SUPREMECOURT OF INDIA

Ayaaubkhan Noorkhan Pathan

Vs.

The State of Maharashtra & Ors.

C.A.No.7728of2012

(B.S. Chauhan and Jagdish Singh Khehar,JJ.)

8.11.2012

JUDGMENT

B.S. Chauhan,J.

1. This appeal has been preferred against the impugned judgment and order dated 22.9.2009, passed by the High Court of Bombay (Aurangabad Bench) in Writ Petition No.3129 of 2009, filed by respondent no.5, challenging the caste certificate of the appellant.

2. The facts and circumstances giving rise to this appeal are as follows:

> "A. The competent authority in the present case, issued a caste certificate dated 19.10.1989, after following due procedure, in favour of the appellant stating that he does in fact, belong to Bhil Tadvi (Scheduled Tribes). On the basis of the said certificate, the appellant was appointed as Senior Clerk in the Municipal Corporation of Aurangabad (hereinafter referred to as the, Corporation) on 6.2.1990, against the vacancy reserved for persons under the Scheduled Tribes category. The Corporation referred the caste certificate of the appellant for the purpose of verification, to the Caste Certificate Scrutiny Committee (hereinafter referred to as the, Scrutiny Committee). The Vigilance Cell attached to the Scrutiny Committee, upon conducting vigilance enquiry, vide order dated29.12.1998, found that the appellant did, in fact, belong to Bhil Tadvi (Scheduled Tribes) and thus, the said certificate was verified. The Scrutiny Committee, on the basis of the said report and also other documents filed by the appellant in support of his case, issued a validity certificate, dated 23.5.2000 to the appellant belonging to Bhil Tadvi (Scheduled Tribes). After the lapse of a period of 9 years, respondent no.5 filed complaint dated 9.1.2009, through an advocate before the Scrutiny Committee, for the purpose of recalling the said validity certificate, on the ground that the appellant had obtained employment by way of misrepresentation, and that he does not actually belong to the Scheduled Tribes

category. In fact, the appellant professed the religion of Islam and therefore, could not be a Scheduled Tribe.

B. The Scrutiny Committee rejected the said application vide order dated 13.3.2009, observing that it had no power to recall or to review a caste validity certificate, as there is no statutory provision that provides for the same.

C. Aggrieved, respondent no.5 challenged the order dated 13.3.2009, by filing Writ Petition No.3129 of 2009 before the High Court of Bombay (Aurangabad Bench), praying for quashing of the order dated 13.3.2009, and directing the Scrutiny Committee to hold de novo enquiry, with respect to the appellants caste certificate. The appellant contested the said petition, denying all the allegations made by respondent no.5. Vide its impugned judgment and order dated 22.9.2009, the High Court disposed of the said writ petition without going into the merits of the case. However, while doing so, the High Court set aside the order dated 13.3.2009, and remitted the matter to the Scrutiny Committee, directing it to hear all the parties concerned in accordance with law, as regards the allegations made by respondent no.5 in the complaint. It further directed the Committee to decide the said matter within a period of 6 months. Hence, this present appeal."

3. Before proceeding further, it may also be pertinent to refer to certain subsequent developments. During the pendency of this appeal, this Court vide order dated 20.11.2009, granted a stay with respect to the operation of the aforementioned impugned judgment. Vide order dated 6.1.2012, the said interim order was modified, to the extent that the Scrutiny Committee would re-examine the case on merit, without being influenced by earlier proceedings before it, and by giving adequate opportunity to the parties to lead evidence in support of their respective cases after which, the Scrutiny Committee would submit its report to this Court within a period of 3 months.

4. Shri A.V. Savant, learned Senior counsel, appearing for the appellant has submitted that respondent no.5 does not belong to any reserved category, infact, he belongs to the General category, and hence, he has no right or locus standi, to challenge the appellants certificate. Thus, the High Court committed an error by directing the Scrutiny Committee to entertain the complaint filed by respondent no.5. It has further been submitted that, despite the directions given by this Court, the Scrutiny Committee failed to ensure compliance with the principles of natural justice, as the appellant was denied the opportunity to cross-examine witnesses, and no order was passed with respect to his application for recalling such witnesses for the purpose of cross-examination, which has no doubt, resulted in the grave miscarriage of justice. The affidavit filed by the Scrutiny Committee did not clarify, or make any specific statement with respect to whether or not the appellant was permitted to cross- examine witnesses. It further, did not clarify whether the application dated 28.2.2012, filed by the appellant to re-call witnesses for the purpose of cross-examination, has been disposed of. Moreover, the procedure adopted by the Scrutiny Committee is in contravention of the statutory requirements, as have been specified under the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward

Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No. XXIII of 2001 (hereinafter referred to as the, 'Act 2001), and the Rules, 2003 which are framed under the Act 2001 and therefore, all proceedings hereby stand vitiated. The appellant placed reliance upon several documents which are all very old and therefore, their authenticity should not have been doubted. The earlier report submitted by the Vigilance Cell dated29.12.1998, clearly stated that the traits and characteristics of the appellants family, matched with those of Bhil Tadvi (Scheduled Tribes). The action of respondent no.5 is therefore, completely malifide and is intended, solely to harass the appellant, and the High Court committed grave error in not deciding the issue related to the locus standi of respondent no.5 in relation to him filing a complaint in the first place, as the said issue was specifically raised by the appellant. Therefore, the present appeal deserves to be allowed.

5. Per contra, Shri Shankar Chillarge, learned counsel appearing for the Scrutiny Committee, has made elaborate submissions, in support of the impugned judgment and subsequent proceedings. Mr. Udaya Kumar Sagar and Ms. Bina Madhavan, learned counsel appearing for respondent no.5, have also supported the impugned judgment of the High Court and has further submitted that even though respondent no.5, does not belong to the Scheduled Tribes category, he most certainly could file a complaint against the appellant, at such a belated stage, as the appellant had obtained employment in 1989, by way of mis- representation and fraud. Respondent no.5, being a public spirited person has espoused the cause of the real persons who have been deprived of their right to be considered for the said post occupied by the appellant. Respondent No. 5 has also filed affidavits of relevant persons before the Scrutiny Committee, to prove his allegations. Thus, the present appeal lacks merit and is liable to be dismissed.

6.We have considered the rival submissions made by learned counsel for the parties and perused the record. Person aggrieved :

7. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant

himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

8. A legal right, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, person aggrieved does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).

9. In Anand Sharadchandra Oka v. University of Mumbai, AIR 2008 SC 1289, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

10. In A. Subhash Babu v. State of A. P. , AIR 2011 SC 3031, this Court held:
The expression aggrieved person denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.

11.This Court, even as regards the filing of a habeas corpus petition, has explained that the expression, next friend means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Vide: Charanjit Lal Chowdhury v. The Union of India & Ors., AIR 1951 SC 41; Sunil Batra (II) v. Delhi Administration, AIR 1980 SC 1579; Mrs. Neelima Priyadarshini v. State of Bihar, AIR 1987 SC 2021; Simranjit Singh Mann v. Union of India, AIR 1993 SC 280; Karamjeet Singh v. Union of India, AIR 1993 SC 284; and Kishore Samrite v. State of U.P. & Ors., JT (2012) 10 SC 393).

12.This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance

to ensure that there is no abuse of the process of court and that, ordinarily meddlesome bystanders are not granted a Visa. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: P.S.R. Sadhanantham v. Arunachalam & Anr., AIR 1980 SC 856; Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114; State of Uttaranchal v. Balwant Singh Chaufal & Ors., (2010) 3 SCC 402; and Amar Singh v. Union of India & Ors., (2011) 7 SCC 69)

13. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors., AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of Maharashtra, AIR 2005 SC 540; and Neetu v. State of Punjab & Ors., AIR 2007 SC 758)

14. In Ghulam Qadir v. Special Tribunal & Ors., (2002) 1 SCC 33, this Court considered a similar issue and observed as under: There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds.
-In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi. (Emphasis added)

15. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others. Locus standi of respondent no.5 :

16. As respondent no.5 does not belong to the Scheduled Tribes category, the garb adopted by him, of serving the cause of Scheduled Tribes candidates who might have been deprived of their legitimate right to be considered for the post, must be considered by this Court in order to determine whether respondent no. 5, is in fact, in a legitimate position to lay any claim before any forum, whatsoever.

17. This Court in Ravi Yashwant Bhoir v. District Collector, Raigad & Ors., (2012) 4 SCC 407, held as under:

> "Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.
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> Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."

18. A similar view has been re-iterated by this Court in K. Manjusree v. State of Andhra Pradesh & Anr., (2008) 3 SCC 512, wherein it was held that, the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Morever, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court, on the grounds of delay and non-maintainability, alone.

19. In Balbir Kaur & Anr. v. Uttar Pradesh Secondary Education Services Selection Board, Allahabad & Ors., (2008) 12 SCC 1, it has been held that a violation of the equality clauses, enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons.

20. While dealing with the similar issue, this Court in Raju Ramsingh Vasave v. Mahesh Deorao Bhiavapurkar & Ors., (2008) 9 SCC 54 held:

> "We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance

suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far- reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so. (See also: Manohar Joshi v. State of Maharashtra & Ors., (2012) 3 SCC 619)

21. In Vinoy Kumar v. State of U.P., AIR 2001 SC 1739, this Court held:

Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.

22. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus-standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bonafides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo-motu, in such respect. Cross-examination is one part of the principles of natural justice:

23. A Constitution Bench of this Court in State of M.P. v. Chintaman Sadashiva Vaishampayan, AIR 1961 SC 1623, held that the rules of natural justice, require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also: Union of India v.T.R. Varma, AIR 1957 SC 882; Meenglas Tea Estate v. Workmen, AIR 1963 SC 1719; M/s. Kesoram Cotton Mills Ltd. v. Gangadhar & Ors., AIR 1964 SC 708; New India Assurance Company Ltd . v . Nusli Neville Wadia and Anr., AIR 2008 SC 876; Rachpal Singh & Ors. v. Gurmit Singh & Ors., AIR 2009 SC 2448; Biecco Lawrie & Anr. v. State of West Bengal & Anr., AIR 2010 SC 142; and State of Uttar Pradesh v. Saroj Kumar Sinha, AIR 2010 SC 3131).

24. In Lakshman Exports Ltd. v. Collector of Central Excise, (2005) 10 SCC 634, this Court, while dealing with a case under the Central Excise Act, 1944, considered a similar issue i.e. permission with respect to the cross-examination of a witness. In the said case, the assessee had specifically asked to be allowed to cross-examine the representatives of the firms concern, to establish that the goods in question had been accounted for in their books of

accounts, and that excise duty had been paid. The Court held that such a request could not be turned down, as the denial of the right to cross-examine, would amount to a denial of the right to be heard i.e. audi alteram partem.

25. In New India Assurance Company Ltd., v. Nusli Neville Wadia & Anr., AIR 2008 SC 876; this Court considered a case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and held as follows :-
If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross¬examine. The witness who intends to prove the said fact has the right to cross-examine the witness. This may not be provided by under the statute, but it being a part of the principle of natural justice should be held to be indefeasible right. (Emphasis added) In view of the above, we are of the considered opinion that the right of cross-examination is an integral part of the principles of natural justice.

26. In K.L. Tripathi v. State Bank of India & Ors., AIR 1984 SC 273, this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also: Union of India v. P.K. Roy, AIR 1968 SC 850; and Channabasappa Basappa Happali v. State of Mysore, AIR 1972 SC 32).

27. In Transmission Corpn. of A.P. Ltd. v. Sri Rama Krishna Rice Mill, AIR 2006 SC 1445, this Court held:

> "In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the Appellate Authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official.

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. He can therefore, do so by cross- examining the witnesses produced against him. The object

of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross- examination.

29. In Rajiv Arora v. Union of India & Ors., AIR 2009 SC 1100, this Court held:

> "Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Indian Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review."

30.The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.

31. Affidavit - whether evidence within the meaning of Section 3 of the Evidence Act, 1872:

> "It is a settled legal proposition that an affidavit is not evidence within the meaning of Section 3 of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). Affidavits are therefore, not included within the purview of the definition of "evidence" as has been given in Section 3 of the Evidence Act, and the same can be used as "evidence" only if, for sufficient reasons, the Court passes an order under Order XIX of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC). Thus, the filing of an affidavit of ones own statement, in ones own favour, cannot be regarded as sufficient evidence for any Court or Tribunal, on the basis of which it can come to a conclusion as regards a particular fact-situation. (Vide: Sudha Devi v. M.P. Narayanan & Ors., AIR 1988 SC 1381; and Range Forest Officer v. S.T. Hadimani, AIR 2002 SC 1147)."

32. While examining a case under the provisions of the Industrial Disputes Act, 1947, this Court, in M/s Bareilly Electricity Supply Co. Ltd. v. The Workmen & Ors., AIR 1972 SC 330, considered the application of Order XIX, Rules 1 and 2 CPC, and observed as under:-
"But the application of principles of natural justice does not imply that what is not evidence, can be acted upon. On the other hand, what it means is that no material can be relied upon to establish a contested fact which are not spoken to by the persons who are competent to speak

about them and are subject to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal, the question that naturally arises is: is it a genuine document, what are its contents and are the statements contained therein true If a letter or other document is produced to establish some fact which is relevant to the inquiry, the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accordance with the principles of natural justice as also according to the procedure under O. 19 of the Code and the Evidence Act, both of which incorporate the general principles."

33. In Needle Industries (India) Ltd. & Ors. v. N.I.N.I.H. Ltd. & Ors., AIR 1981 SC 1298, this Court considered a case under the Indian Companies Act, and observed that, it is generally unsatisfactory to record a finding involving grave consequences with respect to a person, on the basis of affidavits and documents alone, without asking that person to submit to cross-examination. However, the conduct of the parties may be an important factor, with regard to determining whether they showed their willingness to get the said issue determined on the basis of affidavits, correspondence and other documents, on the basis of which proper and necessary inferences can safely and legitimately be drawn.

34. In Ramesh Kumar v. Kesho Ram, AIR 1992 SC 700, this Court considered the scope of application of the provisions of O. XIX, Rr. 1 and 2 CPC in a Rent Control matter, observing as under:-

> "The Court may also treat any affidavit filed in support of the pleadings itself as one under the said provisions and call upon the opposite side to traverse it. The Court, if it finds that having regard to the nature of the allegations, it is necessary to record oral evidence tested by oral cross- examination, may have recourse to that procedure."

35. In Standard Chartered Bank v. Andhra Bank Financial Services Ltd. & Ors., (2006) 6 SCC 94, this Court while dealing with a case under the provisions of Companies Act, 1956, while considering complex issues regarding the Markets, Exchanges and Securities, and the procedure to be followed by special Tribunals, held as under :

> "While it may be true that the Special Court has been given a certain amount of latitude in the matter of procedure, it surely cannot fly away from established legal principles while deciding the cases before it. As to what inference arises from a document, is always a matter of evidence unless the document is self-explanatory.In the absence of any such explanation, it was not open to the Special Court to come up with its own explanations and decide the fate of the suit on the basis of its inference based on such assumed explanations."

36. Therefore, affidavits in the light of the aforesaid discussion are not considered to be evidence, within the meaning of Section 3 of the Evidence Act. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such view, stands fully affirmed particularly, in view of the amended provisions of Order XVIII, Rules 4 & 5 CPC. In certain

other circumstances, in order to avoid technicalities of procedure, the legislature, or a court/tribunal, can even lay down a procedure to meet the requirement of compliance with the principles of natural justice, and thus, the case will be examined in the light of those statutory rules etc. as framed by the aforementioned authorities.

37. The instant case is required to be examined in the light of the aforesaid legal propositions. This Court examined this matter in detail in Km. Madhuri Patil v. Addl. Commissioner, Tribal Development, (1994) 6 SCC 241, and upon realising that spurious tribes and persons not belonging to the Scheduled Tribes category, were snatching away the reservation benefits that have been made available to genuine tribals, and that they were being wrongly deprived of their rights on the basis of false caste certificates, and that further, at a subsequent stage such unscrupulous persons, after getting admission/employment, were adopting dilatory tactics, the court issued a large number of directions to investigate such cases of false claims. The directions inter-alia included:

> "(1)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.
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> (2) The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be not genuine or doubtful or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.
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> (3) In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be
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> false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.
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> (4) The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

(5) In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

(6) As soon as the finding is recorded by the Scrutiny Committee holding that the certifiate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post. The court further issued directions to all States to give effect to the aforesaid directions, in order to ensure that the constitutional objectives that were intended for the benefit and the advancement of persons genuinely belonging to the Scheduled Castes and Scheduled Tribes category, are not defeated by such unscrupulous persons. The Act 2000 and the Rules 2003 are based on the directions issued by this Court in Km. Madhuri Patil (supra) as the same have been incorporated therein."

38. The correctness of the said judgment in Km. Madhuri Patil (supra), was doubted, and the mat ter was referred to and decided by a larger bench of this Court in Daya Ram v. Sudhir Batham & Ors., (2012) 1 SCC 333, wherein, while deciding the various issues involved, including the competence of this Court to legislate in this regard, it was held as under:

> "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... Having regard to the scheme for verification formulated by this Court in Madhuri Patil, the scrutiny committees carry out verification of caste certificates issued without prior enquiry, as for example the caste certificates issued by Tehsildars or other officers of the departments of Revenue/Social Welfare/Tribal Welfare, without any enquiry or on the basis of self- affidavits about caste. If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the scrutiny committees. Madhuri Patil provides for verification only to avoid false and bogus claims.. (Emphasis added)"

39.Thus, it is evident from the aforesaid judgment in Daya Ram (supra), that the purpose of issuing directions in Km. Madhuri Patil (supra), was only to examine those cases, where caste certificates had been issued without conducting any prior enquiry, on the basis of self-

affidavits regarding ones caste alone, and that the said directions were not at all applicable, where a legislation governing or regulating the grant of caste certificates exists, and where caste certificates are issued after due and proper enquiry. Caste certificates issued by holding proper enquiry, in accordance with duly prescribed procedure, would not require any further verification by the scrutiny committee.

40. In pursuance of the said order issued by the High Court, the Scrutiny Committee examined the case of the parties. However, with respect to this, the appellant raised the grievance that, the evidence of a large number of persons had been recorded by the Scrutiny Committee behind his back, and that he had not been given an opportunity to cross-examine the witnesses that were examined by the other side and therefore, he was unable to lead a proper defence. The appellant filed an application dated 28.2.2012, for the purpose of recalling 3 witnesses, namely, Sikandar Gulab Tadvi, Bhagchand Ganpatsing Pardeshi and Bahadursing Mukhtarsing Patil, so that he may cross-examine them. The appellant also filed another application on the same day, seeking a period of 30 days time, to file his reply as is required within the provisions of Rule 12(8) of the Rules 2003, and also another application for the purpose of calling of records from the office of the Tehsildar, to ascertain the genuineness of the certificate impugned. None of the said applications have been decided till now.

41. In view thereof, this Court vide order dated 11.5.2012, directed the learned counsel appearing for the Scrutiny Committee, to produce the original record of the matter and to file an affidavit with respect to whether the appellant had been given an opportunity to cross-examine the witnesses that were examined by the other side, and also with respect to whether the other applications filed by the appellant, were decided upon.

42. In pursuance of the said order, the original record was produced. However, the learned counsel remained unable to point out from the original record, any proceeding or event, by way of which, it could be ascertained that the appellant was in fact, given an opportunity to cross-examine the witnesses, or to show that all the said witnesses were examined in the presence of the appellant. Further, he was also unable to satisfy this Court, with respect to the circumstances under which, the applications filed by the appellant on 28.2.2012, including the one to recall witnesses and permit him to cross-examine them, have been kept pending, without passing any order in relation to either one of them.

43. In order to determine the genuineness and sincerity of respondent no. 5, this Court on 29.10.2012 adjourned the matter until 5.11.2012, directing respondent no. 5 to act as under:
Meanwhile, respondent No. 5 may file the affidavit as on what date he appeared before the Scrutiny Committee and what was the material produced by him and as to whether on that petitioner had a notice of his appearance before the Scrutiny Committee and whether the Committee has allowed the petitioner to cross examine the respondent No. 5. In response to the said order, respondent no. 5 filed an affidavit in Court on 5.11.2012. The contents of the affidavit reveal that respondent no.5 claims that his occupation is that of a social worker. The allegations against the appellant stating that he obtained the said caste certificate

fraudulently, have been repeated. Respondent no. 5 has not mentioned in the affidavit, the date on which he appeared before the Scrutiny Committee, nor has he responded to the query raised with respect to whether he had produced any evidence to support his allegations, or whether the appellant was allowed to cross¬examine any of the witnesses, or if in fact, he simply examined all of them himself. The relevant part of the abovementioned affidavit, has been re- produced hereunder:

> "That it is submitted that on 28.2.2012 the Respondent No. 5 submitted copy of Affidavit of Mr. Supdu Musa Tadvi and by way of an application prayed for personal presence of Mr. Supdu Musa Tadvi. Scrutiny Committee finding contradictions in the two statement of Mr. Supdu Musa Tadvi, issued notice to him requesting his personal presence on 17.3.2012. However, Mr. Supdu Musa Tadri never appeared before the Committee."

44.The affidavit of Mr. Supdu Musa Tadri referred to hereinabove cannot be relied upon, as the said deponent never appeared before the Scrutiny Committee. The conduct of respondent no. 5, who has been pursuing the said matter from one court to another, is found to be reprehensible, and without any sense of responsibility whatsoever, as he could not submit any satisfactory response to the directions issued by this Court on 29.10.2012. In view of the above, we are highly doubtful as regards his bonafides. He has therefore, disentitled himself from appearing either before this Court, or any other court, or Committee, so far as the instant case is concerned.

45.The Scrutiny Committee in ordinary circumstances examined the matter and after investigation through its Vigilance Cell and considering all the documentary evidence on record and after being satisfied, granted the caste verification certificate in 2000. Section 114 Ill.(e) of the Evidence Act provided for the court to pronounce that the decision taken by the Scrutiny Committee has been done in regular course and the caste certificate has been issued after due verification. A very strong material/evidence is required to rebut the presumption. In fact, respondent no. 5 has no legal peg for a justifiable claim to hang upon. Once the respondent no. 5, for the reasons best known to him, had challenged caste certificate under the garb of acting as a public spirited person espousing the cause of legitimate persons who had been deprived of their right of being considered for appointment, the respondent no. 5 must have acted seriously and brought the material before the Scrutiny Committee to show that the earlier decision was improbable or factually incorrect. Such a view stands fortified by a catena of decisions rendered by this Court where it has been held that presumption is based on legal maxim Omnia praesumuntur rite esse acta i.e. all acts are presumed to have rightly and regularly been done.Such a presumption can be rebutted by adducing appropriate evidence. Mere statement made in the written statement/petition is not enough to rebut the presumption. The onus of rebuttal lies upon the person who alleges that the act had not been regularly performed or the procedure required under the law had not been followed. (Vide: Gopal Narain v. State of U.P. & Anr., AIR 1964 SC 370; Narayan Govind Gavate & Ors. v. State of Maharashtra & Ors., AIR 1977 SC 183; Karewwa & Ors.v. Hussensab Khansaheb Wajantri & Ors., AIR 2002 SC 504; Engineering Kamgar Union v. Electro Steels Castings Ltd. & Anr., (2004) 6 SCC 36; Mohd. Shahabuddin v. State of Bihar, (2010) 4 SCC 653;

Punjab State Electricity Board & Anr. v. Ashwani Kumar, (2010) 7 SCC 569; M. Chandra v. M. Thangmuthu & Anr., AIR 2011 SC 146; and R. Ramachandran Nair v. Deputy Superintendent, Vigilance Police, (2011) 4 SCC 395)

46. In view of the above discussion and considering the seriousness of the allegations, as the Scrutiny Committee has already conducted an inquiry in relation to this matter, and the only grievance of the appellant is that there has been non-compliance with the principles of natural justice, and the fact that the applications filed by him, were not decided upon, we direct that before the submission of any report by the Scrutiny Committee, his application for calling the witnesses for cross-examination must be disposed of, and appellant must be given a fair opportunity to cross-examine the witnesses, who have been examined before the Committee. We further direct the Scrutiny Committee to pass appropriate orders in accordance with the law thereafter. In case, the Scrutiny Committee has already taken a decision, the same being violative of the principles of natural justice, would stand vitiated.

47.The appeal is disposed of accordingly, however, considering the fact that respondent no. 5 has not been pursuing the matter in a bonafide manner, and has not raised any public interest, rather he abused the process of the court only to harass the appellant, the respondent no. 5 is restrained from intervening in the matter any further, and also from remaining a party to it, and he is also liable to pay costs to the tune of Rs. one lakh, within a period of 4 weeks to the District Collector, Aurangabad. The District Collector, Aurangabad, would deposit the said amount in the account of the Supreme Court Legal Services Committee. In the event that, the cost imposed is not deposited by respondent no. 5 within the period stipulated, we request the District Collector, Aurangabad, to recover the same as arrears of land revenue and deposit the same, accordingly. A copy of the judgment be sent by the Registry of this Court to the District Collector, Aurangabad (Maharashtra) for compliance.