singh averred that he was born on 5/1/1963 at Village Singhara, Tahsil Mungawali, District Ashoknagar and by birth is residing in State of Madhya Pradesh. The said fact is evident from his school records and statement of Shri Jagdish Prasad Sharma, Principal Middle School Singhara. He is a domicile of District Ashoknagar, Madhya Pradesh.

He further stated that his ancestors, being of SC community, were looked down upon in the Society and to maintain respect in Society, they started writing "Sikh" instead of "NAT. Sikh is a religion and not caste.

He further stated that he has not used any other caste certificate during the period 11/11/2004 to 6/11/2008. He was granted "NAT" SC caste certificate by the competent Authority on 6/11/2008 after due verification and investigation. During the period 2008 to 2013 he did not contest any election on the basis of "NAT" caste certificate. In the year 2009 he had contested Municipal Council, Ashoknagar elections from an unreserved seat and for the first time in 2013 had contested Ashoknagar elections on a reserved seat, which he lost.

Appellant further averred that his OBC caste certificate has already been cancelled in 11/11/2004 by the Scrutiny Committee after

considering entire evidence brought on record and the said order has attained finality. A person cannot be penalized again for the same offence. The complainants have made allegations on the same set of evidence which have been considered by the Scrutiny Committee in its order dated 11/11/2004. They have not been able to point out as to why the appellant does not belong to "NAT" SC caste.

His ancestors were residents of Village Khara, Patwari Halka No. 302, Tahsil Patti, District Tarantaran. Around 90-100 years ago, his grand father Boodh Singh had migrated from Punjab and settled in Singhara, District Ashoknagar. The said fact also finds support from Patwari report of Village Singhara, which contains description of a land recorded in the name of his grandfather in the year 1950 at Village Singhara. This proves that his ancestors have been residing since prior to 1950 in the State of M.P.

Shri Hardeep Singh (Patwari Halka No. 302, Tahsil Patti, District Tarantarn) has stated that as per land records of Village Khara, Boodh Singh S/o Shri Natha Singh was owner of land falling in Survey No. 155, admeasuring 13.13 at Village Khara. As per records, the caste of Boodh Singh S/o Shri Natha Singh is "NAT". The relevant Khasra was annexed for perusal.

Shri Mahendra Singh, aged about 85 years, R/o Village Khara, P.S. Sarahali, District Tarantaran, Punjab stated that Shri Boodh Singh belonged to "NAT" Bazigar community, who used to show their acrobatic skills at villages.

Shri Balvir Singh, aged about 75 years, Sarpanch Village Khara stated that about 50-60 years ago Boodh Singh and Natha Singh had come to Village Khara for selling their land. Natha Singh, father of

Boodh Singh, who was resident of Village Khara, belonged to “NAT” Bazigar family. About 90-100 years ago they migrated to Madhya Pradesh. They used to earn their livelihood by orchestrating shows.

Shri Ranjit Singh is the brother-in-law of appellant. He stated that his caste is NAT and had migrated prior to 1947.

Shri Chiddrapal Singh is cousin of appellant as appellant's father is his maternal uncle. He has stated that his caste is “Bazigar” (Madari) which is Scheduled Caste in Punjab. Their caste is Bazigar (NAT).

In his statement, appellant stated that his ancestors were original residents of Village Khara, Punjab. About 90-100 years ago, they had migrated and started living at Village Singhara, Ashoknagar. His grandfather Late Shri Boodh Singh was rehabilitated during Scindia Kingdom. His ancestors used to show play/acrobatic activities in Villages for earning their livelihood. The caste of his ancestors is “NAT” Bazigar. He never stayed in any hostel during his schooling nor obtained any scholarship. His grandfather, father, brother, and sister were never in Government job. Baba Boodh Singh was issued “NAT” SC caste certificate by Gram Panchayat Khara which is an important piece of evidence.

Appellant further stated that complainant Ladduram Kori has nowhere stated as to why appellant is not of “NAT” caste nor any evidence has been adduced by him in this regard. Since he is a political rival, therefore, he is harassing him in all manner, whereas all his allegations have already been decided vide Scrutiny Committee order dated 11/11/2004. Similarly complainants Roshan Yadav and Gopilal Jatav are also political rivals who would directly get benefited by unsettling his caste certificate. Likewise complainant Devendra

Tamrakar, who is a Journalist, has also been Mayor of Municipal Council and Leader of Opposition during the period 2009 to 2014.

In his cross-examination conducted by complainant Ramesh Kumar Itoriya, appellant admitted that he had been President, Municipal Council Ashoknagar as OBC candidate and has obtained the benefit of OBC category. He further admitted that he had mentioned his caste as "General" in the column of caste while filing nomination for Mandi Elections, Ashoknagar. He further stated that he had filled the form as this seat was for un-reserved category, therefore, candidates belonging to all castes/religion could contest on that seat, though he did not contest the election.

In his cross-examination conducted by complainant Devendra Tamrakar, appellant admitted that in 1994 he had contested the election of Janpad Panchayat, Ashoknagar from general category. He further stated that person belonging to any caste/category can contest election on general category seat. Hence, he had contested the election.

In his cross-examination conducted by complainant Ladduram Kori, he stated that in the revenue records, the caste of his ancestors is mentioned as "NAT". He further admitted that during his education from Class 1 to LL.B. he never used the NAT caste certificate as there was no need.

No cross-examination was conducted by Roshanraj Singh and Gopilal Jatav.

In his cross-examination conducted by the Scrutiny Committee, appellant stated that the then Ruler of Gwalior State had given his ancestors sufficient land for agriculture, therefore, their financial condition was good. In reply to question as to why he took "Keer"

caste certificate, he replied that his maternal grandfather was a resident of Village Hinoda and appellant stayed with him since his childhood. His entire education was arranged for by his maternal grandfather. Family members of his maternal grandfather stayed at Amritsar District. Everyone in the family knew that his family belonged to Scheduled Caste. The “Keer” SC caste certificate issued from Amritsar has been obtained from his maternal grandfather side. By mistake “Keer” caste has been mentioned therein. He never went to Punjab, nor applied or gave any affidavit for such certificate. He is not aware as to how the same was obtained by his maternal grandfather. However, as “Keer” is a Scheduled Caste in Punjab, the certificate was of Scheduled Caste and since he was not aware of the sub-castes of “NAT” caste, he thought that “Keer” must be some sub-caste of “NAT” and on this basis he had applied for getting certificate in Ashoknagar. But since “Keer” caste is registered as “OBC” in Ashoknagar, he was given OBC certificate. This confusion got created owing to his lack of knowledge about “NAT” caste and its sub-castes and the certificate of “Keer” SC obtained by his maternal grandfather. There was no malafide intention behind this. He further stated that his ancestors had come to MP prior to 1950 in Madhya Pradesh and that in Punjab they used to earn their livelihood by orchestrating plays, rope-walking, singing etc. They had small lands, but when the then Ruler of Gwalior declared that free land would be provided to anyone who would like to come from Punjab and do agriculture in Madhya Pradesh, his ancestors settled in Madhya Pradesh.

(iii) Reply of appellant to ten questions

1. Whether the petitioner ever contested any election for the

post of Member Janpad Panchayat in the year 1994, as a “General Category Candidate” or not and whether he was elected or not?

Answer - Yes, the non-applicant had contested and won the election of Member, Janpad Panchayat in the year 1994 on General seat. Since, the said election was not for any reserved category, therefore, being general, it was open for candidates from all categories. Therefore, the non-applicant had contested the election and won. The said question/charge has been decided by the Scrutiny Committee on 11/11/2004.

2. Whether in the year 1999, the petitioner had contested the election for the post of Member Zila Panchayat as a candidate of “Scheduled Caste” or not and when the certificate of “Scheduled Caste” was obtained by him?

Answer - The non-applicant/respondent had not contested the election of Member, Zila Panchayat as a Scheduled Caste candidate. Non-applicant/respondent had obtained the Scheduled Caste Certificate of “Nat” caste on 6/11/2008. The said question/charge has also been decided by the Scrutiny Committee on 11/11/2004.

3. Whether the petitioner had contested the election for the post of President, Municipal Council Ashoknagar as a candidate of "OBC" and under what circumstances, the "OBC" certificate dated 2-12-1999 was issued to him and what happened to his earlier certificate of "SC"?

Answer - Non-applicant/respondent, by birth, comes under Scheduled Caste. The non-applicant/respondent had contested the election of President, Municipal Council on the basis of “Keer”-OBC caste certificate. Previously, he was not issued Scheduled Caste Certificate. The members of Society/family had always been telling that our ancestors were of Scheduled Caste. But, without obtaining correct information about caste, the non-applicant/respondent had applied for “Keer”-Scheduled Caste certificate. However, the complainants brought this fact before the Scrutiny Committee that non-applicant/respondent came under “Nat”-Scheduled Caste and

not "Keer". On the basis of aforesaid, the scrutiny committee cancelled the "Keer" caste certificate while affirming the fact that non-applicant/respondent belongs to "Nat"-Scheduled Caste. The non-applicant/respondent, in absence of knowledge as to caste framework of society, had obtained said certificate. Non-applicant/respondent did not have any mens rea. Non-applicant/respondent since childhood has been hearing from older people of his Society that his ancestors being natives of Punjab came under Scheduled Caste. The scrutiny Committee has cancelled the "Keer" caste certificate on 11/11/2004 and an FIR at Crime No. 161/2010 has been registered against the non-applicant/respondent at PS Kotwali, Ashoknagar and the matter is pending in Court of law. Prior to this, no other caste certificate was ever obtained by the non-applicant.

4. Why the certificate of "OBC" was obtained by the petitioner, just few days prior to the elections for the post of President, Municipal Council, Ashoknagar?

Answer – The answer to this question be also read on the basis of facts mentioned in point no.3. The non-applicant/respondent has not done it deliberately and it was merely by co-incidence that "Keer" caste certificate came to be issued prior to elections of President, Municipal Council. The non-applicant/respondent did not have any mens rea. Since "Keer" caste is notified in Ashoknagar district of Madhya Pradesh under "OBC" category and in other districts of Madhya Pradesh under SC/ST category, the "Keer" caste certificate was issued to the non-applicant/respondent by the competent Authority. The said question/charge has been decided by the Scrutiny Committee vide order dated 11/11/2004 and for this lapse on the part of non-applicant, Crime No. 161/10 has been registered against him.

5. Whether any certificate of "SC" was ever issued in favour of the petitioner prior to 6-11-2008 and if so, then on what date, and when the said certificate was surrendered by him and why?

Answer - The non-applicant/respondent was never issued "NAT" SC caste certificate prior to 6/11/2008 by the competent Authority. Non-applicant/respondent has been issued "NAT" SC caste certificate on 6/11/2008 by Sub Divisional Officer (Revenue), Ashoknagar, which is still in force. Non-applicant/respondent has not surrendered the said certificate before the competent Authority.

6. Why the petitioner did not obtain the "SC" certificate from 11-11-2004 ("OBC" certificate was cancelled by order dated 11-11-2004 by the High Power Caste Scrutiny Committee) till 6-11-2008?

Answer – The reason for delay from 2004-2008 in applying for certificate is the time elapsed in getting information about paternal place of ancestors situated in Punjab for verifying my "Nat" caste, as well as in obtaining information about "Nat" caste and relevant documents. There was no other intention. The delay is bonafide.

7. The election for M.P. State Legislative Assembly were held on 27-11-2008, then why the petitioner had obtained his "SC" certificate just prior to holding of election ?

Answer – Non-applicant/respondent had obtained the SC caste certificate of "NAT" in the year 2008 just prior to Vidhansabha elections for the reasons mentioned in point no.6. This was a mere co-incident. Since non-applicant had neither contested any election in 2008 nor filed any nomination, therefore, it is totally false to say that the certificate was obtained due to the elections of 2008.

8. Why the petitioner was obtaining different caste certificates, just few days prior to the elections?

Answer – The non-applicant/respondent had not obtained caste certificates of different castes. On 2/12/1999, "Keer" caste certificate was obtained. He had applied for certificate of "Keer"-Scheduled Caste, but the State of Madhya Pradesh, except for Bhopal, Sehore, Raisen etc. districts, has declared the "Keer" caste as OBC. Due to this reason, the competent

(27)

Authority had issued "Keer"-OBC caste certificate to the non-applicant/respondent. The said "Keer"-OBC caste certificate has been cancelled by the High Power Scrutiny Committee vide order dated 11/11/2004. The Scrutiny Committee after considering the investigation report and other documents, while treating the non-applicant/respondent to be of "NAT" SC caste, has cancelled the "Keer"-OBC caste certificate on 11/11/2004. Besides this, no other caste certificate has been obtained by the non-applicant. Since, after cancellation of "Keer" caste certificate on the basis of proved facts "NAT"- SC caste certificate was obtained in the year 2008 and no election was contested by the non-applicant at that time, therefore, it is baseless to say that the certificate has been obtained for political gains.

9. Whether the surname of the petitioner has been recorded in some of the documents as "Sandhu" or not?

Answer – Non-applicant/respondent belongs to "NAT" scheduled caste. The ancestors of non-applicant/respondent had taken holy water in Gurudwara. Thereafter "Sandhu" title was provided by the Granthi/Gyani, which is not a caste but a social respect. Non-applicant/respondent was never issued caste certificate of the said caste by the competent Authority. The said question/charge has also been decided by the honorable scrutiny committee in its order dated 11/11/2004.

10. If the earlier "SC" certificate was still in force, then why the petitioner obtained a fresh "SC" certificate on 6-11-2008?

Answer – Previously the non-applicant/respondent was never issued SC certificate, nor it was in force. Respondent was issued "NAT" caste certificate by the competent Authority on 6/11/2008, which is still in force. The non-applicant has not obtained again or fresh SC certificate. The non-applicant/respondent has only one "NAT" SC caste certificate, which is in force since 6/11/2008. Prior to this, no SC certificate was issued in favour of the non-applicant.

On the basis of the aforesaid, the Committee framed two

questions viz.

- (1) Whether non-applicant or his ancestors had migrated to Madhya Pradesh from Punjab prior to 1950 ? and;**
- (2) Whether non-applicant or his ancestors are of “NAT” caste in Punjab ?**

As to question no.1, the Committee noted that as per record of Patwari Halka No. 28, Tahsil Piprai, District Ashoknagar, it is apparent that name of Shri Boodh Singh, grandfather of appellant is mentioned in Khasra of 1950. Superintendent of Police, Ashoknagar has also mentioned about this in his report. This proves that ancestors of appellant had come to Madhya Pradesh prior to 1950. No evidence has been adduced by the complainants that ancestors of appellant had not migrated to Ashoknagar prior to 1950.

With regard to question no.2, the Committee observed that the complainants have again and again impressed upon appellant's OBC caste certificate. However, this certificate has been cancelled by the Scrutiny Committee vide order dated 11/11/2004 on the basis of the fact that the appellant belonged to “NAT” caste. Therefore, for determining his caste, there is no relevance of that OBC caste certificate. In this regard the appellant has clarified that in Punjab both “NAT” and “Keer” caste come under Scheduled Caste, therefore, under confusion he got “Keer” caste certificate made, which has been cancelled by the Scrutiny Committee. The Committee has cancelled his OBC Caste certificate treating him to be of NAT caste.

From the above and in view of the facts that name of grandfather of appellant i.e. Boodh Singh is mentioned in the Khasra of the year 1950 of PH No.28, Tahsil Piprai, District Ashoknagar as

surfaced in the investigation conducted by SP, Ashoknagar and that the ancestors of appellant were residents of Village Khara, Tahsil Patta, Punjab where in revenue records of PH No.302, the caste of Boodh Singh S/o Natha Singh is mentioned as "NAT", as well as the oral evidence of Hardeep Singh, Mahendra Singh and Balvir Singh, residents of Village Khara, Punjab, the Committee concluded that the forefathers of appellant had migrated from Punjab prior to 1950 and there was no reason to disbelieve that appellant is of "NAT" caste and, accordingly, the "NAT" SC caste certificate dated 6/11/2008 issued in favour of appellant by Sub Divisional Officer, Ashoknagar was found to be valid.

7. The aforesaid order has been set aside by the learned Single Judge for the reasons mentioned in the impugned judgment, against which the present writ appeals have come to be filed.

8. Learned counsel for the appellant while taking exception to the impugned judgment *inter alia* has made following submissions :-

(1) That, on 10.07.2008, appellant had applied for issuance of NAT SC caste certificate before Tahsildar, Ashok Nagar, whereupon proceedings were initiated. Along with the application, the appellant had also furnished an affidavit stating his caste to be NAT (Bazigar), nomination form of Member, Jila Panchayat mentioning his caste as NAT, which had been accepted by the returning officer, Jila Panchayat, Guna. The Tahsildar noted that in WP. No.1330/2002 (PIL), this Court had directed to take action on the complaint of petitioner - Baijnath Sahu in terms of Circular dated 01.08.1996 which provided for enquiry and taking action in respect of forged caste certificate, in pursuance whereof, meeting of high caste scrutiny committee was convened

which found that since the appellant had used the certificate of NAT (Bazigar) Scheduled Caste as Member, Jila Panchayat therefore the subsequent caste certificate dated 02.12.1999 of Keer caste was invalid. The said decision was reaffirmed by the High Power Caste Scrutiny Committee dated 11.11.2004 passed in the meeting convened pursuant to the directions issued by this Court in W.P.520/2004 vide order dated 03.09.2004. In wake of the aforesaid i.e. mentioning of caste by appellant as NAT (Bazigar) in his nomination form of Member, Jila Pachayat approved by the Returning Officer, Jila Panchayat Guna and the decision of the committee dated 25.02.2004 as well as 11.11.2004 to treat the appellant as NAT the application of the appellant was allowed and he was granted a temporary NAT (Bazigar) caste certificate. He further noted that the appellant had shown his address as village Singhada, Tahsil Mungaoli, District Guna as on 10.08.1950 and for confirmation thereof he was directed to file relevant documents, failing which the caste certificate was liable to be cancelled. On 08.10.2008, the matter was again taken up and the appellant produced the Khasra of 1950-51 and 2008, 2009 of village Singhada. The Tahsildar observed that no appeal or revision had been filed against the order dated 11.11.2004 in any court of law and therefore the same had attained finality, on the basis whereof the caste of appellant was proved to be NAT (Bazigar). He also found that in the Khatauni of 1950-51 at Khata No.370 name of Boodh Singh S/o Natthu Singh was entered as Bhumiswami, who is the grandfather of appellant which proves the fact that the appellant was the resident of Guna (presently Ashok Nagar) as on 10.08.1950 and accordingly his temporary certificate was confirmed. On 15.10.2008, Balveer Singh

Kushwah filed objection before the SDO, Ashok Nagar regarding issuance of said caste certificate on which the SDO directed the Tahsildar Ashok Nagar to enquire the matter and submit the report. On 01.11.2008, the Tahsildar, Ashok Nagar examined the documents including revenue records and found that the caste of the appellant registered in the revenue record as Sikh. The Tahsildar, Ashok Nagar after detailed discussion submitted his report indicating that on the basis of implied intent of decision of committee, it could be said that the appellant was of scheduled caste. Consequently, on 06.11.2008 the SDO (Revenue) Ashok Ngar had issued NAT caste certificate to the appellant.

(2) That learned Single Judge has exceeded jurisdiction under Article 226 of the Constitution of India by exercising his power of judicial review over the deliberations dated 13.12.2019 and the order dated 18.12.2019 passed by the Scrutiny Committee. The same runs contrary to para 15 of the **Madhuri Patil's case (supra)**. The Writ Court substituted its findings for that of the Scrutiny Committee in excess to the findings recorded by the Scrutiny Committee not only as an appellate authority but also an investigating officer, inasmuch as the Court has evaluated in its own way the entire evidence on record to justify its findings, as such, the impugned judgment deserves to be set aside.

(3) That the impugned judgment is beyond the pleading of the respondent/writ petitioner. The findings so recorded are self styled and based on misconstrued facts. The impugned judgment suffers from perversity of approach.

(4) That the jurisdiction of the High Court is subject to the

limitation of interference with the findings of facts recorded by the Scrutiny Committee and the court is only required to see whether the committee has considered all the relevant material placed before it or has not applied its mind to the relevant facts while recording the finding. In other words, in exercise of the power of judicial review, the court is concerned with the decision making process and not the decision itself. If the committee was found to have not considered relevant facts or not conducted the proceeding in accordance with the procedure prescribed under the statute or relevant government circulars, it ought to have remitted the case back to the committee instead of substituting its decision based upon the finding recorded by it. **[(2018) 6 SCC 162 – Bharti Reddy Vs. State of Karnataka]**. Learned Single Judge failed to point out non consideration of relevant facts or any procedural lapse in the enquiry conducted by the Scrutiny Committee. On the contrary, learned Single Judge in his own way appreciated facts and substituted its finding. Such recourse runs counter to law laid down by the Apex Court.

(5) That the Scrutiny Committee has not only considered the entire material placed before it but also afforded full opportunity to the complainants and others to lead evidence and cross examine the appellant during the course of deliberations keeping in mind the principle of natural justice as well.

(6) That since the complainant approached the Scrutiny Committee challenging the caste certificate issued to the appellant by the competent authority, the burden of proof was upon the complainant to prove that the appellant did not belong to NAT SC caste and therefore the certificate was illegally procured. Only thereafter onus would shift

to the appellant to disprove the allegation. Learned Single Judge in para 115 of the impugned judgment erroneously shifted the burden of proof on the present appellant.

(7) That the findings of the learned Single Judge in para 114 and 115 of the impugned judgment are self contradictory. On one hand learned Single Judge has set aside the decision of the Scrutiny Committee based upon Jamabandi (Khasra) and at the same time, in para 117 of the impugned judgment, the Superintendent of Police, Ashoknagar was directed to personally investigate the matter in respect of same Jamabandi (khasra).

(8) That the learned Single Judge has quashed the caste certificate issued in favour of the appellant and has set aside the decision of the Scrutiny Committee on the ground that the forefathers of the appellant have renounced the profession attached with their caste after migration from the State of Punjab to State of Madhya Pradesh as referred from para 76 to 99 of the impugned judgment. It is settled law that caste is decided by birth in the family and caste will not be decided on the basis of marriage or migration or from profession or employment of the person. Every citizen of the country has right to carry on trade or profession of his choice under Article 19 of the Constitution within the territory of India. The trade or profession or employment cannot be guiding factor for deciding the caste status of any citizen which is explained by following examples :-

(i) Cobbler belonging to Scheduled Caste after obtaining Government Service does not loose caste status of Scheduled Caste (SC).

(ii) A Brahmin does not lose his caste status by opening any merchant shop or general merchant because they are not performing their traditional work of Pooja Archana attached to

Brahmin Caste.

The essence of submissions is that any citizen belonging to any caste can adopt any trade or business without affecting or without changing of his caste status. Therefore, the impugned judgment being arbitrary, unreasonable and in ignorance of Article 19 of the Constitution of India deserves to be set aside.

(9) That the learned Writ Court has relied on circular dated 13.01.2014 and circular dated 11.7.2005 from para 62 to para 75 of the impugned judgment to hold that the appellant shall not be entitled for the benefit of caste certificate issued from the State of Punjab. It is submitted that the circular of the year 2005 clause 3 itself provides that “those persons who have settled in Madhya Pradesh after migration from other states shall be clubbed in the category of interstate migration only if they have migrated after SC/ST Presidential Order 1950 [The Constitution Schedule Caste Order 1950]. Learned Writ Court from para 36 to 41 has held that forefathers of the appellant had already migrated much prior to 1950. Therefore, in view of Clause 3 of circular reproduced at page 39 of the impugned judgment so also finding in para 40 and 41 of the judgment, it is clear that the appellant will not fall under the category of interstate migration and therefore it is submitted that the appellant shall be entitled to obtain caste certificate from state of Madhya Pradesh and to avail all the benefits or reservation provided by the State of Madhya Pradesh.

(10) That the finding recorded by the learned Writ Court in para 110 and 111 of the impugned judgment are perverse and deserve to be set aside. It is submitted that once OBC Caste Certificate was cancelled by the decision of the Scrutiny Committee dt.11.11.2004 and the same

has never been subject matter of challenge before any forum, which had attained finality due to no further challenge to the decision by any of the parties and when the Scrutiny Committee itself has concluded that the appellant belongs to Nat Community, therefore, while dealing with the challenge to Schedule Caste “Nat” caste certificate, the Scrutiny Committee was confined to examine the validity of only Nat Scheduled caste certificate. It was not permissible in law for the Scrutiny Committee to reopen the issues related to OBC caste certificate which controversy was already settled in the year 2004. Therefore, after 15 years, it was not open and prudent for the Scrutiny Committee to review or reopen the issue of OBC caste certificate while deciding the validity of Scheduled Caste Certificate in the year 2019. Thus, the observations in para 109, 110 and 111 of the impugned judgment deserve to be set aside.

(11) That previously an FIR bearing Crime No.161/2010 had been registered against the present appellant under Section 420, 467, 468, 471, 477A and 120B of IPC with flimsy allegations. This Court had granted anticipatory bail to the appellant. The FIR containing false and fabricated allegations could not withstand the judicial scrutiny, as a result, FIR bearing Crime No.161/2010 as well as consequential proceedings were quashed by this Court on 04.02.2002 allowing M.Cr.C.No.2050/2010.

In the face of the aforesaid decision of the Scrutiny Committee dated 11.11.2004 and order dated 04.02.2022 passed in M.Cr.C.No.2050/2010, the directions of the learned Single Judge for fresh FIR based on previous allegations of OBC and Scheduled Caste certificate tantamounts to **double jeopardy** as prohibited under Article

20 of the Constitution of India.

(12) That the learned Single Judge though on one hand has recorded a finding that father and forefathers of the appellant had settled down in Madhya Pradesh prior to 1950 but on the other hand has held that the appellant being a migrant from Punjab can not get the benefit of 'Nat' caste, a scheduled caste in Punjab under the Presidential Order issued on 10.08.1950, though the same caste is also a Scheduled Caste in Madhya Pradesh in the Presidential Order dated 10/8/1950. The findings of the learned Single Judge from para 42 to 61 of the impugned judgment is absolutely perverse and patently illegal, inasmuch Boodh Singh, grandfather of the appellant had migrated from Punjab to Gwalior State about 90-100 years ago, much prior to issuance of Presidential Order 1950, therefore, the appellant, who is grandson of late Boodh Singh and born in the Madhya Pradesh can not be treated as migrant person particularly as per Clause 3 of the Madhya Pradesh Government Circular of 2005. Once the father of the appellant namely Gurumej Singh and the appellant himself both were born in the State of Madhya Pradesh, therefore, they became domicile of the State of Madhya Pradesh. They can not be treated as migrant persons to deny the benefit of reservation in the State of M.P.

(13) That reliance on the judgments by the learned Single Judge in the case of **Bir Singh Vs. Delhi Jal Board** reported in (2018) 10 SCC 312 and **Marri Chandra Shekhar Rao Vs. Seth G.S. Medical College** reported in (1990) 3 SCC 130 is misplaced, inasmuch as the judgments so relied upon were involving the facts where claimants of caste certificates were not domicile and had not taken birth in the State where caste certificate was claimed or were not residents of State on or

before 10/8/1950 i.e. the date of Presidential Order. Even otherwise, once the Single Judge has returned the finding that forefather of the appellant had shifted to the State of Madhya Pradesh prior to 1950, the finding as regards dis-entitlement of the appellant for caste certificates from paras 40-61 are perverse and unsustainable in law.

(14) That learned Single Judge has committed grave illegality having held in para 55 that any document or evidence relatable to State of Punjab has no relevance. In fact, this finding is in ignorance of Clause 13.5 of the judgment of the Supreme court in **Madhuri Patil's case (supra)**, wherein it is prescribed that Vigilance Officer/ Investigation Officer shall go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from and thereafter shall verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He shall also examine the school records, birth registration, if any. **He shall also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars.**

The Scrutiny Committee strictly adhered to the guidelines of the State of M.P. and in conformity with the mandate under Clause 13.5 of the **Madhuri Patil's case (supra)** had directed the Vigilance Officer to visit the native place of the appellant i.e. Punjab and examine the persons who had the knowledge of the social status of the appellant. The Vigilance cell had recorded the statement not only that of father, uncle and grandfather of the appellant but also the statements of the

residents of Punjab i.e. Hardeep Singh, Mahendra Singh and Balbeer Singh. Shri Hardeep Singh (Patwari Halka No. 302, Tahsil Patti, District Tarantarn) has stated that as per land records of Village Khara, Boodh Singh S/o Shri Natha Singh was owner of land falling in Survey No. 155, admeasuring 13.13 at Village Khara. As per records, the caste of Boodh Singh S/o Shri Natha Singh is "NAT". The relevant Khasra was annexed for perusal.

Shri Mahendra Singh, aged about 85 years, R/o Village Khara, P.S. Sarahali, District Tarantaran, Punjab stated that Shri Boodh Singh belonged to "NAT" Bazigar community, who used to show their acrobatic skills at villages.

Shri Balvir Singh, aged about 75 years, Sarpanch Village Khara stated that about 50-60 years ago Boodh Singh and Natha Singh had come to Village Khara for selling their land. Natha Singh, father of Boodh Singh, who was resident of Village Khara, belonged to "NAT" Bazigar family. About 90-100 years ago they migrated to Madhya Pradesh. They used to earn their livelihood by orchestrating shows. Verification certificate has been given by Sarpanch Balvir Singh, Nambardar Kahsmir Singh, Panchat Members Randhir Singh, Birsa Singh and Daya Singh that they are well acquainted with Jajpal Sigh S/o Gurumej Singh S/o Boodh Singh S/o Natha Singh. Their ancestors being residents of Village Khara were of "NAT" caste, who used to earn their livelihood by showing plays and acrobatic skills in villages. The statements of these witnesses were taken into consideration by the Scrutiny Committee while justifying the caste certificate of the appellant. **However, the learned Single Judge consciously did not consider** the statements of the aforesaid independent persons, which

otherwise had direct bearing on the caste/social status of the appellant and has a probative value in the light of the mandate under clause 13.5 of the **Madhuri Patil's case (supra)**. Hence, the impugned judgment deserves to be set aside.

(15) That the findings of the learned Single Judge in para 56 and 57 of the impugned judgment that once the forefather of the appellant had shifted from State of Punjab to the State of Madhya Pradesh long ago, there can not be justification to hold some parcels of agricultural land in Punjab is queer in nature. There is no law prohibiting the persons to hold the property in the State wherefrom they have shifted to another State much prior to 1950 or otherwise. The aforesaid finding is patently illegal and only to ignore the revenue records of 1964-65 in respect of agricultural land held by the grandfather of the appellant wherein his caste was mentioned as 'Nat'. Learned counsel has cited the example that if the finding of the learned Single Judge is upheld it shall lead to an absurd consequence; if an industrialist having an industrial plant in 'A' State to which he originally belong shifted or migrated to 'B' State, he shall not be entitled to set up another industrial plant in State 'A' or other States like Punjab, Bihar or Chhattisgarh. Such finding is perverse. Every citizen of this country has a right to hold property in a State where he resides or in the State wherefrom he was shifted or migrated or other State unless prohibited by law.

With the aforesaid submissions, learned counsel for the appellant prays for setting aside the impugned judgment.

9. *Per contra*, Shri R.D. Jain, learned Senior counsel assisted by Shri Ajay Bhargava, learned counsel for respondent No.1 contended

that:

- (1) There is no illegality or infirmity in the order of the learned Single Judge warranting interference in the intra-court appellate jurisdiction.
- (2) That the appellant, his father and grandfather since are migrated from Punjab, they are not entitled for Scheduled Caste Certificate as 'Nat' Caste only for the reason that 'Nat' caste is also indicated as Scheduled Caste in the State of Punjab in the Presidential order 1950.
- (3) That the revenue record in respect of agricultural land of Bhumiswami rights of the grandfather and father of the appellant indicates their caste as 'Sikh'. There is no mention of 'Nat' caste. Likewise in the school and college record, where the appellant had studied, his caste is shown as 'Sikh'.
- (4) That the appellant is in public life and has contested elections of local bodies and Member of Legislative Assembly. Appellant had obtained a caste certificate of "Keer" caste (OBC) on 2.12.1999 and was elected as President of Municipal Council, Ashoknagar in OBC category on 27.12.1999. One Baijnath Sahu had approached the Caste Scrutiny Committee challenging the said "Keer" caste certificate. On 25.2.2004, the Scrutiny Committee has found that the appellant since had used "Nat" Scheduled Caste Certificate on 13.5.1999, therefore, 'Keer' caste certificate obtained by him on 02.12.1999 was not valid and the certificate of 'Nat' caste was valid. However, the same was set aside by the High Court in W.P.No.520/2004 vide order dt.03.09.2004 holding that for want of coram of six

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persons, the impugned order of the caste scrutiny committee dt.25.02.2004 was bad in law; the case was remanded to the Scrutiny Committee for the decision afresh by the required forum. The committee was reconstituted and vide its recommendation dt.11.11.2004 has reiterated its earlier view that as the appellant belongs to 'Nat' community, therefore, the OBC certificate of 'Keer' caste was not valid.

(5) That one Ramesh Kumar Itoriya had made a complaint to the Scrutiny Committee for verification of 'Nat' Scheduled Caste certificate of the appellant. The scrutiny committee had cancelled the 'Nat' Scheduled Caste Certificate of the appellant on 16.09.2013. The Scrutiny Committee had taken into consideration the report of the revenue authority of Ashoknagar while reaching the conclusion. However, the said order was set aside by the High court in W.P.No.7047/2013 on 01.05.2019 at the instance of the appellant as it was found that he was not issued notice and afforded opportunity. The case was remitted back to the Caste Scrutiny Committee for decision afresh. The Caste Scrutiny Committee after remand ought to have considered the material already collected by the Committee particular report of the Collector in the light of the order of the learned Single Judge which also contains 10 questions to be answered by the appellant and also ought to have held that the appellant did not belong to 'Nat' community. The deliberations and decision of the committee are not in accordance with the directives/guidelines as contained in **Madhuri Patil's case (supra)**. Learned Single Judge was justified having found the

decisions of the Scrutiny Committee as perverse and illegal.

With the aforesaid submissions, learned counsel prayed for dismissal of the Writ Appeal.

10. Heard learned counsel for the parties.

11. Power of judicial review enshrined under Article 226 of the Constitution of India is an extraordinary constitutional power for the purpose of enforcement of legal and fundamental rights of citizens of India with self imposed limitations in the context of manner of exercise of jurisdiction. Indeed, the jurisdiction is equitable in nature and is liable to be exercised with circumspection on the touchstone of justice, equity and good conscience. It is sacrosanct and fundamental, to protect democratic polity governed by rule of law. In **Narmada Bachao Aandalon Vs. Union of India (AIR 2000 SC 3751)**, the Hon'ble Supreme Court has held that role of constitutional Court under the Constitution casts on them a great obligation to defend the values of the Constitution and rights of the people. The Court must, therefore, act within the judicially permissible limitations to uphold the rule of law.

12. The Constitutional Court may examine the legality, validity and propriety of administrative action on the ground viz. (i) violation of fundamental rights in Part III of Constitution; (ii) want or excess of authority or jurisdiction (*coram non judice*); (iii) violation of principles of natural justice; (iv) bias and malafides and (v) colorable exercise of power. The power of judicial review under Article 226 in the context of recommendation of the Scrutiny Committee is further circumscribed in view of Para 15 of the judgment of Hon'ble Supreme Court in **Madhuri Patil's case (Supra)** wherein, it is laid down that

the Committee when considers all the material facts and records a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the finding. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts, which have led the Committee to ultimately record the finding.

13. The High Power Caste Scrutiny Committee constituted by the State is under the directions of Hon'ble Supreme Court in **Madhuri Patil's case (Supra)**. In the State of Madhya Pradesh, the Committee regulates its procedure as per the guidelines framed by the State vide Circular No. F7-42/2012/Aa.Pra/One dated 13/1/2014, as well as, Circular dated 8/9/1997 which provides for the procedure to be adopted by the High Power Caste Scrutiny Committee. However, the caste certificate in question relates to the year 2008 and at that time the Circular No. F7-13/2004/Aa.Pra/one dated 11/7/2005 was in vogue detailing the procedure to be followed by the High Power Caste Scrutiny Committee. The Scrutiny Committee is not an adjudicating Authority like a Court or a Tribunal, but an administrative body which verifies the facts, investigates into specific claims of caste status and ascertains whether the caste/tribal status claimed is correct or not (**Dayaram Vs. Sudhir Batham and others ((2012)1 SCC 333)**, referred to). As such, the scope of judicial review over the deliberations and decisions of the Scrutiny Committee under Article 226 of the Constitution, is limited in nature. The Court is required to ensure that various clauses in paragraph 13 of **Madhuri Patil's case (Supra)** are adhered to, the findings are based on relevant facts brought on record and the conclusions do not suffer from perversity of

approach. This view is reinforced by the dictum of Hon'ble Supreme Court in Paragraph 15 of **Madhuri Patil's case (Supra)** wherein it has been held if the Committee considers all material facts and records a finding, though another view as a Court of appeal may be possible, but it cannot be a ground to reverse the findings of the Scrutiny Committee in exercise of power of judicial review under Article 226 of the Constitution.

14. In the case of **Anand (Supra)**, the Hon'ble Supreme Court in paragraph 22 (i & ii) has further laid down some broad parameters to be kept in view by the Scrutiny Committee while dealing with caste claim, wherein it has been held that in case the applicant is a first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that *ipso facto* does not warrant rejection of his claim. Such applicants deserve to be extended benefit of doubt and it has been further ruled that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence for which an opportunity has to be afforded to the applicant.

Another parameter is application of affinity test which focuses on the ethnological connection of a given scheduled caste or tribe. However, a note of caution is appended to such test with the observation that the claim of an applicant belonging to a particular scheduled caste or tribe cannot *per se* be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc, for the reason that with modernization, migration and contact with other communities, the

communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the particular caste or tribe. Hence, the affinity test cannot be regarded as a litmus test for establishing the link of the applicant with the given scheduled caste or tribe.

15. Appellant Jajpal Singh applied for obtaining NAT SC caste certificate on 10/7/2008. Tahsildar, Ashonagar had issued a temporary/provisional certificate of NAT Scheduled Caste to the appellant for six months on 29/7/2008 (Page 160-165 of the Writ Petition), Objections were raised by political rivals of the appellant viz. Ex MLA Balbir Singh Kushwah on 24/10/2008 (Pages 152-158 of writ petition). The Sub Divisional Officer (Revenue) decided all the objections raised on 3/11/2008. Thereafter the SDO has issued NAT SC caste certificate to the appellant on 6/11/2008 (Page 221 of the petition). The writ Court, while deciding the W.P. No.7047/2013, wherein decision of Scrutiny Committee dated 16/9/2013 invalidating the aforesaid caste certificate of the appellant was under challenge, quashed the said decision in paragraph 76 of the impugned order and in paragraph 73, the writ Court had remanded the case to the Caste Scrutiny Committee for adjudication of Scheduled Caste certificate dated 6/11/2008 *afresh* after issuing notice to the appellant as prescribed under the guidelines. In paragraph 74, the Scrutiny Committee was further directed by way of abundant caution that the Committee shall not be prejudiced by any of the observations made by the writ Court in the order of remand. *Besides, it was also directed that the matter should be decided strictly in accordance with the evidence which would come on record.*

16. This Court has carefully perused the Scrutiny Committee report dated 18/12/2019 pursuant to its meeting dated 13/12/2019. The Scrutiny Committee called for -

(i) The report of Superintendent of Police, Ashoknagar dated 27/7/2019 which included information culled out from revenue records of appellant and his forefathers, School and Village Tara, District Taran Taran Punjab.

(ii) Complaints made by Ramesh Kumar Itoriya, Anand Dohare, Devendra Tamrakar and respondent Ladduram Kori.

(iii) Reply of appellant to the communication of Superintendent of Police and aforesaid complaints

(iv) Reply of appellant to the ten questions formulated by learned Single Judge in his order dated 25/4/2019 (W.P. No.7047/2013).

(v) Statement of appellant with cross-examination by complainants Ramesh Kumar Itoriya, Devendra Tamrakar, Engineer Ladduram Kori, Roshanraj Singh Yadav, Gopilal Jatav, as well as, by High Power Committee;

(vi) That apart, the Scrutiny Committee also ensured recording of statements of residents from native place of appellant's father i.e. Village Khara, PH 302, Tahsil Patti, District Tarn Taran Punjab in compliance of guidelines in clause 13.5 of **Madhuri Patil's case (Supra)** namely Balvir Singh, Mahendra Singh and Hardeep Singh, besides collecting of documents such as copy of Khasra entries (Jamabandi) of the year 1964-1965 and copy of certificate issued by Sarpanch, Gram Panchayat Khara. Shri Balvir Singh, aged about 75 years, Sarpanch Village Khara stated that Natha Singh, father of

Boodh Singh, who was resident of Village Khara, belonged to “NAT” Bazigar community. About 90-100 years ago they had migrated to Madhya Pradesh. Likewise, Mahendra Singh, aged about 85 years, R/o Village Khara, P.S. Sarahali, District Tarantarn, Punjab stated that Shri Boodh Singh belonged to “NAT” Bazigar community. Shri Hardeep Singh (Patwari Halka No. 302, Tahsil Patti, District Tarantarn) has stated that as per land records of Village Khara, Boodh Singh S/o Shri Natha Singh was owner of land falling in Survey No. 155, admeasuring 13.13 at Village Khara. As per records, the caste of Boodh Singh S/o Shri Natha Singh is “NAT”. **All these persons are independent bonafide residents of Village Khara, District Tarantarn, Punjab and have no relation with the appellant.**

Besides, the Vigilance Officer also recorded statements of appellant, his father Gurumej Singh, his uncle Seva Singh, daughter-in-law Harvinder Kaur, Independent witnesses Jagdish Prasad Sharma, Anil Kathwal, brother-in-law Ranjeet Singh, cousin Chhindrapal Singh and political rivals Ladduram Kori, Roshan Yadav, Gopial Jatav and Devendra Tamrakar.

17. It is pertinent to mention that learned Single Judge **has not considered the statements of Hardeep, Mahendra and Balvir, who, as indicated above, are independent witnesses from Punjab.** The Scrutiny Committee has also considered the Jamabandi (Khasra) of 1964-1965, wherein the caste of appellant's forefathers is recorded as NAT. The Committee has also considered the reply furnished by the appellant to the ten questions formulated by learned Single Judge in his remand order. The appellant has also been subjected to cross-examination by the complainant and others who became party to the

proceedings before the Scrutiny Committee. However, the complainants have not adduced any evidence, much less cogent evidence to prove that appellant is not NAT by caste. The appellant has also explained the circumstances under which the KEER caste certificate was issued to him, as has been quoted above in paragraph 6 (reply to cross-examination by Scrutiny Committee). As such, the Committee has considered entire material placed before it while it concluded that the appellant belonged to NAT caste and declared that the certificate dated 2/11/2008 was a valid one.

18. Respondents have laid great emphasis on the point that appellant since once claimed to be of Keer Caste and was given an OBC certificate in the year 1999, he could not have been issued SC caste certificate of NAT caste. The submission is in ignorance of certain relevant facts. The Scrutiny Committee, vide its order dated 11.11.2004, while examining the veracity of caste certificate dated 02.12.1999 has reached the conclusion that the appellant is of NAT caste and not of Keer caste, which remained unchallenged. Therefore, in view of the aforesaid, as well as, answer of appellant in his cross-examination conducted by the Scrutiny Committee as to why he took Keer Caste certificate (quoted in para 6 above), the contention cannot be countenanced and is, accordingly, rejected.

19. We also cannot lose sight of the fact that the appellant's grandfather had migrated from Punjab to Gwalior State about 90-100 years ago. His father Gurumej Singh was born in Gwalior. They did not go to any School and were illiterate. None of the family members of appellant have been in public employment and with agricultural income, the family survived. Therefore, the statement of the appellant

that there was no need to obtain caste certificate for his forefathers cannot be brushed aside and in fact is plausible. The appellant is a first generation ever to attend the school. Availability of documentary evidence of caste certificate becomes a difficulty, but that by itself does not warrant rejection of his claim. Upon consideration of his claim with the oral evidence collected by the Scrutiny Committee from Punjab through Vigilance Officer as discussed above confirming the fact that his grandfather was of NAT caste, the Scrutiny Committee was fully justified in declaring that the appellant belonged to NAT caste. Even if there is some doubt about the caste certificate of the appellant, its veracity was decided on the strength of oral evidence led by the appellant of independent persons from Punjab of the age of his father i.e. 85-90 years. The view taken by this Court is fortified by the decision of the Hon'ble Supreme Court in the case of **Anand (Supra)**, para 22.

20. Learned counsel for the respondent also contended that the record produced before the earlier screening committee which had declared the appellant's caste certificate of Nat caste as illegal vide its order dated 16.09.2013, ought to have been considered by the scrutiny committee in its deliberations/order dated 13.12.2019/18.12.2019.

The argument so advanced has no force for the reason that the Scrutiny Committee has considered the complete record produced before it by the Police and Revenue authorities including oral and documentary evidence as discussed above. Further, the earlier Scrutiny Committee was found to have not issued notices to the appellant and allowed him to lead evidence. As such its decision was not only contrary to the principles of natural justice but also against the

guidelines issued in the case of **Madhuri Patil (supra)** and therefore rightly been quashed by the learned Single Judge, who had further ordered the scrutiny committee to decide the complaint against caste certificate of NAT caste issued to the appellant dated 06.11.2008 afresh on the basis of evidence which would come on record.

21. We have carefully perused the impugned order and the findings recorded by the learned Single Judge while setting aside the order dated 18.12.2019 passed by the Scrutiny Committee. The learned Single Judge in paragraphs 42 to 49 has dealt with the question as to whether the castes certificate issued by the State of Punjab is valid in the State of Madhya Pradesh and while relying on the decisions *inter alia* in the cases of **Delhi Jal Board (supra)**, **Marri Chandrashekhar Rao (supra)**, **Action Committee (supra)**, has come to the conclusion in paragraph 50 that the appellant cannot take advantage of any caste certificate/revenue entry issued by Punjab. Similarly, in para 61, learned Single Judge has held that after migration of his forefathers from Punjab, respondent No.5 cannot take advantage of any caste which might have been declared as Scheduled Caste in the State of Punjab and the scrutiny committee illegally relied upon the Jambandi (Khasra) of village Khara, Tahsil Tarantaran, District Amritsar (Punjab).

Although the law laid down in the aforesaid dicta is beyond any cavil of doubt and well settled, yet the learned Single Judge has lost sight of a crucial fact that the forefathers of the appellant had migrated from Punjab to the erstwhile State of Madhya Pradesh somewhere in 1920-21 i.e. much prior to coming into force of the Constitution (Scheduled Castes) Order, 1950 as has been noted by him in paragraph

41 of the impugned order. Thus, as on 10.08.1950, the forefathers of appellant were very much residing in the State of Madhya Pradesh. Clause 3 of M.P. Government Circular, 2005 provides that those persons who have settled in Madhya Pradesh after migration from other states shall be clubbed in the category of inter-state migration only if they have migrated after the SC/ST Presidential Order, 1950. Therefore, the appellant cannot be treated as migrant in terms of the said clause. Hence, the aforesaid judgments which are in context of migrants have no bearing to the factual matrix in hand. Thus, the Scrutiny Committee was only required to ascertain their caste in terms of guidelines laid down in the case of **Madhuri Patil (supra)**. Caste is acquired by birth. Once the learned Judge has returned the finding in paragraph 41 that appellant's forefathers had migrated from Punjab to the erstwhile State of Madhya Pradesh much prior to 1950, then in terms of paragraph 13(5) of the decision in **Madhuri Patil's** case, the scrutiny committee was fully justified in ascertaining appellant's lineage from Punjab by collecting necessary evidence in this behalf such as recording of statements of natives of appellant's parental village at Punjab and copy of revenue records including Jamabandi (Khasra) of village Khara, Tahsil Tarantaran, District Amritsar (Punjab) as indicated above. The Jamabandi of 1964-1965 reflects name of family members of Boodh Singh and caste as NAT. This feature is common in Jamabandi of 1964-1965 contained in envelope 3, as well as, that filed along with the counter-affidavit of respondent nos. 1 to 4. Besides, the verification certificate issued by Gram Panchayat Khara indicates that forefathers of appellant were of NAT caste. It is well settled that if a state of affairs is shown to exist, the

presumption of its continuity backward and forward can be drawn (**Ambika Vs. Ram Ekabal AIR 1966 SC 605**, referred to). As such, the said certificate and Jamabandi were relevant documents.

22. In paragraph 56, learned Judge has raised the question that if the forefathers of appellant were already having agricultural land in Punjab, then what was the need for migrating to the State of Madhya Pradesh. In para 57, he has raised another question that when in 1964-65 Boodh Singh was not the resident of Punjab then how his caste could be recorded in the revenue records. In the opinion of this Court, the learned Judge has taken a tangential approach as the said questions are neither relevant nor germane to the point in issue, for having land in a State does not prevent anyone to migrate to some other State. Article 19(1)(g) of the Constitution guarantees fundamental right to practise any profession, or to carry on any occupation, trade or business within the territory of India . Moreover, the revenue records are maintained in perpetuity and are altered only pursuant to any mutation order by the competent court, in absence whereof the name of a person normally continues to remain in the revenue record.

23. The learned Judge, in para 79, has held that the appellant had clearly admitted that neither he adopted the original profession of his forefathers (if any), nor his forefathers continued their original profession of playing drama and walking on rope (if any).

The aforesaid finding of the learned Single Judge is in stark ignorance of the law laid down by the Apex Court in the case of **Anand (supra)** wherein while laying the parameter for affinity test which focuses on ethnological connection of a given scheduled caste or tribe, the note of caution has been appended to such test by the

Apex Court stating that the claim of an applicant cannot be washed away merely on the ground that his traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc, for the reason that with modernization, migration and contact with other communities, the communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the particular caste or tribe. Hence, the affinity test cannot be regarded as a litmus test for establishing the link of the applicant with the given scheduled caste or tribe.

24. The learned Single Judge, in paragraphs 80 to 84 of the impugned order, has considered the statements of some witnesses, including Ranjeet Singh and Chhindrapal Singh. Ranjeet Singh is the brother in law of the appellant while Chhindrapal Singh is his cousin. However, the learned Single Judge has not taken into account the statement of independent witnesses which were relevant having substantial bearing on the issue of caste certificate, namely Hardeep Singh, Patwari of Patwari Halka No.302, Tahsil Patti, District Tarantaran, Punjab, who has deposed that the land falling in survey no.155 admeasuring 13.13 was in the name of Boodh Singh S/o Nattha Singh. As per revenue records, his caste was NAT. Similarly, the learned Single Judge has ignored the statement of Mahendra Singh, aged about 85 years, resident of village Khara, who has deposed that Boodh Singh belonged to NAT (Bazigar) community. Likewise, the statement of Balveer Singh, aged about 75 years, Sarpanch of village Khara, has not been considered who has also deposed that Nattha Singh father of Boodh Singh was resident of village Khara and

belonged to NAT (Bazigar) community. All the aforesaid persons were independent witnesses whose statements have not been taken into consideration by the learned Single Judge.

25. In paragraphs 92 to 94, after considering various revenue documents, the learned Judge in para 94 opined that in all the revenue documents issued by the authority of State of Madhya Pradesh, caste NAT has not been mentioned. However, a plausible explanation has been given by the appellant in this regard that as his forefathers belonged to scheduled caste, they were being looked down upon and therefore to maintain social respect, they started writing Sikh. It is pertinent to note that Sikh is a religion and not caste, as is also evident from para 3 of the Constitution (Scheduled Castes) Order, 1950. Therefore, merely for the reason that in the said revenue documents, "Sikh" is written in the column of caste, it would not lead to the conclusion that the appellant did not belong to NAT caste.

26. In paragraph 97, learned Single Judge has observed that even if none of the family members of appellant was in government job but still they could have obtained the caste certificate for taking benefits of the schemes. The said observation of the learned Single Judge is again uncalled for and in despair, inasmuch as if forefathers of the appellant being illiterate and rustic villagers did not obtain caste certificate, that in itself would not create any legal bar for the coming generations to obtain caste certificate. Besides, as held in the case of **Anand (supra)**, a benefit of doubt operates in favour of an applicant who is the first generation to attend school and mere non-availability of any documentary evidence in that regard *ipso facto* does not warrant rejection of his claim.

27. In paragraphs 100 & 101, the learned Single Judge has disregarded the certificate issued by Gram Panchayat Khara, Tahsil Taran Taran, District Amritsar on the ground that the same did not bear any date or despatch number. However, this certificate has to be read in conjunction with other evidence including oral evidence of natives of Punjab recorded by the Vigilance Officer, as provided for in para 22.1 of the decision of Apex Court in the case of **Anand (Supra)**.

28. In paragraphs 102 to 110, the learned Single Judge has highlighted the conduct of the appellant in contesting elections of 1999 with Keer OBC certificate filing nomination paper of Jila Panchyat as member of Scheduled Caste belonging to NAT community, filing nomination of Krishi Upaj Mandi on 20.04.1999 as unreserved candidate through did not contest the election and remaining as Member of Janpad Panchayat during the period 1994-99 as a candidate of unreserved category. Similarly in paragraphs 111, the learned Single Judge has held that the caste Scrutiny Committee did not consider as to why appellant took advantage of OBC certificate by adorning the seat of President, Municipal Council, Ashok Nagar for five years.

The conduct of the appellant has certainly not been above board, but that should not haunt him for all times to come. However, it is noteworthy that the OBC caste certificate of Keer caste was already cancelled by the Scrutiny Committee vide order dated 25.02.2004 on the premise that the appellant belonged to NAT caste, affirmed by the subsequent Scrutiny Committee's order dated 11/11/2004. The said decision of the Committee has remained un-challenged.. The issue before the subsequent Scrutiny Committee has been to ascertain as to

whether the appellant was of NAT caste or not, to be adjudicated strictly in accordance with the guidelines laid down in **Madhuri Patil's (supra)** case and the evidence which would come on record after issuing notice to the appellant as held by the learned Single Judge in his remand order dated 01.05.2019 passed in WP. No.7047 of 2013. The Scrutiny Committee has to act in accordance with the guidelines laid down in **Madhuri Patil's (supra)**. It is well settled that the approach of the Scrutiny Committee keeping in view of its object and the constitution should be inquisitorial and not adversarial. It should not deal with the matter as if it is a court trying a criminal case where the prosecution is required to prove its case beyond reasonable doubt. It's duty is to ascertain the truth and in doing so it can record the evidence and procure relevant documents. It has to deal with the material including the reports of the Police, Revenue and Vigilance Authorities objectively and dispassionately (*WP. No.2074 of 2002 order dated 09.05.2003 (affirmed by Division Bench in W.A. No. 407 of 2012), referred to*).

29. It is noteworthy that the FIR bearing Crime No.161/2010 registered against the appellant for the offences punishable under sections 420, 467, 468, 471, 477 and 120B of IPC for obtaining NAT caste certificate, was quashed by learned Single Judge of this Court in M.Cr.C. No.2050/2010 vide order dated 4/2/2022. In view of aforesaid, this Court finds substantial force in the submissions of learned counsel for the appellant that direction of learned Single Judge to register FIR against him for allegedly procuring such caste certificate shall subject him to go through the same ordeal and humiliation which otherwise is not warranted in the obtaining facts and

circumstances as the same allegations cannot be ordered to be subject matter of another FIR. As such, the said direction is unsustainable and liable to be set aside.

30. Learned counsel for the appellant/State while taking exception to paragraphs 51 to 54 submits that the learned Single Judge has expressed some doubt and suspicion about the envelopes and the documents contained therein viz. Jamabandi (Khasra) of 1964-65 of Tahsil Taran Taran, Amritsar. He further submits that if the court had some doubt about the documents and envelopes containing the documents, the court ought to have afforded an opportunity to the State to explain the same. That has not been done and the learned Judge has formed opinion on his own. Therefore the impugned observations are wholly unwarranted. Learned counsel submits that the documents so produced were genuine documents without any interpolation or otherwise.

We find substantial force in the arguments advanced by learned counsel for the appellant/State in this behalf. Besides, we have already dealt with this issue in earlier part (para 21) of this order.

31. In wake of the aforesaid conspectus and regard being had to the nature and scope of enquiry for caste verification as settled by law, we are of the considered view that the findings/deliberations recorded by the Scrutiny Committee on 18/12/2019 are impeccable in nature and the conclusion drawn is sustainable in law.

32. The upshot of the above discussion leads to the inevitable conclusion that the impugned judgment suffers from vice of excessive jurisdiction. In fact and in effect the impugned judgment is as if the writ Court has exercised appellate jurisdiction recording independent

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findings of facts substituting a well considered Scrutiny Committee report; not permissible in exercise of jurisdiction under Article 226 of the Constitution. The findings of learned Single Judge are vulnerable on facts and in law. Therefore, the impugned judgment is unsustainable and is, accordingly, set aside. The questions formulated in para 5 above are answered in affirmative.

The appeals stand allowed to the extent indicated above.

Reader of the Court is directed to re-seal the six envelopes containing original record of the High Level Committee and return them to Shri Ankur Mody, Additional Advocate General.

A copy of this judgment be retained in the connected appeal.

(ROHIT ARYA)
JUDGE

(SANJEEV S KALGAONKAR)
JUDGE

(and)