

Written Submission in Regular Civil Appeal 33 of 2005

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Shri Punjabhai Dhundhabhai Chanvda...)))) Appellant
(Original Plaintiff)

Versus

Gujarat Electricity Board and others...)))) Respondents
(Original Defendants)

The Appellant, as far as possible, would title the relevant heading in the written submission for the convenience of this Honourable Court in bold letters. It is a matter of common knowledge and information that the underlining and italics indicate emphasis.

1) What was the Challenge involved in a suit?

Exhibit 97 Impugned
order of dismissal
Dated: 01.03.1995

The Appellant (to be hereinafter referred to as the “Plaintiff” for the sake of brevity) *challenged the impugned order* dated: 01.03.1995 passed by the Respondent (to be hereinafter referred to as the “Defendant” for the sake of brevity) dismissing the Plaintiff from service, without holding any regular departmental inquiry under the rules and or providing reasonable and proper opportunity in accordance with the well founded principles of natural justice on an allegation that the Plaintiff produced a false Caste certificate and that the Plaintiff does not belong to the Schedule Tribe community.

And as a result, Plaintiff challenged the legality, validity and propriety of the impugned order in the Regular Civil Suit that was pending before the Learned Civil Judge (Senior Division) at Verawal.

2) What is now challenged in this appeal?

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The Plaintiff challenges the legality, validity and propriety of the impugned judgment pronounced and the decree drawn accordingly by the Learned Civil Judge (Senior Division) Verawal on various grounds mentioned in the memorandum of appeal before this Honourable Court.

According to the humble submission of the Plaintiff,

- (a) the Judgment so passed by the Learned Judge of the lower Court is “contrary to the facts and circumstances” of the case, that “Learned Judge has really not addressed himself on the issues addressed” and surprising feature of the judgment suffering from error of fact and error of law is that the learned judge has really “not applied his mind and not properly evaluated the evidence placed on record”,
- (b) and that the Learned Judge of the lower court materially failed in his duty to consider as to “whether the Plaintiff can be dismissed in a manner adopted by the Disciplinary authority and act in violation of the principles of natural justice”.
- (c) Beside this, with due respect to the Learned Judge of the lower court, the Learned Judge “fundamentally missed to appreciate that the Respondent has himself assessed and evaluated the Caste certificate for which he has had no power, authority and jurisdiction and that if the Disciplinary authority entertains any doubt, the course left open to the Disciplinary authority was to refer the issue in relation to the alleged Caste certificate to the reviewing committee of the State of Gujarat under the existing law relating to Schedule Caste and Schedule Tribe and as laid down in Madhuri Patil’s case, but in any case, he cannot directly jump to a conclusion that the Plaintiff produced a false and frivolous Caste certificate and take such a drastic action of dismissal from service without full-fledged departmental inquiry”. (Disciplinary authority ought to have referred the said certificate to the reviewing authority and or scrutiny committee, because the authority to so considers that it is not a genuine certificate vests in him under the relevant statutory rules. (Please see 1999 LAB IC 1528 Madras High Court)

(d) And the Learned Judge of the lower court has not taken into consideration the notification promulgated by the President of India, where the *Rabari community* residing within the area of *Gir, Barda and Alech* and having the their roots on the date of notification belong to *Schedule Tribe* and in fact *constitutionally notified as “Schedule Tribe community”*, who shall be eligible for benefits for all purpose as the Schedule Tribe candidates¹.

(e) The Learned Judge of the lower court “has materially failed in his duty to consider the legal effect of the provision contained under Sub clauses (e) and (f) of Section 114 of the Indian Evidence Act”².

¹ His Excellency the President of India has issued the notification in this behalf where the “Rabari community within the area of Gir, Barda and Alech are notified as Schedule Tribe at Serial NO: 24 in the said notification.

² Section 114 of the Indian Evidence Act: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration

The Court may presume -

- (a) That a man who is in possession of stolen goods after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;
- (b) That an accomplice is unworthy of credit, unless he is corroborated in material particular;
- (c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;
- (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;
- (e) That judicial and official acts have been regularly performed;
- (f) That the common course of business had been followed in particular cases;
- (g) That evidence which could be and is not produced would, if produced be unfavorable to the person who withholds it;
- (h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavorable to him;
- (i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

- (f) Learned Judge really confused to consider the “principle domicile as laid down by Government policy and the relevant date of the Presidential notification...”

It is submitted that:

Exhibit 85 is the Vigat Darshak Card duly issued by the Deputy Director, Adi-Jati Vikas Vibhag, Gandhinagar...

- (a) Vigat Darshak Card issued contains sufficient particulars that the fathers and forefathers of the Plaintiff belonged to the Sanbeda Nesh... These particulars are relevant material as held by the Gujarat High Court. So one thing is established that the father and forefathers of the Plaintiff belonged to Sanbeda Nesh.
- (b) It is not necessary that the Plaintiff should reside at Sanbeda Ness in order to get the benefits. What the Government Circular and the Judgment of the Division Bench say is that so far as verification of Scheduled Tribe status of Rabari, Bharwad and Charan is concerned, if originally they were residing in the forest areas of Gir, Alech and Barda, even if they have migrated from Gir, Alech and Barda forest areas to other places of the State of Gujarat, as per the circular dated 29.11.1994, they are also entitled to get certificate of Scheduled Tribe. Those Rabari, Bharwad and Charan thereafter born, shall on the basis of the domicile of their parents on the date of the notification, if they were residing in the forest areas of Gir, Alech and Barda, also be entitled to get the Scheduled Tribe certificate though they might have been migrated from Gir, Alech and Barda forest areas and are living in other places of the State.
- (c) The reason is that the father and forefathers of the Plaintiff were belonging and residing at Sanbeda Nesh as on or before the date of notification being 29.10.1956. This has been clearly recorded in the Vigat Darshak Card.

The Learned Judge has, therefore, not truly considered the aforesaid position and simply brushed aside the case of the Plaintiff without considering the issues of “domicile and the relevant date of the notification read with the instructions of the State Government in a circular that those, who have migrated from the locality of Gir, Barda and Alech are also entitled or eligible to the benefit on the simple ground of the domicile of the father and forefathers”.

- (g) And lastly, Learned Judge of the lower court has materially failed to give effect to the Presidential notification issued which is issued for the upliftment of the Schedule Tribe candidates and thereby acted contrary to the constitutional philosophy and materially failed to follow the precedents in this behalf and in connection with service jurisprudence..

A Constitution Bench of this Court in *Supreme Court Bar Association vs. Union of India & Anr.* AIR 1998 SC 1895 has already held that while exercising power under Article 142 of the Constitution, the court cannot ignore the substantive rights of a litigant while dealing with a cause pending before it. The power cannot be used to "supplant" substantive law applicable to a case. The court further observed that Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly.

3) **Submission pertaining to Caste and the notification:**

It will not be out of place to mention before this Honourable Court that in past despite the Presidential notification many difficulties were faced by the Schedule Tribe communities and in particular by candidates belonging to the Rabari community in the State of Gujarat. The Department made havoc that the Caste certificates possessed by the Rabari candidates are not genuine, or in other words bogus.

As a result, the “litigations flooded” against the State of Gujarat and at the same time, the different Departments contemplated actions against the candidates belonging to the Schedule Tribe community and the civil servants or the servants of the Board and Corporation.

Ultimately, the State Government of Gujarat appointed a committee known as “Malkan committee” headed by Shri JM Malkan, Former Director of Social Welfare Department under the Commission of inquiries Act and that the said report of Malkan committee reached at findings consisting of 800 pages and substance of the same can be stated thus:

- (a) That Malkan committee visited the area of Gir, Barda and Alech, recorded various statements of the persons belonging to the localities, the Government officers, the Forest Department and also verified the record in this behalf.
- (b) that the Malkan committee came to the conclusion that no “*illegalities or irregularities*” whatsoever have been committed either by State officers, or the Candidates. And the certificates issued were all genuine.
- (c) that the Malkan Committee observed that the because of the standing instructions and the Government circulars cautioning the issuing authorities that in case the Certificates are falsely issued, the strict actions would be taken against the erring officers and that in appropriate case, such officers will also be dismissed.

In this view of the matter, as observed by Malkan Committee, the officers had a fear in issuing the Caste and community certificates, and it has been specifically observed that the officers did not exercise the powers and authority out of “*administrative timidity*”

Ultimately, the said report of the Malkan Committee was tabled before the Legislative Assembly and it was accepted by the Government of Gujarat. The Government of Gujarat based on the recommendation of the Malkan Committee issued “Vigat Darshak Card” to each head of the family member of the Rabari community, where the whereabouts of the fathers and forefathers of the candidates have been notified.

(The *Vigat Darshak Card*, as held by the High Court of Gujarat is material in arriving to award the certificate and it is furnishing the material information about whereabouts and the particulars and the genuineness.)

It may be pointed out that the Gujarat High Court had the occasion to consider the issue in relation to Vigat Darshak Card. Government despite the clear cut findings of Malkan Committee obstructed to issue the Caste certificates.

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This is what the Gujarat High Court said that the Vigat Darshak Card is a material that can be taken into consideration...

“It has to be agreed on all hands that in fact the job was entrusted by a Government Resolution to Mr. Malkan so as to take up the exercise of collecting the details about persons of the Rabari communities, who were residing in the Nesses of the Forests and on the basis of such a study, if the Tribal Development Department had issued the Vigat Darshak Cards and if made certain entries, which otherwise could not be readily available to persons, the same cannot be ignored altogether and they must form a relevant material in the nature of guidelines to the concerned Committee and the Mamlatdar for the purpose of issuing the Caste Certificate, but we have no hesitation in holding that by no means such Vigat Darshak Cards can be said to be conclusive that holder of such a Card is a member of Scheduled Tribe. Of course the correctness of the entries made therein have to be accepted by the Mamlatdar to be correct unless the Mamlatdar has any other material to disbelieve such entries. After all this exercise at the Government level was undertaken only to ensure that the persons claiming eligibility for such Certificate have ready material with them in support of their claim and the materials such as Maswadi Receipts etc., which may not be readily available and, therefore, the details thereof may be reflected in such Vigat Darshak Cards with the available particulars³.

Admittedly, this Plaintiff who was holding and possessing Caste Certificate belonged to the Schedule Tribe Candidates and that his fathers and forefathers whereabouts have been shown to have existed in the Vigat Darshak Card even subsequent to the old certificate issued and after the findings reached by Malkan Committee.

³ (Special Civil Applications 11734 of 2006 : 12257 of 2006 : Kishankumar Balubhai Garsar vs Collector And 7 Ors. Decided on 13 October, 2006 Author: RR Tripathi)

It may be stated that since the Government resolved to issue the Caste certificates to all such candidates belonging to the Rabari Community as notified in Presidential Notification based on Vigat Darshak card so as to affirm the earlier act of the previous certificate issued fresh Caste certificate and affirmed that the candidates possessing the Caste certificates really belong to the Schedule Tribe Community.

In this case, the Government of Gujarat has even during the pendency of the Civil Suit has also issued a fresh Caste certificate to the Plaintiff affirming the previous conduct of the Government and earlier Caste Certificate. Under the circumstances, it leave no iota of doubt that the present plaintiff is not belonging to the Schedule Tribe Community.

New Caste certificate that has been so issued during the pendency of the litigation may be taken judicial notice, which is issued by the Government of Gujarat. There is no difficulty in looking at or taking into consideration the said Caste certificate having the effect of Government approving and affirming the previous or earlier stand indicated in the Caste certificate and the fact that the present plaintiff belongs to the Schedule Tribe community.

The Plaintiff seeks liberty to produce the said certificate at the appellate stage as contemplated under Order 41 Rule 27 of Civil Procedure Code and the Court can allow such production. The relevant rule is reproduced below:

It is likely that the Defendant may object to such a course when the plaintiff produces the fresh certificate received during the pendency of the proceedings. Hence, following provision of Civil Procedure Code is reproduced below:

Order 18 Rule 17A and Order 41 Rule 27 of the Code of Civil Procedure:

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"Order 18 Rule 17A: Production of evidence not previously known or which could not be produced despite due diligence.-Where a party satisfies the Court that after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading evidence the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just.

Order 41 Rule 27.**Production of additional evidence in Appellate Court:**

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if,

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate court, *the Court shall record the reason for its admission.*"

“Rule 27 of Order 41 of the Code of Civil Procedure, the appellate Court can receive additional evidence not only when it requires such evidence to enable it to pronounce the judgment but also for any other substantial cause. There may well be cases where even though the Court finds that it is able to pronounce the judgment on the state of record as it is and so it cannot strictly say that it requires additional evidence to enable it to pronounce the judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner⁴.

The Plaintiff produces on the record of this Honourable Court the fresh Caste certificate affirming that the Plaintiff is a Schedule Tribe Candidate as additional evidence, which will effectively enable this Honourable court to pronounce upon the cause fought by and between the parties and it be taken into account so that the cause of justice may not be marred⁵. And according to the humble submission of the Plaintiff, the duty of the Court is to render justice in the case and no court can ignore the substantive right of any litigant as said by the Supreme Court in case of Supreme Court Bar Association (Supreme Court Bar Association vs. Union of India & Anr. AIR 1998 SC 1895).

Importance of the Constitutional provisions in relation to the Schedule Caste and Schedule Tribe Candidates as held by the Supreme Court in Madhuri Patil’s case:

Preamble to the Constitution promises to secure to every citizen social and economic justice, equality of status and of opportunity assuring the dignity of the individual. The Scheduled Tribes are inhabitants of intractable terrain regions of the country kept away from the mainstream of national life and with their traditional moorings and customary beliefs and practices; they are largely governed by their own customary code of conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos.

⁴ Kishan vs Narain Dass and others decided on 14 October, 1988 : AIR 1989 P H 267, (1990) 98 PLR 51

⁵ The certificate is a proof... Declaration under the presidential notification is conclusive as held by the Supreme Court in case of Madhuri Patil’s case.

The Constitution guarantees to them, who are also Indian citizens, equality before law and the equal protection of law. Though Articles 14 and 15(1) prohibit discrimination among citizens on certain grounds, Article 15(4) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled Tribes. Article 16(1) requires equality of opportunity to all citizens in matters of appointments to an office or a post under the Union or a State Government or public undertakings etc. But Article 16(4) empowers the State to make provision for reservation of appointments or posts in favour of classes of citizens not adequately represented in the services under the State. Article 46 enjoins the State by mandatory language employed therein, to promote with special care the educational or economic interest of the Scheduled Tribes and Scheduled Castes and to protect them from "social injustice" and "all forms of exploitation".

Article 51A (h) enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and reform. Again Article 51A (h) requires every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It is, therefore, a fundamental duty of every citizen to develop scientific temper and humanism and spirit of inquiry to reform himself in his onward thrust or strive to achieve excellence in all spheres of individual and collective activity.

Since the Scheduled Tribes are a nomadic class of citizens whose habitat being generally hilly regions or forests, results in their staying away from the mainstream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for development of their scientific temper, educational advancement and economic improvement so that they may achieve excellence, equality of status and live with dignity.

Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and economic justice apart from other economic measures. Hence, the tribes, by reason of State's policy of reservation, have been given the exclusive right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota. For availment of such exclusive rights by citizens belonging to tribes, the President by a notification specified the Scheduled Tribes or tribal communities or parts of or groups of tribes or tribal communities so as to entitle them to avail of such exclusive rights.

The Union of India and the State Governments have prescribed the procedure and have entrusted duty and responsibility to Revenue Officers of gazetted cadre to issue social status certificate, after due verification. It is common knowledge that endeavour of States to fulfil constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to such status⁶.

Dealing with the first paragraph of the written statement filed by the Gujarat Electricity Board, it has been stated to the effect that the fact alleged in paragraph 1 of the Complaint, it is a question concerning the legal issue and that of the interpretation of notification and the interpretation placed by the Plaintiff is not acceptable to the Gujarat Electricity Board.

Fortunately, the “existence of the Presidential notification is not disputed by the Board” and rightly so and to that extent, the plaintiff appreciates the fairness of the Defendant. Now the relevant entry in the Presidential notification is at serial no: 24 where the Rabari within the area of Gir, Barda and Alech in the State of Gujarat have been clearly notified as Schedule Tribe Candidates. Under the circumstances, there can be no option with any parties to “deny the recognition and the acceptance” as the law and order including the notifications are binding to the Government, Board, corporations and the parties in whose favour the same is issued or promulgated.

⁶ Supreme Court of India: *Kumari Madhuri Patil vs Additional Commissioner* decided on 2 September, 1994: Reported in 1995 AIR 94= 1994 SCC (6) 241: Bench: Ramaswamy, K. (Source: Indiakanon)

It may be stated that it amounts to a law under the special provisions of the Constitution under Article 346 as also the definition of Section 13 of the Constitution. When Rabari community is so notified, the benefit has to be granted by any authorities discharging the governmental functions and irrespective of whether they like it or not.

गुजरात/Gujarat

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

24 Rabari (in the Nesses of the forests of Alech, Barada and Gir)^a

The Petitioner submits that the learned chief Justice of the Gujarat High Court took the cognizance of the matter and it was finally directed that such candidates should not be deprived of the benefit of the certificate. The Learned chief Justice has also taken into account the Act of Parliament, which has mandated to recognize the rights of the persons belonging to such categories and immediately pass on the benefits...

The relevant paragraph of the judgment is reproduced below for ready reference and perusal of this Honourable court:

So far as verification of Scheduled Tribe status of Rabari, Bharwad and Charan is concerned, if originally they were residing in the forest areas of Gir, Alech and Barda, even if they have migrated from Gir, Alech and Barda forest areas to other places of the State of Gujarat, as per the circular dated 29.11.1994, they are also entitled to get certificate of Scheduled Tribe. Those Rabari, Bharwad and Charan thereafter born, shall on the basis of the domicile of their parents on the date of the notification, if they were residing in the forest areas of Gir, Alech and Barda, also be entitled to get the Scheduled Tribe certificate though they might have been migrated from Gir, Alech and Barda forest areas and are living in other places of the State.

The State having noticed that Rabari, Bharwad and Charan category persons are facing great difficulties in obtaining the Caste certificate, having issued circular dated 29.11.1994, the respondents are bound to act in terms with the said circular and grant appropriate certificate in favour of the such persons after verification of the relevant record and evidence. It is expected that the Committee in terms of the circular comprising of Taluka Mamlatdar, Taluka Development Officer and Taluka concerned Range Forest Officer have been constituted and the said Committee is required to act as per the circular dated 29.11.1994. If such action has not been taken with regard to anyone or other member of Rabari, Bharwad and Charan community, whose ancestral were originally residing in the forest areas of Gir, Alech and Barda on or before 29.10.1956, the authorities are bound to consider their case and pass appropriate orders. If any such order has not been passed in respect of one or other persons, such person may move before the Committee and the Committee is expected to go through all the records and pass orders preferably within three months. If no such committee is constituted or members are to be inducted, the respondents are directed to constitute or induct such members within a month. (Copy of this judgment is separately cited including the Presidential notification)

The reliance on the aforesaid relevant paragraphs of the judgment of the division Bench of the Gujarat High Court is placed by the Plaintiff, because the Learned Judge of the Lower court has really not applied his mind to the facts and circumstances of the case, the notification and the circular letters issued by the State Government and that the finding in relation to issue no: 1 is recorded that the Plaintiff does not belong to Sanbeda Nesh in situated at Gir, but the Plaintiff resides at Sahpur of Mangrol Taluka and since he does not reside at Sanbeda, the certificate is false and not entitled to the benefit etc...

Finding on issue no: 1 is distorted:

The findings of the learned Judge in relation to issue no: 1 is legally unsustainable in law and hence the same is required to be quashed and set aside.

In this connection, it will be appreciated that:

- (d) Vigat Darshak Card issued contains sufficient particulars that the fathers and forefathers of the Plaintiff belonged to the Sanbeda Nesh... These particulars are relevant material as held by the Gujarat High Court. So one thing is established that the father and forefathers of the Plaintiff belonged to Sanbeda Nesh.
- (e) It is not necessary that the Plaintiff should reside at Sanbeda Ness forever in order to get the benefits. The Plaintiff can migrate anywhere within the State of Gujarat for betterment. What the Government Circular and the Judgment of the Division Bench say is that so far as verification of Scheduled Tribe status of Rabari, Bharwad and Charan is concerned, if originally they were residing in the forest areas of Gir, Alech and Barda, even if they have migrated from Gir, Alech and Barda forest areas to other places of the State of Gujarat, as per the circular dated 29.11.1994, they are also entitled to get certificate of Scheduled Tribe. Those Rabari, Bharwad and Charan thereafter born, shall on the basis of the domicile of their parents on the date of the notification, if they were residing in the forest areas of Gir, Alech and Barda, also be entitled to get the Scheduled Tribe certificate though they might have been migrated from Gir, Alech and Barda forest areas and are living in other places of the State.
- (f) The reason is that the father and forefathers of the Plaintiff were belonging and residing at Sanbeda Nesh as on or before the date of notification being 29.10.1956. This has been clearly recorded in the Vigat Darshak Card. And a fresh certificate is given to the Plaintiff affirming the fact that he belongs to Schedule Tribe Candidate and previous certificate is thus approved.

The Learned Judge has, therefore, not truly considered the aforesaid position and simply brushed aside the case of the Plaintiff without considering the issues of “domicile and the relevant date of the notification read with the instructions of the State Government in a circular that those, who have migrated from the locality of Gir, Barda and Alech are also entitled or eligible to the benefit on the simple ground of the domicile of the father and forefathers.

Hence, finding of the Learned Judge is simply not tenable. .

Caste Certificate has to be held valid, until cancelled by the competent authority and the scrutiny committee and as such,

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**Exhibit 84 being the
earlier Caste certificate
issued by the authority**

- (a) The Disciplinary authority or the employer should accept the said Caste certificate as valid, until the said certificate is cancelled by the competent authority which issued that Caste certificate. And as such, the suit can never be said to be premature, but dismissal from service was. Because, no cancellation of Caste certificate was followed by the competent authority under the State Government and there is nothing on the record of the suit that refutes or rebuts the statement of fact.
- (b) Earlier certificate so issued to the Plaintiff is never cancelled by the authority, nor were any proceedings held against the Plaintiff by the Director of Adi-Jati Vikas Vibhag, Bisra Munda, Gandhinagar, which was otherwise done in few cases of other candidates.
- (c) The Plaintiff was never “criminally prosecuted” by the State authorities by lodging the criminal complaint as held in **Madhuri Patil’s case**.
- (d) Had that Caste certificate been really false and fabricated, nothing prevented the State from prosecuting the present Plaintiff and as such the State could have filed the criminal prosecution, which is otherwise launched in few cases of other candidates.

Now, in addition to the aforesaid submission, the Plaintiff submits that assuming as it is, the earlier certificate that was issued should be certainly held genuine in view of the provisions of the Indian Evidence Act. It is surprising, how the Gujarat Electricity Board and particularly the Disciplinary authority jumped to the conclusion that the said Caste certificate is bogus and that to without any power, authority and jurisdiction.

The submission in connection with the usual official acts based on the Indian Evidence Act:

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The Plaintiff draws the attention of this Honourable Court to the Sub Clauses (e) and (f) of Section 114 of the Indian Evidence Act. The Learned Judge has really missed to appreciate the legal provision that the Caste certificate that was previously issued should have been taken as an action under usual official acts as laid down under Section 114 of the Indian Evidence Act.

It may be pointed out that the witness from the office of the Social Welfare Department has been examined in this case, who has never deposed that the said certificate is false and frivolous. The deposition never says that the said certificate is not issued to the Plaintiff. What has been deposed by that Government witness is that the outward entry was omitted and could not be found in the register? Can it ever be said, thereby that the said Caste certificate issued by the Welfare officer of the Social Welfare Department, Junagadh was false and frivolous? Obviously not...

And, under such circumstances of the case, the Plaintiff makes a humble submission before this Honourable court that the said certificate is a certificate genuine and Section 114 of the Indian Evidence Act should have been looked into and considered by the Learned Judge. In fact, the Learned Judge of the lower court has materially failed to apply his mind, or to carry out the vigour of the provision of the Indian Evidence Act, and therefore, the judgment suffers from the patent illegality.

Exhibit 101 being the deposition and cross-examination of Bipinchandra Gulabrai, an officer from Welfare Department

Relevant evidence by officer witness:

Now let us survey what has been said by that witness in the evidence and in the cross examination: (Exhibit 101 in the said suit of the Plaintiff)

The Plaintiff has read the entire deposition of the officer and as far as possible make an attempt to pursue the Court as to how the Plaintiff is right in his case. The Plaintiff requests the Honourable Court to go through the said deposition at **Exhibit 101** and the following reproduction may just be treated as the substance of what has been stated in reply by the witness. The Plaintiff leaves it on the Honourable Court as far as the appreciation of the said evidence is concerned and the interpretation at the same time.

As replied in the cross examination by the officer witness of the social welfare department, it has been stated to the effect that presently, he has been performing and discharging the duty as additional charge. Reason is that the predecessor has been suspended from his post due to the issue arose out of the Caste Certificates. The said witness further upon cross examination replied to the effect that it is not that the said predecessor in officer came to be suspended in connection with the Caste certificate issued to Punjabhai Dhundhabhai Chavda. In relation to the specific question in cross examination of that officer as to whether the officer who was performing his duties at Junagadh and presently at Rajkot was suspended or not? The said witness said that he has no knowledge about the suspension of that officer. The said witness has very specifically answered to the effect that he does not know that any departmental inquiry is initiated against him. It has been further replied by the witness that he has been performing the duties in this office since last one and a half year. Prior to that he was serving at Keshod. The witness says that it is true that he is serving the Jilla Panchayat since last 11 years. The witness further answered to the effect that it is true that at the time, when the certificate was issued to the Plaintiff, the witness was serving at Junagadh. It is true that he performed his duties in various branches of the Jilla Panchayat. In this view of the matter, it is true, as said by the said witness that he had an occasion to know as to whose signatures are there on the documents.

A pointed question was asked to the said witness by the Learned Advocate for the Plaintiff that did he know as to who was the officer at the relevant point of time in the year 1985? In reply to this question, the witness initially said that he does not know as to who was the particular officer in the branch at that point of time, but subsequently on further cross examination, the witness has admitted that he knows Shri Dipak Trivedi and his signature. The witness has affirmed that the signature on the certificate is that of Dipak Trivedi and he can recognize the signature, because he knows and had relation with that officer. The relation means the official office relation as frequently coming and going.

That the further question was asked to the witness that there is no other reason with him while identifying the signature of Shri Dipak Pandya on the certificate. The Witness says that there are no other reasons. (Thereby, according to the plaintiff, it must be interpreted that there is no extraneous consideration or oblique motive of that witness so as to favour the present Plaintiff)

The witness further answers that there is a great importance attached to these types of the Caste certificates and an importance similar to that of currency. It has been answered that it is the responsibility of the officer concerned to preserve the certificates. Such certificates are kept in custody etc... It is not known that when such blank certificates are received from the Government, how much number of certificates are received are not entered into the register.

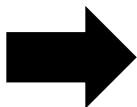
Said witness has answered and admitted that the certificate that is possessed and placed on the record is very similar to the certificates that are usually issued by our office....It has been further answered and admitted by the witness that the rubber seal impression on the certificate is exactly what the official seal may be belonging to the Department. This seal remains in the custody of the officer.

In relation to the question of the “register”, the witness has said that the register for the year 1985 bears the seal of the Department, but the register for the year 1986 does not bear the seal of the Department. In reply to the question that the relevant print of the department is cut.. which has been confirmed by the witness.

The humble submission of the Plaintiff keeping in mind the aforesaid deposition of the officer leaves no doubt that the said certificate was issued by the office of Jilla Panchayat. The clinching reason is that the witness has affirmed that the officer, who has signed the certificate, is a signature of Shri Dipak Trivedi and he has very affirmatively said so.

In this view of the matter, it was all the more required of the Learned Judge of the lower court to consider and give an effect of the provision of Section 114 of the Indian Evidence Act. The said certificate too was issued usually as laid down under Section 114 (e) of the Evidence Act and that sub section (f) of Section 115 should have been applied by the Learned Civil Judge, Senior Division..

Be it may as it is, now the fact remains that by issuing the fresh certificate, the Government itself affirmed that the Plaintiff belongs to the Schedule Tribe Community. It is, therefore, requested that the judgment of the Learned Judge of the lower court may be completely reversed and set aside and particularly, it be held that the Learned Judge of the lower court has really not applied his mind to the important evidence with the result that the plaintiff is non-suited on some irrelevant considerations.



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Submission about principles of natural justice, inquiry, and the competence of the Disciplinary authority and the justice:

Whether the Plaintiff could be dismissed despite the fact that he has not produced false certificate and despite the fact that the Vigat Darshak Card conveys the sufficient particulars about the domicile of the father and forefathers of the Plaintiff at Sanbeda Nesh and that the principle of domicile prevail as said by the Government in a circular letter, and therefore, no show cause notice was called for at all, or that the Plaintiff could have been dismissed from services without full-fledged departmental inquiry, where the Plaintiff ought to have been provided reasonable and proper opportunity.

And in no case, the Disciplinary authority jump to arbitrary conclusion that the said Caste certificate was bogus having regard to the fact that even if the Social Welfare Department at District Level said that the same was not issued from their office, the better course was to refer the matter to the authority that issued the Caste certificate for cancellation, which is never done in this case and that the authority has never taken up the proceeding for cancellation of the Caste certificate.

Hence, so long as the Caste certificate is not cancelled by the competent authority, the Caste certificate has to be treated and accepted as valid and genuineness cannot be doubted and further that the Plaintiff cannot be deprived of his substantive right flowing from the Caste certificate, Presidential notification and the sacred constitutional and or substantive right under law.

The Learned Judge of the Lower Court has recorded the finding to the effect that Article 311 (2) of the Constitution does not apply to the case of the Plaintiff, and that the Learned Judge has relied upon the judgment of the Honourable the Supreme Court of India, as cited by Learned Advocate for the Defendant Gujarat Electricity Board.

But, the Plaintiff has nowhere claimed that he is a Civil Servant of the State as understood within the meaning of Article 311 of the Constitution, and therefore, the entire exercise undertaken either by the Learned Advocate for the Defendant Shri PN Nanavaty, or by Learned Civil Judge, Senior Division would be futile exercise.

What the Plaintiff submits is that the Board is a State as defined under Article 12 of the Constitution of India, and therefore, the guarantee enshrined under Articles 14 and 16 would automatically apply. At the same time, the “principles of natural justice” would be definitely invoked and that the same will apply to every State action that “brings civil consequences”. And more particularly in cases of disciplinary proceedings ending either in minor or major penalties.

Before proceeding to submit on the audi alteram partem, the Plaintiff submits that the Gujarat Electricity Board has framed the rules and regulations governing the conditions of service and that the breach of said regulations would result in violation of principles of natural justice. Those regulations are enforceable in law as said in Sukhdevsinh vs. Bhagat Ram. The Honourable the Supreme Court cleared the status, nature and the position of such rules and the regulations.

❖ **Sukhdev Singh v. Bhagatram**⁷

Contention of the employees in this case was that “Regulations” are made under the statute. The origin and source of power to make Regulation is statutory. Regulations are self-binding in character. Regulations have the force of law, in as much as; the statutory authorities have no right to make any departure from the regulations.

As against this, the contention of the State was that regulations framed under powers given by the statute affecting matters of internal management, regulations do not have the statutory binding character. Terms and conditions laid down in the regulations are not matters of statutory obligations. Regulations are not binding as law, but as contract. Regulations provide for the terms and conditions of employment and thereafter the employment of each person is contractual.

If the regulations are held to be administrative in character, the contention should have prevailed. But the Supreme Court took it otherwise. Rules, Regulations, bylaws, orders made under the statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules after the coming into force of the act in a better position to adapt the act to special circumstances.

⁷ AIR 1975 SC 1331

The Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operations of statutes. A person or body by virtue of the powers conferred by a statute makes subordinate legislation. Bylaws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their area or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the making of statutory rule.

The word “rules” and “regulations” are used to limit the power of the statutory bodies. They are controlled and restricted by their statutes that create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed in their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.

In England subordinate legislation has, if validly made, the full force and effect of a statute, but it differs from a statute in that its validity whether as respects form or substance is normally open to challenge in the courts. The subordinate legislation has full force as if enacted like statute. The Supreme Court observed that:

“The noticeable feature is that there statutory bodies have no free hand in framing the conditions and terms of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down in the regulations. The statutory bodies are not free to make such terms, as they think fit and proper. Regulations prescribe the terms of appointment, conditions of service and procedure for dismissal.”

The Court further observed it that:

“Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other hand is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power, second the executive power of a state is not authorised to frame rules under Article 162. This court held that the public works department code was not a subordinate legislation’s (See G. J. Fernandes v. State of Mysore, 1967 3 SCR 636=(AIR 1967 SC 1753. The rules under Article 309 on the other hand constitute not only the constitutional rights of relationship between the state and the Government Servants but also establish that there must be specific power to frame rules and regulations.”

(Para 24)

The Supreme Court held that the regulations so framed assumed statutory force and therefore enforceable at law. The employees of the corporation were thus held entitled for relief of reinstatement etc.

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Gujarat Electricity Board is a State within the meaning of Article 12 of the Constitution of India, and therefore, the declaration that dismissal is void would lie and a decree for reinstatement can be granted by the Civil Court:

In *Sukhdev Shingh*'s⁸ case, the question paused before the Supreme Court was whether the employees of the Statutory Corporations were entitled to a declaration of continuance in service and whether they were entitled to claim protection of Articles 14 and 16 of the Constitution. The Statutes that were considered by the Court were Oil and Natural Gas Commission Act, Industrial Finance Corporation Act and Life Insurance Corporation Act. The Court further considered as to whether the regulations framed by the Corporation in exercise of powers granted under the Statutes have the force of law. According to the Supreme Court, Sections 31 and 31 of the oil and Natural Gas Commission Act had important bearing to decide the subject matter. Section 31 states that the Central Government may, by notification in the Official Gazette, make rules to give effect to the provisions of the Act. The rules provide inter alia for the terms of office, and the manner of filling casual vacancies among the members. And their conditions of service; Under Sections 31 and 32 of the Act, the commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the Act and the rules made thereunder, for enabling it to discharge its functions under the Act. Regulations so made provided for the terms and conditions of services of employees under the Corporation. Similarly, same powers were granted under other statutes and hence they are not repeated.

The Objects and activities of these corporations:

“The Oil and Natural Gas Commission is owned by the Government. It is a statutory body and not a Company. The Commission has the exclusive privilege of extracting petroleum.”

“The Life Insurance Corporation is owned by the Government. The Life Insurance business is nationalized and vested in the Corporation. No other insurer can carry on the life insurance business. The dissolution can be only by the Government.”

The Industrial Finance Corporation is under the complete control and management of the Central Government. All these corporations discharge the public duties for the welfare of the people in a democratically organized society created under the Statutes.

⁸ AIR 1975 SC 1331

Contentions raised:

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That the regulations are made under the Statute. The origin and source of the power to make regulations is statutory. Regulations are binding in character. Regulations have the force of law in as much as the statutory authorities have no right to make any departure from the regulations.

As against this, it was contended by the State that regulations are framed under the powers given by the statute affecting matters of internal management. Regulations do not have a statutory force and binding character. Terms and conditions of employment as laid down in the regulations are binding not as a law but as contract. Regulations provide the terms and conditions of employment and thereafter the employment of each person is contractual.

Now in this background, chief Justice Ray himself and on behalf of Chandrachud and Gupta took into consideration the position obtaining in England on the question of “rule making power and authority”. That is called subordinate legislation. It was observed that in England subordinate legislation has, if validly made, the force and effect of statute, but it differs from a statute in that its validity whether as respects form or substance is normally open to challenge in the Courts. It was further observed that subordinate legislation has if validly made the full force and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing, the result of a breach is in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument authorizes or requires the doing of any act, the principles to be applied in determining whether the person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute. After considering some other authorities also, the Court held that the regulations have the full force of law and statutory in character. It is well-settled rule that in appropriate cases of employment problems, the Courts would control the discretion of the authority. The dismissal is held invalid if the Public authorities dismiss the employee in violation of the mandatory procedural requirements on the grounds that are not sanctioned or supported by statute. Justice Mathew dealt with the substantial question of instrumentality or Statehood as defined under Article 12 of the Constitution. His lordship observed:

The concept of State has undergone drastic changes in recent years. Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a Service Corporation.” (Para 80)

Justice Mathew also took into consideration the work entitled “the modern State” written by Mac Iver in Para 81 of the reports where different meanings to different minds have been explained. Some say governors and governed, some say organised for action under the legal rules and to some mutual insurance society. According to him the task of the government multiplied with the advent of the Welfare State and consequently the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character..The public Corporation, therefore, became a third arm of the Government. It is submitted the line of reasoning that was adopted was also that the large powers do not come to them because the Corporations are created by or under Statutes, but because they produce goods or services upon which the community relies. The aspect as to whether it constitutes an element of Statehood came to be considered in this leading case. What would be material aspect to characterise the body as State? A public activity may be carried out by the Corporations or such semi government bodies or public sector undertakings. It at all the Government desires on the basis of public policy to create such body, the material aspect would be a question purely about public funding supported publicly. Besides this, it is submitted how far the degree of command over the management and policies is retained by the Government or under the scheme of the Statutes. The another aspect to characterize the element being an authority was that of State aid and furnishing of important public service. However, all public services rendered by some organizations were not considered instrumentalities within the meaning of article 12 of the Constitution. The Indian Supreme Court stopped therein extending the principle of Statehood to such organizations. In Para 12 of the reports, Justice Mathew observed:

“I do not think there is any basis for the apprehension expressed that by holding that these public corporations are “State” within the meaning of Article 12, the employees of these Corporations would become government servants. I also wish to make it clear that private corporations or other like organizations though they exercise powers over their employees which might violate their fundamental rights would be “State’ within the meaning of Article 12”

In Electricity Board’s case⁹, the test of instrumentality was adopted from the viewpoint of statutory command, clutches and promotional activities by the State. However, no detailed discussion was made in the said judgment about the role of the Welfare State and increasing needs of the society. It rested by observing:

⁹ Rajasthan State Electricity Board V Mohan Lal AIR 1967 SC 1857

“ It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State itself envisaged as having the right to carry on trade or business as mentioned... the State has been given the same meaning as in Article 12 and one of directive principles laid down in Article 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Article 12 is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people..”

Thereafter Bhargav J went on to consider the clutches of these bodies:

“On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a Criminal Offence.”

Justice Shah in the said judgment gave separate reasoning for himself. He did not agree that every constitutional or statutory authority on whom powers are conferred by law is “other authority” within the meaning of Article 12. The expression “authority” in its etymological sense means a body invested with power to command or give an ultimate decision, or to enforce obedience, or having a legal right to command and be obeyed. A further confusion was made while he observed that in my judgment, authorities constitutional or statutory invested with power by law not sharing the sovereign power do not fall with the expression “State” as defined in Article 12. These authorities which are invested with sovereign power, i.e. power to make rules or regulations and to administer or enforce them to the detriment of Citizens and others fall within the definition of “State” in Article 12 and Constitutional or Statutory bodies which do not share that sovereign power of the State are not, in my judgment, “State” within the meaning of Article 12 of the Constitution.

Justice Bhagawati in case of International Airport authority’s Case¹⁰ appreciated the concept of instrumentalities approving the concept of instrumentalities applied by Justice Mathew in Sukhdev’s case and rejecting the narrower views. While discussing the problem he has appreciated to the possible extent the role of the instrumentalities sought to be performed in a Welfare State. This correctly represents the test which is affirmed in subsequent judgments of the Supreme Court. Justice Bhagawati observed:

¹⁰ Raman V International Air Port authority of India AIR 1979 SC 1628

“There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of Welfare and social service functions increasing control of material and economic resources and large-scale assumption of industrial and commercial activities by the State, the power of the executive government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being the conscious end of State policy there is a vast and inevitable increase in the frequency with which ordinary Citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise...To day the Government, in a welfare State is the regulator and dispenser of special services, contracts, quotas and licences. The valuables dispensed by the Government puts forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These resources are available for utilization by private corporations and individuals buy way of lease or licence.”

In Para 14, Justice Bhagawati observed:

“A Corporation may be created in one of two ways. It may be either established by Statute or incorporated under a law such as the companies Act or the societies Registration Act...Where a corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Character of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a Corporation is established by Statute, it is autonomous in its working, subject only to a provision often times made, that it shall be bound by any directions that may be issued from time to time by the Government in respect of policy matters..”

Lordship appreciated the concept prevailing in the United State laying that “the analogy of the concept of State action as developed in the united State may not, however, be altogether out of place while considering this question. The decisions of the courts in United States seem to suggest that a private agency, if supported by extraordinary assistance given by the State, may be subject to the same Constitutional limitations as the State. This was however not fully appreciated by the Court paused there. At this stage it would be profitable to refer to Sukhdev Shinh’s case where in Para 101, it is stated:

“In America, Corporations or associations, private in character, but dealing with public rights, have already been held subject to constitutional standard. Political parties, for example, even though they are not statutory organisations, and are in form private clubs, are within this category. So also are labour unions on which Statutes confer the right of collective bargaining.”

Case of *Steele V Louisville & NRB Company* (1944) 23 US 192 was referred to. The relevant portion is as under:

“If.. the (Railway labour) Act confers this power on the bargaining representative of a craft.. Without any commensurate statutory duty towards its members, constitutional questions arise. For the representative is clothed with power not alike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy, discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights. “

It is submitted, the activities too fundamental to the societies must be held capable of being covered under the concept of instrumentalities. If some social organisations, associations or companies have been allowed to regulate their affairs giving free hand while dealing with services and public good who are in turn enjoying the constitutional fundamentals, why the State should hesitate to enforce the expectation of constitutional standard for a very simple reason that if such bodies are enjoying constitutional fundamentals there shall be corresponding fundamental duties too at the same time.

Justice Krishna Iyer in *Som Prakash Rekhi*¹¹ decorated the tests:

- (1) One thing is clear that if the entire share capital of the Corporation is held by Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government.
- (2) Existence of “deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.
- (3) It may also be a relevant factor.. Whether the Corporation enjoys monopoly status which is State conferred or State protected.
- (4) If the functions of the Corporation are of public importance, it would be a relevant factor in classifying the Corporation as an instrumentality or agency of Government.

¹¹ *Som Prakash Rekhi V Union of India* AIR 1981 SC Page 225

- (5) Specifically, if a department of Government is transferred to a Corporation it would be a strong factor supportive of his inference of the Corporation being an instrumentality or agency of Government.

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Justice Krishna Iyer has not only taken into consideration the functional test, but also the social perspective and held that such corporation as it transpired from the very object of the Act, conveyed the meaning of instrumentality as defined under Article 12 of the Constitution. In the said case, Justice Pathak gave some brief reasoning, although he agreed to the position what justice Krishna Iyer laid down. Lordship observed:

“ I find I must lean in favour of that conclusion. I would have welcomed a wider range of debate before us on the implications flowing from the definition in the Companies Act, 1956 of a Government Company, but perhaps a future case may provide that.

Lordship further observed:

“They are provisions which could well have been applied to a private corporation, if the Act had selected one for vesting the undertaking in it. Would that have made the private corporation a State?”

As can be seen from the authorities, it appears the Supreme Court or some High Courts are likely to set judicial activism and apply the test that is already in vogue in United States. The judicial dogmatism should be lifted or else the Courts would be revolving round the considerations like command, clutches and pervasive control theory. Unfortunately, Justice Bhagwati falls short of time to decide the type of the question in M.C.Mehta' case¹² when it came up before the Supreme Court.

In view of the catena of decisions, there is no difficulty in saying that the Defendant is a State under Article 12 of the Constitution and that the declaration that the dismissal is void can be granted against such a statutory corporation.

¹² M.C.Mehta V Union of India AIR 1987 SC 1086

Audi alteram partem would apply in this case:

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What is audi alteram partem? Audi alteram partem is a second principle of natural justice. That means, "hear the other side". Different judges have defined natural justice in different terms and the languages¹³. Some judges would say "substantial requirement of justice" and some judges called it to be "fair play in action" or duty to act fairly, Judge¹⁴ criticised as sadly lacking in precision and repelling to this statement, it was once said¹⁵ concept of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but an essential part of the philosophy of the law. Principles have been introduced as "great humanising principles"¹⁶. It was also said that they are vague and difficult to ascertain¹⁷. The view that in modern times opinions have sometimes been expressed to the effect that it is vague as to be practically meaningless is regarded as tainted by the perennial fallacy¹⁸. The aim is to secure justice or to prevent miscarriage of justice¹⁹. They are defined as rules derived from God; reason or nature as distinct from man made law²⁰. This expression natural law or just naturale was largely used in the philosophical speculations of the Roman jurists of the Antoine age and was intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any people, might be discovered by the rational intelligence of mankind would be found to grow out of and conform to his nature, meaning by that word his whole mental, moral and physical constitution.. In ethics, it consists in practical universal judgments which man himself elicits²¹.

¹³ Law Lexicon by N. M. Mulchandani, Semipermanent Edition, 1990, printed at Daulat Press Publication, Nagpur, India

¹⁴ Lord Justice Hamilton in Local Government Board, Ex parte Abridge (1914) 1 KB 160

¹⁵ Lord Morris in Wiseman v. Barneman, (1971) AC 308

¹⁶ Recently Justice Bhagwati in Maneka Gandhi v. Union of India did so. Please see AIR 1978 SC 597 of Health (1935) 1 KB 249-80

¹⁷ Maugham Lord Justice in Errington v. Minister of Health (1935) 1 KB 249-80

¹⁸ Lord Reid in Ridge v. Baldwin, 1964 AC 40 on appeal from LR(1963) 1 QB 539

¹⁹ K. S. Hegde in A. K. Kraipak v. Union of India, AIR 1970 SC 150, a very famous case decided by the Supreme Court of India

²⁰ Dictionary of English Law by Jowitt, Second Edition at page 1221

²¹ Black's Law Dictionary, Fifth Edition 925

It is true that these principles are not codified but yet their application to administrative or quasi-judicial proceedings would be absolutely indispensable.

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*Professor H.R. Wade*²² in his administrative law has said that "By developing the principles of natural justice the Courts have devised a kind of code of fair administrative procedure...thereby imposing a particular procedural technique on government departments and statutory authorities generally.. to require them to be exercised in a manner that is procedurally fair...Procedure is not a matter of secondary importance." There imposed a clog on discretion in that it cannot be exercised arbitrarily without regard to natural justice²³ And Judges further ventured to say that there would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice²⁴. And Byles says although there are no positive words in a statute requiring that party shall be heard, yet the justice of the common law will supply the omission of the legislature²⁵.

Ridge V/s Baldwin:

In Ridge V/s Baldwin²⁶ it was observed that:

"In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does exist. The idea of negligence is equally insusceptible of exact definition.. and natural justice as it has been interpreted in the Courts is much more definite than that "

²² Administrative Law by H. R. W. Wade, Fifth Edition

²³ Ridge v. Baldwin...ibid.

²⁴ Spackman v. Plumstead District Board of works, 1988 10 Appeal cases 229

²⁵ Cooper v. Wandsworth Board of Work (1863) 14 CNBS 18

²⁶ Ridge v. Baldwin (already referred to) AC 1964 Page 40

Lord Atkin's erroneous Statement:

In *R v. Electricity commissioner*²⁷ Lord. Atkin formulated the principle that:

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"Whenever anybody or persons having legal authority to determine question affecting rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench division exercised in these writs."

The observation that "having the duty to act judicially" made confusion. That would mean that unless there is no duty to act judicially the powers could not be exercised by the writ courts and consequently there would appear fewer chances for effective judicial review of administrative actions. This was clarified by a subsequent decision in *Ridge v Baldwin* by Lord Reid holding it to be erroneous in law. This has been lucidity explained by Lord Denning in his valuable work entitled "Discipline of Law" in chapter 5 at page 88 in 1979 Edition.

Honourable Right Lord Denning says in Discipline of law:

"Thirty years ago everyone in the law drew a distinction between "judicial" and "administrative". If a public authority was acting judicially, its conduct was subject to control by the Courts by means of certiorari and mandamus. But if it was acting administratively, its decisions were virtually exempt from any control by the Courts.. The distinction remained in everybody's minds until 1958 when it was held that it did not apply to the remedy by declaration. "

²⁷ (1924) 1 KB 171

Master of Rolls²⁸ has discussed the Pox Granite Case²⁹. It was held in that case that it does not matter if the authority is acting judicially or administratively. Ridge v. Baldwin³⁰ is accepted milestone in the field that has practically provided guidance to settle law on principles of natural justice. It was held that:

"At one time it was said that the principles only apply to judicial proceedings and not to administrative proceedings. That hearsay was scotched."

After arrival of this mile-stone, research started by answering the problems of acting quasi judicially or administratively.

➤ Obligation of hearing³¹:

When such principles apply and when the right of hearing can be claimed against the Government or public authorities generally? Today, the Welfare State is engaged in host of the activities controlling and regulating the rights and obligations under any given statute. Donation of discretion is inevitable. They exercise their powers over the subjects and decide the lis inter parte. The adjudicators in administration decide the problems paused before them, be it against citizens or between the Citizens and Government. The concept of fair hearing is recognised by the Courts, as these authorities have to logically come to the perfect conclusion and render justice because Justice must seem to have been done or should appear to have been done. [Natural justice has got allergy of laconic conclusions] That can be done only if the aggrieved party is heard in support of his grievance. Judges believed that these principles apply only to the quasi-judicial bodies and not to administrative bodies. Following may be mentioned as some of the essential requirements of natural justice:

²⁸ LORD DENNING

²⁹ (1958) 1 QB 554

³⁰ Ridge V/s Baldwin, (1963) 2 All ER at page 66

³¹ Spackman V Plumstead Board of works (1885) 10 AC 229; Cooper V Wandsworth (1863) 14 CB(NS) 180

- ❑ Tribunal should be impartial;
- ❑ Tribunal should not have personal interest;
- ❑ It should provide full and fair opportunity to every party of being heard;
- ❑ It should act in good faith;
- ❑ It should do nothing that is contrary to the essence of justice and lastly, justice should only be done but seen to be done³².

For over a century, Courts have been at pains to lay down principles to guide authorities who have to determine questions in a quasi-judicial manner and the insistence has always been on adherence to the principles of natural justice. This, of course, requires a fair opportunity. A person charged or a person to be taxed should be afforded an opportunity of being heard. It appears to me that it does not end there. By merely telling a person of the proposal and giving him a chance to explain the principles of natural justice are not satisfied. If giving a mere opportunity to show cause and to explain would satisfy the principles of natural justice the notice to show cause becomes an empty formality signifying nothing for, after issuing the notice to show cause the authority can decide according to his whim and fancy. The judicial process does not end by making known to a person the proposal against him and giving him a chance to explain but extends further to a judicial consideration of his representations and the materials and a fair determination of the question involved. In this connection I may refer to two decisions of the House of Lords. Lord Loreburn in dealing with the powers of the Board of Education in *Board of Education v. Rice*, 1911 AC 179, observed :

“In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything”.

³² AIR 1956 Nag 235; AIR 1957 SC 232; 1980 Lab IC 1077; AIR 1962 MP 112; 1979 Lab IC 138

And later on, the same learned Judge observed :

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“But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari”.

The same principle was reiterated by the House of Lords in the decision in *Local Govt. Board v. Arlidge*, 1915 AC 120. Viscount Haldane, Lord Chancellor quoted with approval the decision of Lord Loreburn and said:

“I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In 1911 AC 179 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything”.

❖ RIGHT TO BE HEARD REINSTATED:

Ridge V/s Baldwin

(Basic³³ in Administrative jurisprudence)

A historical case decided by the House of Lords on the point of “principles of natural justice” that ended all the “judicial blacksidings”. The appellant joined the police force who was appointed as chief constable. The appointment was expressed as subject to “Police Acts and regulation”. He was suspended from duty after he was arrested. Ultimately the watch committee exercised its power of dismissal. The following were two charges against him:

- (1) Criminal conspiracy to corrupt the course of justice and
- (2) Corruption.

³³ Hence discussed in detail

During the prosecution, there was no evidence offered against him and accordingly the Judge directed the jury to acquit him. However, certain observations were made against him while acquitting the accused of the charges leveled. Court observed that the observations made in the decision of acquittal damaged the Appellant to some extent. The watch committee held a meeting and unanimously dismissed the appellant. The appellant was not present at the said meeting, nor was he charged with or given notice of the proposal to dismiss him or particulars of the grounds on which it was based or an opportunity of putting his case. The appellant therefore submitted an appeal against the summary dismissal from service but the Home Secretary dismissed the appeal confirming the order passed by the Watch Committee. The High Court dismissed his claim so also the court of Appeal. Lastly the matter went before the House of Lords.

It appears that he claimed that purported dismissal from service was void and also claimed that he was entitled to payment of salary and pension or alternatively damages.

Reference to “the Act”

“The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same.”

It was submitted that the watch committee was expected to proceed under the provisions of the Act, but the counter reply was that the Act is inapplicable to the case of the Appellant. Admittedly the provisions contained under the Act conferred discretion upon the Watch committee or any two justices to take suitable steps against the employee. The provision includes the language like “whom they think” coupled with conditions of “negligence” or “unfitness”. So, here also, when the watch committee intended to exercise its discretion to impose punishment of dismissal from service, it was required of it to form an opinion after scrutinising the existence and/or non-existence of factual aspects. This would require the watch committee to comply with the principles of

natural justice, because unless he is granted reasonable and proper opportunity of telling something against the proposed action, it cannot be said that the committee was acting fairly. He was not even told of the charge. His explanation was also not demanded and his was summarily dismissed from service. The watch committee can think of the situation as existed in the statute only when he is called upon to explain about the alleged misconduct.

Dealing with the principles of natural justice Lord Reid observed that:

“The principles Audi alteram partem goes back many centuries in our law and it papers in a multitude of judgments of judges of the highest authority. In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut or dried or nicely weighed or measure therefore it does not exist. The idea of negligence is equally insusceptible of exact definition but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equally capable of serving as tests in law, and natural justice as it had been interpreted in the courts is much more definite than that. It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds odd cases in which it has been sought to apply the principles “

(Observations at page 71)

Speaking on the “procedural impropriety” Lord Reid observed:

“There I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling³⁴ him what is alleged against him and hearing his defence or explanation”.

(At page 72 of the reports)

³⁴ Alike Khemchand's specification and Purasottamlal Dhingra

Defending the “principles of natural justice” and safeguarding the right of the appellant, it was further observed that:

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“So I would hold that the power of dismissal in the Act of 1882 could not then have been exercised and cannot now be exercised until the watch committee have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in defence.”

(At page 80 of the reports)

In this case, the solicitor was granted an opportunity of hearing by the committee, but that was again without any charge in this behalf and therefore the same was void of the principles of natural justice. This judgment consistently brought new vitality on the aspect of principles of natural justice that did not only clear the picture about “fair hearing” before imposing any punishment, but the same also repudiated the fallacy of acting “administratively”.

❖ RIGHT TO BE HEARD REINSTATED: [INDIA]

Bina Pani Dei (Landmark³⁵ in law)

In *State of Orissa v. Bina Pani Dei*³⁶ the Respondent was serving as Assistant Surgeon in the state Medical Department of Orissa. She furnished certain date of Birth that was not accepted by the Department to be true on the basis of some complaint. The Department obtained some different evidence as to the data of birth of the Respondent and retired her from service. It was contended that the order of compulsory retirement was contrary to the rules governing her service and was violate of the principles of natural justice, as she was never afforded reasonable and proper opportunity if being heard. The Court held that:

“We think that such an inquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even and administrative order which involves civil consequences,

³⁵ Wiping out judicial differences of acting judicially and administratively.

³⁶ AIR 1967 SC 1269

as already sated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting of explaining the evidence.”

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Prior to this Judgments the Supreme Court and different High Courts undertook an exercise of precisely defining the concept of duty to act judicially and in what type of cases, the requirement of complying with the principles of natural justice should be insisted upon. Bina Pani Dei's case proved mile-stone, finally setting that such principles would apply even to administrative orders when they entail civil consequences.

The law on the subject came to be gradually developed in India, although the principles of natural justice are having universal application. In A.K.Kraipak³⁷ the question came to be considered by the Supreme Court. It is no doubt true that the facts had some concern with first principle of natural justice, but then the effects of those rules were considered and hence placed. The jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State were not charged with the duty of discharging their function in a just and fair manner... With the increase of power of the administrative bodies it has becomes necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, courts are gradually evolving³⁸ the principles to be observed while exercising discretionary powers. Court observed that the aim of the rules of natural justice is to secure justice, or to put it negatively to prevent miscarriage of justice. An unjust decision in an administrative inquiry may have more far reaching effect than a decision in a quasi-judicial inquiry.

³⁷ AIR 1970 SC 150

³⁸ In fact evolved and is more a judge made law. Nothing remains outstanding and that is a sign of zealously protecting the rights of the subject.

Maneka Gandhi³⁹ is a case dealing with interpretation of freedom and personal liberty of the Citizens. In this case, the specified authority under the Passports Act has had been enjoying the limited powers to impound the passport in the interest of the general public. The Government impounded the passport of the petitioner without affording any reasons in support thereof. Maneka wanted to know the reasons that led to the logic of impounding the passport, but she was not heard and no reasons were furnished though demanded. The Supreme Court held that natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action.. Relying on various decisions, the court further held that it would not be right to conclude that the audi alteram partem rule is excluded merely because the power to impound a pass-port might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his pass-port.. A fair opportunity of being heard following immediately upon the order impounding the pass-port would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Pass-port Act.

In *Mohinder Singh Gill v. Chief Election Commissioner*⁴⁰ the Election Commission derived the constitutional power to cancel the result of the poll coupled with certain statutory exercise. The Commission cancelled the election arbitrarily, which according to the Winning candidate was contrary to the fair play in action. The Court observed that fair hearing is a postulate of decision making. It can be fair without the rules of evidence or form of trial. It cannot be fair in the absence of hearing and representation. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law.

³⁹ AIR 1979 SC 597

⁴⁰ AIR 1978 SC 581

ASSERTION ON NATURAL JUSTICE:

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In *Calcutta Dock Labour Board v. Jaffar Immam and others*⁴¹ who were serving as Dock workers were removed from service without proper inquiry on the ground that they were preventively detained under the Act as they were doing prejudicial activities. It was contended that if the Board had to insist upon a proper inquiry being held against the respondents before terminating their services, the appellant would find it impossible to take any disciplinary action against them. It was submitted in view of the fact that the respondents were bullies and they terrorised their co-workers to such an extent that no one would be willing or prepared to give evidence. The court observed that there can be no doubt that when the appellant purports to exercise its authority to terminate the employment of its employees such as the respondents in the present case, it is exercising authority and power of a quasi-judicial character. In cases where a statutory body or authority is empowered to terminate the employment of its employees, the said authority or body cannot be heard to say that it will exercise its powers without due regard to the principles of natural justice.

The court further observed that: -

"Any attempt to short-circuit the procedure based on considerations of natural justice must, we think, be discouraged if the rule of law has to prevail, and in dealing with the question of the liberty and livelihood of a citizen, considerations of expediency which are not permitted by law can have no relevance whatever."

⁴¹ AIR 1966 SC Page 282

In Dr. (Miss) Bina Pani Dei⁴² the respondent was serving as Assistant Surgeon in medical department who was compulsorily retired from service on the ground of corrected date of birth, which amounted to removal from service. In this case, the respondent was also not given the report of inquiry and material was utilised behind her back. The Supreme Court held that:

"We think that such an inquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character but even administrative order which involved civil consequence as already stated, must be made consistently with the rules of natural justice after informing... the case of the State, the evidence in support thereof and after giving an opportunity to...of being heard and meeting or explaining the evidence. "

Natural Justice: Service jurisprudence Condemned unheard category of removal and dismissal.

Khemchand's specification on principles of natural justice⁴³ laid down following essential obligations upon the State and any other authorities:

- (a) an opportunity to the delinquent to deny his guilt and establish innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

⁴² AIR 1967 SC 1269

⁴³ AIR 1958 SC 300. The Supreme Court laid down the requirement of complying with what has been specified in relation to cases of civil servants to whom the provision of Article 311 (2) of the Constitution of India applies.

But, it is not that the type of the obligation pointed out is not required to be followed in cases other than civil servants. The reason is that the Supreme Court has clarified the concept of natural justice while dealing with the cases of private sectors. The Supreme Court has observed in cases that the rules framed under Industrial Employment (Standing Orders) Act should yield to the requirement pointed out under Article 311 (2) of the Constitution.

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servants concerned.

The Supreme Court of India was dealing with the case arising out of the breach of Article 311(2) of the Constitution. In fact, Article 311 (2) is nothing, but a reflection of well-founded principles of natural justice. By means of such obligations, the Honourable the Supreme Court not only insisted upon fairness, but in effect carved out the “procedural reasonableness,”⁴⁴ so that the person, who suffers the inquiry, can effectively represent his case and establish his innocence. Obviously, therefore, the procedural fairness requires that a person should be notified of the charges, allowed to test the evidence, and finally allowed to make the representation to establish his innocence.

The State or the authorities cannot justify the order of punishment at the time of judicial review of administrative action before the Court, unless the principle is complied with. They cannot and should not plead administrative expediency at the same time. They should avoid the “condemned unheard” category as a matter of course, because the State has to be fair and impartial, and legally speaking, it is charged with a duty to adopt “procedural reasonableness”. Only then, it is a sign of good and the honest administration. An action that is violative of the principle shambles

44 Justice Ahmedi argues in case of Rashlal Yadav vs. State of Bihar, 1994 (5) SCC 267 that with the passage of time, a third element of “procedural reasonableness” has been added, because the main objective of requirement of rule of natural justice is to promote justice and prevent its miscarriage. In fact, the third principle called procedural reasonableness said to have been added after relying on the judgment in case of AK Kraipak, AIR 1970 SC 150 was already introduced in earlier decided cases in India and exhaustively specified in case of Khemchand, AIR 1958 SC 300. In fact, insufficient attention is paid to those judgments. It is not a recent addition starting from Kraipak era. It is introduced much earlier than that. The reason to say so is also obvious as the Supreme Court has asserted preserving “fairness” during the period where the judiciary was busy in drawing distinction between administrative and quasi-judicial action. Thus clauses (a) (b) and (c) introduced in Khemchand’s specification is nothing else then the “procedural reasonableness”.

its sustainability or the enforcement, because such action produces nullity. There are cases, where the aforesaid principle is often breached by the State or the authorities.

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Types of cases are known as “no notice and no hearing” cases and time and again the Courts have set aside the administrative actions. One would, therefore say that “Condemned unheard categories of cases always admit of nullity”. These principles are so strongly guarded that the Supreme Court in case of Kalkatta Dock Labour Board vs. Jaffar Imam, AIR 1966 SC 282 held that any attempt to short-circuit the procedure based on considerations of natural justice must, we think, be discouraged if the rule of law has to prevail, and in dealing with the question of the liberty and livelihood of a citizen, considerations of expediency, which are not permitted by law can have no relevance whatever.

Case of Mafatlal Narandas Barot⁴⁵

Automatic removal... Case of no inquiry at all.

Appellant, who was a permanent employee of the Gujarat state Road Transport Corporation, applied to the Divisional Controller for leave on the ground that he was required to attend to his personal work. Subsequently, he was transferred and a formal order of transfer with a direction to join the duty was issued. The appellant applied for extension of leave on medical grounds, but his request was refused. The appellant was directed to report for duty within 48 hours of the receipt of notice failing that the appellant would be removed from service. The appellant wrote a letter to the Divisional Controller intimating him of his inability to join duty as he was still not well. A medical certificate was appended. Lastly, the Services of the appellant were terminated on the ground of long absence. It is admitted that no charge was

45 Mafatlal Narandas Barot vs. JD Rathod, Divisional controller, Gujarat State Road Transport Corporation, AIR 1966 SC 1364; In case of Jai shaker vs. State of Rajasthan, AIR 1966 SC 492, the Jail warder was summarily dismissed on the ground that rule permitted to summarily dismissed an employee, who is on over stayal of leave. However, the Supreme Court observed that the rule cannot take away the guarantee enshrined under Article 311 (2) of the Constitution. The dismissal, was therefore, set aside. It was admittedly a case of “condemning a person unheard”. See Ridge vs. Baldwin, 1964 AC 60 where the Chief Constable was dismissed by the watch Committee without telling him of the charges levelled against him and without giving any opportunity to correct or contradict the material.

framed against him nor was he given an opportunity to show cause.

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It is contended for the respondent that though the order of termination referred to long absence as the cause of termination, the termination itself was not by way of punishment and the only right of the appellant was to two months' pay in lieu of notice under regulation No. 61, that assuming that the termination was by way of punishment, the appellant, as would be evident from the correspondence and the circumstances of the case, had been given an opportunity to show cause and that there was in fact and in substance compliance with the rules of natural justice.

Regulation provided as under:

“The service of an employee, who does not hold a permanent appointment in State Transport or a lien on a permanent appointment in any Government Department from which he is transferred, are liable to be terminated by the Competent Authority by giving a calendar months’ notice or a calendar month's pay in lieu.”

Provided further that a permanent employee of State Transport shall be entitled to 60 days' notice or 60 days' pay in lieu.

Regulations further provided as under:

- Regulation 38:

Irregular attendance, absence without leave and without reasonable cause and absence without permission."
- Regulation 40:

Failure, without sufficient cause, to report, when directed, for duty, on the part of an employee to whom the leave he has applied for is refused."

The Regulation further provided that a person, against whom action is proposed to be taken for any act of misconduct, shall be provided with a copy of the charge or charges as well as a statement of allegations that have been made against him and over which enquiry is being held. Regulation further provided that irregular attendance, absence without leave and without reasonable cause and failure, without sufficient cause, to report, when directed for duty amount to acts of misconduct. It is obligatory on the part of the respondent to give the appellant a reasonable opportunity to show cause by providing him with a copy of the charge or charges, as well as the statement of the allegations that have been made against him. Admittedly, the respondent did not frame a charge against the appellant nor conduct any enquiry.

“It is true that the respondent may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show cause why he be not removed.”

“The appellant is entitled to a reasonable opportunity to show cause which includes an opportunity to deny his guilt and establish his innocence which he can do, only when he knows what the charges levelled against him are and the allegations on which such charges are based.”

Supreme Court, therefore, held that the appellant was entitled to an opportunity to show cause against the action proposed to be taken against him. The order of termination passed against the appellant is bad in law since it contravenes the Regulation and also the principles of natural justice.

A case of Calcutta Dock Labour Board vs. Jaffar Imam⁴⁶
Considerations of expediency... Case of neither notice, nor hearing

In this case, the Supreme Court did not allow the Calcutta Dock Labour Board to compromise with the Principles of Natural justice, did not even allow the “considerations of expediency” as the entire action dismissing the employees affected in terms of their purse and property. The Supreme Court insisted that there shall be always a proper inquiry. Respondents were not given notice of any specific allegations made against them, and the record clearly shows that no evidence was led in the enquiry at all. It is only the detention orders that were apparently produced and it is on the detention orders alone that the whole proceedings rest and the impugned orders are founded.

In such a case, before appellant can validly dismiss such an employee, it will have to hold a proper enquiry. Circumstance that respondents happened to be detained can afford no justification for not complying with the relevant statutory provision and not following the principles of natural justice. It was urged that the employees are bullies and no witnesses would come forward out of terrorism.

But the Supreme Court said:

“any attempt to short-circuit the procedure based on considerations of natural justice must, we think, be discouraged if the rule of law has to prevail, and in dealing with the question of the liberty and livelihood of a citizen, considerations of expediency which are not permitted by law can have no relevance whatever.”

⁴⁶ *Calcutta Dock Labour Board vs. Jaffar Imam*, AIR 1966 SC 282

Automatic removal without any inquiry illegal:

Jai Shanker⁴⁷ serving as Jail Warder was a permanent Civil Servant of the State, who proceeded on leave for two months and applied for extension of leave on medical grounds. He requested for more leave on the ground his ill health. Later he asked for an extension by a month. He was due to join, but he was told that no more leave would be granted and that his transfer to Jaipur, made while he was ill at Hyderabad, would not be cancelled. Jai Shaker received a communication sent by the Deputy Inspector General, Prisons under endorsement from the Superintendent, Central Jail that he was discharged from service.

Jai Shanker alleged that he was called by Personal Assistant to the Inspector General and was offered reinstatement if he undertook not to claim back salary, but he declined the offer. After serving a notice under section 80 of the Code of Civil Procedure, Jai Shanker filed the suit from which this appeal arises. He asked for a declaration that the termination of his service was illegal inasmuch as *he was entitled to a notice enabling him to show cause against the termination of his service as required by Article 311 of the Constitution.*

On appeal to the District Court Jai Shankar succeeded in getting a reversal of the decree of the trial Judge. The District Judge, Jodhpur held that Jai Shanker was entitled to a declaration that his removal from service was illegal and that he continued to remain in employment and was also entitled to all arrears of salary admissible to him under the rules. The State Government appealed against the judgment and decree of the District Judge and by the order under appeal the decree of the District Judge was set aside and the decree of the Subordinate Judge was restored. Jai Shanker was ordered to pay costs in the High Court and the two courts below.

⁴⁷ Jai shanker vs. State of Rajasthan AIR 1966 SC 492

The short question in the appeal before the Supreme court was *whether Jai Shanker was entitled to an opportunity to show cause against the proposed punishment as required by cl. (2) of Article 311. It is admitted that no charge was framed against him. Nor was he given any opportunity of showing cause. The case for the State Government is that Government did not terminate Jai Shanker's service, and that it was Jai Shanker who gave up the employment by remaining absent. It is submitted that such a case is not covered by Article 311.*

Regulation 7 lays down that leave cannot be claimed as a right and that Government has discretion to refuse or revoke leave of any description. Regulation 11 lays down that an individual who has been granted leave on medical grounds for a Period of one month or more may not return to duty without producing a certificate of fitness signed by an officer authorized by a general or special order to grant such certificate. Regulation 12 lays down that an individual who absents himself without permission or remains absent at the end of his leave is entitled to no salary for the period of such absence and that period will be debited against his leave account unless the leave is sanctioned or extended under the ordinary rules by competent authority.

Regulation 13 is important because it forms the basis of the contention that Article 311 does not apply to this case. That Regulation may be reproduced here:

“13. An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note: The submission of an application for extension of leave already granted does not entitle an individual to absent himself without permission.”

It is contended that this Regulation operated automatically and no question of removal from service could arise because Jai Shanker must be considered to have sacrificed his appointment. Under the Regulation he could only be reinstated with the sanction of the competent authority. We have, therefore, to determine whether this Regulation is sufficient to enable the Government to remove a person from service without giving him an opportunity of showing cause against that punishment, if any.

It is admitted on behalf of the State Government that discharge from service of an incumbent by way of punishment amounts to removal from service. It is, however, contended that under the Regulation all that Government does, is not to allow the person to be reinstated. Government does not order his removal because the incumbent himself gives up the employment.

The Honourable the Supreme Court held that:

“We do not think that the constitutional protection can be taken away in this manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law. One circumstance deserving removal may be over-staying one's leave. This is a fault which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed. During the hearing of this case we questioned the Advocate General what would happen if a person owing to reasons wholly beyond his control or for which he was in no way responsible or blamable, was unable to return to duty for over a month, and if later on he wished to join as soon as the said reasons disappeared?

Would in such a case Government remove him without any hearing, relying on the regulation? The learned Advocate General said that the question would not be one of removal but of reinstatement and Government might reinstate him. We cannot accept this as a sufficient answer. The Regulation, no doubt, speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. *The Regulation involves a punishment for overstaying, one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing causes why he should not be removed.*

If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. *A removal is removal and if it is punishment for over-staying one's Leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here.*

Supreme Court, therefore, held that *“in our judgment, Jai Shanker was entitled to an opportunity to show cause against the proposed removal from service on his overstaying his leave and as no such opportunity was to him his removal from service was illegal. He is entitled to this declaration.”*

The Plaintiff has attempted to describe what is the importance of natural justice. Here, Article 311 of the Constitution does not apply, but the Honourable the Supreme Court of India has said that when an action of the statutory body is in breach of the principles of natural justice, a declaration would be granted that the employee of the statutory corporation was wrongly dismissed. The Supreme court has very exhaustively considered all categories of the cases and hence summary of the judgment is reproduced:

Summary of the judgment in Sirsi Municipality⁴⁸:

The question which falls for determination in this appeal by special leave is whether the respondent is entitled to a declaration in a suit filed by her that her dismissal by the appellant municipality referred to as the municipality was illegal and void.

The respondent was an employee of the municipality. Her services were terminated by a resolution dated 23 March, 1955. She was dismissed from service. She filed this suit for a declaration that the resolution of the municipality dismissing her from service was void and that she continued to be in service of the municipality and was entitled to emoluments from the date of the resolution up to the date of the suit. The Municipality is governed by the Bombay District Municipalities Act, 1901 referred to as the Act. Section 46 of the Act provides that the municipality shall make rules in respect of matters enumerated in that section. Clause (g) of section 46 empowers the municipality to frame rules regulating inter alia the period of service, the conditions of service etc.

⁴⁸ Supreme Court of India : Sirsi Municipality vs Cecelia Kom Francis Tellis decided on 18 January, 1973 and reported in 1973 AIR 855, 1973 SCR (3) 348

Rule 183 framed by the municipality provides that except in the case of Chief Health Officer and the Engineer every municipal officer or servant is liable to be discharged at one month's notice. Rule 183 was not invoked by the municipality in the present appeal. Therefore, rule 183 is out of consideration. Rule 143 of the municipality provides two things. First, no officer or servant shall be dismissed without a reasonable opportunity being given to him of being heard in his defence. Any written statement tendered shall be recorded and written order shall be passed thereon. Second, every order of dismissal or confirming dismissal shall be in writing and shall specify the charge or charges brought, the defence and the reasons for the order.

Sometime in February, 1955 one *Nayak* brought his wife Nagamma to Pandit Cottage Hospital administered by the municipality. Nagamma was admitted to the maternity section. On 15 February 1955 Nagamma died. Nagamma's husband complained to the municipality against the negligence of the staff of the hospital as the cause for the death of Nagamma. The Civil Surgeon held an enquiry. He gave a finding that the death of Nagamma was not due to the negligence of the staff. There was public agitation for a fresh enquiry. On 7 March 1955 the municipality passed a resolution appointing a committee of four persons to hold an enquiry into the cause of the death of Nagamma and the alleged negligence of the staff of the hospital.

The committee recorded the statements of several persons. The committee submitted its report to the Municipal Council. On 23 March 1955 a meeting of the Municipal Council was held. The respondent alleged that though the consideration of the report of the sub-committee and the taking of a decision thereon were not included in the agenda of that meeting, yet the President of the Council sent a notice to the respondent. The communication to the respondent was to the effect that it had come to the notice of the President that the death of Nagamma was due to the negligence of the respondent, and, therefore, she was to appear before the Municipal Council at 4 p.m. on 23 March 1955 and give her explanation. The respondent received a notice on 23 March, 1955 at

about 10.30 a.m. She sent her reply denying her negligence. The respondent also stated that if it was necessary for her to explain anything she should be asked questions in writing and she would give her answers in writing.

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The respondent did not appear before the Municipal Council at 4 p.m. The respondent came to the municipal hall at about 6 p.m. But that time, the Municipal Council had passed a resolution dismissing the respondent from service. The President asked the respondent what her statement was about negligence. The respondent did not make any oral statement. The respondent insisted that the charge against her should be given in writing and that she would reply in writing. The municipality did not accede to the respondent's request. The resolution of the municipality was communicated to the respondent on the same day. The respondent handed over charge on 24 March 1955.

Broadly stated, the two contentions of the respondent were these. First, rule 143 of the municipality was violated. She was not given a reasonable opportunity of defending herself against the charge. Second, the resolution was passed by the municipality on a day when the agenda before the municipality did not contain any subject of dismissal of the respondent. On these grounds the respondent filed a suit for a declaration that the resolution was illegal, that the status of the respondent as mid-wife in the hospital remained unaffected and that the respondent was an employee of the municipality as before. The respondent claimed other reliefs.

The contention of the municipality on the other hand was that the rules and bye-laws of the municipality were only for the guidance of the municipality and that the respondent could not challenge the resolution or action of the municipality on the ground of violation of rules and bye-laws.

The High Court upheld the findings of the trial Court and the first Appellate Court that the respondent was not given a reasonable opportunity of defending herself against the charge on which she was dismissed and that the municipality thus violated rule 143. The High Court however did not accept the finding of the courts below that the Municipal Council was not competent to pass the resolution on the ground of want of notice on the agenda. The High Court also set aside the findings of the courts below that the charge had not been proved against the respondent. The High Court found that the, resolution of the municipality was clearly in violation of rule 143 and declared it as invalid and inoperative.

The High Court maintained the declaration that the respondent was deemed to have continued- in service from the date of, dismissal to the date:-of the suit. Counsel on behalf of the municipality contended that the respondent was not entitled to any declaration. In short, it was said on behalf of the municipality that if the dismissal was wrongful the remedy lay in damages. The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the Law of Specific Relief Act. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific. Relief Act which do not provide for reinstatement of a servant.

The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

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Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant. Counsel on behalf of the municipality relies on the decisions of this Court in *Executive Committee of U.P. State Warehousing Corporation limited v. Chandra Kiran Tyagi* (1970) 2 S.C.R. 250 and *Indian Airlines Corporation v. Sukhdea Rai* (1971) 2 S.C.C. 192 in support of the contention that even in cases of statutory authorities or bodies a dismissal would only sound in damages and not entitle the dismissed servant to the relief of a declaratory judgment against the order of dismissal or termination.

In *Tyagi's case* (supra) Warehousing Corporation was competent to make regulations not inconsistent with the Agricultural Produce (Development and Warehousing) Corporation Act, 1956. The Warehousing Corporation framed regulations. Regulation 11 dealt with termination of the service of an employee other than by way of punishment. Regulation 16 dealt with penalties imposed on

servant. Regulation 16(3) stated that no punishment other than fine, censure or postponement of increments or promotion was to be imposed on an employee without giving him an opportunity for tendering an explanation in writing and cross examining the witnesses against him and of producing evidence in defence. Tyagi in that case complained that at the enquiry he was not given opportunity to adduce evidence in defence and the persons from whom the Enquiry Officer gathered information were not tendered for cross-examination. The question for consideration by this Court in that case was whether the dismissal of Tyagi could support the grant of a declaration that the dismissal was null and void and that Tyagi was entitled to be reinstated. This Court held that an order made in breach of regulation 16(3) was not in breach of any statutory obligation. It was also held in Tyagi's case (*supra*) that the relevant Act did not 'guarantee any statutory status to Tyagi nor did it 'impose any obligation' on the Warehousing Corporation in the matter of dismissal. The ratio in Tyagi's case (*supra*) was that violation of regulation 16(3) was a breach of terms and conditions of relationship of master and servant and the master was liable for damages for wrongful dismissal. This Court did not find any violation of statutory obligation in Tyagi's case (*supra*).

In the Indian Airlines Corporation case (*supra*) Sukhdeo Rai was suspended on certain charges. Later on he was found guilty of those charges in an enquiry. He was thereafter dismissed. He filed a suit alleging that the enquiry had been conducted in breach of the procedure laid down by regulations made by the Corporal under section 45 of the Act, and, therefore, the dismissal was illegal and void. The High Court held that the Corporation was under a statutory obligation to observe the procedure laid down in the regulations and gave the relief of a declaratory judgment. This Court set aside the declaration granted by the High Court. The ratio in Indian Airlines Corporation case was stated thus:

The employment of the respondent not being one to an office or status and there being no obligation or restriction in the Act or the rules subject to which only the power to terminate the respondent's employment could be exercised, could the respondent contend that he was entitled to a declaration that the termination of his employment was null and void

In the Indian Airlines Corporation case (*supra*) regulations framed under section 45 of the Act were said by this Court to be terms and conditions of service but the same did not constitute a statutory restriction as to the kind of contracts which the Corporation could make with the servants or he-ground on which it could terminate. The dismissal in that case was found to be wrongful and not to fall within the vice of infraction of statutory limitation or statutory obligation.

This Court in *S. R. Tewari v. District Board Agra* (1964) 3 S.C.R. 55, *Life Insurance Corporation of India v. Sunil Kumar Mukherjee* (1964) 5 S.C.R. 528, *Calcutta Dock Labour Board v. Jaffar Imam & Ors.* (1965) 3 S.C.R. 453 and *Narandas Barot v. Divisional Controller, S.T.C.* (1966) 3 S.C.R. 40 dealt with power of statutory authorities and bodies to dismiss servants. These decisions establish that the dismissal of a servant by statutory including local authorities or bodies in breach of the provisions of the statutes or orders or schemes made under the statute which regulate the exercise of their power is invalid or ultra vires and the principle of pure master and servant contractual relationship has no application to such cases. In *Tewari's case* (*supra*) this Court said that dismissal, removal or reduction of an officer or servant might be affected under the rules only after giving the servant a reasonable opportunity of showing cause against the action proposed to be taken. This Court held in *Tewari's case* (*supra*) that in three instances a dismissed employee might in appropriate cases obtain a declaratory judgment that the dismissal was wrongful. Those three instances are : first, cases of public servants falling under Article 311(2) of the Constitution; secondly, cases falling

under the Industrial Law and, thirdly, cases where acts of statutory bodies are in breach of mandatory obligation imposed by a statute. In Narandas Barot's case (*supra*) this Court held that the order of termination was bad in law since it contravened the provisions of clause 4(b) of the regulation and also the principles of natural justice.

This Court has held in the decisions referred to that the dismissal or termination of the services of employees without complying with the provisions of statute or scheme or order is invalid. This Court has quashed the orders of dismissal and granted appropriate declarations.

There have been recent English decisions on this subject. These are *Vine v. National Dock Labour Board* (1956) 3 All E.R. 939; *Barber v. Manchester Hospital Board* (1958) 1 All E.R. 322; *Ridge v. Baldwin* 1964 A.C. 41; *Malloch v. Aberdeen Corporation* (1971) 2 All E.R. 1278 and *McClelland v. Northern Ireland General Health Services Board* (1957) 1 W.L.R. 594.

These decisions indicate that statutory provisions may limit the power of dismissal. Where such limitation is disregarded a dismissal may be held invalid. In this respect employment under statutory bodies differs from ordinary private employment. Where a public body is empowered to terminate employment on specified grounds or where a public body does not observe the procedure laid down by legislation e.g., improperly delegates power of dismissal to 'another body the courts have declared such dismissal from public employment to be invalid.

The cases of a statutory status of an employee can be also form the subject matter of protection of the rights of an employee under the statute. In *Vine's case* (*supra*) the removal of *Vine's* name from the register was held to be a nullity. The statutory scheme of employment was held to confer on the worker a status.

An unlawful act of the Board was found to be interference with status. The status of the dock worker was recognised by this in Jaffar Imam's case (supra). In Jaffar Imam's case (supra) the termination of the employment in breach of clause 36(3) of the scheme made by the Central Government in exercise of the power conferred on it by section 4(1) of the Dock Workers (Regulation of Employment) Act 1948 was held to be bad. The round given by this Court was that before any disciplinary action was taken under clauses 36(1) and (2) of the scheme in Jaffar Imam's case (supra) the person concerned was to be given an opportunity to show cause as to why the proposed action should not be taken against him. Again in Barber's case (supra) under the memorandum issued 'by the Minister of Health the Hospital Board was not to carry into effect the dismissal of consultant before a certain appeal procedure had been completed. Barber was dismissed without the prescribed procedure being followed. It was held that despite the 'strong statutory flavour attaching to the plaintiff's contract' this was an ordinary contract between master and servant. The House of Lord in McClelland's case held that the dismissal of the plaintiff by the Board in that case on the ground of redundancy of staff was not one of the grounds specified in the terms and conditions of service. It was found that the dismissal could be on specified grounds e.g., gross misconduct. A declaration was granted in favour of McClelland on an originating summons as to whether the agreement of service was validly terminated. It was not a case of a Government servant. *There was no question of breach of statutory provisions. The employment was based on contract.* The Court found that the express power of the Board did not include reduction on the ground of redundancy. The Court spelt out security of status in employment. The legal basis of the decision in McClelland's case (supra) is that the post was terminable only on certain specified grounds. In the present appeal, the preeminent question is whether the dismissal is in violation of rule 143. Rule 143 imposes a mandatory obligation. The rules were made in exercise of power conferred on the municipality by statute. The rules are binding on the municipality. They cannot be amended without the assent of

the State Government. The dismissal of the respondent was rightly found by the High Court to be in violation of rule 143 which imposed a mandatory obligation. The respondent was dismissed without a reasonable opportunity of being heard in her defence. The dismissal by the municipality was without recording any written statement which might have been tendered. The dismissal by the municipality was without written order. The dismissal was ultra vires.

For the foregoing reasons the High Court was correct in declaring the dismissal of the respondent to be illegal and void. The appeal is therefore dismissed. In view of the fact this court directed the appellant would in any event pay the respondents' costs, the Respondent will be paid these costs.

BEG, J: The facts of the case before us, which are so clearly set out in the judgment of my learned Brother Ray, need not be repeated by me. I respectfully concur with what has fallen from my learned brother. I would, however, like to 'add some observation on two aspects of the case before us.

Firstly, it was suggested, on behalf of the Municipality, that the local authority had some kind of dispensing power which could enable it to over-ride Rule 143 in the circumstances of the case before us. Rule 143 of the Sirsi Municipality, reads as follows:

"Rule 143(1). No officer or servant be dismissed without a reasonable opportunity being given to him of being heard in his defence. Any written defence tendered shall be recorded and written order shall be passed, thereon.

(2) Every order of dismissal or confirming a dismissal shall be in writing and shall specify the charge or charges brought, the defence and the reasons for the order".

This suggestion was based on the provisions of Section 26, Sub section (8) of the Bombay District Municipal Act 1901 (hereinafter referred to as "the Act") which has really nothing to do with any general power to disperse with the application of any rule. All that Section 26, Sub Section (8), empowers the Council to do is to take up a matter for consideration 'and discussion with the permission of the Presiding authority even though it may not have been tabled on the notified agenda for the meeting. this, provision reads as follows:

"26(8). Except with the permission of the presiding authority, which permission shall not be given in the case of a motion or proposition to modify or cancel any resolution within three months after the passing thereof. no business shall be transacted and no proposition shall be discussed at any general meeting unless it has been mentioned in the notice convening such meeting or, in the case of a special general meeting, in the written request for such meeting. The order in which any business that may be transacted or any proposition that may be discussed at any meeting in accordance with this subsection shall be brought forward at such meeting, shall be determined by the presiding authority, who in case it is proposed by any member to give priority to any particular item of such business, or to any particular proposition shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal". Section 26, sub. s. (8), seems initially to have been relied upon only to meet the argument that the impugned resolution could not be passed in the absence of a previous notice of it to the Members of the Council. The competence of the Municipal Council to pass the resolution dismissing the respondent depended more on compliance with Rule 143 made under Section 46 of the Act than on Section 26(8) of the Act. Compliance with such a rule could not be dispensed with by the Council or its presiding authority under Section 26(8) of the Act.

The mode and conditions of appointment, punishment, and dismissal of officers and servants of the Municipality were meant to be regulated by rules which had to be approved by the State Government in the case of the City Municipalities and by the Commissioner in other cases before they could become binding or be altered. Bye-laws could be made on certain specified subjects only after the previous sanction of the State Government or the Commissioner, as the case may be, given to them. Neither rules nor bye-laws of the Municipality could be made or altered unilaterally by it. Both operated as laws which bound the local authority. This was clear from the provisions of Section 46 and 48 of the Act.

In *Yabbicon v. King* it was said :

"The District Council could not control the law, and bye-laws properly made have the effect of laws; a public body cannot any more than private persons dispense with laws that have to be administered; they have no dispensing power whatever".

Again, in *William Feam & Sons. v. Flaxton Dural Council*(2) Sankey, L. J., held that a local authority has "no power" to contravene its own bye-laws properly made. In *Kruse Vs. Johnson* Lord Russel pointed out that a bye-law has the "force of law" within the sphere of its legitimate operation. Therefore, quite. Apart from the basic character of Rule 143 as a procedural protection against unmerited punishment by dismissal of servants of the Municipality, I think that the local body was not competent to act upon the assumption that it had any power to dispense with compliance with this rule so long as it stood unaltered.

Secondly, the question arose whether the violation of Rule 143, which admittedly took place, made the, dismissal of the respondent merely illegal, for which award of damages was sufficient remedy, or made it void and unaffected, so that a declaration of the rights of the respondent as a servant of the Municipality could also be given despite the provisions of Section 21 Specific Relief Act. It is true

that, ordinarily, a Court will not give a declaration which will have the effect of enforcing a contract of personal service and will restrict relief to the injured party to damages for breach of contract. But, the principles which are applicable to the relation of a private master and a servant, unregulated by statute, could not apply similarly to the case of a public statutory body exercising powers of punishment fettered or limited by statute and relevant rules of procedure.

Although *Indian Airlines Corporation v. Sukhdeo Rai*, which was cited on behalf of the appellant, could perhaps be distinguished on facts, I am unable to reconcile the decision of this Court in the case of *Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi*, with our view in the case before us. In *Tyagi's case (supra)*, as in the case before us, no express statutory provision was contravened by the impugned dismissal, but a rule, made under powers conferred by statute, which protects the servant concerned from punishment by way of dismissal contrary to rules of natural justice, was violated. If a guaranteed "statutory status" means only an express statutory protection, such as the one found in Article 311 of the Constitution. And a rule made under a statutory power is not enough to confer it, there was none either in *Tyagi's case (supra)* or in the case before us. An express' statutory provision or guarantee is not the only basis of a mandatory duty or obligation. It can be imposed either by a rule made in exercise of a statutory power or it may arise by implication when exercising a quasi-judicial functions. Even when there was no specific rule on the subject like Rule 143 in the case before us, this Court has held that violation of implied rules of natural justice, in exercise of a quasi-judicial statutory power, results in a legally void decision. It was so held because the obligation to observe rules of natural justice was imperative in such a situation. In *State, of Orissa v. Dr. (Miss) Binapani Rai*, this Court said:

"This rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case".

This principle would be equally applicable to local Government bodies which fall within the definition of "State" given in Article 12 of the Constitution. Byles, J., in *Cooper v. The Board of Works for Wendsworth District*, said long ago about the primordial character of the opportunity to be heard before punishment:

"The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God) 'where art thou ? Hast thou not eaten of the tree whereof I commanded those that thou should not eat?'"

Such a principle has been described as a principle of "Universal jurisprudence" by Mahomood, J., in *Queen Empress v. Ponhi In Ridge v. Baldwin* (4) Lord Reid observed (at page 71) "The authorities on the applicability of the Principles of natural justice are in some confusion and so I find it necessary to examine this matter in some detail. The principle *audi alteram partem* goes back many centuries in our law and appears in a multitude of judgments of judges of the highest authority. In modern times opinions have

sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. The idea of negligence is equally insusceptible of exact definition but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equally capable of serving as tests in law, and natural justice as it had been interpreted in the courts is much more definite than that. It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle. What a minister ought to do in considering objections to a scheme may be very different from what a watch committee ought to do in considering whether to dismiss a chief constable. So I shall deal first with cases of dismissal. These appear to fall into three classes, dismissal of a servant by his master, dismissal from an office held during pleasure, and dismissal from an office where there must be something against a man to warrant his dismissal".

The case before us undoubtedly falls within the category of cases where dismissal must be based upon a decision arrived at quasi-judicially about a wrong done by the servant. This elementary and basic procedural safeguard flows not merely from an implied rule of natural justice, but, in the case before us, it is actually embodied in a rule which 'we cannot interpret as anything other than a legal limitation or fetter on the power of the Municipal authority to dismiss. It constitutes a condition precedent to a valid decision to dismiss whether contained in a resolution or an order of the local authority. As the local Government authority had failed to see that a mandatory duty, embodied in a basic rule, had been carried out, the resulting decision must necessarily be held to be void. If the decision to dismiss the respondent was void and inoperative in law, there seems no reason why a declaration to that effect be not granted. Such a case would be covered by the principles laid down by this court in : Life Insurance Corporation of India v. Sunil

Kumar Mukherjee & Ors. and S. P. Tewari V. District Board Agra & Anr. This could not be a case in which damages for a simple breach of contract could afford adequate relief. Damages could not wipe off the stigma attached to the record of the servant. The law requires that, before the future of a servant is allowed to be marred by a blot on the record of the servant concerned, rules of natural justice must be complied with. I, therefore, concur with the judgment and the order proposed by my learned Brother Ray.

Dismissal on the ground of fraud without inquiry:

Yugal Rajak vs Eastern Coalfields Limited decided by Justice N. Tiwari on 17 March, 2005: 2005 (3) JCR 25 (Jharkhand)

- 1) In a petition, petitioner prayed⁴⁹ for quashing the order dated: 20.6.2001 passed by the General Manager, SP Mines Area, whereby the petitioner was dismissed from service and was further directed to refund the total compensation paid against the land. According to the petitioner, his land was acquired through the Land Acquisition Proceeding. The said land belonged to his mother's mother. The compensation was paid on acquisition of the said land. The petitioner claimed himself to be the sole heir and legal representative of his maternal grand-mother. On the basis of policy of the Company, the petitioner was given employment, *on due consideration and verification of the records* in 1984. Subsequently, his services were made permanent.
- 2) One Parwati Devi filed a suit claiming 1/2 share in the land of the maternal grand-father of the petitioner in the Court of Sub-Judge. In the said suit, neither the petitioner's mother's mother nor the petitioner was made a party, and behind their back, the said suit was decided. The respondents on the said ground issued a show cause notice to the petitioner to explain as to how he could get employment against the land of Ghughni Rajak and Saraswati Rajak, mother's mother of the petitioner. The petitioner after going through the contents of the said notice came to know about the

⁴⁹ Yugal Rajak vs Eastern Coalfields Limited decided by Justice N. Tiwari on 17 March, 2005 : 2005 (3) JCR 25 (Jharkhand)

said Judgment and decree and filed an appeal being Title Appeal No. 14 of 2001 in the Court of District Judge, Deoghar with the leave of the Court.

- 3) The respondents, without waiting for the result of the said title appeal, hastened to pass an order dated 20.6.2001 dismissing the petitioner from the service with immediate effect. *The petitioner has alleged that before passing the said order of dismissal, the procedure established by law was not followed.* The petitioner complained that the impugned order is wholly illegal and arbitrary. The petitioner has also specifically stated that the title appeal filed by him was allowed in his favour and the judgment and decree in title suit No. 52 of 1996 passed by the Sub-Judge Deoghar was set aside.
- 4) A counter affidavit has been filed on behalf of the respondents stating, inter alia, that *the petitioner has played fraud and submitted incomplete family tree which led to the litigation. It was stated that in view of the decree passed in the title suit, the petitioner was not entitled to continue in the service.* In the counter affidavit, *it has not been stated that for the alleged fraud and misrepresentation any charge was framed against the petitioner or any departmental proceeding was initiated informing him the charges.* The learned counsel for the respondent firmly submitted that *no charge sheet was ever served and there was no departmental inquiry, and only on the ground of the judgment and decree of the trial Court whereby some share was declared in favour of the plaintiff of that suit in respect of the land against which the employment was given to the petitioner, the said order of dismissal was passed against the petitioner.*
- 5) In my view *any order of dismissal from service cannot be passed in the manner it has been done. Admittedly, no charge sheet was issued framing any charge of playing fraud and misrepresentation by the petitioner in getting the employment. The petitioner was not afforded any opportunity to defend himself before awarding punishment of dismissal from service on the allegation of committing fraud and misrepresentation for getting employment which is the basic requirement of the principle of natural Justice. It has been now well settled that in the sphere of public*

employment, any action taken by the employer against an employee must be fair Just, reasonable and must conform to the rule of natural Justice. Article 311(2) of the Constitution does not permit any employer to dismiss any person without any enquiry, informing him of the charges and affording him reasonable opportunity of being heard in respect of those charges. The impugned order is violative of Articles 14 and 311 of the Constitution and not sustainable. Accordingly, the impugned order as contained in Annexure 6 is quashed. Since the petitioner was kept out of employment illegally and against his will and wishes, the petitioner shall be entitled to be reinstated with the back wages and consequential benefits.

- 6) This writ application is allowed.

The Supreme Court never intended that the full-fledged inquiry should be dispensed with and only show cause notice is sufficient. In a case, the Supreme Court held that “after inquiry as provided in Rule 14 of the CCS(CCA) Rules, 1965 if the charges are proved, the government servant should be removed or dismissed from service and under no circumstances any other penalty should be imposed⁵⁰”.

Existence and non-existence of facts and circumstances:

The Plaintiff submits that the Learned Judge of the lower court was required to consider as to whether the authority has ever applied his mind to the facts and circumstances of the case, and as to whether the facts alleged ever existed.

Section 237 of the Indian Companies Act provided the Central Government with powers to appoint two or more Inspectors to investigate the affairs of the Company and to report thereafter in the manner as the Central Government may direct in that behalf. In this background, the legislators granted discretion to the executive authorities that they might do so if, in the opinion of the Central Government, there are circumstance suggesting that the

⁵⁰ Supreme Court of India
Ram Saran vs I.G. Of Police, CRPF and Ors decided on 2 February, 2006
being Appeal (civil) 2044 of 2003.

business of the Company is being conducted with intent to defraud its creditors... or otherwise for a fraudulent or unlawful purpose etc.. Those persons concerned in the formation of the Company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the Company... What was required of the central Government was to form an opinion on cogent material and to arrive at best judgement. Opinion must necessarily concern the existence or non-existence of facts suggesting the things mentioned in the provisions. Central Government was under a statutory obligation to consider the event as to whether the statutory and relevant considerations really exist. That comes to formation of opinion after application of mind. The statutory consideration was "Circumstances suggesting" the existence or non-existence of facts. The section gave only exploratory powers and the object was to ascertain the facts for which the board should make a formation of opinion on the basis of material. The formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine quo non for action must be demonstrable.

If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists; the action might be exposed to interference unless the existence of the circumstances is made out. Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances if questioned, has to be proved at least prima facie. The conclusion must relate to an intent to defraud or fraudulent or unlawful purpose, fraud or misconduct of withholding of information of a particular kind. What was alleged was irregularity capable of inefficiency and therefore it was held that the Board did not reasonably exercise the discretion. They must arrive at specific judgement in this behalf⁵¹.

⁵¹ **Barium Chemicals Limited V/s Company Law Board, AIR 1967 SC 267 interpreting Section 237 of the Companies Act of 1956.**

Supreme Court of India: State Of Andhra Pradesh And Others vs Nagam Chandrasekhara Lingam decided on 4 May, 1988: Reported in AIR 1988 SC 1309, JT 1988 (2) SC 577, 1989 Lab IC 249

Bench: K Singh, M Kania:

1. These Appeals are directed against the judgment of a Division Bench of the Andhra Pradesh High Court disposing of a number of writ petitions, being Writ Petitions Nos. 7548 of 1983, 7356 of 1984 and 10320 of 1984. Civil Appeals Nos. 2306-2308 of 1985 are filed by the State of Andhra Pradesh and others, Civil Appeals Nos. Nos. 2309-10 of 1985 are filed by the Andhra Pradesh State Scheduled Castes Welfare Association and Civil Appeals Nos. 2518-2519 of 1985 are filed by the Union of India.

2. As the controversy before us is very limited, we propose to set out only the short facts necessary for the appreciation of the contentions raised before us.

3. The Respondent No. 1, Nagam Chandrasekhara Lingam (referred to hereinafter as "Chandrasekhara") was selected in 1981 by the Union Public Service Commission for appointment in the Indian Administrative Service (IAS) against a vacancy reserved for a Scheduled Caste candidate. This was done on the basis of a social status certificate produced by him which was issued to him on October 27, 1980, certifying that he belonged to the Beda Jangam Community, a Scheduled Caste. Under the Scheduled Castes and Scheduled Tribes (Modification) Order, 1956, Beda Jangam Community in the Telangana region was enumerated as a Scheduled Caste. In 1976 the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 was enacted whereby the area restriction imposed under the aforesaid Order of 1956 in respect of the Beda Jangam Castes was removed and that Caste was declared as a Scheduled Caste throughout the State of Andhra Pradesh. By an Order, being Order No. G.O.Ms. No. 838 dated December 12, 1977 issued by the Governor of Andhra Pradesh, the Andhra Pradesh State and Subordinate Service Rules were amended with effect from July 27, 1977 and by these amendments Beda Jangam : Community inter alia was notified as a Scheduled Caste throughout the State of Andhra Pradesh. Thereafter, Chandrasekhara obtained the aforesaid social status certificate from the Tahsildar, Ongole.

He enclosed this certificate along with his application for selection to the Indian Administrative Service and he was selected in a reserved post as stated above. Thereafter, a Representation was made in writing to the Central Government by one Vijaya Kumar, President, Ambedkar Mission, Vishakhapatnam, alleging that Chandrasekhara belonged to the Jangam Caste which was a backward Caste in the State of Andhra Pradesh but was not a Scheduled Caste. That Representation was forwarded by the Central Government to the State Government for taking appropriate action. The State Government directed the Collector, Prakasam District, to enquire into the matter and submit a Report as to whether Chandrasekhara belonged to Beda Jangam Community. Pursuant to the Report made by the Collector in the enquiry, the Secretary to the Government of India was informed that Chandrasekhara belonged to the Beda Jangam Community which was a Schedule Caste throughout the State of Andhra Pradesh. A further Representation was made to the Central Government by the Andhra Pradesh Scheduled Castes Welfare Association to the effect that some persons belonging to the Jangam Community in the district of Prakasam had obtained false certificates to the effect that they belonged to the Beda Jangam Community which is a Scheduled Caste in the State of Andhra Pradesh and Chandrasekhara had produced one such false certificate and got qualified in the Indian Administrative Service on that basis. The Central Government forwarded that Representation to the State of Andhra Pradesh and requested them to conduct a thorough enquiry into the matter. The State Government appointed T. Munivenkatappa, the then Commissioner of Welfare, Social Welfare Department of the State Government to conduct a de nova enquiry and submit a Report. The terms of enquiry which have been set out by the High Court in the impugned judgment are as follows :

- (i) Whether Sri Lingam, his parents, the members of his family and near relatives are treated as untouchables by the Caste Hindus;
- (ii) In what village or villages his parents, members of his family and near relatives are living;
- (iii) Whether all of them in that village are living in a separate colony along with the other scheduled Castes;
- (iv) Whether they along with the other sections in the colony are drawing water from their own wells or drawing water from the wells situated in the Caste Hindu locality;
- (v) Whether they are prohibited from entering or permitted to enter into temples and coffee hotels;
- (vi) The enquiry officer should record the statements of the near relatives and neighbours and others living in the locality or in the colony;
- (vii) When the enquiry officer proceeds for enquiry he should give notice to Sri Chandrasekhara Lingam and he should record the

statements of the persons in his presence. He should also be asked to produce the persons whom he desires to be examined.

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The Commissioner conducted an enquiry commencing from March 7, 1984 and submitted his Report dated March 18, 1984 to the State Government stating that the Jangam Community in the Prakasam district did not have the disability of untouchability and the Jangamas of that district are not Beda Jangamas. The Report also stated that Chandrasekhara did not belong to the Scheduled Caste of Beda Jangam and as such the social status certificate issued to him deserved to be cancelled. On the basis of this Report, the State Government of Andhra Pradesh issued an Order Being G.O.Ms, 51, Social Welfare (J) Department dated March 20, 1984, cancelling the social status certificate issued on October 27, 1980 in favour of Chandrasekhara. The State Government also directed the Revenue and Social Welfare authorities in the district to cancel the false certificates obtained by Jangamas to the effect that they belonged to Beda Jangam Community and take certain consequential steps. In these circumstances, although Chandrasekhara was selected, he was not called for training along with other selected candidates.

4. Writ Petition No. 7548 of 1983 was filed by Chandrasekhara seeing a declaration that he was entitled to be sent for training. Writ Petition No. 7356 of 1984 was filed by him questioning the validity of the aforesaid Order, being G.O.Ms. 51 dated March 20, 1984 cancelling the social status certificate. The other orders issued by the State Government pursuant to the aforesaid Report of the Commissioner were also challenged by Chandrasekhara. The Andhra Pradesh High Court considered the entire matter somewhat exhaustively in the impugned judgment and came to the conclusion that since a number of persons were examined and their statements recorded behind the back of an affected party, namely, Chandrasekhara, and as he had not been given an opportunity to cross-examine such persons, the enquiry held by the Commissioner of Welfare, Social Welfare Department was vitiated and invalid and the High Court set aside the aforesaid Order, G.O.Ms. 51 dated March 20, 1984 and the consequential Memorandum dated April 3, 1984 issued by the Government of Andhra Pradesh. The Division Bench of the High Court also held that in view of the complicated nature of the matter and rights of the persons likely to be affected, the enquiry about the position of persons including the Appellant, claiming to belong to the Beda Jangam Community should be conducted by a Commission headed preferably by a Judicial Officer of the rank of a District Judge. The Division Bench of the High Court directed the Government of India to send Chandrasekhara for training for the Indian Administrative Service but further directed that he should not be appointed pending the completion of the enquiry into his social status and that the enquiry should be completed within four months from the receipt of the judgment. The State of Andhra Pradesh as well as the Government of India filed the aforesaid Appeals in this Court challenging the decision of the High Court.

5. In our view, the Appeals can be disposed of on a short point. It is evident from the aforesaid Order, G.O.Ms. 51 dated March 20, 1984 that in the course of the enquiry, the Commissioner of

Welfare, Social Welfare Department, went into the social and economic status of Chandrasekhara, his parents and other members of his family and the question whether they were regarded as untouchables by the Caste Hindus of the area. The Commissioner of Social Welfare examined : exhaustively the question whether any disability or untouchability was suffered by Chandrasekhara and members of his family and by others belonging to the Jangam Community in the district concerned. The Commissioner came to the conclusion that Beda Jangamas properly called were hunters of small jungle animals, fowlers and also cultivators whereas Jangamas in the area concerned did not suffer from any social disability at all but were regarded as a part of the comparatively advanced classes. What is material is that this Order itself shows that the Enquiry Officer made enquires from several persons and recorded thier statements without any notice to Chandrasekhara so that he could remain present and ask for permission to cross-examine these witnesses. In view of this, it appears to us that the Commissioner clearly violated the terms of the enquiry which have already set out earlier to the effect that while conducting the proceedings of the enquiry, the Enquiry Officer should give notice to Chandrasekhara and should record the statements of persons in his presence. It may further be pointed out that the learned Counsel for the Central Government fairly conceded before the High Court that the enquiry conducted was not fair and proper, as set out in the impugned judgment. In this view of the matter there is no doubt that the aforesaid Order, namely, G.O.Ms. 51 dated March 20, 1984 is clearly vitiated and the Division Bench of the High Court of Andhra Pradesh was fully justified in setting aside the Order.

6. It was urged by Krishnamurthi Iyer, learned Counsel for the Appellant, the State of Andhra Pradesh, that, in spite of the aforesaid error committed by the Commissioner of Social Welfare in conducting the enquiry in the present case, the aforesaid Order G.O.Ms. No. 51 dated March 20, 1984 ought not to be set aside in view of the conduct of Chandrasekhara who, even long after 1976 when the Caste Beda Jangam was recognised as a Scheduled Caste throughout the State of Andhra Pradesh, never claimed the benefit of having belonged to that Community and proceeded on the footing that he was a candidate belonging to the General Category. In our view, this submission cannot be upheld because the said Order G.O.Ms. No. 51 dated March 20, 1984 is clearly based on the Report of the Social Welfare Commissioner and not on any conduct of the Appellant. We may mention that it was further contended before us by learned Counsel appearing for Chandrasekhara, the contesting Respondent before us, that the Report of the Social Welfare Commissioner was also vitiated because out of 49 witnesses he desired to be called only a few were called by the Commissioner to give evidence. We may make it clear that we do not feel we are called upon to examine the correctness of this contention because, in our view, the Report of the Social Welfare Commissioner is vitiated on the ground set out earlier. We may, however, point out that in an enquiry like the one in question, it may not be necessary for the Enquiry Officer to call in evidence all the witnesses who the party concerned may desire to be called. He would be perfectly justified in declining to call any witness whose evidence in his view was bound to be merely

repetitive or irrelevant and not of any assistance. We may further point out that it might be open to the Enquiry Officer to limit the right of cross-examination where he feels that it is not required for compliance with the principles of natural justice. The Commissioner must, however, observe the conditions in the terms of the enquiry which we have set out earlier and must also see to it that the principles of natural justice and fairplay are observed.

7. In view of the facts and circumstances of the case, we feel that it is not correct to say that a District Judge or a Judicial Officer is better qualified to conduct an enquiry of this type and it may, in fact, be better to have the enquiry conducted by an officer who is well conversant with the matters in question. In view of this, we direct that the enquiry should be conducted, preferably by the present Commissioner of Social Welfare of the State of Andhra Pradesh. However, if the person holding that position is the very same person who conducted the aforesaid enquiry; we feel that, in the interest of justice, the enquiry should be conducted not by him but by some other suitable officer nominated by the State of Andhra Pradesh for conducting the enquiry keeping in view what we have stated earlier. The enquiry should be completed as early as possible, preferably within four months of the receipt of a copy of this judgment.

8. In the result, the Appeals are dismissed save and except for the directions given by us as stated above.

9. There will be no order as to costs of these Appeals.

Supreme Court of India: The State Of Punjab & Ors vs Bakshish Singh decided on 8 September, 1998 and reported in AIR 1998 SC Page 1895 Author: SS Ahmad: Bench: S Ahmad, S R Babu.

State of Punjab vs. Bakshishinh

S. SAGHIR AHMAD, J.

Respondent who was a police constable in Punjab was dismissed from service on 1.6.1998 after a regular departmental enquiry on the charge of unauthorised absence from duty. This order was challenged by the respondent in a suit filed in the trial court on 16.7.1990 which was decreed on 12.5.1993 and the order of dismissal was set aside as it was found by the trial court that the defendants having themselves regularised and treated the period of respondent's absence from duty as the "period of leave without pay", could not legally say that he was guilty of misconduct for unauthorised absence from duty. The trial court also recorded a finding that the respondent's statement that he was not given an opportunity of personal hearing and that his signatures were obtained under duress in the departmental proceedings was not controverted by the appellant as no evidence was produced by the appellant in defence.

The decision of the trial court was challenged in appeal before the District Judge which was disposed of by the Additional District Judge, Jalandhar on 15.1.1995 with the following findings:

"In view of the above brief discussion, I am of the considered opinion that once period of absence is treated as leave of the kind whatsoever, the fact that the delinquent remained absent from duty cannot be sustained after the person has been treated on whatsoever kind it may be. Thus the findings of the learned lower court upon this matter are hereby confirmed."

Having affirmed the findings of the trial court that the charge of absence from duty did not survive, the lower appellate court proceeded to consider the question whether absence from duty was a misconduct of the gravest kind so as to warrant the maximum penalty of "dismissal from service" or it was a mere "misconduct" for which lesser punishment would be appropriate. Having found that it was not a case of misconduct of the gravest kind the lower appellate court remanded the case back to the punishing authority for passing a fresh order of punishment. The appellant then filed a second appeal in the High Court which was dismissed summarily.

It will thus be seen that the trial court as also the lower appellate court has both recorded the findings that the period of absence from duty having been regularised and converted into leave without pay, the charge of absence from duty did not survive. Once it was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to understand how the lower appellate court could remand the matter back to the punishing authority for passing a fresh order of punishment. In the face of these findings, specially the finding of the trial court that proper opportunity of hearing was not given and the signatures of the respondents were obtained under duress during departmental proceedings with have not been set aside by the lower appellate court, we are of the view that there was no occasion to remand the case to the punishing authority merely for passing a fresh order of punishment. Learned counsel for the appellant contended that respondent has not filed nay cross appeal and, therefore, the order of remand passed by the lower appellate court for a fresh order of punishment need not be interfered with, particularly as that order has been upheld by the High Court which had summarily dismissed the second appeal filed by the State of Punjab. If, therefore, this Court intervenes in the matter even in exercise of its power under Article 142 of the Constitution, the same would be without jurisdiction. This contention cannot be accepted.

A Constitution Bench of this Court in *Supreme Court Bar Association vs. Union of India & Anr.* AIR 1998 SC 1895 has already held that while exercising power under Article 142 of the Constitution, the court cannot ignore the substantive rights of a litigant while dealing with a cause pending before it. The power cannot be used to "supplant" substantive law applicable to a case. The court further observed that Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly. In this case, what we propose to do would be fully in consonance with the provisions of order XLI Rule 33 which provides as under:

"ORDER XLI - APPEAL FROM ORIGINAL DECREES:

33. Power of Court of Appeal: The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or make and to pass or made such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court

from whose decree the appeal is preferred has omitted or refused to make such order."

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This provision gives very wide power to the appellate court to do complete justice between the parties and enables it to pass such decree or order as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not filed any appeal or cross-objections.

The direction, however, has to be exercised with care and caution and that too in rare cases where there have been inconsistent findings and an order or decree has been passed which is wholly uncalled for in the circumstances of the case. The appellate court cannot, in the garb of exercising power under Order XLI Rule 33, enlarge the scope of the appeal. Whether this power would be exercised or not would depend upon the nature and facts of each case. The powers of the appellate court are also indicated in Section 107 of the Code of Civil Procedure which provides that the appellate court shall have the same powers as are conferred on the original court.

If the trial court could dispose of a case finally, the appellate court could also, by virtue of clause (a) of sub-section (1) of Section 107, determine a case finally. In *R.S.Lala Praduman Kumar vs. Virendra Goyal & Ors.* AIR 1969 SC 1349, it was held that the appellate court could even relieve against forfeiture in a case under the Transfer of Property Act. This too was based on the principle that the power which was available to the original court could be exercised by the appellate court also.

Applying the above principles to the instant case, it will be noticed that the trial court recorded a categorical finding of fact that a proper opportunity of hearing was not afforded to the respondent in the departmental proceedings and that his allegation that his signatures on certain papers during those proceedings were obtained under duress, was not controverted as the State of Punjab had lead no evidence in defence. The trial court also recorded a finding that unauthorised absence from duty having been regularised by treating the period of absence as leave without pay, the charge of misconduct did not survive. It was with this finding that the suit was decreed. The lower appellate court confirmed the finding that since the period of unauthorised absence from duty was regularised, the charge did not survive but it did not say a word about the finding relating to the opportunity of hearing in the departmental proceedings. Since those findings were not specifically set aside and the lower appellate court was silent about them, the same shall be treated to have been affirmed. In the face of these findings, it was not open to the lower appellate court to remand the case to the punishing. The High Court, before which the second appeal was filed by the State of Punjab, did not advert itself to this inconsistency as it dismissed the appeal summarily, which indirectly reflects that it allowed an inconsistent to pass through its scrutiny.

It is in circumstances that we, in exercise of our power of doing complete justice between the parties, finally decide this appeal and the whole case by providing as under:

(a) The appeal is allowed.

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(b) The judgment dated 15.1.1996 passed by the lower appellate court in so far as it purports to remand the case to the punishing authority as also the judgment of the High Court dated 21.8.1996 are set aside.

(c) The judgment and decree passed by the trial court is upheld.
There will be no order as to costs.

Summary of Kumari Madhuri Patil's case⁵²:

Appellants are *Suchita and Madhuri*, daughters of Laxman Pandurang Patil. Their grandfather was Panduranga Patil. Laxman Patil was admitted in the school in the year 1943. In his school admission register and his school and college certificates his Caste was shown as "*Hindu Koli*". Suchita applied through her father, Laxman Patil to the *Tahsildar*, Andheri on 30-11-1989 for issuance of Caste certificate as "*Mahadeo Koli*" a *Scheduled Tribe*. Sub-Divisional Officer, Bombay Suburban District by his proceeding dated 22-6-1989 *refused to issue Caste certificate sought for by Ms Suchita and informed her that she was not a Scheduled Tribe 'Mahadeo Koli'*.

She filed an appeal before the Additional Commissioner, Konkan Division, Bombay. As she applied for admission into the MBBS course and the time for her admission was running out, she filed Writ Petition No. 3516 of 1990 in the High Court to direct the Additional Commissioner to dispose of her appeal and to further direct to the Dean of DYC Naik Medical College to permit her to appear for interview and admit her in the college, if she was found fit. It was not in dispute that she filed a copy of the judgment in *Subhash Ganpatrao Kabade v. State Of Maharashtra*, wherein '*Koli*' was held to be '*Mahadeo Koli*', before the Additional Commissioner and also in the High Court.

Because of the directions of the High Court she was admitted in the MBBS course and she is continuing her studies. Additional Commissioner directed the Tahsildar to issue the certificate and accordingly issued to Miss Suchita the certificate as Scheduled Tribe. Miss Suchita applied to the Verification Committee for confirmation of her status as Scheduled Tribe. Madhuri applied for the issuance of Scheduled Tribe certificate before the Divisional Executive Magistrate, Greater Bombay, enclosing the order passed by the High Court in Writ Petition No. 3516 of 1990, dated 4-12-1990, in favour of her sister Suchita, which was issued on 23-8-1990 declaring her status to be '*Mahadeo Koli*' and then she got the admission into BDS in the year 1992.

Thereafter, she applied to the Verification Committee for confirmation. Proceeding by the Verification Committee was jointly conducted into the claims of the appellants, initiated on 8-12-1989, the father of the appellants was called upon to furnish in the prescribed form the detailed information regarding his family background, ancestry; and anthropology of '*Mahadeo Koli*', Scheduled Tribe, to verify the veracity of his claim of status as Schedule Tribe.

⁵² Supreme Court of India: *Kumari Madhuri Patil vs Additional Commissioner* decided on 2 September, 1994: Reported in 1995 AIR 94= 1994 SCC (6) 241: Bench: Ramaswamy, K. (Source: Indiakanon)

'Mahadeo Koli' was declared to be a Scheduled Tribe by Bombay Province as early as 1933 and the President of India declared in 1950 under Article 342, in consultation with the Government of Bombay (Maharashtra) and as amended from time to time. Laxman submitted the particulars along with his school and college certificates, junior college certificate and school certificates of the appellants, the certificates of his sister and appellants' maternal aunt, Jyotsana Pandurang Patil dated 3-3-1978 and maternal uncle Balakrishna Pandurang Naik dated 22-10-1954 and a statement by the Caste Association.

The Committee in their order dated 26-6-1992 considered the *entire evidence placed before them, the particulars furnished by their father in the pro forma on their ancestry and other anthropological particulars* and after hearing their counsel, found that the appellants are 'Koli' by Caste which is recognised as Other Backward Class, i.e., OBC in the State and that they are not 'Mahadeo Koli', the Scheduled Tribe and their claim for that social status was accordingly declared untenable.

Certificates issued by the respective Executive Magistrates were cancelled and confiscated. Their appeal provided under the Rules too was heard by the Additional Commissioner in Caste Appeal No. 11 of 1992 who by an elaborate order dated 30-4-1993 found that the certificate issued in favour of Balakrishna Pandurang Naik, maternal uncle, was from a Magistrate, Greater Bombay, *who had no jurisdiction and was issued social status certificate without proper scrutiny.* The certificate issued to Jyotsana by the Judicial Magistrate was on the basis of the school leaving certificate, ration card etc. and that, therefore, it does not provide any probative value to their status as Scheduled Tribe, the entries in school and college certificates of the appellants are not conclusive.

It is obvious that Judicial Magistrate has no jurisdiction to issue Caste certificate and it is a void certificate. The entries in the school certificate of the father of the appellants, Laxman Patil, being pre-independence period, it bears *“great probative value” wherein he declared himself to be “Hindu Koli” which is now recognised as a backward class.* The Caste affirmation certificate issued by the Samaj "Caste Association" consists of these very communities who seek to get the status as Scheduled Tribes. It also does not, therefore, bear any probative value. School certificates and college certificates in favour of the appellants are the subject of enquiry, therefore, do not bear any value and independently their status is to be considered.

Committee as well as the Additional Commissioner relied upon a report of expert committee which had gone into the *sociology, anthropology and ethnology* of the Scheduled Tribes including 'Mahadeo Koli' which formed the basis for the pro forma questionnaire prepared by the Government and as given to and answered by the father of the appellants. On the basis of the information furnished by the father of the appellants and anthropological and ethnological findings in that behalf, the Additional Commissioner, in our view rightly, held that an argument of social mobility and modernisation often alluringly put forth to obviate the need to pass the affinity test is only a convenient plea to get over the crux of the question.

Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. *The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved.* Their cultural advancement to some extent may have modernised and progressed, but they would not be oblivious to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe.

Mahadeo Koli a Scheduled Tribe declared in the Presidential Notification, 1950, *itself is a tribe and is not a sub-Caste.* It is a hill tribe, may be like 'Koya' in Andhra Pradesh. Kolis, a backward class, are fishermen by Caste and profession and reside mostly in Maharashtra coastal area. Kolis have different sub-Castes. Mahadeo Kolis reside in hill regions, *agriculture, agricultural labour and gathering of minor forest produce and sale thereof is their avocation.* Therefore, the cancellation of the social certificate issued by the Executive Magistrates concerned by the Scrutiny Committee was legal.

Appellants' Writ Petition No. 1849 of 1993 was dismissed by the Division Bench by its order dated 17-8-1993 with brief reasons. Shri Ganesh, the learned counsel for the appellants contended that in the affidavit filed by the appellant's father before the Verification Committee he has explained the circumstances in which he came to be described as Hindu Koli. Prior to 1950, there was no necessity to describe sub-Caste. For the first time in 1976 under the Scheduled Castes Scheduled Tribes (Amendment) Act, 1976, Mahadeo Koli was introduced as a Scheduled Tribe in the State of Maharashtra. The certificates issued to the maternal Uncle Balakrishna Naik as Mahadeo Koli in the year 1954 and entries in his service record and to maternal aunt, Jyotsana in the year 1979 probabilise the omission to describe Laxman Patil as Mahadeo Koli, though they, as a fact, belong to Scheduled Tribe.

In the school registers the appellants had enjoyed the status as Scheduled Tribe which provides probative value. The Committee, the Additional Commissioner and the High Court *had not appreciated the evidence in proper perspective before declining to confirm the social status of the appellants as Scheduled Tribes* and the High Court ought to have gone into these aspects as was done in Subhash Ganpatrao Kabade case. It is further contended that Suchita has completed her final year course of study. Madhuri is in midway and that, therefore, justice demands that their education should not be dislocated with the denial of the social status as Scheduled Tribes. Sheet-anchor for the counsel's argument is the judgment of the Division Bench of the Bombay High Court in Subhash Ganpatrao Kabade case'. We find no force in the contentions.

From the counter-affidavit filed by the State which has not been disputed by filing any rejoinder and as is borne out from the public notification issued by the President in the year 1950 in exercise of the power under Article 342 read with Article 366(25) of the Constitution that Mahadeo Koli is declared as a Scheduled Tribe. Article 366(25) *defines Scheduled Tribes, as meaning such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are declared under Article 342 to be Scheduled Tribes for the purposes of the Constitution*. Article 342 gives power to the President to specify the tribe with respect to any State or Union Territory, after consultation with the Governor where it is a State, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall, *for the purposes of the Constitution, be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be*.

In *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College*⁵³, this Court declared that *subject to the law made by Parliament under sub-section (2) of Section 342, the tribes or tribal communities or parts of or groups within tribes or tribal communities specified by the President by a public notification shall be final for the purpose of the Constitution. They are the tribes in relation to that State or Union Territory and that any tribe or tribes or tribal communities or parts of or groups within such tribe or tribal communities, not specified therein in relation to that State, shall not be Scheduled Tribes for the purpose of the Constitution*.

⁵³ 1990) 3 SCC 130; (1990) 14 ATC 671 250

The father of one Chandra Shekhar Rao who hailed from Tenali in Guntur District of Andhra Pradesh is a Settibalija by Caste which is recognised as a backward class. His father obtained a certificate from the Tahsildar, Tenali that he belonged to Scheduled Tribe and had got an appointment in a public undertaking of Bombay. On the basis of social status certificate obtained by his father and entries in service record of his father, he applied for admission into medical college as Scheduled Tribe. When he was not admitted, he filed the writ petition in this Court under Article 32 seeking a declaration that Settibalija though was not declared to be Scheduled Tribe in Maharashtra it was a Scheduled Tribe for the purpose of the Constitution and that he was entitled to the admission into the medical college on the basis of his social status as a Scheduled Tribe. This Court did not uphold the contention. This Court held that the declaration by the President by a public notification in relation to a State in consultation with the Governor of that State is conclusive and court cannot give such a declaration. The same view was reiterated by another Constitution Bench in Action Committee on issue of Caste Certificate to SCs and STs in the State of Maharashtra v. Union of India⁵⁴.

Preamble to the Constitution promises to secure to every citizen social and economic justice, equality of status and of opportunity assuring the dignity of the individual. The Scheduled Tribes are inhabitants of intractable terrain regions of the country kept away from the mainstream of national life and with their traditional moorings and customary beliefs and practices, they are largely governed by their own customary code of conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos.

The Constitution guarantees to them, who are also Indian citizens, equality before law and the equal protection of law. Though Articles 14 and 15(1) prohibit discrimination among citizens on certain grounds, Article 15(4) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled Tribes. Article 16(1) requires equality of opportunity to all citizens in matters of appointments to an office or a post under the Union or a State Government or public undertakings etc. But Article 16(4) empowers the State to make provision for reservation of appointments or posts in favour of classes of citizens not adequately represented in the services under the State. Article 46 enjoins the State by mandatory language employed therein, to promote with special care the educational or economic interest of the Scheduled Tribes and Scheduled Castes and to protect them from "social injustice" and "all forms of exploitation".

⁵⁴ (1994) 5 SCC 244 251

Article 51A (h) enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and reform. Again Article 51A (h) requires every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It is, therefore, a fundamental duty of every citizen to develop scientific temper and humanism and spirit of inquiry to reform himself in his onward thrust or strive to achieve excellence in all spheres of individual and collective activity.

Since the Scheduled Tribes are a nomadic class of citizens whose habitat being generally hilly regions or forests, results in their staying away from the mainstream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for development of *their scientific temper, educational advancement and economic improvement so that they may achieve excellence, equality of status and live with dignity.*

Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and economic justice apart from other economic measures. Hence, the tribes, by reason of State's policy of reservation, have been given the exclusive right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota. For availment of such exclusive rights by citizens belonging to tribes, the President by a notification specified the Scheduled Tribes or tribal communities or parts of or groups of tribes or tribal communities so as to entitle them to avail of such exclusive rights.

The Union of India and the State Governments have prescribed the procedure and have entrusted duty and responsibility to Revenue Officers of gazetted cadre to issue social status certificate, after due verification. It is common knowledge that endeavour of States to fulfil constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to such status.

The case in hand is a clear instance of such pseudo-status. Kolis have been declared to be OBC in the State of Maharashtra being fishermen, in that their avocation is fishing and they live mainly in the coastal region of Maharashtra. Mahadeo Kolis are hill tribes and it is not a sub-Caste. Even prior to independence, the Maharashtra Government declared Mahadeo Koli to be criminal tribe as early as 29-5-1933 in Serial No. 15 in List II thereof. In 1942 Resolution in Serial No. 15 in Schedule B of the Bombay resolution Mahadeo Koli tribe was notified as a Scheduled

Tribe. It was later amended as Serial No. 13. In the Presidential Scheduled Castes/Scheduled Tribes Order, 1950, it was reiterated. A slight modification was made in that behalf by the Presidential Notification dated 29-10-1956. In the 1976 Amendment Act, there is no substantial change except removing the area restriction. Thus Mahadeo Koli, a Scheduled Tribe continued to be a Scheduled Tribe even after independence.

The Presidential Notification, 1950 also does recognise by public notification of their status as Scheduled Tribes. The assumption of the Division Bench of the Bombay High Court in Subhash Ganpatrao Kabade case', that Mahadeo Koli was recognised for the first time in 1976 under Amendment Act, 1976, as Scheduled Tribe is not relatable to reality and an erroneous assumption made without any attempt to investigate the truth in that behalf. Presidential declaration, subject to amendment by Parliament being conclusive, no addition to it or declaration of Castes/tribes or sub-Castes/parts of or groups of tribes or tribal communities is permissible.

The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a Caste. Hierarchical Caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the Caste status of the people inclusive of the school or college records, as the then census rules insisted upon. Undoubtedly, Hindu social order is based on hierarchy and Caste was one of the predominant factors during pre-Constitution period.

Unfortunately instead of dissipating its incursion it is being needlessly accentuated, perpetrated and stratification is given legitimacy for selfish ends instead of being discouraged and put an end to by all measures, including administrative and legislative. Be it as it may, *people are identified by their Castes for one or the other is a reality.* Therefore, it is no wonder that Caste is reflected in relevant entries in the public records or school or college admission register at the relevant time and the certificates are issued on its basis.

The father of the appellants admittedly described himself in 1943 and thereafter as a Hindu Koli. In other words his status was declared a Koli by Caste and Hindu by religion. Kolis are admittedly OBCs. His feigned ignorance of the ancestry is too hard to believe. The averment in the affidavit that the entries were mistakenly made as Hindu Koli is an obvious afterthought. The anthropological moorings and ethnological kinship affirmity (sic) gets genetically ingrained in the blood and no one would shake off from past, in particular, when one is conscious of the need of preserving its relevance to seek the status of Scheduled Tribe or Scheduled Caste recognised by the Constitution for their upliftment in the society.

The ingrained tribal traits peculiar to each tribe and anthropological features all the more become relevant when the social status is in acute controversy and needs a decision. The correct projective furnished in pro forma and the material would lend credence and give an assurance to properly consider the claims of the social status and the officer or authority concerned would get an opportunity to test the claim for social status of particular Caste or tribe or tribal community or group or part of such Caste, tribe or tribal community. It or he would reach a satisfactory conclusion on the claimed social status. The father of the appellant has failed to satisfy the crucial affinity test which is relevant and germane one. On the other hand the entries in his school and college registers as Hindu Koli positively belies the claim of his social status as Scheduled Tribe.

It is seen that admittedly the appellants reside in Muland area. In the first instance Suchita rightly approached the Tahsildar having jurisdiction over the area concerned who refused to give her social status certificate as Mahadeo Koli, she filed an appeal and the High Court directed the Deputy Commissioner to dispose of the appeal who in turn without deciding the facts, directed the Tahsildar to issue the certificate. In the meanwhile she had, by orders of the court, got admission into the college and pursued her study. The Caste Certificate Scrutiny Committee, consists of the Secretary as Chairman and two members, and a Research Officer-cum-Director who have intimate knowledge in the identification of the specified tribes, considered the entire material. The Committee has stated and as is seen that the appellant's father clearly accepted that his Caste is recorded in the college as well as secondary school and college records as Hindu Koli only. This fact is strengthened by the candidate's father's school record (document at Serial No. 1). In the new English School locality at Thane, the name of the candidate's father appeared in the admission register at Serial No. 3733, and the Caste clearly shown there was as H. Koli. This school record, comparatively, is not only oldest but it being the record pertaining to candidate's father's admission to school prior to independence, it carries greatest probative evidentiary value. The Caste of the person, as stated earlier, is determined on the basis of the Caste of their parents, basically for the reasons that the Caste is acquired by birth. When the school record of the candidate's father shows his Caste as Koli, the documents which the candidates have produced (documents quoted at Serial Nos. 3, 5 to 8, 11, 13 to 16) showing their Caste as Mahadeo Koli cannot be relied upon. All these documents furnished by the candidates are those manipulated and fabricated with to knock of the seats in educational institutions defrauding the true Scheduled Tribes to their detriment and deprivation. As the school record of the candidate's father shows his Caste as 'Koli', the Caste certificates which have been issued to the appellants and their relatives by the Executive Magistrate, Greater Bombay (documents at Serial Nos. 9, 10, 12, 17 to 19) are without proper enquiry and investigation, besides being without

jurisdiction. Its reiteration in service record would not carry any credibility or a ground to accept the Caste as Scheduled Tribe. The Caste certificate issued by Samaj being self-serving and subject to scrutiny, they cannot be held to be conclusive proof to determine the Caste claim. The finding recorded by the Committee is based on consideration of the entire material together with sociological, anthropological and ethnological perspectives which Mahadeo Kolis enjoy and of the OBC Castes and sub- Caste of the Kolis. The Additional Commissioner as well, has minutely gone into all the material details and found that when a section of the society have started asserting themselves as tribes and try to earn the concession and facilities reserved for the Scheduled Tribes, the tricks are common and that, therefore, must be judged on legal and ethnological basis. Spurious tribes have become a threat to the genuine tribals and the present case is a typical example of reservation of benefits given to the genuine claimants being snatched away by spurious tribes. On consideration of the evidence, as stated earlier, both the Committee and the appellate authority found as a fact that the appellants are not tribe 'Mahadeo Koli' entitled to the constitutional benefits. In Subhash Ganpatrao Kabade case', the approach of the Division Bench of the High Court appears to be legalistic in the traditional mould totally oblivious of the anthropological and ethnological perspectives and recorded their findings with unwarranted strictures on the approach rightly adopted by the Scrutiny Committee and the Additional Commissioner to be '(funny)' 'obviously incorrect' and "queer reasoning". Admittedly the petitioner therein, in days preceding the Constitution, described himself in the service book as well as school leaving certificate as a Hindu Koli. The High Court also found that they were backward class but proceeded on the erroneous footing that Mahadeo Koli was introduced for the first time through 1976 Amendment Act and that, therefore, they were the genuine Scheduled Tribes entitled to the benefits. In view of the above, we cannot help holding that the reasoning of the High Court is wholly perverse and untenable.

We have seen that Scrutiny Committee proceedings although started on 8-12-1989 were prolonged till 26-6-1992. We do not have record to scan the reasons for the delay. It would appear that the constitution of a Committee with large number of members and Secretary as Chairman must have greatly contributed for the delay in deciding the claims for the social status. A right of appeal provided thereafter compounded further delay though the Additional Commissioner on the facts of this case has disposed of the appeal very expeditiously. However, all of them are the contributory factors for the delay.

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

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of Castes and sub-Castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the Caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in 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 status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their Caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the Castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. 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.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent / guardian /candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. 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 Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned 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 from further study or continue in office in a post.

14. Since this procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted /appointed on false social status or further continuance therein, every State concerned should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons.

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.

16. Whether appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or Castes. Courts would be circumspect and vary in considering such cases.

17. We have seen that Miss Suchita rightly made an application before the competent officer within whose jurisdiction her father lives in Muland and when he refused to give the certificate, she filed an appeal; approached the High Court and obtained direction and gained admission. It is not in dispute that the Additional Commissioner was delaying it; he did not decide as directed by the High Court, instead directed the Tahsildar to issue the certificate. Thus she secured a false social status certificate and orders of the court were used to gain admission. The judicial process is made use of to secure admission. She continued her studies thereafter pending scrutiny of her status certificate. No doubt there was a delay on the part of the Scrutiny Committee in the disposal of the claims and we do not find any record to scan the reasons for the delay. Suffice to state that her parents have put her under a cloud as to her social status. But as seen from the facts a course of conduct was adopted by her parents to gain admission on the claim which is now found to be false. Parents' misconduct visits the children also many a times. However, she has now completed the course of study except to appear for the final year as contended for her and nothing more is to be done in the situation for her to complete her course of study. We direct the Principal to permit her to sit for the final year examination, if she has completed the course of study as represented to us but not with the social status as a Scheduled Tribe which was claimed fraudulently and made her admission with the aid of the court's order and continue her studies. The delay in disposal facilitated her continuance in study of MBBS course.

18. The delay in the process is inevitable but that factor should neither be considered to be relevant nor be an aid to complete the course of study. But for the fact that she has completed the entire course except to appear for the final examination, we would have directed to debar her from prosecuting the studies and appearing in the examination. In this factual situation no useful purpose would be served to debar her from appearing for the examination of final year MBBS. Therefore, we uphold the cancellation of the social status as Mahadeo Koli fraudulently obtained by Km Suchita Laxman Patil, but she be allowed to appear for the final year examination of MBBS course. She will not, however be entitled in future for any benefits on the basis of the fraudulent social status as Mahadeo Koli. However, this direction should not be treated and used as a precedent in future cases to give any similar directions since the same defeats constitutional goals.

19. In the case of Madhuri Laxman Patil, she did not approach the competent officer. She appears to have wrongly gone to an officer who had no jurisdiction, obviously she has shown the order issued by the High Court in favour of her sister Suchita and secured the certificate and got the admission. Though she is in midway of her study in BDS in the end of second year, she cannot continue her studies with her social status as Mahadeo Koli, a Scheduled Tribe and the concessions which she might have got on that account. If she was eligible for obtaining admission as a general candidate she may continue her studies. Therefore, we uphold the cancellation and confiscation of her and of Suchita of social status as Mahadeo Koli ordered by Scrutiny Committee and affirmed by the order of Appellate Authority and that of the High Court in that behalf. Subject to the above modifications, the appeal is dismissed but without costs.

It will be appreciated by this Honourable Court that the material particulars could be made available in the Vigat Darshak Card that the father and forefathers of the Plaintiff belonged to Sanbeda Nesh and that after undertaking all procedure prescribed and guidelines issued in case of Madhuri Patil and or the rules made in this behalf, the State government issued a fresh Caste certificate and held the Plaintiff eligible for all the benefits as Schedule Tribe Candidate. Such certificate has been provided to the Plaintiff after the judgment in case of Madhuri Patil. And the Plaintiff was never prosecuted, as guided by the Supreme Court of India in case of Madhuri Patil that itself establishes the fact that even the earlier Caste certificate was also not bogus and not only that, but the concerned Director never issued a show cause notice to initiate any proceedings for cancellation of the Caste certificate.

2002 Labour & Industrial Cases Page 3129 at page 3131:

“6: The next point taken is, where the power to cancel a Caste Certificate has not been conferred on empowered authorities, there is no need for the concerned authority to await till the concerned authority cancels the certificate, and only thereafter take a decision about the correct Caste of the candidate or employee or servant. Under Section 21 of the General Clauses Act⁵⁵, a power to make an order includes the power to rescind it. Hence, the empowered authorities who had brought into existence or his higher authorities who had brought into existence the lawful and valid Caste certificate or his higher authority alone until it is done, all public sector undertakings and bodies etc... which are under its control are bound to treat the contents of such certificate as correct”

⁵⁵ 21. 2[Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye- laws.- Where, by any 3[Central Act] or Regulation, a power to 4[issue notifications,] orders, rules, or bye- laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any 5[notifications,] orders, rules or bye- laws so 6[issued].

“In the absence of cancellation of the Caste certificate issued in favour of the petitioner as invalid, the initiation of Disciplinary proceedings against the petitioner by the Disciplinary authority is not only bad in law, but without jurisdiction. Accordingly, point no: 1 is answered in favour of the petitioner”

As a result, whether impugned order is void?

❖ **VOID OR VOIDABLE**

The Plaintiff submits that since the principles of natural justice are not followed as said above by holding the full-fledged inquiry and since there is fundamentally no case of fraud and yet the plaintiff is dismissed, it is a case of serious injustice and breach of all cannons of justice, fair play and natural justice. The impugned order, if passed in breach of natural justice, the entire action is void from the inception.

The Law on the point:

General discussion on void or voidable:

The controversy was raised in past, may be due to the law under the developmental situation, as to whether the administrative decision reached in violation of rules of natural justice is in fact void from the inception or violable and not really void. Lord Denning said "It is beyond doubt that, if a tribunal fails to observe the rules of natural justice, or is biased-its decision is a nullity and void."⁵⁶

That is what has been done in some cases⁵⁷. The decision arrived at in violation of rules of natural justice is held to be void from the very beginning.

⁵⁶ Lord Denning at page 84 of Discipline of Law relying on Kanda v. Government of Malaya,(1962) AC 322, See 1979 Edition of Butter worth Publication, London.

⁵⁷ Kanda's case (foot note no. 1 supra); Metropolitan properties con v. Lennon,(1969) 1 Q.B.577. Ridge V/s Baldwin, 1964 AC 40.

The reasons articulated by the judiciary are that the tribunal has no power whatsoever to go against those rules of fair play, which are fundamental in governance. It had always previously been held that a breach of the rules of natural justice resulted in the determination being null and void, in the same way as any other act that was ultra vires. For the duty to act fairly, just like the duty to act reasonably, was enforced as an implied statutory requirement, so that failure to observe it meant that the administrative act or decision was outside the statutory power, unjustified by law, and therefore ultra vires and void⁵⁸. In *Ridge v. Baldwin* (Supra) the court in majority observed that:

"..there was considerable argument whether in the result the watch committee's decision was void or merely violable. Time and again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void and that was expressly decided in *Wood v. Wood*. I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity.."

However, fact remains that if the party does not adopt a remedy to declare so, the decision will remain violable, although it may be void decision. This distinction is often styled as "relative term". Void is therefore meaningless in any absolute sense. Its meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over "void or violable" can be avoided. So long as the ultra vires doctrine remains the basis of administrative law, the correct epithet must be void⁵⁹

⁵⁸ See H.R.W. Wade on administrative law, at page 468 5th Edition, Butterworth publication, London.

⁵⁹ Wade on administrative law. See void or violable (Specific head in the work)

As can be seen that as the impugned order is contrary to the elementary principles of natural justice, it is a void order and such a void order cannot be confirmed by the confirming authority which heard the petitioner, the entire exercise would be one in futility as a still-born or a void order cannot get revitalized by any process of confirmation.⁶⁰

Maneka Gandhi's case⁶¹ has been misunderstood by some jurists believing that the Court on this point created the confusion. But that position, I do not regard it to be so, nor is there any confusion created on the point. The Court had before them the proposition of law expounded that although there are no positive words in the statute requiring that a party shall be heard, yet the justice of the common law will supply the omission of the legislature. The Principle of Audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice.. The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable..

Justice Bhagwati took into consideration various English as well as Indian authorities on the point, including famous Ridge case where it was expounded that failure to comply with the requirement of natural justice is bad in law and therefore the administrative decision is void. The effect in Maneka's case might be so, but the court did not declare the order impounding the pass port as void in view of the fact that the "government made a statement that it was agreeable to consider any representation that might be made by the petitioner in respect of the impounding of her passport and giving her an opportunity in the matter.

⁶⁰ Pratap V/s Gandhidham Development Authority, AIR 1985 Gujarat page 68 at page 77 para 10 per Lordship Justice S.B.Majmudar.

⁶¹ Maneka Gandhi V/s Union of India, AIR 1978 SC 597.

"Because the Attorney general made a statement realizing the consequence from the discussion of the Judgments, the court observed that "we do not think it necessary to formally interfere with the impugned order." This Judgment should not therefore be considered in a manner that the court allowed the authority despite the void order and did not declare the action void. It was in fact impliedly held so, but for the statement, the Government saved the situation from being declared formally to be void. The post decisional hearing was afforded to strengthen the principles of natural justice. The court definitely reaches at the conclusion that action is void, otherwise why the court would insist for even post decisional hearing in accordance with natural justice. Any decision notified without regard to the principles of natural justice is void. The principle is firmly established and there is no debate on the issue at all.

Lord Denning has very vividly stated that:

"It is beyond doubt that, if a tribunal fails to observe the rules of natural justice, or is biased-its decision is a nullity and void. "

Courts have said that the authorities cannot lawfully exercise their discretion in breach of those principles or that they cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity. Even before the case of Ridge V/s Baldwin, the old view was that a breach of those principles resulted in the determination being null and void, which would consequently be an ultra vires decision just as any other administrative orders. The void decision is absolutely without any value and does not exist in the eye of law at all. Any decision that is void would be outside the statutory provisions, unjustified by law and therefore also ultra vires and void.

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Having regard to the aforesaid clear position of the case on hand, the judgment pronounced by the lower court and the decree drawn requires to be quashed and set aside with a direction to the Defendant to reinstate the present plaintiff with full honour, which he richly deserves with all consequential benefits.

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अनुलग्नक Iख /Annexure - Ib

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

जम्मू और कश्मीर/Jammu & Kashmir

संविधान (जम्मू और कश्मीर) अनुसूचित जनजातियां आदेश, 1989 और संविधान (अनुसूचित जनजातियां) आदेश (संशोधन) अधिनियम, 1991

The Constitution (Jammu & Kashmir) Scheduled Tribes Order, 1989 and The Constitution (Scheduled Tribes) Order (Amendment) Act, 1991

अनुसूचित जनजातियां/Scheduled Tribes

1 बकरवाल	1 Bakarwal
2 बाल्टी	2 Balti
3 बेडा	3 Beda
4 बोट, बोटो	4 Bot, Boto
5 ब्रोक्पा, ड्रोकपा, दर्द, शिन	5 Brokpa, Drokpa, Dard, Shin
6 चांगपा	6 Changpa
7 गद्दी	7 Gaddi
8 गरा	8 Garra
9 गुज्जर	9 Gujjar
10 मोन	10 Mon
11 पुरिगपा	11 Purigpa
12 सिप्पी	12 Sippi

हिमाचल प्रदेश/Himachal Pradesh

अनुसूचित जातियां और अनुसूचित जन जातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 भोट, बोध	1 Bhot, Bodh
2 गद्दी [पंजाब पुनर्गठन अधिनियम, 1966 (1966 का 31) की धारा 5 की उपधारा (i) में विनिर्दिष्ट, लाहौल और स्पीति जिले से भिन्न राज्यक्षेत्रों को छोड़कर] ^क	2 Gaddi [excluding the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966 (31 of 1966), other than the Lahaul and Spiti district] ^a
3 गुज्जर [पंजाब पुनर्गठन अधिनियम, 1966 (1966 का 31) की धारा 5 की उपधारा (i) में विनिर्दिष्ट राज्यक्षेत्रों को छोड़कर] ^ख	3 Gujjar [excluding the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966 (31 of 1966)] ^b
4 जाद, लाम्बा, खम्पा	4 Jad, Lamba, Khampa
5 कनौरा, किन्नरा	5 Kanaura, Kinnara
6 लाहौला	6 Lahaula
7 पंगवाला	7 Pangwala
8 स्वांगला	8 Swangla

^क छोड़े गए क्षेत्रों में अब कांगड़ा, हमीरपुर, कुल्लू, ऊना और शिमला जिले शामिल हैं।

^ख छोड़े गए क्षेत्रों में अब कांगड़ा, हमीरपुर, कुल्लू, ऊना, शिमला और लाहौल स्पीति जिले शामिल हैं।

^aThe areas excluded now comprises of Kangra, Hamirpur, Kullu, Una and Shimla districts.

^bThe area excluded now comprises of Kangra, Hamirpur, Kullu, Una, Shimla and Lahul and Spiti districts.

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

उत्तरांचल/Uttaranchal

संविधान (अनुसूचित जनजातियां) (उत्तर प्रदेश) आदेश, 1967 तथा 2000 के अधिनियम संख्या 29 द्वारा यथा अन्तः स्थापित
The Constitution (Scheduled Tribes)(Uttar Pradesh) Order, 1967 and as inserted by Act 29 of 2000

अनुसूचित जनजातियां/Scheduled Tribes

1 भोटिया	1 Bhotia
2 बुक्सा	2 Buksa
3 जौनसारी	3 Jannsari
4 राजी	4 Raji
5 थारु	5 Tharu

राजस्थान/Rajasthan

अनुसूचित जातियां और अनुसूचित जन जातियां आदेश (संशोधन) अधिनियम, 1976
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 भील, भील गरासिया, धोली भील, डूंगरी भील, डूंगरी गरासिया, मेवासी भील, रावल भील, तडवी भील, भगालिया, भिलाला, पावरा, वसावा, वसावे,	1 Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvil Bhil, Bhagalia, Bhilala, Pawra, Vasava, Vasave
2 भील मीना	2 Bhil Mina
3 डामोर, डामरिया	3 Damor, Damaria
4 धनका, तड़वी, तेतारिया, वलवी	4 Dhanka, Tadvil, Tetaria, Valvi
5 गरासिया (राजपूत गरासिया सम्मिलित नहीं)	5 Garasia (excluding Rajput Garasia)
6 काथोडी, कातकरी, धोर काथोडी, धोर कातकरी, सोन काथोडी, सोन कातकरी	6 Kathodi, Katkari, Dhor Kathodi, Dhor Katkari, Son Kathodi, Son Katkari
7 कोकना, कोकनी, कुकना	7 Kokna, Kokni, Kukna
8 कोली धोर, टोकरे कोली, कोलचा, कोलघा	8 Koli Dhor, Tokre Koli, Kolcha, Kolgha
9 मीना	9 Mina
10 नायकडा, नायका, चोलीवाला नायका, कापड़िया नायका, मोटा नायका, नाना नायका	10 Naikda, Nayaka, Cholivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka
11 पटेलिया	11 Patelia
12 सेहारिआ, सेहरिआ, सहारिया	12 Sehariala, Sehariala, Sahariya

उत्तर प्रदेश/Uttar Pradesh

संविधान (अनुसूचित जनजातियां) (उत्तर प्रदेश) आदेश, 1967
The Constitution (Scheduled Tribes)(Uttar Pradesh) Order, 1967

अनुसूचित जनजातियां/Scheduled Tribes

1 भोटिया	1 Bhotia
2 बुक्सा	2 Buksa
3 जौनसारी	3 Jaunsari
4 राजी	4 Raji
5 थारु	5 Tharu

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

बिहार/Bihar

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 असुर	1 Asur
2 बैगा	2 Baiga
3 बंजारा	3 Banjara
4 बाथुडी	4 Bathudi
5 बेदिया	5 Bedia
6 भूमिज (उत्तरी छोटा नागपुर और दक्षिणी छोटा नागपुर खण्डों और संथाल परगना जिले में) ^क	6 Bhumij (in North Chotanagpur and South Chotanagpur divisions and Santal Parganas district) ^a
7 बिझिया	7 Binjhia
8 बिरहोर	8 Birhor
9 बिरजिया	9 Birjia
10 चैरो	10 Chero
11 चिक बराइक	11 Chik Baraik
12 गोंड	12 Gond
13 गोराइत	13 Gorait
14 हो	14 Ho
15 करमाली	15 Karmali
16 खरिया	16 Kharia
17 खरवार	17 Kharwar
18 खोंड	18 Khond
19 किसान	19 Kisan
20 कोरा	20 Kora
21 कोरवा	21 Korwa
22 लोहार, लोहरा	22 Lohara, Lohra
23 महली	23 Mahli
24 माल पहाड़िया	24 Mal Paharia
25 मुन्डा	25 Munda
26 उरांव	26 Oraon
27 परहैया	27 Parhaiya
28 संथाल	28 Santal
29 सौरिया पहाड़िया	29 Sauria Paharia
30 सावर	30 Savar

^क उत्तरी छोटा नागपुर खण्डों में धनबाद, गिरिडीह और हजारीबाग जिले शामिल हैं; दक्षिणी छोटा नागपुर खण्डों में पलामू, लोहारदगा, गुमला, रांची, पूर्वी सिंहभूम और पश्चिमी सिंहभूम जिले शामिल हैं; संथाल परगना जिले में गोड्डा, साहिबगंज, दुमका और देवघर जिले शामिल हैं।

^aNorth Chotanagpur division comprised of Dhanbad, Giridih and Hazaribag districts; South Chotanagpur division comprised of Palamu, Lohardaga, Gumla, Ranchi, Purbi Singhbhum and Pashchimi Singhbhum districts; Santal Parganas district comprised of Godda, Sahibganj, Dumka and Deoghar districts.

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

सिक्किम/Sikkim

संविधान (सिक्किम) अनुसूचित जनजातियां आदेश, 1978

The Constitution (Sikkim) Scheduled Tribes Order, 1978

अनुसूचित जनजातियां/Scheduled Tribes

- | | |
|---|---|
| 1 भूटिया (चुम्बिपा, दोपथापा, डुकपा, कगाटे, शेरपा, तिबेटन, ट्रुमोपा, योलमो सहित) | 1 Bhutia (including Chumbipa, Dophapa, Dukpa, Kagatey, Sherpa, Tibetan, Tromopa, Yolmo) |
| 2 लेपचा | 2 Lepcha |

अरुणाचल प्रदेश/Arunachal Pradesh

अनुसूचित जातियां और अनुसूचित जनजातियां सूची (उपांतरण) आदेश, 1956 तथा 1986 के अधिनियम संख्या 69 द्वारा यथा अन्तः स्थापित

The Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 and as inserted by Act 69 of 1986

अनुसूचित जनजातियां/Scheduled Tribes

राज्य की सभी जनजातियों सहित :

All tribes of the State including:

- | | |
|-----------------------|--------------------|
| 1 अबोर | 1 Abor |
| 2 अका | 2 Aka |
| 3 अपातानी | 3 Apatani |
| 4 डफला | 4 Dafla |
| 5 गालोंग | 5 Galong |
| 6 खाम्पती | 6 Khampti |
| 7 खोवा | 7 Khowa |
| 8 मिश्मी | 8 Mishmi |
| 9 मोम्बा | 9 Momba |
| 10 कोई भी नागा जनजाति | 10 Any Naga tribes |
| 11 शेरदुकपेन | 11 Sherdukpen |
| 12 सिंगफो | 12 Singpho |

नागालैण्ड/Nagaland

संविधान (नागालैण्ड) अनुसूचित जनजातियां आदेश, 1970

The Constitution (Nagaland) Scheduled Tribes Order, 1970

अनुसूचित जनजातियां/Scheduled Tribes

- | | |
|---------|-----------|
| 1 गारो | 1 Garo |
| 2 कचारी | 2 Kachari |
| 3 कूकी | 3 Kuki |
| 4 मिकिर | 4 Mikir |
| 5 नागा | 5 Naga |
-

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

मणिपुर/Manipur

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 आयमोल	1 Aimol
2 अनाल	2 Anal
3 अंगामी	3 Angami
4 चिरू	4 Chiru
5 चोथे	5 Chothe
6 गंगते	6 Gangte
7 हमार	7 Hmar
8 काबुई	8 Kabui
9 कचा नागा	9 Kacha Naga
10 कोइराओ	10 Koirao
11 कोयरेंग	11 Koireng
12 कोम	12 Kom
13 लामगंग	13 Lamgang
14 माओ	14 Mao
15 मराम	15 Maram
16 मारिंग	16 Maring
17 कोई मीजो (लुशाई) जनजातियां	17 Any Mizo (Lushai) tribes
18 मोन्संग	18 Monsang
19 मोयोन	19 Moyon
20 पाइते	20 Paite
21 पुरुम	21 Purum
22 राल्ते	22 Ralte
23 सेमा	23 Sema
24 सिम्टे	24 Simte
25 सुहते	25 Suhte
26 तंगखुल	26 Tangkhul
27 थडोऊ	27 Thadou
28 वाइफुई	28 Vaiphui
29 जोऊ	29 Zou

मिजोरम/Mizoram

अनुसूचित जातियां और अनुसूचित जनजातियां सूची (उपांतरण) आदेश, 1956 तथा 1971 के अधिनियम संख्या 81 द्वारा यथा अन्तः स्थापित

The Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 and as inserted by Act 81 of 1971

अनुसूचित जनजातियां/Scheduled Tribes

1 चकमा	1 Chakma
2 डिमासा (कचारी)	2 Dimasa (Kachari)
3 गारो	3 Garo

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

4 हाजंग	4 Hajong
5 हमार	5 Hmar
6 खासी और जैन्तिया, (खासी सिन्तेंग या पनार, वार, भोई या लिंगाम सहित)	6 Khasi and Jaintia (including Khasi Synteng or Pnar, War, Bhoi or Lyngngam)
7 7. कोई कुकी जनजातियां, निम्नलिखित सहित :	7 Any Kuki Tribes, Including:
(i) बियाते, बियेते	(i) Biate, Biete
(ii) चंगसान	(ii) Changsan
(iii) चोंगलोई	(iii) Chongloi
(iv) दोंगेल	(iv) Doungel
(v) गमल्हो	(v) Gamalhou
(vi) गंगते	(vi) Gangte
(vii) गुइते	(vii) Guite
(viii) हान्नेंग	(viii) Hanneng
(ix) हाकिप, होपित	(ix) Haokip, Haupit
(x) हाँलाई	(x) Haolai
(xi) हेंगना	(xi) Hengna
(xii) होंगसुंघ	(xii) Hongsungh
(xiii) ह्रंगख्वाल, रंगखोल	(xiii) Hrangkhwal, Rangkhoh
(xiv) जोंगबे	(xiv) Jongbe
(xv) खावचुंग	(xv) Khawchung
(xvi) खवाथलांग, खोतालंग	(xvi) Khawathlang, Khothalong
(xvii) खेलमा	(xvii) Khelma
(xviii) खोल्हू	(xviii) Kholhou
(xix) किपोंन	(xix) Kipgen
(xx) कुकी	(xx) Kuki
(xxi) लेंगथांग	(xxi) Lengthang
(xxii) ल्हांगम	(xxii) Lhangum
(xxiii) ल्हजेम	(xxiii) Lhoujem
(xxiv) ल्होवुन	(xxiv) Lhouvun
(xxv) लुफेंग	(xxv) Lupheng
(xxvi) मांजेल	(xxvi) Mangjel
(xxvii) मिसाऊ	(xxvii) Misao
(xxviii) रियांग	(xxviii) Riag
(xxix) सैरहम	(xxix) Sairhem
(xxx) सेल्नाम	(xxx) Selnam
(xxxi) सिंगसन	(xxxi) Singson
(xxxii) सितल्हो	(xxxii) Sitlhou
(xxxiii) सुक्ते	(xxxiii) Sukte
(xxxiv) थाडो	(xxxiv) Thado
(xxxv) थांगज्यू	(xxxv) Thangngeu
(xxxvi) उइबू	(xxxvi) Uibuh
(xxxvii) वाइफेई	(xxxvii) Vaiphei
8 लाखेर	8 Lakher
9 मान (ताई बोलने वाली)	9 Man (Tai speaking)

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

10 कोई मीजो (लुशाई) जनजातियां	10 Any Mizo (Lushai) tribes
11 मिकिर	11 Mikir
12 कोई नागा जनजातियां	12 Any Naga tribes
13 पावी	13 Pawi
14 सितेंग	14 Synteng

त्रिपुरा/Tripura

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 भील	1 Bhil
2 भुटिया	2 Bhutia
3 चैमल	3 Chaimal
4 चकमा	4 Chakma
5 गारो	5 Garoo
6 हलाम	6 Halam
7 जमातिया	7 Jamatia
8 खासीया	8 Khasia
9 कूकी, जिनके अन्तर्गत निम्नलिखित उप जनजातियां भी हैं :-	9 Kuki, including the following sub-tribes:
(i) बाल्ते	(i) Balte
(ii) बेललहुत	(ii) Belalhut
(iii) छाल्य	(iii) Chhalya
(iv) फुन	(iv) Fun
(v) हजांगो	(v) Hajango
(vi) जांगतेई	(vi) Jangtei
(vii) खरेंग	(vii) Khareng
(viii) केफांग	(viii) Khephong
(ix) कुन्तेई	(ix) Kuntei
(x) लाइफांग	(x) Laifang
(xi) लेनतेई	(xi) Lentei
(xii) मिजेल	(xii) Mizel
(xiii) नमते	(xiii) Namte
(xiv) पाईतु, पाइते	(xiv) Paitu, Paite
(xv) रंगचान	(xv) Rangchan
(xvi) रांगखोले	(xvi) Rangkhole
(xvii) थांग्लुया	(xvii) Thangluya
10 लेपचा	10 Lepcha
11 लुसाई	11 Lushai
12 माग	12 Mag
13 मुन्डा, कौर	13 Munda, Kaur
14 नोआतिया	14 Noatia
15 ओरांग	15 Orang
16 रियांग	16 Rieng

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

17 सन्ताल	17 Santal
18 त्रिपुरा, त्रिपुरी, टिप्पेरा	18 Tripura, Tripuri, Tippera
19 उचई	19 Uchai

मेघालय/Meghalaya

अनुसूचित जातियां अनुसूचित और जन जातियां आदेश (संशोधन) अधिनियम, 1976 और संविधान (अनुसूचित जनजाति) आदेश (संशोधन) अधिनियम, 1987

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and The Constitution (Scheduled Tribes) Order (Amendment) Act, 1987

अनुसूचित जनजातियां/Scheduled Tribes

1 बोरो कचारीज	1 Boro Kacharis
2 चकमा	2 Chakma
3 डिमासा, कचारी	3 Dimasa, Kachari
4 गारो	4 Garo
5 हाजंग	5 Hajong
6 हमार	6 Hmar
7 खासी, जैन्तिया, सिन्तेंग, पनार, वार, भोई, लिंगाम	7 Khasi, Jaintia, Synteng, Pnar, War, Bhoi, Lyngngam
8 कोच	8 Koch
9 कोई कुकी जनजातियां, निम्नलिखित सहित :	9 Any Kuki Tribes, including:
(i) बियाते, बियेते	(i) Biate, Biete
(ii) चंगसान	(ii) Changsan
(iii) चंगलोई	(iii) Chongloi
(iv) दोंगेल	(iv) Doungei
(v) गमलहो	(v) Gamalhou
(vi) गंगते	(vi) Gangte
(vii) गुइते	(vii) Guite
(viii) हैन्नंग	(viii) Hanneng
(ix) हौकिप, हौपित	(ix) Haokip, Haupit
(x) होलाई	(x) Haolai
(xi) हेंगना	(xi) Hengna
(xii) होंगसुंघ	(xii) Hongsungh
(xiii) ह्रांगख्वाल, रांगखल	(xiii) Hrangkhwal, Rangkhoh
(xiv) जोंगबे	(xiv) Jongbe
(xv) ख्वाचंग	(xv) Khawchung
(xvi) ख्वात्लंग, खोत्तलंग	(xvi) Khawathlang, Khothalong
(xvii) खेलमा	(xvii) Khelma
(xviii) खोलहू	(xviii) Kholhou
(xix) किपेन	(xix) Kipgen
(xx) कुकी	(xx) Kuki
(xxi) लेंगथांग	(xxi) Lengthang
(xxii) ल्हांगम	(xxii) Lhangum
(xxiii) ल्हूजेम	(xxiii) Lhoujem
(xxiv) ल्हूवुन	(xxiv) Lhouvun

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

(xxv) लुफेंग	(xxv) Lupheng
(xxvi) मांजेल	(xxvi) Mangjel
(xxvii) मिसाऊ	(xxvii) Misao
(xxviii) रियांग	(xxviii) Riang
(xxix) सैरहैम	(xxix) Sairhem
(xxx) सैल्नाम	(xxx) Selnam
(xxxi) सिंगसन	(xxxi) Singson
(xxxii) सितल्हौ	(xxxii) Sitlhou
(xxxiii) सुक्ते	(xxxiii) Sakte
(xxxiv) थाडो	(xxxiv) Thado
(xxxv) थांगंज्यु	(xxxv) Thangngeu
(xxxvi) उइबू	(xxxvi) Uibuh
(xxxvii) वाइफेई	(xxxvii) Vaiphei
10 लाखेर	10 Lakher
11 मान (ताई बोलने वाली)	11 Man (Tai speaking)
12 कोई मीजो (लुसाई) जनजातियां	12 Any Mizo (Lushai) tribes
13 मिकिर	13 Mikir
14 कोई नागा जनजातियां	14 Any Naga tribes
15 पावी	15 Pawi
16 राबा, रावा	16 Raba, Rava
17 सितेंग	17 Synteng

असम/Assam

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

I स्वशासी जिलों में :- ^क	I In the autonomous districts: ^a
1 चकमा	1 Chakma
2 डिमासा, कचारी	2 Dimasa, Kachari
3 गारो	3 Garo
4 हाजोंग	4 Hajong
5 हमार	5 Hmar
6 खासी, जयन्तिया, सिन्तेंग, प्नार, वार, भोई, लिंगनगाम	6 Khasi, Jaintia, Synteng, Pnar, War, Bhoi, Lyngngam
7 निम्नलिखित के सहित अन्य कूकी जनजातियां:	7 Any Kuki Tribes, including:
(i) बियाते, बियेते	(i) Biate, Biete
(ii) चांगसान	(ii) Changsan
(iii) चंगलोई	(iii) Chongloi
(iv) दौंगेल	(iv) Doungei
(v) गमल्हो	(v) Gamalhou
(vi) गंगते	(vi) Gangte
(vii) गुइते	(vii) Guite
(viii) हान्नैंग	(viii) Hanneng

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

(ix) हौकिप, होपित	(ix) Haokip, Haupit
(x) हौलाई	(x) Haolai
(xi) हेंगना	(xi) Hengna
(xii) होंगसुंघ	(xii) Hongsungh
(xiii) हरंगख्वाल, रांगखोल	(xiii) Hrangkhwal, Rangkhoh
(xiv) जोंगबे	(xiv) Jongbe
(xv) खावचुंग	(xv) Khawchung
(xvi) खाथलांग, खोथालंग	(xvi) Khawathlang, Khothalong
(xvii) खेलमा	(xvii) Khelma
(xviii) खोलहू	(xviii) Kholhou
(xix) किपोन	(xix) Kipgen
(xx) कुकी	(xx) Kuki
(xxi) लेंथांग	(xxi) Lengthang
(xxii) ल्हांगुम	(xxii) Lhangum
(xxiii) ल्हुजेम	(xxiii) Lhoujem
(xxiv) ल्हुवुन	(xxiv) Lhouvun
(xxv) लुफेंग	(xxv) Lupheng
(xxvi) मांजेल	(xxvi) Mangjel
(xxvii) मिसाऊ	(xxvii) Misao
(xxviii) रिआंग	(xxviii) Riang
(xxix) सेरहम	(xxix) Sairhem
(xxx) सेलनाम	(xxx) Selnam
(xxxi) सिंग्सन	(xxxi) Singson
(xxxii) सितल्हो	(xxxii) Sitlhou
(xxxiii) सुक्ते	(xxxiii) Sukte
(xxxiv) थाडो	(xxxiv) Thado
(xxxv) थॉंग्यू	(xxxv) Thangngeu
(xxxvi) उइबुह	(xxxvi) Uibuh
(xxxvii) वाईफेई	(xxxvii) Vaiphei
8 लाखेर	8 Lakher
9 मान (ताई बोलने वाले)	9 Man (Tai speaking)
10 कोई मिजो (लुशाई) जनजातियां	10 Any Mizo (Lushai) tribes
11 मिकिर	11 Mikir
12 अन्य नागा जनजातियां	12 Any Naga tribes
13 पावी	13 Pawi
14 सिथेंग	14 Syntheng
II स्वशासी जिलों को छोड़कर असम राज्य में :-	II In the State of Assam excluding the autonomous districts
1 बर्मन कचार में	1 Barmans in Cachar
2 बोरो, बोरोकचारी	2 Boro, Borokachari
3 देओरी	3 Deori
4 होजाई	4 Hojai
5 कचारी, सोनवाल	5 Kachari, Sonwal

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

6 लालुंग	6 Lalung
7 मेच	7 Mech
8 मिरी	8 Miri
9 राभा	9 Rabha
^क असम के स्वशासी जिलों में कर्बी - अंगलांग और उत्तरी कचार हिल्स जिले शामिल हैं ।	^अ The autonomous districts of Assam comprised of Karbi Anglong and North Cachar Hills districts.

पश्चिम बंगाल/West Bengal

अनुसूचित जातियाँ और अनुसूचित जनजातियाँ आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियाँ/Scheduled Tribes

1 असुर	1 Asur
2 बैगा	2 Baiga
3 बेदिआ, बेदिया	3 Bedia, Bediya
4 भूमिज	4 Bhumij
5 भूटिया, शेरपा, टोटो, दुक्पा, कगाते, तिबेतन, योलमो	5 Bhutia, Sherpa, Toto, Dukpa, Kagatay, Tibetan, Yolmo
6 बिरहोर	6 Birhor
7 बिरजिया	7 Birjia
8 चकमा	8 Chakma
9 चरो	9 Chero
10 चिकबराईक	10 Chik Baraik
11 गारो	11 Garo
12 गोंड	12 Gond
13 गोरईत	13 Gorait
14 हाजंग	14 Hajang
15 हो	15 Ho
16 करमाली	16 Karmali
17 खारवार	17 Kharwar
18 खोंड	18 Khond
19 किसान	19 Kisan
20 कोरा	20 Kora
21 कोरवा	21 Korwa
22 लेपचा	22 Lepcha
23 लोधा, खेरिया, खारिया	23 Lodha, Kheria, Kharia
24 लोहारा, लोहरा	24 Lohara, Lohra
25 माघ	25 Magh
26 महाली	26 Mahali
27 महली	27 Mahli
28 माल पहाड़िया	28 Mal Pahariya
29 मेच	29 Mech
30 म्रू	30 Mru

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

31 मुंडा	31 Munda
32 नागसिया	32 Nagesia
33 ओरांव	33 Oraon
34 परहईया	34 Parhaiya
35 राभा	35 Rabha
36 संताल	36 Santal
37 सौरिया पहाड़िया	37 Sauria Paharia
38 सावर	38 Savar

झारखंड/Jharkhand

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976 तथा 2000 के अधिनियम संख्या 30 द्वारा यथा अन्तः स्थापित
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and as inserted by Act 30 of 2000

अनुसूचित जनजातियां/Scheduled Tribes

1 असुर	1 Asur
2 बैगा	2 Baiga
3 बंजारा	3 Banjara
4 बथुडी	4 Bathudi
5 बेदिया	5 Bedia
6 बिंझिया	6 Binjhia
7 बिरहोर	7 Birhor
8 बिरजिया	8 Birjia
9 चैरो	9 Chero
10 चिक बराइक	10 Chick Baraik
11 गोंड	11 Gond
12 गोराइत	12 Gorait
13 हो	13 Ho
14 करमाली	14 Karmali
15 खरिया	15 Kharia
16 खरवार	16 Kharwar
17 खोंड	17 Khond
18 किसान	18 Kisan
19 कोरा	19 Kora
20 कोरवा	20 Korwa
21 लोहरा	21 Lohra
22 महली	22 Mahli
23 माल पहाड़िया	23 Mal Pahariya
24 मुन्डा	24 Munda
25 उरांव	25 Oraon
26 परहाइया	26 Parhaiya
27 संथाल	27 Santhal
28 सौरिया पहाड़िया	28 Sauria Paharia
29 सावर	29 Savar
30 भूमिज	30 Bhumij

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

उड़ीसा/Orissa

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 बगता	1 Bagata
2 बैगा	2 Baiga
3 बनजारा, बनजारी	3 Banjara, Banjari
4 बाथुडी	4 Bathudi
5 भोतडा, धोतडा	5 Bhottada, Dhotada
6 भुईया, भुयां	6 Bhuiya, Bhuyan
7 भुमिआ	7 Bhumia
8 भुमिज	8 Bhumij
9 भुंजिआ	9 Bhunjia
10 बिझाल	10 Binjhal
11 बिझिआ, बिझोआ	11 Binjhia, Binjhoa
12 बिरहोर	12 Birhor
13 बोंडो पोरजा	13 Bondo Poraja
14 चेन्चु	14 Chenchu
15 दाल	15 Dal
16 देसुआ भुमिज	16 Desua Bhumij
17 धारुआ	17 Dharua
18 दिदयी	18 Didayi
19 गादबा	19 Gadaba
20 गांडिया	20 Gandia
21 घारा	21 Ghara
22 गोंड, गोंडो	22 Gond, Gondo
23 हो	23 Ho
24 होलवा	24 Holva
25 जातपु	25 Jatapu
26 जुआंग	26 Juang
27 कांध गौडा	27 Kandha Gauda
28 कवर	28 Kavar
29 खरिआ, खरिआन	29 Kharia, Kharian
30 खरवार	30 Kharwar
31 खोंड, कोंड, कन्ध, नांगुली कांधा, सीथा कांधा	31 Khond, Kond, Kandha, Nanguli Kandha, Sitha Kandha
32 किसान	32 Kisan
33 कोल	33 Kol
34 कोल्ह लोहराज, कोल लोहराज	34 Kolah Loharas, Kol Loharas
35 कोल्हा	35 Kolha
36 कोली, मल्हार	36 Koli, Malhar
37 कोन्डाडोरा	37 Kondadora
38 कोरा	38 Kora
39 कोरुआ	39 Korua

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

40 कोटिया	40 Kotia
41 कोया	41 Koya
42 कुलीज	42 Kulis
43 लोधा	43 Lodha
44 माडिया	44 Madia
45 महाली	45 Mahali
46 मनकिडी	46 Mankidi
47 मनकिरडिआ	47 Mankirdia
48 माटिया	48 Matya
49 मिर्धाज	49 Mirdhas
50 मुंडा, मुंडा लोहरा, मुंडा महालीज	50 Munda, Munda Lohara, Munda Mahalis
51 मुंडारी	51 Mundari
52 ओमानत्या	52 Omanatya
53 उरांओ	53 Oraon
54 परेंगा	54 Parenga
55 परोजा	55 Paroja
56 पेंटिया	56 Pentia
57 रजुआर	57 Rajuar
58 संताल	58 Santal
59 सओरा, सावर, सौरा, सहारा	59 Saora, Savar, Saura, Sahara
60 शबर, लोधा	60 Shabar, Lodha
61 सौन्ती	61 Sounti
62 थारूआ	62 Tharua

छत्तीसगढ़/Chhattisgarh

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976 तथा 2000 के अधिनियम संख्या 28 द्वारा यथा अन्तः स्थापित
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and as inserted by Act 28 of 2000

अनुसूचित जनजातियां/Scheduled Tribes

1 अगारिया	1 Agariya
2 अन्ध	2 Andh
3 बैगा	3 Baiga
4 भैना	4 Bhaina
5 भारिआ भूमिआ, भुईहार भूमियां, भूमिआ, भारिया, पालिहा, पांडो	5 Bharia Bhumia, Bhuinhar Bhumia, Bhumiya, Bharia, Paliha, Pando
6 भत्तरा	6 Bhattra
7 भील, भिलाला, बरेला, पटेलिया	7 Bhil, Bhilala, Barela, Patelia
8 भील मीना	8 Bhil Mina
9 भुंजिया	9 Bhunjia
10 बिआर, बीयार	10 Biar, Biyar
11 बिंझवार	11 Binjhar
12 बिरहुल, बिरहोर	12 Birhul, Birhor
13 दमोर, दामारिया	13 Damor, Damaria
14 धनवार	14 Dhanwar
15 गडाबा, गडबा	15 Gadaba, Gadba

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

16 गोंड, अरख, अरख, अगारिया, असुर, बड़ी मारिया, बड़ा मारिया, भटोला, भीमा, भुता, कोइलाभुता, कोलीभुती, भार, बिसोनहान मारिया, छोटा मारिया, दंडामी मारिया, धुरु, धुरवा, धोबा, धुलिया, डोरला, गायकी, गड्डा, गट्टी, गैटा, गोंड, गोवारी हिल मारिया, कंडरा, कलंगा, खटोला, कोइतर, कोया, खिरवार, खिरवारा, कुचा मारिया, कुचाकी मारिया, माडिया, मारिया, माना, मन्नेवर, मोघया, मोगिया, मोंघया, मुडिया, मुरिया, नगारची, नागवंशी, ओझा, राजगोंड, सोन्झारी, झरेका, थाटिया, थोटया, वाडे मारिया, वडे मारिया, दरोई	16 Gond; Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Kolibhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta, Gatti, Gaita, 'Gond, Gowari Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Mardia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Nagwanshi, Ojha, Raj Gond, 'Sonjhari, Jhareka, Thatia, Thotya, Wade Maria, Vade Maria, Daroi
17 हलबा, हलबी	17 Halba, Halbi
18 कमर	18 Kamar
19 कारकू	19 Karku
20 कवर, कंवर, कौर, चेरवा, राठिया, तँवर, छत्री	20 Kavar, Kanwar, Kaur, Cherwa, Rathia, Tanwar, Chattri
21 खैरवार, कोंडार	21 Khairwar, Kondar
22 खरिया	22 Kharia
23 कोंध, खोंड, कांध	23 Kondh, Khond, Kandh
24 कोल	24 Kol
25 कोलम	25 Kolam
26 कोरकू, बोपची, मोवासी, निहार, नाहुल, बोधी, बोडेया	26 Korku, Bopchi, Mouasi, Nihar, Nahul, Bondhi, Bondeya
27 कोरवा, कोडाकू	27 Korwa, Kodaku
28 माझी	28 Majhi
29 मझवार	29 Majhwar
30 मवासी	30 Mawasi
31 मुंडा	31 Munda
32 नगिसिया, नागासिया	32 Nagesia, Nagasia
33 उरांव, धानका, धांगड	33 Oraon, Dhanka, Dhangad
34 पाव	34 Pao
35 परधान, पथारी, सरौली	35 Pardhan, Pathari, Saroti
36 पारधी; बहेलिया, बहेल्लिया, चिता पारधी, लंगोली पारधी, फांस पारधी, शिकारी, टकनकर, टाकिया [(i) बस्तर, दंतेवाड़ा, कांकेर, रायगढ़, जशपुर नगर, सरगुजा और कोरिया जिलों में, (ii) कोरबा जिला के कटघोड़ा, पाली, करताला और कोरबा तहसीलों में, (iii) बिलासपुरजिला के बिलासपुर, पेन्द्रा, कोटा और तखतपुर तहसीलों में, (iv) दुर्ग जिला के दुर्ग, पटन, गुन्डेरदेही, धामधा, बलोद, गुरुर और डोंडीलोहारा तहसीलों में, (v) राजनंदगांव जिला के चौकी, मानपुर और मोहाला राजस्व निरीक्षक अंचल में, (vi) महासमुन्द जिला के महासमुन्द, सराइपाली और बासना तहसीलों में, (vii) रायपुर जिला के बिंद्रा-नवागढ़ राजिम और देवभोग तहसीलों में, और (viii) धमतरी जिला के धमतरी, कुरूद और सिहावा तहसीलों में]	36 Pardhi, Bahelia, Bahellia, Chita Pardhi, Langoli Pardhi, Phans Pardhi, Shikari, Takankar, Takia [in (i) Bastar, Dantewara, Kanker, Raigarh, Jashpurnagar, Surguja and Korba district, (ii) Katghora, Pali, Kartala and Korba tahsils of Korba district, (iii) Bilaspur, Pendra, Kota and Takhatpur tahsils of Bilaspur district, (iv) Durg, Patan, Gunderdehi, Dhamdha, Balod, Gurur and Dondilohara tahsils of Durg district, (v) Chowki, Manpur and Mohala Revenue Inspector Circles of Rajnandgon district, (vi) Mahasamund, Saraipali and Basna tahsils of Mahasamund district, (vii) Bindra-Navagarh Rajim and Deobhog tahsils of Raipur district, and (viii) Dhamtari, Kurud and Sihava tahsils of Dhamtari district]
37 परजा	37 Parja
38 सहारिया, सहारिया, सेहारिया, सेहारिया, सोसिया, सोर	38 Sahariya, Saharia, Seharía, Sehria, Sosia, Sor

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

39 साओंता, सौंता	39 Saonta, Saunta
40 सौर	40 Saur
41 सावर, सवरा	41 Sawar, Sawara
42 सौर	42 Sonr

मध्य प्रदेश/Madhya Pradesh

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 अगरिया	1 Agariya
2 आन्ध	2 Andh
3 बैगा	3 Baiga
4 भैना	4 Bhaina
5 भारिआ भूमिआ, भुईहार भूमिया, भूमिआ, भारिया, पालिहा, पांडो	5 Bharia Bhumia, Bhuinhar Bhumia, Bhumiya, Bharia, Paliha, Pando
6 भत्तरा	6 Bhattara
7 भील, भिलाला, बरेला, पटलिया	7 Bhil, Bhilala, Barela, Patelia
8 भील मीना	8 Bhil Mina
9 भुंजिया	9 Bhunjia
10 बीआर, बीयार	10 Biar, Biyar
11 बिंझवार	11 Binjhwar
12 बिरहुल, बिरहोर	12 Birhul, Birhor
13 दमोर, दामरिया	13 Damor, Damaria
14 धनवार	14 Dhanwar
15 गडाबा, गडबा	15 Gadaba, Gadba
16 गोंड, अरख, अरख, अगरिया, असुर, बड़ी मारिया, बड़ा मारिया, भटोला, भीमा, भुता, कोइलाभुता, कोलियाभुती, भार, बिसोनहार्न मारिया, छोटा मारिया, दंडामी मारिया, धुरु, धुरवा, धोबा, धुलिया, डोरला, गयकी, गड्डा, गट्टी, गैटा, गोंड, गोवारी, हिल मारिया, कंडरा, कलंगा, खटोला, कोइतर, कोया, खिरवार, खिरवारा, कुचा मारिया, कुचाकी मारिया, माडिया, मारिया,माना, मन्नेवार, मोघ्या, मोगिया, मोंघ्या, मुडिया, मुरिया, नगारची, नागवंशी, ओझा, राज गोंड, सोन्झारी, झरेका, थाटिया, थोट्या, वडे मारिया, वडेमारिया, डरोई	16 Gond; Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koliabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta, Gatti,Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia, Thotya, Wade Maria, Vade Maria, Daroi
17 हलबा, हलबी	17 Halba, Halbi
18 कमार	18 Kamar
19 कारकू	19 Karku
20 कवर, कंवर, कौर, चेरवा, राथिया, तैवर, छत्री	20 Kavar, Kanwar, Kaur, Cherwa, Rathia, Tanwar, Chattri

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

21 कीर [भोपाल, रायसेन और सीहोर जिलों में]	21 Keer (in Bhopal, Raisen and Sehere districts)
22 खैरवार, कोंडर	22 Khairwar, Kondar
23 खरिया	23 Kharia
24 कोंध, खोंड, कांध	24 Kondh, Khond, Kandh
25 कोल	25 Kol
26 कोलम	26 Kolam
27 कोरकु, बोपची, मोवासी, निहाल, नाहुल, बोंधी, बोंडेया	27 Korku, Bopchi, Mouasi, Nihal, Nahul, Bondhi, Bondeya
28 कोरवा, कोडाकू	28 Korwa, Kodaku
29 माझी	29 Majhi
30 मझवार	30 Majhwar
31 मवासी	31 Mawasi
32 मीना (विदिशा जिले के सिरोंज उपखंड में)	32 Mina (in Sironj sub-division of Vidisha district)
33 मुंडा	33 Munda
34 नगेसिया, नगासिया	34 Nagesia, Nagasia
35 उरांव, धनका, धांगड	35 Oraon, Dhanka, Dhangad
36 पनिका [(i) छतरपुर, पन्ना, रीवा, सतना, शाहडोल, उमरिया, सीधी और टीकमगढ़ जिलों, और (ii) दतिया जिले के सेवदा एवं दतिया तहसीलों में]	36 Panika (in Chhatarpur, Datia, Panna, Rewa, Satna, Shahdol, Sidhi and Tikamgarh districts)
37 पाओ	37 Pao
38 परधान, पथारी, सरोती	38 Pardhan, Pathari Saroti
39 पारधी [भोपाल, रायसेन और सीहोर जिलों में]	39 Pardhi (in Bhopal, Raisen and Sehere districts)
40 पारधी, बहेलिया, बहेल्लिया, चिता पारधी, लंगोली पारधी, फांस पारधी, शिकारी, टकनकर, टाकिया [(i) छिन्दवाड़ा, मंडला, डीन्डोरी एवं सिवनी जिलों, (ii) बालाघाट जिले की बेहर तहसील, (iii) बैतूल जिले की बैतूल, भैंसदेही एवं शाहपुर तहसीलों, (iv) जबलपुर जिले की पाटन तहसील एवं सिहोरा और मजोली ब्लाक, (v) कटनी जिले की कटनी (मुरवारा) और विजया राघोगढ़ तहसीलों एवं बहोरीबन्द और धेमेरखेडा ब्लाक, (vi) होशंगाबाद जिले की होशंगाबाद, बबई, सोहागपुर, पिपरिया और बनखेडी तहसीलों तथा केसला ब्लाक, (vii) नरसिंगपुर जिला एवं (viii) खंडवा जिले की हरसुद तहसील में] ^क	40 Pardhi; Bahelia, Bahellia, Chita Pardhi, Langoli Pardhi, Phans Pardhi, Shikari, Takankar, Takia [in (1) Bastar, Chhindwara, Mandla, Raigarh, Seoni and Surguja districts, (2) Baihar tahsil of Balaghat district, (3) Betul and Bhainsdehi 'tahsils of Betul district, (4) Bilaspur and Katghora tahsils of Bilaspur district, (5) Durg and Balod tahsils of Durg district, (6) Chowki, Manpur and Mohala Revenue Inspectors Circles of Rajnandgaon district, (7) Murwara, Patan and Sihora tahsils of Jabalpur district (8) Hoshangabad and Sohagpur tahsils of Hoshangabad district and Narsimhapur district, (9) Harsud tashil of Khandwa district, (10) Bindra-Nawagarh, Dhamtari and Mahasamund tahsils of Raipur district] ^a
41 परजा	41 Parja
42 सहारिया, सहारिआ, सेहारिआ, सेहरिआ, सोसिआ, सोर	42 Sahariya, Saharia, Seharia, Sehria, Sosia, Sor
43 साओता, साँता	43 Saonta, Saunta
44 सौर	44 Saur
45 सावर, सावरा	45 Sawar, Sawara
46 सोंर	46 Sonr

^क प्रविष्टि को "पूर्वी नीमाड जिले की हरसुद तहसील (10) धमतरी और महासमुद जिले और रायपुर जिले की बिंद्रा - नवगढ़ तहसील" पढ़ा जाए ।

^a The entry is to be read as "(9)Harsud tashil of East Nimar district, (10) Dhamtari and Mahasamund districts and Bindra-Nawagarh tahsil of Raipur district".

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

गुजरात/Gujarat

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 बारडा	1 Barda
2 बावचा, बामचा	2 Bavacha, Bamcha
3 भरवाड (अलेच्छ, बराडा और गीर के जंगलों के अंतरीपों में) ^क	3 Bharwad (in the Nesses of the forests of Alech, Barada and Gir) ^a
4 भील, भील गरासिया, धोली भील, डुंगरी भील, डुंगरी गरासिया, मेवासी भील, रावल भील, टडवी भील, भगालिया, भिलाला, पावरा, वसावा, वसावे	4 Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvi Bhil, Bhagalia, Bhilala, Pawra, Vasava, Vasave
5 चारन (अलेच्छ, बराडा और गीर के जंगलों के अंतरीपों में) ^क	5 Charan (in the Nesses of the forests of Alech, Barada and Gir) ^a
6 चौधरी (सूरत और वलसाड़ जिलों में)	6 Chaudhri (in Surat and Valsad districts)
7 चोधरा	7 Chodhara
8 धनका, टडवी, टेटरिया, वलवी	8 Dhanka, Tadvi, Tetaria, Valvi
9 धोडिया	9 Dhodia
10 दुबला, तलाविया, हलपति	10 Dubla, Talavia, Halpati
11 गमित, गमता, गवित, मावची, पदवी	11 Gamit, Gamta, Gavit, Mavchi, Padvi
12 गोंड, राजगोंड	12 Gond, Rajgond
13 कथोडी, कटकारी, डोर कथोडी, डोर कटकारी, सोन कथोडी, सोन कटकारी	13 Kathodi, Katkari, Dhor Kathodi, Dhor Katkari, Son Kathodi, Son Katkari
14 कोकना, कोकनी, कुक्ना	14 Kokna, Kokni, Kukna
15 कोली (कच्छ जिले में) ^ख	15 Koli (in Kutch district) ^b
16 कोली डोर, टोकरे कोली, कोल्चा, कोल्घा	16 Koli Dhor, Tokre Koli, Kolcha, Kolgha
17 कुनबी (डांग जिले में)	17 Kunbi (in the Dangs district)
18 नायकडा, नायका, चोलीवाला नायका, कपाडिया नायका, मोटा नायका, नाना नायका	18 Naikda, Nayaka, Cholivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka
19 पद्धार	19 Padhar
20 पारधी (कच्छ जिले में) ^ख	20 Paradhi (in Kutch district) ^b
21 पारधी, अदविचिन्चेर, फांनसे पारधी (अमरेली, भावनगर, जामनगर, जूनागढ़, कच्छ, राजकोट और सुरेन्द्रनगर जिलों को छोड़कर)	21 Pardhi, Advichincher, Phanse Pardhi (excluding Amreli, Bhavnagar, Jamnagar, Junagadh, Kutch, Rajkot and Surendranagar districts)
22 पटेलिया	22 Patelia
23 पोमला	23 Pomla
24 रबारी (अलेच्छ, बराडा और गीर के जंगलों के अंतरीपों में) ^क	24 Rabari (in the Nesses of the forests of Alech, Barada and Gir) ^a
25 राथवा	25 Rathawa
26 सिद्दी (अमरेली, भावनगर, जामनगर, जूनागढ़, राजकोट और सुरेन्द्रनगर जिलों में)	26 Siddi (in Amreli, Bhavnagar, Jamnagar, Junagadh, Rajkot and Surendranagar districts)

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

27 वाघरी (कच्छ जिले में) ^ख	27 Vaghri (in Kutch district) ^b
28 वारली	28 Varli
29 विटोला, कोतवालिया, बरोडिया	29 Vitola, Kotwalia, Barodia
^क क्षेत्र में जामनगर और जूनागढ़ जिले शामिल हैं ।	^a The area comprised of Jamnagar and Junagadh districts.
^ख कट्च की वर्तनी को कच्छ पढ़ें ।	^b Spelling of Kutch is to be read as Kachchh.

दमन और दीव/Daman & Diu

संविधान (गोवा, दमन और दीव) अनुसूचित जनजातियां आदेश, 1968 तथा 1987 के अधिनियम संख्या 18 द्वारा यथा अन्तः स्थापित
The Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 and as inserted by Act 18 of 1987

अनुसूचित जनजातियां/Scheduled Tribes

1 धोडिया	1 Dhodia
2 दुबला (हलपति)	2 Dubla (Halpati)
3 नायकडा (तलाविया)	3 Naikda (Talavia)
4 सिद्दी (नायका)	4 Siddi (Nayaka)
5 वरली	5 Varli

दादर और नागर हवेली/Dadra & Nagar Haveli

संविधान (दादरा और नागर हवेली) अनुसूचित जनजातियां आदेश, 1962
The Constitution (Dadra & Nagar Haveli) Scheduled Tribes Order, 1962

अनुसूचित जनजातियां/Scheduled Tribes

1 धोडिया	1 Dhodia
2 दुबला जिनके अन्तर्गत हलपति आते हैं	2 Dubla Including Halpati
3 काथोडी	3 Kathodi
4 कोकना	4 Kokna
5 कोली धोर जिनके अन्तर्गत कोलघा आते हैं	5 Koli Dhor Including Kolgha
6 नायकडा या नायका	6 Naikda or Nayaka
7 वरली	7 Varli

महाराष्ट्र/Maharashtra

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 अंध	1 Andh
2 बैगा	2 Baiga
3 बारदा	3 Barda
4 बावचा, बामचा	4 Bavacha, Bamcha
5 भैना	5 Bhaina
6 भारिया भूमिया, भुईहार भूमिया, पाण्डो	6 Bharia Bhumia, Bhuinhar Bhumia, Pando

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

7 भत्तरा	7 Bhattra
8 भील, भील गरासिया, धोली भील, दुंगरी भील, दुंगरी गरासिया, मेवासी भील, रावल भील, तडवी भील, भागलिया, भिलाला, पावरा, वसावा, वसावे	8 Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvī Bhil, Bhagalia, Bhilala, Pawra, Vasava, Vasave
9 भुंजिया	9 Bhunjia
10 बिंझवार	10 Binjhar
11 बिरहुल, बिरहोर	11 Birhul, Birhor
12 चोधरा [अकोला, अमरावती, भंडारा, बुल्दाना, चन्द्रपुर, नागपुर, वर्धा, यवतमाल, औरंगाबाद, बीड़, नान्देड, उस्मानाबाद और परभणी जिलों को छोड़कर] ^क	12 Chodhara (excluding Akola, Amravati, Bhandara, Buldana, Chandrapur, Nagpur, Wardha, Yavatmal, Aurangabad, Bhir, Nanded, Osmanabad and Parbhani districts) ^a
13 धनका, तडवी, तेलारिया, वलवी	13 Dhanka, Tadvī, Tetaria, Valvi
14 धनवार	14 Dhanwar
15 धोडिया	15 Dhodia
16 दुबला, तलाविया, हलपति	16 Dubla, Talavia, Halpati
17 गामित, गामता, गावीत, मावची, पदवी	17 Gamit, Gamta, Gavit, Mavchi, Padvi
18 गोंड राजगोंड, अरख, अरख, अगरिया, असुर, बड़ी मारिया, बड़ा मारिया, भटोला, भीम्मा, भूता, कोईलाभूता, कोईलाभूती, भार, बाइसनहान मारिया, छोटा मारिया, दंडामी मारिया, धुरु, धुरवा, धोबा, धुलिया, डोरला, गैकी, गड्डा, गट्टी गैटा, गोंड गोवारी, हिल मारिया, कंडरा, कलंगा, खटोला, कोइतर, कोया, खीरवर, खीरवारा, कुचा मारिया, कुचाकी मारिया, मडिया, मारिया, माना, मन्नेवर, मोघया, मोगिया, मोंघ्या, मुदिया, मुरिया, नागरची, नायकपोड, नागवंशी, ओझा, राज, सोन्झारी झरेका, थाटिया, थोट्या, वाडे मारिया, वडे मारिया	18 Gond Rajgond, Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta, Gatti, Gaita, Gond, Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia, Thotya, Wade Maria, Vade Maria
19 हलबा, हलबी	19 Halba, Halbi
20 कमार	20 Kamar
21 काथोडी, कातकारी, ढोर काथोडी, ढोर कातकारी, सोन काथोडी, सोन कातकारी	21 Kathodi, Katkari, Dhor Kathodi, Dhor Kathkari, Son Kathodi, Son Katkari
22 कवर, कंवर, कौर, चेरवा, राथिया, तंवर, छत्री	22 Kavar, Kanwar, Kaur, Cherwa, Rathia, Tanwar, Chattri
23 खैरवार	23 Khairwar
24 खड़िया	24 Kharia
25 कोकना, कोकनी, कुक्ना	25 Kokna, Kokni, Kukna
26 कोल	26 Kol
27 कोलाम, मन्नेरवरलू	27 Kolam, Mannervarlu
28 कोली ढोर, टोकरे कोली, कोलचा, कोलघा	28 Koli Dhor, Tokre Koli, Kolcha, Kolgha
29 कोली महादेव, डोंगर कोली	29 Koli Mahadev, Dongar Koli
30 कोली मल्हार	30 Koli Malhar
31 कोंध, खोंड, कांध	31 Kondh, Khond, Kandh

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

32 कोरकू, बोपची, मौवासी, निहाल, नाहुल, बोधी, बोंडेया	32 Korku, Bopchi, Mouasi, Nihal, Nahul, Bondhi, Bondeya
33 कोया, भिनेकोया, राजकोया	33 Koya, Bhine Koya, Rajkoya
34 नगेसिया, नगासिया	34 Nagesia, Nagasia
35 नाईकड़ा, नायका, चोलीवाला नायका, कापडिया नायका, मोटा नायका, नाना नायका	35 Naikda, Nayaka, Cholivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka
36 ओरांव, धांगड	36 Oraon, Dhangad
37 परधान, पथारी, सरोती	37 Pardhan, Pathari, Saroti
38 पारधी, अदविचिचेर, फांस पारधी, फांसे पारधी, लंगोली पारधी, बहेलिया, बहेल्लिया, चिता पारधी, शिकारी, टकनकर, टाकिया	38 Pardhi; Advichincher, Phans Pardhi, Phanse Pardhi, Langoli Pardhi, Bahelia, Bahellia, Chita Pardhi, Shikari, Takankar, Takia
39 परजा	39 Parja
40 पटेलिया	40 Patelia
41 पोमला	41 Pomla
42 रथावा	42 Rathawa
43 सावर, सावरा	43 Sawar, Sawara
44 ठाकुर, ठाकर, का ठाकुर, का ठाकर, मा ठाकुर, मा ठाकर	44 Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar
45 थोटी [औरंगाबाद, बीड़, नान्देड, उस्मानाबाद और परभणी जिलों और चन्द्रपुर जिले की राजुरा तहसील में] ^ख	45 Thoti (in Aurangabad, Bhir, Nanded, Osmanabad and Parbhani districts and Rajura tahsil of Chandrapur district) ^b
46 वरली	46 Varli
47 विटोलिया, कोतवालिया, बरोडिया	47 Vitolia, Kotwalia, Barodia
^क प्रविष्टि को "अकोला, अमरावती, भंडारा, गोंडिया, बुलदाना, चन्द्रपुर, नागपुर, वर्धा, यवतमाल, औरंगाबाद, जालना, बीड़, नांदेड, उस्मानाबाद, लातूर, परभणी और हिंगोली जिलों को छोड़कर" पढ़ा जाए।	^a The entry is to be read as "excluding Akola, Amravati, Bhandara, Gondiya, Buldana, Chandrapur, Nagpur, Wardha, Yavatmal, Aurangabad, Jalna, Bid, Nanded, Osmanabad, Latur, Parbhani and Hingoli districts".
^ख प्रविष्टि को "औरंगाबाद, जालना, बीड़, नांदेड, उस्मानाबाद, लातूर, परभणी और हिंगोली जिलों तथा चन्द्रपुर जिले की राजुरा तहसील में" पढ़ा जाए।	^b The entry is to be read as "in Aurangabad, Jalna, Bid, Nanded, Osmanabad, Latur, Parbhani and Hingoli districts and Rajura tahsil of Chandrapur district".

आन्ध्र प्रदेश/Andhra Pradesh

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 अन्ध	1 Andh
2 बगाटा	2 Bagata
3 भील	3 Bhil
4 चेंचु, चेंचवार	4 Chenchu, Chenchwar
5 गडाबास	5 Gadabas

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

6 गोंड, नायकपोड, राजगोंड	6 Gond, Naikpod, Rajgond
7 गौड़ (अभिकरण भूखंडों में) ^क	7 Goudu (in the Agency tracts) ^a
8 हिल रेड्डी	8 Hill Reddis
9 जटापुस	9 Jatapus
10 कम्मारा	10 Kammara
11 कट्टुनायाकन	11 Kattunayakan
12 कोलम, मन्नरवल्लू	12 Kolam, Mannervallu
13 कोंडा धोराज	13 Konda Dhoras
14 कोंडा कापूस	14 Konda Kapus
15 कोंडारेड्डीस्	15 Kondareddis
16 कोंधस, कोडी, कोधु, देसया कोंधस, डोंगरिया कोंधस, कुट्टिया कोंधस, टिकरिया कोंधस, येनिटी कोंधस	16 Kondhs, Kodi, Kodhu, Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs, Yeniti Kondhs
17 कोटिया, बेंथों ओरिया, बारतिका, धुलिया, डुलिया, होल्वा, पैको, पुटिया, सन्नोना, सिधोपैको	17 Kotia, Benthoriya, Bartika, Dhulia, Dulia, Holva, Paiko, Putiya, Sanrona, Sidhopaiko
18 कोया, गौड, राजाह, राशा कोया, लिंगधारीकोया (साधारण), कोट्टू कोया, भिने कोया, राज कोया	18 Koya, Goud, Rajah, Rasha Koya, Lingadhari Koya (ordinary), Kottu Koya, Bhine Koya, Rajkoya
19 कुलिया	19 Kulia
20 मालिज (आदिलाबाद, हैदराबाद, करीमनगर, खम्माम, महबूबनगर, मेडक, नलगोंडा, निजामाबाद और वारंगल जिलों को छोड़कर)	20 Malis (excluding Adilabad, Hyderabad, Karimnagar, Khammam, Mahbubnagar, Medak, Nalgonda, Nizamabad and Warangal districts)
21 मन्ना धोरा	21 Manna Dhora
22 मुखा धोरा, नूका धोरा	22 Mukha Dhora, Nooka Dhora
23 नायकस (अभिकरण भूखंडों में) ^क	23 Nayaks (in the Agency tracts) ^a
24 परधान	24 Pardhan
25 पोर्जा, परंगीपेर्जा	25 Porja, Parangiperja
26 रेड्डी धोरास	26 Reddi Dhoras
27 रोना, रेना	27 Rona, Rena
28 सवारास, कापू सवारास, मलिया सवारास, खुट्टू सवारास	28 Savaras, Kapu Savaras, Maliya Savaras, Khutto Savaras
29 सुगाली, लम्बाडीस	29 Sugalis, Lambadis
30 थोटी (आदिलाबाद, हैदराबाद, करीमनगर, खम्माम, महबूबनगर, मेडक, नलगोंडा, निजामाबाद और वारंगल जिलों में)	30 Thoti (in Adilabad, Hyderabad, Karimnagar, Khammam, Mahbubnagar, Medak, Nalgonda, Nizamabad and Warangal districts)
31 वाल्मीकि (अभिकरण भूखंडों में) ^क	31 Valmiki (in the Agency tracts) ^a
32 येनाडीज	32 Yenadis
33 येरुकुलास	33 Yerukulas
^क अभिकरण भूखंडों में श्रीकाकुलम, विजयनगरम, विशाखापटनम, पूर्वी गोदावरी, पश्चिमी गोदावरी और खम्माम जिले शामिल हैं ।	
^a The Agency tracts is comprised of Sriakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari and Khammam districts.	

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

कर्नाटक/Karnataka

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976 तथा 1991 के अधिनियम संख्या 39 द्वारा यथा अन्तः स्थापित
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and as inserted by Act 39 of 1991

अनुसूचित जनजातियां/Scheduled Tribes

1 अदियन	1 Adiyan
2 बारडा	2 Barda
3 बवचा, बम्चा	3 Bavacha, Bamcha
4 भील, भील गरासिया, धोली भील, डूंगरी भील, डूंगरी गरासिया, मेवासी भील, रावल भील, तडवी भील, भगालिया, भिलाला, पवरा, वासवा, वासवे	4 Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvi Bhil, Bhagalia, Bhilala, Pawra, Vasava, Vasave
5 चेंचू, चेंचवार	5 Chenchu, Chenchwar
6 चोधारा	6 Chodhara
7 दुबला, तालाविया, हलपति	7 Dubla, Talavia, Halpati
8 गामित, गमता, गावित, मावची, पडवी, वाल्वी	8 Gamit, Gamta, Gavit, Mavchi, Padvi, Valvi
9 गोंड, नायकपोड, राजगोंड	9 Gond, Naikpod, Rajgond
10 गोवडालू	10 Gowdalu
11 हक्कीपिक्की	11 Hakkipikki
12 हासालारू	12 Hasalaru
13 इरुलर	13 Irular
14 इरुलिगा	14 Iruliga
15 जेनु कुरुबा	15 Jenu Kuruba
16 काडु कुरुबा	16 Kadu Kuruba
17 कम्मारा (दक्षिणी कनारा जिला और मैसूर जिले के कोल्लेगाल तालुक में) ^ख	17 Kammara (in South Kanara disitric and Kollegal taluk of Mysore district) ^b
18 कनियान, कन्यान (मैसूर जिले के कोल्लेगाल तालुक में) ^ग	18 Kaniyan, Kanyan (in Kollegal taluk of Mysore district) ^c
19 काथोडी, काटकारी, धोर काथोडी, धोर काटकारी, सोन काथोडी, सोन काटकारी	19 Kathodi, Katkari, Dhor Kathodi, Dhor Katkari, Son Kathodi, Son Katkari
20 कट्टुनायकन्	20 Kattunayakan
21 कोकना, कोकनी, कुक्ना	21 Kokna, Kokni, Kukna
22 कोली धोर, टोकरे कोली, कोल्चा, कोल्घा	22 Koli Dhor, Tokre Koli, Kolcha, Kolgha
23 कोंडा कापुस	23 Konda Kapus
24 कोरागा	24 Koraga
25 कोटा	25 Kota
26 कोया, भिने कोया, राजकोया	26 Koya, Bhine Koya, Rajkoya
27 कुडिया, मेलकुडी	27 Kudiya, Melakudi
28 कुरुबा (कुर्ग जिले में) ^घ	28 Kuruba (in Coorg district) ^a
29 कुरुमन्स	29 Kurumans
30 महा मालासार	30 Maha Malasar
31 मलाईकुडी	31 Malaikudi
32 मालासार	32 Malasar
33 मालायेकान्डी	33 Malayekandi

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

34 मालेरु	34 Maleru
35 मराठा (कुर्ग जिले में) ^क	35 Maratha (in Coorg district) ^a
36 मराठी (दक्षिणी कनारा जिले में) ^घ	36 Marathi (in South Kanara district) ^d
37 मेडा	37 Meda
38 नायकडा, नायका, चेलीवाला नायका, कपाडिया नायका, मोटा नायका, नाना नायका, नाइक, नायक, बेडा, बेडार और वाल्मीकि	38 Naikda, Nayaka, Cholivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka, Naik, Nayak, Beda, Bedar and Valmiki
39 पल्लियन	39 Palliyan
40 पनियन	40 Paniyan
41 पारधी, अडविचिन्चेर, फांसे पारधी	41 Pardhi, Advichincher, Phanse Pardhi
42 पटेलिया	42 Patelia
43 राथावा	43 Rathawa
44 शोलगा	44 Sholaga
45 सोलीगारु	45 Soligaru
46 टोडा	46 Toda
47 वरली	47 Varli
48 विटोलिया, कोतवालिया, बारोडिया	48 Vitolia, Kotwalia, Barodia
49 यरवा	49 Yerava
^क प्रविष्टि को "कोडागू जिले में" पढ़ा जाए ।	^a The entry is to be read as "in Kodagu district".
^घ प्रविष्टि को "दक्षिण कन्नड़ जिला और चमराज नगर जिले का कोलेगल तालुक" पढ़ा जाए ।	^b The entry is to be read as "Dakshina Kannada district and Kollegal taluk of Chamarajanagar district".
^ग प्रविष्टि को "चमराजनगर जिले का कोलेगल तालुक" पढ़ा जाए ।	^c The entry is to be read as "Kollegal taluk of Chamarajanagar district".
^घ प्रविष्टि को "दक्षिण कन्नड़ जिले में" पढ़ा जाए ।	^d The entry is to be read as "in Dakshina Kannada district".

गोवा/Goa

संविधान (गोवा, दमन और दीव) अनुसूचित जनजातियां आदेश, 1968 तथा 1987 के अधिनियम संख्या 18 द्वारा यथा अन्तः स्थापित
The Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 and as inserted by Act 18 of 1987

अनुसूचित जनजातियां/Scheduled Tribes

1 धोडिया	1 Dhodia
2 दुबला (हलपति)	2 Dubla (Halpati)
3 नायकदा (तलविया)	3 Naikda (Talavia)
4 सिद्दी (नायक)	4 Siddi (Nayaka)
5 वरली	5 Varli

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

लक्षद्वीप/Lakshadweep

अनुसूचित जातियों और अनुसूचित जनजातियां सूची (उपांतरण) आदेश, 1956 और लक्काद्वीव, मिनिकोय और अमीनदीवी द्वीप समूह (नाम परिवर्तन) (विधि अनुकूलन) आदेश, 1974

The Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 and the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) (Adaptation of Laws) Order, 1974

अनुसूचित जनजातियां/Scheduled Tribes

सम्पूर्ण संघ राज्यक्षेत्र में :-

Throughout the Union Territory :-

लक्कादीव, मिनिकाय और अमीनदीवी द्वीप के वे निवासी जो स्वयं और जिनके माता-पिता दोनों ही उन द्वीपों में जन्में हैं ।^क

Inhabitants of the Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands.^a

^क प्रविष्टि को "लक्षद्वीप के वे निवासी जो स्वयं एवं जिनके माता-पिता का जन्म संघ राज्यक्षेत्र में हुआ" पढ़ा जाए ।

^aThe entry is to be read as "Inhabitants of the Lakshadweep who, and both of whose parents, were born in the Union Territory".

केरल/Kerala

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 आदियन	1 Adiyan
2 अरांदन	2 Arandan
3 इरावालन्	3 Eravallan
4 हिल पुलया	4 Hill Pulaya
5 इरुलर, इरुलन	5 Irular, Irulan
6 कादर	6 Kadar
7 कम्मारा [राज्य पुनर्गठन अधिनियम, 1956 (1956 का 37) की धारा 5 की उपधारा (2) में यथा विनिर्दिष्ट मालाबार जिले के क्षेत्रों में] ^क	7 Kammara [in the areas comprising the Malabar district as specified by sub-section (2) of section 5 of the States Reorganisation Act, 1956 (37of 1956)] ^a
8 कनिकरन, कानिक्र	8 Kanikaran, Kanikkar
9 काटुनायकन्	9 Kattunayakan
10 कोचु वेलन	10 Kochu Velan
11 कोण्डा कापूज	11 Konda Kapus
12 कोण्डा रेड्डीज	12 Kondareddis
13 कोरागा	13 Koraga
14 कोटा	14 Kota
15 कुडिया, मेलाकुडी	15 Kudiya, Melakudi
16 कुरिच्चन	16 Kurichchan
17 कुरुमन्स	17 Kurumans

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

18 कुरुम्बाज	18 Kurumbas
19 महा मालासार	19 Maha Malasar
20 मलई आरयन	20 Malai Arayan
21 मलई पंडारम्	21 Malai Pandaram
22 मलई वेडन	22 Malai Vedan
23 मालाक्कुरवन्	23 Malakkuravan
24 मालासार	24 Malasar
25 मलयन [राज्य पुनर्गठन अधिनियम, 1956 (1956 का 37) की धारा 5 की उपधारा (2) में यथा विनिर्दिष्ट मालाबार जिले के क्षेत्रों में] ^क	25 Malayan [excluding the areas comprising the Malabar district as specified by sub-section (2) of section 5 of the States Reorganisation Act, 1956 (37 of 1956)] ^a
26 मलायारायार	26 Malayarayar
27 मन्नान	27 Mannan
28 मराटी [कन्नोर जिले के होसड्रुग और कासरगोड तालुक में] ^ख	28 Marati (in Hosdrug and Kasaragod taluks of Cannanore district) ^b
29 मुतुवन, मुदुगर, मुदुवन	29 Muthuvan, Mudugar, Muduvan
30 पल्लेयान	30 Palleyan
31 पल्लियान	31 Palliyan
32 पल्लियार	32 Palliyar
33 पानियन	33 Paniyan
34 उल्लाडन	34 Ulladan
35 उराली	35 Uraly
^क मालाबार जिले में कन्नूर जिला (पूर्ववर्ती कन्नानोर), कोझीकोडे, मालापपुरम जिले और चित्तूर तालुक को छोड़कर पलाक्कड़ (पूर्ववर्ती पालाघाट) जिले शामिल हैं ।	
^ख प्रविष्टि को "कासरगौड़ जिले के होसड्रुग और कासरगौड़ तालुकों में" पढ़ा जाए ।	
^a Malabar district comprised of Kannur (earlier Cannanore), Kozhikode, Malappuram districts and Palakkad (earlier Palaghat) district excluding Chittur taluk.	
^b The entry is to be read as "in Hosdrug and Kasaragod taluks of Kasaragod district".	

तमिलनाडु/Tamil Nadu

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 अडियन	1 Adiyen
2 अरनाडन	2 Aranadan
3 एरावल्लन	3 Eravallan
4 इरूलर	4 Irular
5 कादर	5 Kadar
6 कम्मारा (कन्याकुमारी जिले और तिरुनेलवेलि जिले के शेन्कोट्टा तालुक को छोड़कर) ^ग	6 Kammara (excluding Kanyakumari district and Shenkottah taluk of Tirunelveli district) ^c

जारी/Cont

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

7 कनिकरण, कनिकर (कन्याकुमारी जिले में और तिरुनेलवेलि जिले के शेन्कोट्टा तालुक में) ^क	7 Kanikaran, Kanikkar (in Kanyakumari district and Shencottah taluk of Tirunelveli district) ^a
8 कनियन, कनयन	8 Kaniyan, Kanyan
9 कट्टुनायकन	9 Kattunayakan
10 कोचु वेलन	10 Kochu Velan
11 कोन्डा कापुस	11 Konda Kapus
12 कोन्डारेड्डिज	12 Kondareddis
13 कोरगा	13 Koraga
14 कोटा (कन्याकुमारी जिले और तिरुनेलवेलि जिले के शेन्कोट्टा तालुक को छोड़कर) ^ग	14 Kota (excluding Kanyakumari district and Shencottah taluk of Tirunelveli district) ^c
15 कुडिया, मेलाकुडी	15 Kudiya, Melakudi
16 कुरिच्छन	16 Kurichchan
17 कुरुंबास (नीलगिरि जिले में) ^ख	17 Kurumbas (in the Nilgiris district) ^b
18 कुरुमन्स	18 Kurumans
19 महा मालासार	19 Maha Malasar
20 मलई आरेयन	20 Malai Arayan
21 मलई पंडारम	21 Malai Pandaram
22 मलई वैडन	22 Malai Vedan
23 मालाक्कुरवन	23 Malakkuravan
24 मालासार	24 Malasar
25 मलयाली (धर्मपुरी, उत्तरी अरकाट, पुडुकोट्टाई, सेलम, दक्षिणी अरकाट और तिरुचिरापल्ली जिलों में) ^घ	25 Malayali (in Dharmapuri, North Arcot, Pudukottai, Salem, South Arcot and Tiruchirappalli districts) ^d
26 मलयेकंडी	26 Malayekandi
27 मान्नन	27 Mannan
28 मुदुगर, मुदुवन	28 Mudugar, Muduvan
29 मुथुवन	29 Muthuvan
30 पल्लेयन	30 Palleyan
31 पल्लियन	31 Palliyan
32 पल्लियार	32 Palliyar
33 पनियन	33 Paniyan
34 शोलगा	34 Sholaga
35 टोडा (कन्याकुमारी जिले और तिरुनेलवेलि जिले के शेन्कोट्टा तालुक को छोड़कर) ^ग	35 Toda (excluding Kanyakumari district and Shencottah taluk of Tirunelveli district) ^c
36 उराली	36 Uraly
^क प्रविष्टि को "कन्याकुमारी जिले में और तिरुनेलवेलि जिले के शेन्कोट्टा तालुक में" पढ़ा जाए ।	^a The entry is to be read as "in Kanniyakumari district and Shencottah taluk of Tirunelveli district".
^ख प्रविष्टि को "नीलगिरि जिले में" पढ़ा जाए ।	^b The entry is to be read as "in the Nilgiri district".
^ग प्रविष्टि को "कन्याकुमारी जिले और तिरुनेलवेलि जिले के शेन्कोट्टा तालुक को छोड़कर" पढ़ा जाए ।	^c The entry is to be read as "excluding Kanniyakumari district and Shencottah taluk of Tirunelveli district".
^घ प्रविष्टि को "धर्मपुरी, वेल्लौर, तिरुवन्नामलई, पुडुकोट्टाई, सेलम, नामक्कल, विल्लूपुरम, कुड्डालोर, तिरुचिरापल्ली, करूर और पराम्बलूर जिलों में" पढ़ा जाए ।	^d The entry is to be read as "in Dharmapuri, Vellore, Tiruvannamalai, Pudukkottai, Salem, Namakkal, Villupuram, Cuddalore, Tiruchirappalli, Karur and Perambalur districts".

अधिसूचित अनुसूचित जनजातियों की सूची/List of notified Scheduled Tribes

अण्डमान और निकोबार द्वीपसमूह/Andaman & Nicobar Islands

अनुसूचित जातियां और अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम, 1976

The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

अनुसूचित जनजातियां/Scheduled Tribes

1 अंडमानीज, चारियर, चारी, कोरा, टाबो, बो, येरे, केडे, बीया, बलावा, बोजिगियाब, जुवाई, कोल	1 Andamanese, Chariar, Chari, Kora, Tabo, Bo, Yere, Kede, Bea, Balawa, Bojigiyab, Juwai, Kol
2 जरावाज्	2 Jarawas
3 निकोबारीज	3 Nicobarese
4 ओंगेज	4 Onges
5 सेंटिनलीज	5 Sentinelese
6 शोम पेन्स	6 Shom Pens

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

This document is available at www.ielrc.org/content/e0618.pdf

NO. 2 OF 2007

[29th December, 2006]

An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

Short title and commencement.

1. Short title and commencement. - (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

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

(a) "community forest resource" means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access;

(b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;

(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;

(d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;

(e) "forest rights" means the forest rights referred to in section 3;

(f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;

(g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;

(h) "habitat" includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;

(i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

(j) "nodal agency" means the nodal agency specified in section 11;

(k) "notification" means a notification published in the Official Gazette;

- (l) "prescribed" means prescribed by rules made under this Act;
- (m) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;
- (n) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;
- (o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.
- Explanation.-For the purpose of this clause, "generation" means a period comprising of twenty-five years;
- (p) "village" means-
- (i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; or
- (ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or
- (iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
- (iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;
- (q) "wild animal" means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 and found wild in nature.

CHAPTER II FOREST RIGHTS

Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.

3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.- (1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

- (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
- (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-

(a) schools;

(b) dispensary or hospital;

(c) anganwadis;

(d) fair price shops;

(e) electric and telecommunication lines;

(f) tanks and other minor water bodies;

- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;
- (i) minor irrigation canals;
- (j) non-conventional source of energy;
- (k) skill upgradation or vocational training centres;
- (l) roads; and
- (m) community centres:

Provided that such diversion of forest land shall be allowed only if,-

- (i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

CHAPTER III

RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.

4. Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers. - (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in-

(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;

(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:-

(a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;

(b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;

(c) the State Government has concluded that other reasonable options, such as, co-existence are not available;

(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;

(e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;

(f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package:

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of- kin.

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

(6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

(8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

Duties of holders of forest rights.

5. Duties of holders of forest rights.- The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to-

(a) protect the wild life, forest and biodiversity;

(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

CHAPTER IV AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.

6. Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof. - (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:

Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of

decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.

(6) The decision of the District Level Committee on the record of forest rights shall be final and binding.

(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

CHAPTER V OFFENCES AND PENALTIES

Offences by members or officers of authorities and Committees under this Act.

7. Offences by members or officers of authorities and Committees under this Act.- Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Cognizance of offences.

8. Cognizance of offences.- No court shall take cognizance of any offence under section 7 unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

CHAPTER VI MISCELLANEOUS

Members of authorities, etc., to be public servants.

9. Members of authorities, etc., to be public servants.- Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Protection of action taken in good faith.

10. Protection of action taken in good faith. - (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority as referred to in Chapter IV including its Chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

Nodal agency.

11. Nodal agency.- The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

Power of Central Government to issue directions.

12. Power of Central Government to issue directions.- In the performance of its duties and exercise of its powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

Act not in derogation of any other law.

13. Act not in derogation of any other law.- Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Power to make rules.

14. Power to make rules. - (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) procedural details for implementation of the procedure specified in section 6;

(b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;

(c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;

(d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive

sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1591 of 2009¹

PER MR. S.J. MUKHOPADHAYA:

- 1) This writ petition in the interest of Scheduled Tribes has been preferred by the petitioners alleging *inaction on the part of the respondents not implementing its circulars and guidelines*. Further prayer has been made to allow appropriate certificate in favour of the petitioners, who belong to Alech Forest nesses of Kutiyana Taluka in Porbandar District.
- 2) The learned counsel for the petitioners would submit that the respondents have not issued appropriate certificate in favour of the Scheduled Tribes though the circular was so issued as far back as on 29.11.1994 for verification of the Scheduled Tribe status of Rabari, Bharward, *who have migrated from the Gir, Alech and Barda forest areas*.
- 3) Per contra, according to the counsel for the State, the petitioners having sought for certificate showing them as a tribe of Alech, the petition cannot be entertained as public interest litigation.
- 4) We have heard the learned counsel for the parties and perused the record.
- 5) In the present case, as we find that the petitioners have made a prayer for grant of certificate in favour of the Scheduled Tribe community persons, and have also claimed to be members of the said Tribe, we are not inclined to reject the writ petition on the ground that this is a person interested litigation. Grant of certificate in favour of the Scheduled Tribes is in the interest of the public. Therefore, we are inclined to issue the appropriate directions on the respondents.
- 6) We have already noticed that the Central Government has enacted the Act known as "*Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*". Under the said Act, various tribes of Scheduled Tribes and other traditional forest dwellers have been mentioned. The respondent State have already brought to the notice of the Court that the Committees as required under the said Act have been constituted to find out the Scheduled Tribes of forest area, who are entitled for such benefit. Therefore, if one or other petitioner or other Scheduled Tribe is residing in the forest area, they are entitled to derive the advantage of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Committee may declare that they are Scheduled Tribe of such forest area.
- 7) So far as verification of Scheduled Tribe status of Rabari, Bharwad and Charan is concerned, if originally they were residing in the forest areas of Gir, Alech and Barda, even if they have migrated from Gir, Alech and Barda forest areas to other places of the State of Gujarat, as per the circular dated 29.11.1994, they are also entitled to get certificate of Scheduled Tribe. Those Rabari, Bharwad and Charan thereafter born, shall on the basis of the domicile of their parents on the date of the notification, if they were residing in the forest areas of Gir, Alech and Barda, also be entitled to get the Scheduled Tribe certificate though they might have been migrated from Gir, Alech and Barda forest areas and are living in other places of the State.

¹ Jan Adhikari Sangh v. State of Gujarat, Special Civil Application NO:1591 of 2009 decided on 24.12.2010 by a Division Bench consisting of Honourable the chief Justice Mukhopadhyaya and Honourable Justice KM Thakar

- 8) The State having noticed that Rabari, Bharwad and Charan category persons are facing great difficulties in obtaining the caste certificate, having issued circular dated 29.11.1994, the respondents are bound to act in terms with the said circular and grant appropriate certificate in favour of the such persons after verification of the relevant record and evidence. It is expected that the Committee in terms of the circular comprising of Taluka Mamlatdar, Taluka Development Officer and Taluka concerned Range Forest Officer have been constituted and the said Committee is required to act as per the circular dated 29.11.1994. If such action has not been taken with regard to anyone or other member of Rabari, Bharwad and Charan community, *whose ancestral were originally residing in the forest areas of Gir, Alech and Barda on or before 29.10.1956, the authorities are bound to consider their case and pass appropriate orders.* If any such order has not been passed in respect of one or other persons, such person may move before the Committee and the Committee is expected to go through all the records and pass orders preferably within three months. If no such committee is constituted or members are to be inducted, the respondents are directed to constitute or induct such members within a month.
- 9) We may only mention that we have not expressed any opinion with regard to any of the petitioners whether they belong to a particular community or not.
- 10) The writ petition stands disposed of with the aforesaid observations and directions, but there shall be no order as to costs.

Kundan Singh, J. 1. Rule. This petition has been filed for a direction to the respondent No. 1 Mamlatdar, Talala, Dist. Junagadh, to issue caste certificate to the effect that the petitioner belongs to scheduled tribe category and also for quashing and setting aside the Order dated 25-7-2001 passed by the Mamlatdar and for a direction to the respondents No. 2 to 4 to treat the petitioner as scheduled tribe candidate on the basis of the documents produced by the petitioner for the purpose of admission to M.B.B.S. course.

2. It is stated that the petitioner belongs to *"Rabari" community hailing from Gir, Barda and Alech areas of Junagadh District and that community has been declared to be scheduled tribe community. As per the notification of the President of India dated 29-10-1956 the persons belonging to Rabari community who were residing in various NES in Gir, Alech and Barda Forest area were declared to be the persons belonging to the scheduled tribes. After such persons migrated for various reasons, they are required to be declared as scheduled tribe persons and the concerned revenue authorities are required to give such certificate on the basis of the various documents which were in possession of the various departments of the State Government. For that purpose, the person concerned has to show that he was permanent resident of NES in the aforesaid forest area and the petitioner has produced necessary documents like "Maswadi" receipts which were prepared by the Forest Department. The leaders of "Rabari" community filed several representations before the State Government pointing out that though "Rabari" community hailing from Gir, Barda and Alech Forest areas are declared to be scheduled tribe persons and they are facing difficulties in getting caste certificates. One-man Commission known as "Malkan Commission" headed by Shri J..M. Malkan, who was appointed as commission and he was a retired Joint Director of Social Welfare Department, the said Commission was required to prepare a report after verifying the list of such persons given by the leaders of "Rabari" community for entitlement of the caste certificate. Malkan Report has submitted to the State Government and the State Government started process of issuing caste certificate to be known as "Vigat Darshak Cards" on the basis of the entry made in the Malkan Commission Report and that was considered to be conclusive proof to show that such persons belong to schedule tribe community.*

3. The petitioner had appeared in 12th Standard Examination in science stream in May 2001 and succeeded by obtaining 70.2 % marks in the examination and wants to take admission in M.B.B.S. course in the reserved quota for scheduled tribe. The mother of petitioner applied before the respondent No. 1 for issuance of caste certificate on 2-6-2001 and it was stated that the maternal uncle and maternal grandfather of the petitioner are residing in Gir, Barda and Alech area. The petitioner applied for issuance of caste certificate on earlier occasion. The names of the maternal uncle and maternal grandfather of the petitioner have appeared in the voters' list of Talala Legislature Constituency, 1984. The maternal uncle as well as other relatives of the petitioner are still residing at Gir, Barda and Alech area and hence the petitioner belongs to scheduled tribe. Therefore, the petitioner is entitled to the caste certificate. The petitioner also applied for admission in M.B.B.S. course in reserved quota of scheduled tribe community and the petitioner has also made endorsement on the admission form that he will submit caste certificate in his name on or before 7-7-2001.

4. The Commissioner of Adijati Vikas, Gandhinagar informed the leaders of Scheduled Tribes community vide letter dated 17-5-2001 that caste certificate will be issued to the scheduled tribe community belonging to the Rabari caste hailing from Gir, Barda and Alech area.

5. The Mamlatdar by his Order dated 25-7-2001 rejected the application of the petitioner holding that the petitioner has not accompanied any evidence to show that he himself or his mother-father were permanent resident of Gir, Barda and Alech area on the date of notification dated 29-10-1956.

6. Learned counsel for the petitioner submitted that this Court in the Letters Patent Appeal No. 1670/99 and other cognate matters rendered the judgment on 31-8-2000 and observed as under:

"We direct that in case the Vigat Darshak Card is produced before the concerned Committee and the Mamlatdar, they may proceed to decide the Applications of the candidates claiming to be treated as members of scheduled tribe and in taking up such exercise, they may consider such Vigat Darshak Cards as a relevant material and the entries made therein to be correct unless there is any ground or material to disbelieve the same and find those entries to be wrong or false and such case has to be decided on its own facts and the applicant will be under an obligation to furnish the necessary materials, as may be required, besides the Vigat Darshak Card itself."

7. On the basis of the aforesaid observations of the Division Bench of this Court, learned counsel for the petitioner contended that though Vigat Darshak Card is not itself conclusive proof. But if such card has been produced before the authority concerned and unless and until any material has been shown or produced before the authority concerned, the entries made in such card are wrong. It is the duty of the authority concerned to consider the entries made in such cards to be genuine. In the present case, the petitioner has produced this card along with other seven documents including the Forest Form No. 27 Ticket of the rate of Maswadi No. 10070 name Jetha Hira Janvadia Round dated 7-8-52 Sanvat Year 2009 of maternal grandfather of the petitioner and Forest Form No. 27 of rate of Maswadi No. 44550 name Meraman Jeta Round Devalia dated 20-8-1955 Sanvat Year 2011. The Mamlatdar or the competent authority has erroneously ignored these two relevant documents which conclusively show that the maternal grandfather and maternal uncle of the petitioner were residing at the relevant place and time in that area and still they are residing there. As such, the Mamlatdar has committed manifest error on the face of the record by ignoring the relevant piece of evidence though the same was on record.

8. On the contrary, learned A.G.P. submitted that the material on record produced by the petitioner has already been considered by the Mamlatdar and competent authority and the Mamlatdar has not committed any error.

9. I have considered rival contentions of the learned counsel for the parties. It appears that the petitioner has produced Vigat Darshak Card containing the entries which are required to be considered and treated as genuine unless any material has been produced by the State to show that the entries are false or incorrect. It does not appear from the impugned Order that any material was produced by the State to show that the entries made in the Vigat Darshak Card were false and incorrect. As such, it was obligatory on the part of the Mamlatdar to presume and hold that the entries made in Vigat Darshak Card were genuine and correct and on the basis of the entries made in Vigat Darshak Card itself entitles the petitioner for issuance of caste certificate. Moreover, the petitioner has filed other necessary evidence including documents at Sr. 2 and 3 which clearly show that the petitioner's maternal grandfather and maternal uncle at the relevant time were permanent resident of Gir Barda and Alech forest area. Besides that, the petitioner has produced other evidence to show that the family of the petitioner is still residing in the aforesaid area. It is not disputed by the learned A.G.P. that the petitioner does not belong to "Rabari" community. From the material on record, it appears that the petitioner's maternal uncle and maternal grandfather were residing at the relevant time at Gir Barda and Alech forest area and still they are residing there.

10. In the facts and circumstances of the case and considering the relevant material on record and submissions made by the learned counsel for the parties, it appears that the Mamlatdar has not considered the material on record and he has erroneously rejected the petitioner's application. Therefore, this petition deserves to be allowed and the impugned Order dated 25-7-2001 deserves to be quashed and set aside.

11. Accordingly, this petition is allowed and the impugned Order dated 25-7-2001 passed by the Mamlatdar is quashed and set aside and the matter is sent back to the Mamlatdar and the Mamlatdar concerned is directed to decide the petitioner's application afresh in accordance with law after giving reasonable opportunity of hearing to him, within a period of two weeks from the date of presentation of a certified copy of this Order or receipt of writ of this Court whichever is earlier.

12. Learned A.G.P. makes a statement that one seat would be kept vacant for admission to M.B.B.S. course at M.P. Shah Medical College, Jamnagar till the petitioner's application is decided by the Mamlatdar as per above directions. In case any adverse decision is taken by the Mamlatdar, the Mamlatdar shall communicate the his decision by sending a copy of the Order by registered Post A.D. to the petitioner and one seat for admission to M.B.B.S. course at Jamnagar Medical College would be kept vacant for a further period of one week.

13. Rule is made absolute² to the aforesaid extent, with no Order as to costs. D.S. is permitted

² Galchar Keankumar Laxamanbhai vs State of Gujarat

Judgment³: M.R. Calla, J.

1. The three Letters Patent Appeals are directed against the common judgment and order dated 20.9.99 whereby the learned single Judge allowed three Special Civil Applications Nos.4593, 5977 and 3885 of 1999. All these three Letters Patent Appeals were admitted on 1.3.2000 and were directed to be listed for final hearing. During the pendency of these Letters Patent Appeals, Special Civil Application No.4108/2000 was filed on 25.4.2000, Special Civil Application No.4123/2000 was filed on 24.4.2000, Special Civil Application No.5189/2000 was filed on 25.5.2000, Special Civil Application No.5260/2000 was filed on 31.5.2000 and Special Civil Application No.5893/2000 was filed on 19.6.2000; while Special Civil Application No.4295/99 had already been filed on 18.1.99 even during the pendency of the three Special Civil Applications. This Special Civil Application No.4295/99 had been filed by Adijati Rabari Seva Mandal and two others as a public interest litigation. Special Civil Application No.9024/99 was filed on 18.11.99. Notices had been issued in all these Special Civil Applications on different dates except Special Civil Application No.9024/99 in which the Rule was issued on 19.11.99 and it appears that subsequently an order was passed that these matters may be listed along with Letters Patent Appeals and this is how these Special Civil Applications also came up before us when the Letters Patent Appeals came up for final hearing. Whereas the question involved in these Letters Patent Appeals and all these Special Civil Applications are common, we hereby issue rule in the Special Civil Applications in which only notices had been issued as stated above. Service of Rule in each of these Special Civil Applications is waived by the learned counsel for the respondents. Thus the three Letters Patent Appeals along with seven Special Civil Applications have been heard together.

2. In all these matters, except Special Civil Application No.9024/99, original petitioners are students desirous of being treated as Scheduled Tribe candidates for the purpose of admission to the professional courses. In Special Civil Application No.9024/99 the petitioner is desirous of seeking appointment in the Gujarat Electricity Board as a helper against seat reserved for Scheduled Tribe.

3. The common question involved in all these matters is as to whether the Vigat Darshak Cards, as have been issued by the Director, Tribal Development, Government of Gujarat (now designated as Commissioner, Tribal Development) should be treated as sufficient as a Caste Certificate for the purpose of claiming benefit as a member of Scheduled Tribe and as to whether the Mamlatdar can issue the Caste Certificate in their favour on the basis of the Vigat Darshak Cards without making any further inquiry. During the course of arguments, it has been given out by Mr. Tushar Mehta, learned counsel for the original petitioners in Special Civil Applications Nos.4593/99 and 5977/99 (i.e. subject matter of Letters Patent Appeals Nos.1670/99 and 1671/99) that these two petitioners had been issued Certificates by the concerned Mamlatdar after the order passed by the learned single Judge on 20.9.99 and that in case of Rekha Nathabhai Sambada, who was petitioner in Special Civil Application No.5977/99, the Mamlatdar has also made reference to the proceedings of the meeting dated 12.10.99 held in the office of the Mamlatdar and the Certificate dated 11.8.80 issued by the District Social Welfare Officer, Junagadh.

³ (2001) 4 GLR 3334

4. By Notification dated 29.10.1956 issued by the Ministry of Home Affairs of the Government of India, persons belonging to Rabari, Bharvad and Charan Castes residing in the Nesses area of the Forests of Gir, Barda and Alech were included in the list of Scheduled Tribes. Those Rabaris who were residing in the Nesses area in the Forests of Gir, Barda and Alech at the time of the issuance of the aforesaid Notification could apply for the Caste Certificate of being members of Scheduled Tribe. However, the leaders of Rabari community had represented before the State Government that due to Gir Sanctuary Scheme and other allied reasons, the Rabaris, who had left the Nesses situated in Gir, Barda and Alech areas were facing great difficulties in obtaining Caste Certificates as the relevant data was not readily available with them and they were not in a position to collect such information, being illiterate persons. The Government of India had, therefore, passed a Resolution dated 28.1.93 entrusting the work of scrutinising the list produced by the Sorathia Rabaris and verifying as to whether those persons, whose names were mentioned in the list, were actually entitled to the status of being Scheduled Tribe or not, to one Shri J.M. Malkan, retired Joint Director, Social Welfare Department. It is not in dispute that said Shri J.M. Malkan submitted his report in this regard in 4 Volumes on the basis of the studies made by him during the period from 8.2.93 to 7.5.93. A Circular dated 3.2.94 was then issued by the Tribal Development Department and the Director, Tribal Development, now known as Commissioner, Tribal Development was entrusted with the work of issuing Vigat Darshak Cards (Cards showing the details on the basis of the report submitted by Shri Malkan wherein details were set out against the names of the persons in the list). While this Circular dated 3.2.94 clearly holds out that the Caste certificate is required to be issued by the Mamlatdar and the concerned Mamlatdar is the Competent Authority for the purpose of issuing the Caste Certificate and even in terms of the instructions, as are contained in the letter dated 22.3.77 issued by the Home Ministry of Government of India, it is insisted that the Caste Certificates are to be issued by Revenue Authorities only, the petitioners in these cases sought relief that the Vigat Darshak Cards issued by the Director, Tribal Development, should be treated to be sufficient proof for the purpose of treating them as members of Scheduled Tribe and on that basis they must be given the benefit of the reserved status, whether for the purpose of admission in professional courses or for the purpose of employment. It may also be mentioned that for the purpose of verification of the status of the persons belonging to Rabari, Bharvad and Charan Castes, who had migrated from the Nesses area (group of few huts/houses in areas of Forests of Gir, Barda and Alech) the Tribal Development Department had issued a Resolution dated 29.11.94 constituting a Committee consisting of Taluka Mamlatdar, Taluka Development Officer and Taluka Range Forests Officer and the concerned Mamlatdar is required to follow the necessary procedure for issuance of Caste Certificate. The Tribal Development Department of Government of Gujarat had also addressed a letter to the Collector Junagadh according to which:-

(a) Those Rabaris who are permanently residing in the Nesses area in the Forests of Gir, Barda and Alech on the date of the publication of the Presidential Notification whereby Rabaris residing in the Nesses area in the Forests of Gir, Barda and Alech had been declared as Scheduled Tribe i.e. on 29.10.56 and that they were entitled to obtain a Scheduled Tribe Certificate. Those who are born after the said date are entitled to get Scheduled Tribe Certificate if their parents were permanently residing in the aforesaid Nesses on the date of the Notification.

(b) After due verification and after reliable scrutiny the decision to issue Caste Certificate is to be taken and the Certificate to be issued by the concerned Mamlatdar in whose jurisdiction the Ness in which the permanent residence on the aforesaid date was proved.

(c) The scrutiny can be carried out on the basis of the details which have been given in the Vigat Darshak Cards issued by the Director, Tribal Development but no policy has been framed to issue Caste Certificate on the basis of the Vigat Darshak Card. 5. A Government Resolution dated 28.8.97 had also been issued by the Tribal Development Department that the concerned Mamlatdar of the concerned District had been appointed as the authority for issuing the Caste certificate after necessary verification regarding the status of persons belonging to Rabari community, who have migrated from the Nesses areas in the Forests of Gir, Barda and Alech and after considering the Report of the Committee question of issuing the Certificate is to be decided. Accordingly, those persons, who produced evidence/proof showing that they or their parents were permanently residing in these areas on the date of the Presidential Notification of 1956, were to be issued the Caste Certificates. The cases relating to Caste Certificates are placed before three Member Taluka Level Committee and after verification of the evidence produced before the Committee; concerned Mamlatdar accordingly issues Certificates depending upon the decision of the Committee. In this regard, we may also make reference to a Government Resolution dated 27.6.86, whereby it was held out that the candidates claiming to be the members of the Schedule Tribe had to give details and produce the materials with regard to the Caste of their father and mother, Matriculation or School Leaving Certificate, birth Certificate and other revenue records etc. and it appears that this Resolution was issued keeping in view the allegations that such Caste Certificates were being wrongly issued in certain cases. Thus, the persons residing in or not migrated from the Nesses area in the Forests of Gir, Barda and Alech are to be considered for grant of the Scheduled Tribe Certificate in terms of the Government Resolution dated 29.11.94 issued by the Tribal Development Department based on the Presidential Notification dated 29.10.56 after following the procedure to which reference has already been made hereinabove in detail. The Applications are of course required to be considered on its own merits. While it is not in dispute between the parties that ultimately the Certificate has to be issued by the concerned Mamlatdar, after following the proper procedure, the petitioners have joined issues with the respondent - State of Gujarat and its functionaries and other Institutions on the point that the production of the Vigat Darshak Card by itself should be taken to be sufficient proof so as to treat the holder of the Vigat Darshak Card as a member of the Scheduled Tribe and the Mamlatdar should issue the Caste Certificate in favour of such person on the basis of the Vigat Darshak Card itself without requiring the applicant to furnish any other or further proof in this regard. The learned single Judge while deciding the above three Special Civil Applications has considered that the Presidential Notification does not limit the operation of the declaration only to the children of the Rabaris who are residing in those Forests and that when the Government has given the benefits to children of the Rabaris who were residing in the Nesses as on 29.10.56, there is no reason to deny the benefit to the grand children of the Rabaris who were residing in the Nesses on 29.10.56. But at the same time, it cannot be said that the Government can never draw a line as to when the persons may be deemed to have shifted their residence permanently. Whether the persons who were originally residing as Rabaris in the aforesaid Nesses on 29.10.56 had permanently migrated or not could be decided with reference to the number of generations which were away from the Nesses. That it would be reasonable to presume that even if the Rabaris might have migrated for earning their livelihood and, therefore, they might not be residing in the Nesses after 29.10.56, they may come back to the locality after their retirement and so also their children and the grand children may also come back, that there was no reason for limiting the benefits of this declaration only to the second generation i.e. the children. Of course, it could not be unlimited and that benefit could be extended to two generations i.e. Rabaris who were residing in the Nesses on 29.10.56 and to their children, who might be away for the purpose of earning their livelihood and their grandchildren, who may be away for the purpose of education. For these

reasons, the learned single Judge allowed the three Special Civil Applications and directed the respondents to treat the petitioners as belonging to the Scheduled Tribe at Sr.No.24 of Part IV of the Presidential Declaration under Article 342 of the Constitution as contained in the Notification dated 29.10.56 and accordingly Rule was made absolute.

6. The challenge to this decision made in the three Letters Patent Appeals on behalf of the State Government is that the Vigat Darshak Card by itself cannot be taken to be conclusive proof so as to treat the holder of such a card to be a member of Scheduled Tribe and it cannot be said that the Mamlatdar had to issue a Caste Certificate on the basis of such Vigat Darshak Card. In fact we find that one of the Mamlatdars has prescribed a proforma for making such applications, which contains about 17 columns and application is required to be made in the said Proforma. This Proforma is prescribed by the concerned Mamlatdar and it cannot be said that this rigid proforma is to be followed in each and every case. But before issuing Caste Certificate, it is always open for the concerned Mamlatdar to require the relevant answer and production of the relevant material so that the Committee may take appropriate decision based on such material. From the columns of this prescribed Proforma, the copy of which has been annexed at page 46 in the record of Letters Patent Appeal No.1672/99, as was annexed as Annexure 'D' in Special Civil Application No.3885/99 with the letter dated 18.5.99 by the Mamlatdar of Ranavav addressed to one Shri Sureshkumar Bhupatbhai Karmata, we find from the entries at Nos.10 and 11 therein that these entries require the production of Vigat Darshak Cards also. Thus, it is very clear that Vigat Darshak Card is certainly a material, which can be said to be relevant for the purpose of deciding the question of Caste Certificate by the Mamlatdar. It has to be agreed on all hands that in fact the job was entrusted by a Government Resolution to Mr. Malkan so as to take up the exercise of collecting the details about persons of the Rabari communities, who were residing in the Nesses of the Forests and on the basis of such a study, if the Tribal Development Department had issued the Vigat Darshak Cards and if made certain entries, which otherwise could not be readily available to persons, the same cannot be ignored altogether and they must form a relevant material in the nature of guidelines to the concerned Committee and the Mamlatdar for the purpose of issuing the Caste Certificate, but we have no hesitation in holding that by no means such Vigat Darshak Cards can be said to be conclusive that holder of such a Card is a member of Scheduled Tribe. Of course the correctness of the entries made therein have to be accepted by the Mamlatdar to be correct unless the Mamlatdar has any other material to disbelieve such entries. After all this exercise at the Government level was undertaken only to ensure that the persons claiming eligibility for such Certificate have ready material with them in support of their claim and the materials such as Maswadi Receipts etc., which may not be readily available and, therefore, the details thereof may be reflected in such Vigat Darshak Cards with the available particulars. How a material in aid for the purpose of arriving at the decision as to whether the applicant concerned is to be treated as a member of the Scheduled Tribe or not should be taken as conclusive proof? In such cases, guidelines as were laid down by the Apex Court in the case of *Kumari Madhuri Patil v. Addl. Commr., Tribal Development*, reported in (1994) 6 SCC 241 have to be followed. We may also observe that in the case of *Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri*, reported in (1995) 4 SCC 32 the Supreme Court has very clearly held that burden of proof of social status is always on the person who profess it to seek constitutional socio-economic advantages and it is no part of the duty of the State to disprove or otherwise. In ordinary course there is no reason to doubt or disbelieve the correctness of those entries but in a given case even if taking such entries to be correct on their face value, it may be found that the holder of such Vigat Darshak Card is not entitled to the Certificate of being a Scheduled Tribe and in a given case if it is found that such entries have been wrongly reflected in the Vigat Darshak Card and the Mamlatdar has any reason or material to doubt the correctness of such entries, the burden lies

upon him to confront the applicant with the reasons and material to disbelieve such entries and the Mamlatdar or the concerned Committee may certainly enter upon such an exercise and to that limited extent we are of the view that the conclusion arrived at by the learned single Judge deserves to be modified. In no case, the blanket direction, as had been issued by the learned single Judge, could be issued to treat the petitioners as belonging to Scheduled Tribe only on the basis of the Vigat Darshak Card. To that extent, we find that the Letters Patent Appeals filed by the State of Gujarat deserves to be allowed and we direct that in case the Vigat Darshak Card is produced before the concerned Committee and the Mamlatdar, they may proceed to decide the Applications of the candidates claiming to be treated as members of Scheduled Tribe and in taking up such exercise, they may consider such Vigat Darshak Cards as a relevant material and the entries made therein to be correct unless there is any ground or material to disbelieve the same and find those entries to be wrong or false and each case has to be decided on its own facts and the applicant will be under an obligation to furnish the necessary materials, as may be required, besides the Vigat Darshak Card itself. The order passed by the learned single Judge is, therefore, set aside and these three Appeals are allowed, as above, with no order as to costs.

7. In view of the reasoning and the conclusion arrived at by us in the three Appeals, as aforesaid, the other Special Civil Applications, as have been filed, deserves to be rejected subject to the direction, as has been issued by us herein above. The rights of all the parties shall be determined accordingly for the purpose of their claim to be treated as members of Scheduled Tribe. The interim order passed in any of these matters comes to an end and the respondents may consider the case of each of these petitioners, whether they are members of Scheduled Tribe or not accordingly in the light of what has been held in this order. Rule is discharged in each of these Special Civil Applications with no order as to costs.

In case the respondents find that the Certificates issued by Mamlatdar in favour of petitioners in Special Civil Applications Nos.4593/99 and 5577/99 after the Judgment of the learned single Judge dated 20.9.99 are sufficient for the purpose of treating them to be Scheduled Tribe candidates, they may deal with their cases accordingly.

As the main Letters Patent Appeals have already been decided, no orders are required to be passed in Civil Applications Nos.1188, 1189 and 1187 of 2000 and they are accordingly disposed of.

Source: Roundtableindia.com: A division bench of the Gujarat high court has asked the state government to set up a committee to address the problems faced by these tribes from the Gir forest region in getting the Scheduled Tribe certificate.

A PIL filed by the NGO, Jan Adhikar Sangh, had highlighted the difficulties faced by people whose ancestors once lived in the Gir forest area and adjacent villages, in getting the Scheduled Tribe certificate. The matter concerns mainly people of the Rabari, Bharwad and Charan communities who had migrated from the forest areas of Gir, Alech and Barda.

The division bench comprising chief justice SJ Mukhopadhyay and justice KM Thaker stated that people of Rabari, Bharwad and Charan communities, were entitled to the Scheduled Tribe status. The court said that if they had originally lived in the forest areas of Gir, Alech and Barda and had later migrated to other places in Gujarat, then "as per the circular dated November 29, 1994", they are entitled to the Scheduled Tribe certificate.

The bench added that the Rabari, Bharwad and Charan people born after November 29, 1994, will also be entitled to the Scheduled Tribe certificate if their parents (on the date of the notification) were residing in Gir, Alech and Barda. The court further clarified that such people would be entitled to the certificate even they had migrated from Gir, Alech and Barda forest areas and were now living in other places in the state.

The court further said that the committee comprising the taluka mamlatdar, taluka development officer and the range forest officer of the taluka concerned, set up as per the terms of the 1994 circular, is required to act as per the circular.

If this has not happened with regard to any member of the Rabari, Bharwad or Charan communities whose ancestors were living in the forest areas of Gir, Alech and Barda on or before 29.10.1956, the authorities must consider their case and pass appropriate orders, the court said.

The court directed that if such an order has not been passed, such a person may move the committee for relief.

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

WP(C) No. 300 of 2007
(Agartala Bench)

Sri Abhishek Chandra @ Sachin Besarya,
S/o Late Pramod Chandra Bisaria,
Permanent resident of 11 Phayre Road,
Opposite Hutching's School, Pune Cantonment,
Pune, Maharashtra,
[holding the post of Project Director, DRDA, Government of Tripura,
Udaipur, South Tripura, and presently residing at Udaipur, South
Tripura]

- Petitioner

- Versus -

1. **The State of Tripura,**
Represented by the Chief Secretary to the Government of Tripura,
Agartala, West Tripura.
2. **The Principal Secretary to the Government of Tripura,**
General Administration (Personnel & Training) Department,
Secretariat Complex, Agartala, Tripura.
3. **The Central Bureau of Investigation,**
Represented by its Director, having its office at
CGO Complex, Lodhi Road, New Delhi.
4. **The Inspector of Police,**
The Central Bureau of Investigation, having its office at
CGO Complex, Lodhi Road, New Delhi.
5. **The Central Bureau of Investigation,**
Represented by the Deputy Superintendent of Police,
Having his office at T.P. Road, Agartala,
West Tripura.

- Respondents

**BEFORE
HON'BLE MR JUSTICE IA ANSARI**

Advocates for Petitioner

Mr. D. C. Kabir, Advocate.
Mr. Somik Deb, Advocate.

Advocates for Respondents.

Mr. N. C. Pal, Senior Government Advocate.
Mr. A. Lodh, Government Advocate.

Date of hearing : 22.07. 2011.

Date of judgment : 05.09. 2011

JUDGEMENT AND ORDER

With the help of this writ petition, made under Article 226, the petitioner, who holds a *caste certificate* acknowledging him as a member of the Scheduled Caste, has sought to get set aside and quashed, *inter alia*, the Memorandum, dated 05.12.2005, issued by the Under Secretary to the Govt. of Tripura, General Administration (Personnel & Training) Department, whereby a departmental proceeding is sought to be initiated against the petitioner on the ground that he has submitted a *false caste certificate* for the purpose of obtaining appointment in the Indian Administrative Service (in short, 'the IAS'). By this writ petition, the petitioner is also seeking setting aside and quashing of the Memorandum, dated 10.05.2006, issued by Under Secretary to the Govt. of Tripura, General Administration (Personnel & Training) Department, whereby the petitioner has been directed to respond to the show cause notice, issued to him under the earlier Memorandum, dated 05.12.2005, aforementioned, the First Information Report (in short, 'FIR') as well as the *charge-sheet* filed by the Central Bureau of Investigation (in short, 'the CBI') against the petitioner and some others under various penal provisions of law.

2. The petitioner, Abhishek Chandra, earlier known as Sachin Pramod Besarya, was born on 27.11.1975. His father, late PC Bisarya, joined Indian Police Service, on 11.11.1973, as a candidate of General category, the petitioner's mother's name being Majula Bisarya. The petitioner's brother, Abhinav Chandra, earlier known as Nitin Pramod Besarya, born on 30.12.1976, is also a member of the IAS.

3. By an order, dated 04.07.89, (Annexure P/9), the *Tehsildar* (i.e., Sub-Deputy Collector), Pune, issued a certificate that the present petitioner belongs to *Scheduled caste* community. Similar certificate was issued, on 21.08.1990, by the *Tehsildar* (i.e., Sub-Deputy Collector), Pune, in favour of the petitioner's said younger brother. This was followed by a scrutiny and verification of the *scheduled caste* status of the petitioner and, upon such scrutiny and verification, a Certificate of Validity community was issued, on 15.06.91, jointly by the Joint Director, Social Welfare (CV) M.S., Pune, and Deputy Director, Social Welfare, (CV) M.S., Pune. In the year 2002, the petitioner, having been emerged successful, as a *Scheduled caste* candidate, in the IAS, was appointed to the IAS (Manipur and Tripura Cadre).

4. However, on 23.12.2002, one Clement Ramesh Kumar, a member of the Indian Revenue Service, lodged a complaint with the National Council for *Scheduled caste* and Scheduled Tribe, alleging, *inter alia*, that the petitioner's younger brother, Abhinab Chandra, does not belong to *Scheduled caste* community. On the complaint being so made, the National Council for *Scheduled caste* and Scheduled Tribe referred the matter to the Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class Caste Certificate Verification Committee, Pune Division, Pune, whereupon the said Verification Committee caused enquiry and verification thereto and, thereafter, concluded that the said complaint was untenable. Upon reaching this finding, the said Committee, by its order, dated 25.12.2002, affirmed the status of the younger brother of the petitioner as a member of the Scheduled Caste.

5. On 22.07.2004, on the basis, however, of a complaint made by one S.K. Gupta, Deputy Superintendent of Police, CBI, SCR-I, a preliminary enquiry was launched against the petitioner and his younger brother alleging that even though the petitioner and his younger brother belong to Kayastha community (General Category), they had claimed themselves to be members of *Scheduled caste* and thereby managed to have fraudulent entries in the IAS. On completion of preliminary enquiry, an FIR was lodged, on 04.07.2005, by S.S. Kishore, Deputy Superintendent of Police, CBI, New Delhi, initiating a criminal proceeding. Based on this FIR, a criminal case was registered at PS CBI, SCR-I, New Delhi. This was followed by memorandum/show cause notice, dated 05.12.2005, aforementioned, issued by Under Secretary to the Govt. of Tripura, directing the petitioner to assign reasons as to why appropriate action should not be taken against him for submitting a *false caste certificate* in order to get appointment in the IAS. While issuing the said memorandum, the issuing authority made a reference to the written complaint lodged by the CBI against the petitioner regarding submission of *false Caste certificate* by him in order to get his employment. On 02.02.2007, pursuant to the FIR, which was registered against the petitioner and his brother, a *charge-sheet* was submitted by the CBI in the Court of the learned Additional Chief Metropolitan Magistrate, Kakardooma, New Delhi, arraigning the petitioner, his younger brother and his mother as accused persons. The said *charge-sheet* also named, as accused, the deceased father of the petitioner and also the deceased Principal of the school, once attended by the petitioner.

6. I have heard Mr. Somik Deb, learned counsel, and Mr. D.C Kabir, learned counsel, for the petitioner. I have also heard Mr. N.C.

Pal, learned Senior Govt. Advocate, Tripura, and Mr. A. Lodh, learned counsel, for the CBI.

7. As already indicated above, the petitioner has put to challenge sustainability of the two memoranda, dated 05.12.2005 and 10.05.2006. The first memorandum directs the petitioner to show cause as to why departmental proceeding should not be initiated against him on the ground that he has submitted *false caste certificate* in order to get appointment in the IAS and the second memorandum directs the petitioner to respond to the show cause notice contained in the earlier Memorandum, dated 05.12.2005. These two memoranda are challenged, by way of this writ petition, on the ground that these two memoranda clearly indicate that the disciplinary authority has already concluded, as a matter of fact, that the petitioner had submitted a *false caste certificate* and managed to obtain thereby his entry into the IAS. The decision, thus, having already been taken, that the petitioner had submitted *false caste certificate*, the notice of show cause, contained in the two memoranda aforementioned, are, in substance, nothing but post-decisional hearing inasmuch as the disciplinary authority concerned has already concluded, without according opportunity of hearing to the petitioner, that he has obtained a *false caste certificate* and, with the help of this certificate, the petitioner has managed to become a member of the IAS. Without any finding from any statutory body or competent authority or the Court of law that the petitioner had submitted a *false caste certificate* as alleged, it is, according to the petitioner, wholly illegal to issue show cause notices to the petitioner in the manner as has been done in the present case.

8. By C.M. Application No.444/2007, which arose out of the present writ petition, the Court, as the record reveals, has stayed the operation of the impugned Memorandum, dated 05.12.2005, as well as the further proceedings thereof. The record also reveals that in CM Application No.444/2007, an order has also been made staying further proceedings of the case against the petitioner pending in the Court of the learned Additional Chief Metropolitan Magistrate, Kakardooma, New Delhi.

9. Referring to the case of **Kumari Madhuri Patil Vs. Addl. Commr. Tribal Development**, reported in **(1994) 6 SCC 241**, Mr. Deb has submitted that in terms of this decision, it is a Committee, which the decision, in **Kumari Madhuri Patil** (supra), describes as the *Scrutiny Committee*, which would be the only competent authority to give a finding as to whether a *caste certificate*, issued to a person, describing him as a member of the *Scheduled caste* community, is or is not true, correct and valid. The decision, in **Kumari Madhuri Patil** (supra), further lays down, submits Mr. Deb, that the Scrutiny Committee's decision, as regards the correctness, legality and validity of a *Scheduled caste* certificate, issued in favour of a person, shall be final and the same can be put to challenge before no authority or Court except by way of an application under Article 226 of the Constitution of India.

10. It has been pointed out by Mr. Deb that deriving strength from **Kumari Madhuri Patil** (supra) and Articles 341 and 342 of the Constitution of India, the Maharashtra Legislative Assembly has enacted the Maharashtra Scheduled Caste, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward

Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, (in short, 'the Maharashtra Act'), which received the assent of the President on 23.05.2001.

11. Section 7 of the Maharashtra Act, further points out Mr. Deb, authorizes the Caste Scrutiny Committee, constituted by the Maharashtra Act, to examine, either *suo motu* or on the basis of the information gathered, cancel and/ or revoke a *caste certificate* issued in favour of an individual. Section 7(2) of the Maharashtra Act, in clear and express terms, ousts the authority of the Courts and Tribunals to adjudicate upon the social caste status of an individual save and except by way of judicial review under Article 226 of the Constitution of India.

12. Thus, according to Mr. Deb, the Scrutiny Committee, under the Maharashtra Act, is the only competent body or the authority to give a finding as to whether the *caste certificate*, which the petitioner holds or has used in order to become a member of the IAS, is or is not a *false caste certificate* and the decision, rendered by this body, would be final and cannot be challenged before any authority or court except by way of invoking Article 226 of the Constitution of India.

13. Continuing his argument, Mr. Deb points out, as already indicated above, that, on a complaint being made by one claimant, Ramesh Kumar, a member of the Indian Revenue Service, with the National Council for *Scheduled caste* and Scheduled Tribe, that the petitioner's younger brother does not belong to *Scheduled caste* community, a verification was conducted by the Verification Committee of the Council for *Scheduled caste* and Scheduled Tribe, and this Committee affirmed, on 25.12.2002, that the petitioner's

younger brother belongs to the *Scheduled caste* as a member of the *Bansor community*. This finding, points out Mr. Deb, has never been reversed, or superseded, or revoked or cancelled by any competent authority or Court and, in such circumstances, the prosecution of the petitioner and/or the *post-decisional* hearing, which the impugned Memoranda seek to hold, are not sustainable in law.

14. In short, what Mr. Deb submits is that in the light of the decision in **Kumari Madhuri Patil** (supra), it is the Scrutiny Committee, constituted under the Maharashtra Act, which is the competent authority to determine the caste status of a person and either grant him certificate or cancel his certificate if the certificate is false and if anybody is aggrieved by the decision of the Scrutiny Committee, the only remedy provided to such a person is to invoke Article 226 in the High Court of competent territorial jurisdiction under Article 226 and by no other means. In the case at hand, according to Mr. Deb, when Maharashtra Act has already come into force and the *caste certificate*, which is alleged to be false, is a certificate granted by the State of Maharashtra, it is the Scrutiny Committee, under the Maharashtra Act, which is the only competent authority or body to say whether the certificate, in question, granted to the petitioner, is or is not a false one. Without obtaining any such finding against the caste status of the petitioner, labelling his certificate as false is, contends Mr. Deb, bad in law and the CBI does not derive jurisdiction to lodge any criminal proceeding by describing the said certificate as false and the State of Tripura has committed monumental error by issuing show cause notices stating to the effect as if the petitioner's status, as a person not belonging to the *Scheduled caste* Community, is incorrect and is really false. This course of action,

which the respondents have adopted, is, according to Mr. Deb, wholly untenable in law inasmuch as without a finding from the appropriate body as regards the validity of the petitioner's *caste certificate*, or an appropriate finding, in this regard, by the competent High Court under Article 226, and/or without even determining for itself as to whether what the CBI has alleged is true or sustainable in law, the disciplinary authority, i.e., the State of Tripura, has concluded that the petitioner's *caste certificate* is false and that the petitioner has obtained his entry into the IAS with the help of such a *false caste certificate*. This finding having been reached, reiterates Mr. Deb, without any opportunity of hearing having been given to the petitioner, the two Memoranda, containing the show case notices, as well as the criminal prosecution, are bad in law and the same may, therefore, be set aside and quashed.

15. Closely supporting Mr. Deb, Mr. Kabir, learned counsel, has pointed out, as I would show a little later, that none of penal provisions is attracted to the facts of the present case. The whole criminal prosecution is, according to Mr. Kabir, misconceived in law and may, therefore, be not allowed to be proceeded further and the same needs to be set aside and quashed, for, allowing the same to proceed would amount to abuse of the process of the Court.

16. Resisting the writ petition, the State of Tripura has contended that the writ petition is not maintainable inasmuch as the writ petition is liable to be relegated to the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 (in short, 'the 1985 Act'). There is, however, an implied admission, in the counter-affidavit filed by the State of Tripura, that the two

memoranda, dated 05.12.2005 and 10.05.2006, were issued to the writ petitioner under the directions of the Central Government.

17. While considering the submission of the State of Tripura that Central Administrative Tribunal is the competent authority in a case of present nature, it needs to be noted that a careful reading of Section 14 of the 1985 Act would reveal that this Tribunal can only adjudicate upon matters relating to recruitment and matters concerning the conditions of service. It is, therefore, quite apparent that this Tribunal possesses no authority to decide issues, which have been raised in the present writ petition, particularly, when the writ petition seeks to get set aside not only the two memoranda aforementioned, which lay the foundation for disciplinary proceeding, but also the FIR and the *charge-sheet* filed by the CBI. The Central Administrative Tribunal is not the body meant for determination of the fundamental question of maintainability of a criminal proceeding or the question as to how a person's *scheduled caste* status has to be determined and when can a person be prosecuted and proceeded with departmental proceedings for obtaining entry into service with the help of a *false certificate*.

18. As far as CBI is concerned, it has resisted the writ petition, broadly speaking, on two grounds, namely, (i) that this Court does not have the territorial jurisdiction and (ii) that the materials, collected during investigation, are sufficient to warrant prosecution of the petitioner under various penal provisions as have been submitted in the *charge-sheet*.

19. Because of the fact that the CBI's counter affidavit strikes at the very root of the jurisdiction of this Court on the ground as indicated above that this Court has no territorial jurisdiction, it is necessary to,

first, appreciate as to what challenges the present writ petition is posing and whether such challenges could have been posed by way of a writ petition, made under Article 226 of the Constitution of India, within the State of Tripura.

20. While considering the above aspects of the matter, it needs to be pointed out that the two memoranda, which the petitioner has put to challenge in this writ petition, are, according to the petitioner, in the form of *post-decisional* hearing inasmuch as without giving any opportunity to the petitioner to show cause or hearing, the State Government has asked the petitioner to show cause as to why action shall not be taken against him, because an FIR has been registered against the petitioner by the CBI. The petitioner was directed to show cause as to “*why appropriate action should not be taken against him for submission of false caste certificate for getting appointment in the IAS.*”

21. Mr. Deb, learned counsel for the petitioner, is wholly correct in contending that the Memorandum, dated 05.12.2005, clearly shows that merely because FIR was lodged by the CBI alleging that the petitioner had submitted *false caste certificate* in order to manage entry into the IAS, the petitioner has been given notice to show cause as to why disciplinary action should not be taken against him for submission of *false caste certificate* in order to get employment in the IAS. This shows that the disciplinary authority believes that the petitioner has really submitted *false caste certificate* in order to obtain entry into the IAS and, in consequence thereof, needs to face disciplinary proceeding.

22. Mr. Deb, learned counsel, is, therefore, not incorrect, when he submits that without giving any opportunity of showing cause and/or

hearing to the petitioner, the disciplinary authority has already made up its mind that the petitioner has really submitted *false caste certificate* in order to obtain entry into the IAS. Merely because an FIR has been lodged, the FIR has led to investigation and, then, *charge-sheet* has been submitted, one, it is evident, would not be right in concluding that whatever has been alleged in the *charge-sheet* are true and need no proof.

23. In the facts of the present case, if the disciplinary authority wanted to take disciplinary action against the petitioner, the remedy really lied in giving, first, a show cause notice to the petitioner as to what the petitioner has to say in respect of the allegation that he has submitted a *false caste certificate* to obtain entry into the IAS and had the petitioner admitted this allegation, the situation would have been different; but if the petitioner denied, then, it was for the disciplinary authority to prove on record that the petitioner had really submitted *false caste certificate* as alleged against him. Without proving these facts, in the disciplinary proceeding, it would be wholly illegal, on the part of the disciplinary authority, to take any disciplinary action against the petitioner by concluding as if what is alleged stands proved. As the office Memorandum, dated 05.12.2005, is in the form of a notice to show cause against a *post-decisional* hearing so that the disciplinary authority can decide as to what penal action shall be taken against the petitioner, the office Memorandum aforementioned is *ex facie* illegal and such a memorandum could have been put to challenge by invoking High Court's jurisdiction under Article 226. As far as the Memorandum, dated 10.05.2006, is concerned, the disciplinary authority has really done nothing except that it has

forwarded to the petitioner a copy of the FIR with the request to furnish his (petitioner's) reply to the earlier show cause notice containing Memorandum, dated 05.12.2005, aforementioned.

24. For the purpose of clarity, the two impugned memoranda, namely, Memorandum, dated 05.12.2005, and the Memorandum, dated 10.05.2006, are reproduced below:

Memorandum, dated 05.12.2005:

“GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION (PERSONNEL & TRAINING) DEPARTMENT

No. F.35(4)-GA(P&T)/2004(S) dated Agartala, the 5th December, 2005

MEMORANDUM

WHEREAS, Shri Abhishek Chandra has been appointed to Indian Administrative Service in the year 2003 as a Scheduled Caste and joined in IAS on 01.09.2003 (A/N);

AND WHEREAS, a written complaint has been received by the Central Bureau of Investigation regarding submission of false caste certificate for getting employment.

AND WHEREAS, A **FIR Under Sec. 154 CrPC has been registered at Central Bureau of Investigation**, Special Crime Region – 1, New Delhi, against Shri Abhishek Chandra, IAS (RR:MT:2003) regarding submission of false caste certificate and antecedent details for getting appointment in the IAS;

NOW, THEREFORE, Shri Abhishek Chandra, IAS (RR:MT:2003) is hereby asked to show cause **why appropriate disciplinary action should not be taken against him for submission of false caste certificate for getting appointment in the IAS.**

Reply of Shri Chandra should reach the undersigned within 7 (seven) days from the date of receipt of this Memorandum.

Sd/-
(S. Chaudhuri)
Under Secretary to the
Government of Tripura.

To
Shri Abhishek Chandra, IAS,
Deputy Secretary to the Government of Tripura,
Rural Development Department,

Agartala.

Copy to:-

*The Commissioner & Secretary, Government of Tripura,
R.D. Department, Agartala.*

”

Memorandum, dated 10.05.2006:

“GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION (PERSONNEL & TRAINING) DEPARTMENT

No. F.35(4)-GA(P&T)/2004(S) dated Agartala, the 10th May, 2006

MEMORANDUM

Subject:- Reply of Show-cause.

*The undersigned is directed to refer to the application dated the 25th February, 2006 of Shri Abhishek Chandra, IAS, Additional Director, Industries & Commerce, Tripura, on the subject mentioned above and to forward herewith a copy of written complaint and **FIR (Under Sec. 154 CrPC)** with request to furnish the reply in reference to this Department Memorandum of even number dated 05.12.2005 within 7 (seven) days. If no reply is received within 7 (seven) days, the position shall be informed to the Government of India, Department of Personnel & Training, New Delhi.*

Sd/-
(S. Chakraborty)
Under Secretary to the
Government of Tripura.

To
Shri Abhishek Chandra, IAS,
Additional Director,
Industries & Commerce,
Agartala.”

25. From a bare reading of both the memoranda, it becomes transparent that the notice to show cause was issued by the Memorandum, dated 05.12.2005, on the ground that an FIR had been lodged by the CBI against the petitioner alleging that the petitioner had submitted a ‘false caste certificate’ in order to obtain appointment in the IAS. As both these memoranda are based on the First

Information Report, it is contended, on behalf of the petitioner, that if the criminal prosecution, set into motion by the FIR, in the present case, is not sustainable, the consequence would be that the two memoranda aforementioned, which wholly rest on the criminal prosecution, would, as a corollary, fail. In other words, what has been contended, on behalf of the petitioner, is that since the FIR, in the present case, is not sustainable in law, the impugned memoranda, being based on the registration of the criminal prosecution against the petitioner, must also fail.

26. The question, therefore, is: If this Court finds that the criminal prosecution, launched against the petitioner, is not sustainable in law, whether it would be within the power of this Court, under Article 226 of the Constitution of India, to set aside and quash the impugned memoranda, which rest upon the criminal prosecution. Another question, which naturally arises, is: If the findings of this Court be that the criminal prosecution, set into motion by the CBI, is not sustainable in law, whether the criminal prosecution too can be set aside and quashed, though the criminal prosecution is pending in the Court of the learned Additional Chief Metropolitan Magistrate, Kakardooma, New Delhi.

27. The above questions bring us to yet another significant question; and the question is: If a person is entitled to challenge a notice to show cause, served on him by his disciplinary authority, by way of writ petition under Article 226, which High Court would have the territorial jurisdiction to entertain and decide such a writ petition ?

28. The question, now, is: If a person is entitled to challenge a notice to show cause, served on him by his disciplinary authority, by way of writ petition under Article 226, which High Court would have the territorial jurisdiction to entertain and decide such a writ petition ?

29. In view of the fact that the challenge to the maintainability of the writ petition is posed on the ground of lack of territorial jurisdiction of the Agartala Bench of this High Court, it is imperative that this Court determines the layout of the territorial limits of the jurisdiction of a High Court to entertain an application made under Article 226 of the Constitution of India.

30. Article 226, as it stands today, reads as follows :-

"226. Power of High Courts to issue certain writs.

(1) Notwithstanding anything in article 32, every High Court shall have/power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

2) The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

31. While considering the question of territorial limits of the jurisdiction of a High Court under Article 226, it is necessary to bear in mind that Clause (2) of Article 226 did not, originally, exist. In the absence of Clause (2) of Article 226, when the question arose as to whether a High Court could invoke its jurisdiction, under Article 226, to issue writs based on the ground that the *cause of action* had arisen

within the territorial limits of the jurisdiction of the High court, the Constitution Bench, while interpreting Article 226 (as it stood then) observed, in **Election Commission, India Vs. Saka Venkata Subba Rao (AIR 1953 SC210)**, as follows :-

" The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226, which makes no reference to any cause of action or where it arises, but insists on the presence of the person or authority within the territories in relation to which the high Court exercises jurisdiction. "

32. Thus, in **Saka Venkata Subba Rao** (supra), the Supreme Court had expressed the view, in no uncertain words, that in the absence of a specific provision in Article 226 on the lines of the Code of Civil Procedure, the High Court could not have exercised jurisdiction on the plea that the whole or part of the *cause of action* had arisen within its jurisdiction. In other words, what the Supreme Court, in **Saka Venkata Subba Rao** (supra), had held was that in the absence of a specific provision, in Article 226, suggesting that the *cause of action* would attract jurisdiction to enable a High Court to issue, under Article 226, writs, the High Court could not have exercised jurisdiction, under Article 226, on the plea that the whole or part of the *cause of action* had arisen within its jurisdiction. According to what **Saka Venkata Subba Rao** (supra) laid down was that a High Court can exercise jurisdiction, under Article 226, only if the person or authority to whom the writ is sought to be issued is located within the territorial limits of the High Court. Extended logically, the decision, in **Saka Venkata Subba Rao** (supra), conveyed that even if *cause of action* or part thereof had arisen within the territorial limits of a High Court, the High Court could not have issued writs unless the person

or authority to whom the writ was sought to be issued stood located within the territorial limits of the High Court. This view was followed in subsequent cases.

33. When the question was, once again, raised as to what are the limitations on the territorial jurisdiction of a High Court and if, on the ground of *cause of action* having arisen within the territorial jurisdiction of the High court, a High Court will be constitutionally competent to issue writ, the Supreme Court, in **Lt. Col. Khajoor Singh Vs. The Union of India and another (AIR 1961 SC532)**, following its earlier decisions in **Saka Venkata Subba Rao** (supra) and **K. S. Raashid and Son Vs. The Income-Tax Investigation Commission (1954 S. C. R. 738)**, observed thus: “.
Therefore, the view taken in Election Commission, India Vs. Saka Venkata Subba Rao ([1953] S. C. R. 1144) and K. S. Rashid and son Vs. The Income-tax Investigation commission ([1954] S. C. R. 738.) that there is two-fold limitation on the power of the High court to issue writs etc. under Art. 226, namely, (i) the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction, and (ii) the person or authority to whom the High court is empowered to issue such writs must be "within those territories" which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories, is the correct one.

30. The Supreme Court further observed and held in **Lt. Col. Khajoor Singh** (supra), as follows :-

"Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Art. 226 are not suits; they provide for extraordinary remedies by a special procedure and give powers of correction to the High court over persons and authorities and these special powers have to be exercised within the limits set for them. These two limitations have already been indicated by us above and one of them is that the person or authority concerned must be within the territories over which the High Court exercises jurisdiction. Is it possible then to overlook this constitutional limitation and say that the High Court can issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories? It seems to us that it would be going in the face of the express provision in Art. 226 and doing away with an express limitation contained therein if the concept of cause of action were to be introduced in it."

34. From a close reading, of what had been laid down in **Saka Venkata Subba Rao** (supra), and **Lt. Col. Khajoor Singh** (supra), it becomes clear that there were considered to be two-fold limitations on the powers of the High Courts to issue writs under Article 226, namely, (i) that the seat of the person or authority to whom the writ is issued must be within the territorial limits of the High Court meaning thereby that the writs could not have been issued by a High Court to run beyond its territorial jurisdiction and (ii) that *cause of action* could not be a ground for the High Courts to assume jurisdiction unless the person or authority to whom the writ is sought to be issued stood located within the territorial limits of the High Court.

35. The consequence of the views, expressed in **Saka Venkata Subba Rao** and **Lt. Col. Khajoor Singh** (supra), was that it was only the High Court of Punjab, which could exercise jurisdiction, under Article 226 of the Constitution, against the Union of India and other instrumentalities of the Union Government located in Delhi. To remedy this situation, Clause (1 -A) came to be inserted by the 15th Amendment act, 1963, conferring thereby, on the High Courts,

jurisdiction to entertain a petition, under Article 226, against the Union of India or any other body or authority located, in Delhi, if the *cause of action* arose, wholly or in part, within its jurisdiction. Clause (1 -A) was, later on, renumbered as Clause (2) of Article 226.

36. Thus, Clause (2) was introduced to Article 226 with the object of enlarging the scope of the writ jurisdiction of the High Courts; hence, by virtue of Clause (2) of Article 226, the power conferred by Clause (1) of Article 226 on the High Courts to issue writs can, now, be exercised by a High Court if the *cause of action*, wholly or in part, has arisen within its territorial limits. In other words, in the context of territorial jurisdiction, the maintainability or otherwise of a writ petition in a High Court, now, depends on the answer to the question as to whether the *cause of action* or any part thereof has arisen within the territorial limits of the jurisdiction of the High Court, whose interference is sought. If the answer to this question is found in the affirmative, the High Court will have the territorial jurisdiction to entertain the writ petition and not otherwise.

37. The fall-out of the above discussion is that with the insertion of Clause (2) to Article 226, a High Court can, now, exercise its writ jurisdiction if the *cause of action*, wholly or in part, arises within the territorial limits of jurisdiction of the High Court even if the seat of the Government or the authority concerned to whom the direction, order or writs, sought to be issued, is not located within the territorial limits of the High Court. Conversely put, what Clause (2) of Article 226 conveys is that if the *cause of action* has not arisen, wholly or in part, within the territorial limits of the jurisdiction of a High court, the High Court will not have the power to issue writ or writs even if the seat of

the government or of the authority concerned is located within the territorial jurisdiction of the High Court.

38. After an in-depth study of the subject of territorial jurisdiction of a High Court as postulated under Article 226, a three-Judge Bench of the Supreme Court, in **Oil and Natural Gas Commission Vs. Utpal Kr. Basu**, reported in **1994 (4) SCC 711**, laid down as follows :-

*“(I) 5. Clause (1) of Article 226 begins with a non obstante clause-notwithstanding anything in Article 32 and provides that every High Court shall have power ‘throughout the territories in relation to which it exercises jurisdiction’, to issue to any person or authority, including in appropriate cases, any Government, ‘within those territories’ directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid **two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Par III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.** In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. This is, at best, case in the writ petition. ”*

[Emphasis added]

39. It may be pointed out that in **Navinchandra N. Majithia Vs. State of Maharashtra and Others**, reported in **2000 (7) SCC 640**, which arose out of an application made, under Article 226, in the Bombay High Court, for quashing of an FIR lodged in the State of Meghalaya, the Supreme Court, while relying, amongst others, on its decision in **Utpal Kumar Basu** (supra), has observed, “From the provisions in Clause (2) of Article 226, it is clear that the

maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.”

[Emphasis added]

40. Thus, the language, used in Clause (2) of the Article 226, and the authorities, cited above, leave no room for doubt that a High court can, now, invoke its powers under Article 226 only if the *cause of action* arises, wholly or in part, within the territorial limits of the jurisdiction of the High Court and not otherwise irrespective of the fact as to whether the person or authority to whom the writ, sought to be issued, is located within or outside the territorial limits of the High Court.

41. In **Kusum Ignots and Alloys Limited vs. Union of India**, reported in (2004) 6 SCC 254, it has been held, in no uncertain words, that even if a small part of the cause of action accrues within the jurisdiction of a High Court, such a High Court will have the jurisdiction to entertain an application under Article 226 of the Constitution.

42. Bearing in mind the fact that the basis for exercise of jurisdiction under Article 226 is the ‘*cause of action*’ and not the seat of power of the authority to whom writ is intended to be issued, it may, now, be pointed out that in **Hindustan Paper Corporation Ltd. and another Vs. Synergy Composites Pvt. Ltd and another**, reported in 2005 (3) GLT 1 (to which I was a party), a Division Bench of this Court, having considered the question as to whether a writ petition was maintainable, at Shillong Bench, of the Gauhati High Court, for

adjudication, in the face of the contention that no *cause of action* had arisen within the territorial limits of the jurisdiction of the Shillong Bench, had this to say in respect of Presidential Notification establishing a Permanent Bench at Shillong,

“46. What crystallises from the above discussion is that under the Presidential Notification, dated 04.02.95, aforementioned, the Shillong Bench of the Gauhati High Court shall exercise jurisdiction to issue writ under Article 226 only when the cause of action, wholly or in part, arises within the limits of the territorial jurisdiction of the State of Meghalaya. If the cause of action does not arise within the State of Meghalaya, the Shillong Bench shall have no jurisdiction to entertain a writ petition under Article 226. The mere fact that the Chief Justice has the power to withdraw a case from the Shillong Bench for the purpose of its hearing, at Guwahati, does not mean that if no cause of action has arisen within the State of Meghalaya, a writ petition can still be filed at Meghalaya and the Chief justice can, at his discretion, withdraw such a writ petition and fix it for hearing at the Principal seat at Guwahati. The proviso to paragraph 2 of Notification, dated 04.02.1995, aforementioned being an exception to the general power of the High Court, at the Shillong Bench, indicates that when a validity instituted case has arisen at the Shillong Bench, the Chief Justice can withdraw such a case from the Shillong Bench and can direct that the matter be heard at the Principal Seat at Guwahati. This does not, however, mean, we must emphasise, that if cause of action, either wholly or in part, has not arisen in a given case within the State of Meghalaya and no case has been validly instituted at the Shillong bench, the High Court, at Shillong Bench, can entertain such a writ petition under Article 226 merely on the ground that the Chief Justice may, in his discretion, in exercise of the powers contained in the proviso aforementioned, withdraw such a case to the Principal Seat at Guwahati for hearing.

(47) What follows, as a corollary, from the above discussion is that it is the permanent bench at Shillong, which has to decide whether a cause of action in a given case has arisen or not within the territorial limits of the State of Meghalaya and if it is found by this Division bench that the cause of action, in the present case, has not arisen, wholly or in part, within the State of Meghalaya, the permanent bench at Shillong will have no jurisdiction to entertain such a writ petition or give relief to the parties concerned.”

43. From what have been laid down in **Hindusthan Paper Corporation Ltd.** (supra), it becomes clear that unless *cause of action*, in part or as a whole, can be shown to have arisen within the

territorial limits of the State of Tripura, this Bench (i.e., the Agartala Bench) will have no jurisdiction to entertain any writ petition including the present one. As a corollary thereto, it is not difficult to hold, and I do hold, that if the writ petitioner succeeds in showing that the *cause of action*, either *in whole* or *in part*, has arisen within the territorial jurisdiction of this Bench of the Gauhati High Court, then, this High Court would have the jurisdiction to decide this writ petition even if a *a part of the cause of action* lies in what have been done or what are being done or what were done in Delhi or in any other part of the country.

44. Having indicated the position of law that no writ petition can be entertained at the Agartala Bench of the Gauhati High Court, under article 226, if the *cause of action* has not, wholly or partly, arisen within the State of Tripura, I am, now, required to turn to the question as to whether any *cause of action* can be said to have arisen, in the present case, within the State of Tripura, so as to attract jurisdiction of the this High Court at the Agartala Bench. Determination of this question would, obviously, call for determination of the meaning of the expression, '*cause of action*', and the materials, which are to be considered for the purpose of determination of the question as to whether a '*cause of action*' or a part thereof has arisen or not within the territorial limits of a given court ?

45. Coming to the question as to what '*cause of action*' means, it may be pointed out that '*cause of action*' implies a right to sue. '*Cause of action*' is not defined in any statute. It has, however, been judicially interpreted, *inter alia*, to mean every fact, which would be necessary for the plaintiff to prove, if traversed, in order to support his right to

the judgment of the Court. Thus, the material facts, which are imperative for the suitor to allege and prove, constitute the ‘*cause of action*’. Negatively put, it would mean that everything, which, if not proved, gives the defendant an immediate right to judgment, would form part of ‘*cause of action*’. [See **Kusum Ignots and Alloys Ltd. vs. Union of India**, reported in (2004) 6 SCC 254]

46. The ‘*cause of action*’ has no relation whatsoever to the defence, which may be set up by the defendant, nor does it depend upon the character of the reliefs prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the ‘*cause of action*’, or, in other words, to the media upon which the plaintiff asks the court to arrive at conclusion in his favour. [See **Chand Kour vs. Pratap Singh**, reported in (1887-88) 15 JA 1566]

47. In **ONGC vs. Utpal Kumar Basu**, reported in (1994) 4 SCC 711, the Supreme Court has made it clear that the answer to the question, as to whether a High Court has territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial. The relevant observations, made in **Utpal Kumar** (supra), read as under:

“.....therefore, in determining the objection of lack of territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words, the question whether a High Court has territorial jurisdiction to entertain a writ petition, must be answered on the basis of the averments in the petition, the truth or otherwise whereof being immaterial. To put it differently, the

question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.” [Emphasis added]

48. What becomes transparent from the above discussion is that the expression, ‘*cause of action*’ means a bundle of facts, which, if traversed, a plaintiff must prove to entitle him to receive a judgment in his favour. The ‘*cause of action*’ bears no relation to the defence, which may be set up by the defendant, nor does it depend upon the character of the relief(s) sought for. The ‘*cause of action*’ is nothing, but the media upon which the plaintiff or the petitioner seeks the Court to arrive at a conclusion in his favour. For determining, therefore, the question as to whether a court has territorial jurisdiction or not, the court must take into account all the facts pleaded in support of the ‘*cause of action*’ without, however, embarking upon an enquiry as to the correctness or otherwise of the facts pleaded. Thus, the question as to whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the writ petition, the truth or otherwise whereof being immaterial. (See **Naveenchandra N. Majithia Vs. State of Maharashtra**, reported in (2000) 7 SCC 640.

49. In **Union of India vs. Adani Exports Limited**, reported in (2002) 1 SCC 567, the Supreme Court has held that in order to confer jurisdiction on a High Court to entertain a writ petition, the High Court must be satisfied from the entire facts, pleaded in support of
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'cause of action', that the facts constitute a cause so as to empower the Court to decide a dispute, which has, at least in part, arisen within its jurisdiction. Facts, which have no bearing on the *lis* or the dispute involved in a case, do not give rise to a *'cause of action'* and cannot confer territorial jurisdiction on a High Court enabling it to exercise its writ jurisdiction under Article 226.

50. In the light of what is indicated by the Supreme Court, in **Adani Exports** (supra) and **Naveenchandra N. Majithia** (supra), it is more than clear that any controversy, in a writ petition, with regard to territorial jurisdiction has to be settled by the High Court on the basis of the facts pleaded, in the writ petition, in support of the *'cause of action'* without, of course, embarking upon an enquiry as to whether the facts pleaded are or are not correct.

51. In the backdrop of the law discussed above, when I revert to the case at hand, it becomes clear that the two Memoranda, which the petitioner has put to challenge, have been issued to the petitioner by the Government of Tripura, when the petitioner stood posted in Tripura and the petitioner still stands posted in Tripura. The legality or validity of these memoranda is, undoubtedly, determinable by this Court, in exercise of the powers under Article 226 inasmuch as the two memoranda have been served by the Government of Tripura, under whose control the petitioner has been serving. This is besides the fact that it is within the State of Tripura that the two memoranda aforementioned have been served on the petitioner.

52. The *cause of action* for the present writ petition has, thus, arisen within the territorial limits of this Bench of the Gauhati High Court

and this Bench has, therefore, the territorial jurisdiction to decide, by invoking Article 226, if the memoranda issued are sustainable in law ?

53. As the writ petition also puts to challenge the sustainability of the criminal prosecution aforementioned on the ground that the same has been launched against the law laid down in **Kumari Madhuri Patil** (supra) and the petitioner contends that when the criminal prosecution is bad in law, the two impugned memoranda, which have been issued to the petitioner in consequence of the launching of the criminal prosecution, too are not sustainable in law, it becomes evident that it is within the competence of this Court to determine if the criminal prosecution, launched against the petitioner, is sustainable in law and, if the finding of this Court be that the criminal prosecution is, in the light of the decision, in **Kumari Madhuri Patil** (supra), not maintainable, the two impugned memoranda must be made by this Court to fail. Viewed thus, the writ petition is, indeed, maintainable.

54. As already pointed out above, even a cursory reading of the Memorandum, dated 05.12.2005, makes it clear that no opportunity of hearing was given to the petitioner to have his say whether or not he was a member of the *scheduled caste* community and, yet, as rightly contended by Mr. Deb, a minute scrutiny of the impugned Memorandum shows that what the petitioner has been asked to show is why action should not be taken against him for submission of *false caste certificate* in order to obtain entry into the IAS. Thus, the disciplinary authority is satisfied, in the light of the impugned Memorandum, dated 05.12.2005, that as far as the petitioner is concerned, he had, indeed, submitted a *false caste certificate* so as to

gain his entry into the IAS. This conclusion was wholly illegal, particularly, when there was nothing before the disciplinary authority to show, except the fact that there was an FIR culminating into *charge-sheet*, that the petitioner had really submitted a *false caste certificate* to gain entry into the IAS.

55. It needs to be borne in mind that a High Court, under Article 226, exercises plenary jurisdiction, while entertaining a writ petition of the present nature, wherein validity of a show cause notice is put to challenge. If the show cause notice is found to be wholly without jurisdiction or with premeditated mind, a writ petition is maintainable inasmuch as even if the Court, in such a case, directs the disciplinary authority to hear the matter afresh, such a hearing would not yield any fruitful result. The State respondents, as the impugned memoranda show, have noticeably made up their mind that the petitioner has submitted *false caste certificate* to obtain entry into the IAS and this is clearly reflected by both the show cause notices, covered by the memoranda, dated 05.12.2005 and 10.05.2006. It is trite that a *post-decisional* hearing is not a substitute for pre-decisional hearing, for, it is to be noted that there is always a tendency to uphold the decision, which has already been taken in a given case. In this connection, the language, used in **K. I. Shephard v. Union of India**, reported in (1987) 4 SCC 431, may be borne in mind. In fact, the relevant observations, in **K. I. Shephard** (supra), reads, “....It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose....”. Going a little further, the Supreme Court held, in **Shekhar Ghosh vs. Union of India**, reported in (2007) 1 SCC 331,

thus” “.....14. A *post-decisional hearing* was not called for as the disciplinary authority had already made up its mind before giving an opportunity of hearing. Such a *post-decisional hearing* in case of this nature is not contemplated in law. The result of such hearing was a *foregone conclusion*.”

56. It needs to be noted that for ascertaining the correctness of the accusations made in the Memorandum, dated 05.12.2005, that the petitioner had submitted *false caste certificate* in order to obtain entry into the IAS, what is required for adjudication and determination is the question as to whether the petitioner belongs to *scheduled caste* community or not. The petitioner contends, on the strength of the documents produced, that the petitioner and his brother are members of *scheduled caste* community and since the petitioner's brother's status, as a member of *scheduled caste* community, has been upheld by the appropriate body, it is not possible for the CBI to challenge the same without getting the decision of the appropriate body withdrawn, cancelled, set aside or superseded. The petitioner also contends that so long as the caste certificate, given by the appropriate body, remains intact, prosecution of the petitioner, in the form of a disciplinary proceeding or otherwise, is nothing but abuse of the process of the Court and is, therefore, impermissible in law and, merely because the CBI claims that the *caste certificate*, relied upon by the petitioner, is false, the *caste certificate*, issued by the appropriate authority, cannot, in law, be treated as a false document.

57. The question, therefore, is: Is it, in the facts of the present case, for the CBI to claim, as a matter of fact, or as a matter of law, or both,

whether the caste certificate, granted in favour of the petitioner, is or is not false.

58. The question, raised above, takes us back to the case of **Kumari Madhuri Patil** (supra), which holds good even today. What has been laid down, in **Kumari Madhuri Patil** (supra), is the law within the meaning of Article 141 and no authority, even the CBI, can ignore or flout the directions given therein and/or the guidelines issued therein. In **Kumari Madhuri Patil's** case (supra), the Supreme Court, streamlining the procedure for issuance of Social Status Certificates, scrutiny, approval and cancellation thereof, has clearly laid down that the application, for grant of Social Status Certificate, shall be made to the Revenue Sub-Divisional Officer, or Deputy Collector, or Deputy Commissioner and the certificate shall be issued by such an officer rather than an officer at the *Taluk* or Mandal level.

59. What is, however, important to note is that **Kumari Madhuri Patil's** case (supra) lays down that the verification of caste certificate shall be done by the Scrutiny Committee. How such a Committee has to be constituted is also indicated by the Supreme Court in its decision in **Kumari Madhuri Patil's** case (supra). What is most crucial to note is that, in terms of **Kumari Madhuri Patil's** case (supra), it is the Caste Scrutiny Committee, which would be the competent authority to determine the allegation of falsity, or otherwise, of a caste certificate and shall have the power to cancel the certificate or confiscate the same.

60. What is, of course, of paramount importance to note is that **Kumari Madhuri Patil's** case (supra) clearly lays down that an order,

passed by the Scrutiny Committee, shall be final and conclusive and would only be subject to the proceedings under Article 226 of the Constitution of India. Thus, it is the Caste Scrutiny Committee, as envisaged by **Kumari Madhuri Patil's** case (supra), which is the competent body or authority to determine the falsity, or otherwise, of a caste certificate and the remedy of the person, who feels aggrieved by the determination of the question of falsity of a caste certificate by the Scrutiny Committee, lies in instituting a proceeding under Article 226 of the Constitution of India and by no other means. The relevant observations, appearing in this regard, in **Kumari Madhuri Patil's** case (supra), read as under:

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

- 1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall*

be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in 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 status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the

parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be “not genuine” or ‘doubtful’ or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. 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.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ

petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. 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 Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned 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 from further study or continue in office in a post.”

[Emphasis added]

61. Apart from what have been indicated above, it is also imperative to bear in mind that, taking a cue from **Kumari Madhuri Patil** (supra) and deriving strength from Articles 341 and 342 of the Constitution of India, the Maharashtra Legislative Assembly has, as already indicated above, enacted the Maharashtra Act. Section 7 (1) of the Maharashtra Act, which is pivotal in nature, authorizes its Scrutiny Committee to examine *suo moto* or on the basis of information gathered, and cancel/revoke a social caste certificate issued in favour of an individual after complying with the principles of natural justice. Section 7(2) of the Maharashtra Act, in clear and express terms, ousts

the authority of any Court/ Tribunal to adjudicate upon the social caste status of an individual save and except by way of judicial review under Article 226 of the Constitution of India.

62. It is rightly submitted by Mr. Deb that since Section 7(1) of the Maharashtra Act has invested absolute authority for cancellation/ confiscation of a social caste certificate upon the Caste Scrutiny Committee, the solitary inference that is deducible is that it is only the body, named under the statute, that would have the authority to order such cancellation. In fact, even without deriving any support from Section 7(2) of the Maharashtra Act, when the legislature expressly confers an authority upon a tribunal, constituted under a special enactment, for adjudication of certain disputes, any collateral/ simultaneous vesting of jurisdiction upon some other body constituted under some other enactment would frustrate the legislative intent underlying the special enactment. This contention would be further reinforced from a plain reading of Section 7(2) of the Maharashtra Act, which, in no uncertain terms, has ousted the jurisdiction of all Civil Courts/Criminal Courts/Other courts/ Tribunals to adjudicate upon a dispute centering around the social caste status of an individual. The key words employed by the legislature '*the Order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or Court*' is suggestive of the said inference. It is submitted that the aforesaid statutory mandate is in harmony with the settled legal parameters. It is submitted that placed on the heels of Section 7 of the Maharashtra Act, it emerges that in the event, a social caste status is conferred by the Caste Scrutiny Committee and, thereafter, the same is not invalidated/cancelled by the Caste Scrutiny Committee, the order attains finality. It is

submitted that in the event, such an order is subjected to any scrutiny of any Court, the same would run *de hors* the mandate contained in Section 7(2) of the Maharashtra Act, leading to frustration of the legislative intent, underlying the special enactment (i.e., the Maharashtra Act), the mandates contained in Articles 341 and Article 342 of the Constitution of India and also the guidelines issued in **Kumari Madhuri Patil** (supra).

63. What can also not be ignored, and has been rightly pointed out by Mr. Deb and Mr. Kabir, is that sub-Section (1) of Section 11 of the Maharashtra Act provides for punishment of a person, who obtains a *caste certificate* by furnishing false information or by filing false statement or documents or by any other fraudulent means. Sub-Section (1) of Section 11 of the Maharashtra Act reads as under:

“11. Offences and penalties.

(1) Whoever,

(a) obtains a false certificate by furnishing false information or filing false statement or documents or by any other fraudulent means, or

(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or co-operative society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificates;

Shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years or with fine which shall not be less than two thousand rupees, but which may extend up to twenty thousand rupees, or both.”

64. Sub-Section (2) of Section 11 of the Maharashtra Act further makes it clear that no court shall take cognizance of an offence punishable under this Section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee for this purpose.

65. I find considerable force in the submissions of Mr. Deb and Mr. Kabir, learned counsel for the petitioner, when they point out that Section 11 of the Maharashtra Act, being a special law and having excluded the jurisdiction of all other courts to punish a person, who obtains a *false caste certificate* by furnishing false information, or by filing false statement or documents, or by any other fraudulent means, no other Court can deal with such cases and an aggrieved person's remedy lies in resorting to proceedings under Article 226. Relying on the decision of the Supreme Court, in **Kumari Madhuri Patil**'s case (supra), Mr. Deb and Mr. Kabir, learned counsel for the petitioner, submits that any penal provision, contained in the Penal Code, which provides for such punishment, would not be attracted and/or applicable to the case of the present nature until the time the Caste Scrutiny Committee and, in the present case, the Scrutiny Committee, constituted under the Maharashtra Act, determines and decides that a *caste certificate*, issued in the State of Maharashtra in favour of an

individual, such as, the present petitioner, is false, or based on false information or forged documents.

66. It needs to be pointed out that apart from the fact that sub-section (2) of Section 7 of the Maharashtra Act excludes the jurisdiction of all Civil as well as Criminal Courts or every body or authority except by way of invoking Article 226, the Maharashtra Act or sub-section (2) of Section 7 thereof cannot be considered completely divorced from, or wholly independent of, **Kumari Madhuri Patil's** case (supra). Consequently, when **Kumari Madhuri Patil's** case (supra) lays down that an order passed by the Scrutiny Committee shall be final and conclusive save and except a proceeding under Article 226, it logically follows that when the *caste certificate*, in question, has been granted by the Government of Maharashtra, it is the Scrutiny Committee, under the Maharashtra Act, which is the only competent authority to examine and affirm if the *caste certificate*, issued in favour of the petitioner and/or his brother is true, correct and valid. It further logically follows that when the *Scheduled caste*, Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class *Caste certificate* Verification Committee, Pune Division, Pune, which has been constituted under the Maharashtra Act, has already rendered its decision, on 25.12.2002, that the *caste certificate*, issued to the petitioner's brother, is correct and valid, no prosecution for submission of *false caste certificate*, in order to obtain entry into the IAS by the petitioner, would be maintainable. So long as the *caste certificate*, issued by the *Scheduled caste*, Vimukta Jati, Nomadic Tribes/Other Backward Class and Special Backward Class *Caste certificate* Verification Committee, Pune Division, Pune, in favour of the

petitioner's brother remains intact, the petitioner, too, cannot, but be treated to be a member of the *scheduled caste*.

67. It is submitted, on behalf of the petitioner, that a Social Caste Certificate, having been scrutinized by the Caste Scrutiny Committee and held to be correct and valid, the scrutiny of the same *caste certificate* by a civil or criminal court would run contrary to the Supreme Court decision, in **Kumari Madhuri Patil's** case (supra), inasmuch as the decision, in **Kumari Madhuri Patil's** case (supra), is binding on all the Courts. Consequently, neither the CBI nor any State Government can, in such a situation, as the one at hand, carry out any investigation with regard to the correctness and/or validity of the *caste certificate* of the petitioner.

68. I find considerable force in the above submissions, made on behalf of the petitioner, inasmuch as the fact as to whether a *caste certificate*, issued to a person, is or is not true, correct and valid has to be determined by the Caste Scrutiny Committee in terms of the mechanism, which **Kumari Madhuri Patil's** case (supra), lays down. In terms of the decision, in **Kumari Madhuri Patil** (supra), when there is a State legislation, in place, in the present case, the correctness and validity of the *caste certificate*, in the present case, which has been granted in the State of Maharashtra, cannot be scrutinized by way of investigation, or otherwise, by any authority or body or by any Court except the Scrutiny Committee. The only ground, perhaps, which remains open for investigation is as to whether the *caste certificate*, which the petitioner relies upon, is or is not a forged one and, if the *caste certificate* is found to be a forged one, there may, perhaps, be a criminal prosecution; but, if the *caste certificate* has been incorrectly

granted, in the State of Maharashtra, cancellation thereof has to be also under the mechanism of the Maharashtra Act and the validity of such a *caste certificate* cannot be challenged in any court of law, civil or criminal, on the ground that the petitioner does not belong to the *scheduled caste* except by taking recourse to Article 226 of the Constitution of India.

69. I find considerable force also in the submission, made on behalf of the petitioner, that the impugned Memorandum, dated 05.12.2005, proceeds on the basis of the conclusion, drawn by the disciplinary authority, that the petitioner does not belong to *scheduled caste* and this conclusion has been reached, it is clear, with no opportunity having been provided to the petitioner to have his say in the matter. This apart, the State Government appears to have abdicated its authority inasmuch as the pleadings and the materials on record clearly reveal that the State Government has issued the impugned Memorandum, dated 05.12.2005, merely because the Central Government has conveyed that the CBI has lodged the FIR and has asked the State Government to take action in this regard. In the face of Rule 2 of the All India Services (Conduct) Rules, 1968, it is, rightly contends Mr. Deb, only the Government of Tripura, which has the competence to initiate proceeding against the petitioner and it has to be the decision of the Government of Tripura as to whether or not to proceed against an officer belonging to the IAS cadre. It is trite in administrative law that whenever discretion is vested in an authority, the discretion has to be exercised by that authority, and that too, independent of, and free from, the influence and dictation of any other body or authority.

70. The two memoranda, dated 05.12.2005 and 10.05.2006, served on the petitioner, are founded on the criminal proceeding, which has been initiated against the petitioner and others. The criminal case has been investigated by the CBI and a report, in terms of Section 173 CrPC, has been submitted, on 02.02.2007, to the Court of the Additional Chief Judicial Magistrate (Metropolitan), New Delhi. The petitioner appeared, in the Court, in connection with the said criminal case and has been allowed to go on bail on 07.05.2007. The entire basis of the two memoranda, dated 05.12.2005 and 10.05.2006, are, as indicated above, the said criminal proceeding inasmuch as paragraph 23 of the counter-affidavit, affirmed by one Ratan Sanjoy, Superintendent of Police, CBI, Special Crime Branch-I, New Delhi, states, *“.....after completion of the investigation, Department of Personnel & Training, Govt. of India, was requested to initiate Regular Departmental Action for Major Penalty against the petitioner.”* The Department of Personnel and Training, Government of India, in turn, asked the Government of Tripura to initiate departmental action and the State Government simply issued the Office Memorandum, dated 05.12.2005, aforementioned. From the affidavit, so filed, it is clear that the entire departmental proceeding was initiated and is based on the criminal proceeding.

71. In order, therefore, to determine the legality and validity of the departmental proceeding, or the show-cause notices, which have been issued to the petitioner under the two impugned memoranda, this Court is, first, required to determine if the criminal proceeding, in question, is tenable in law. For this purpose, the CBI has also been made one of the parties to this writ petition.

72. The present proceeding has been initiated against the petitioner on the basis of the preliminary enquiry, which came to be registered by the CBI, on 22.07.2004, against the petitioner, Abhishek Chandra @ Sachin Bisaria, and Abhinav Chandra @ Nitin Bisaria, both sons of Late Promod Bisaria, on the complaint of one S. K. Gupta, DSP, CBI, SCR 1, New Delhi, alleging, *inter alia*, that although these persons belong to *Kayastha* Caste (General Caste), yet they had got appointments, in the Indian Administrative Service, in the year 2003 and 2001, respectively, by furnishing *false caste certificate* and, further, that they had furnished false information, in their application forms, submitted to the Union Public Service Commission, regarding their antecedents to the effect that they had studied at St. Vincent's School, Pune, from Class I to Class X. At a later stage, when, in the opinion of the investigating authority, a *prima facie* case was found to have been made out, a regular case was registered against them and others under Sections 420, 466, 468, 471, 474 and 120B IPC.

73. What is, now, of immense importance to note is that *charge-sheet* has been submitted by the investigating authorities against five persons, namely, Abhishek Chandra @ Sachin Bisaria, Abhinav Chandra @ Nitin Bisaria, Late Dr. Pramod Chandra Bisaria @ P. C. Bisaria, Late Vishvambhar Shiv Prasad Sharma, and Manjula Bisaria. What is curious to note, in this regard, is that the principal allegation of '*forgery*' of the *caste certificates*, in question, has been levelled against the father of the petitioner, mother of the petitioner and the principal of one of the schools, where the petitioner had studied, the allegation being that the petitioner's father and the principal of the said school had entered into a *criminal conspiracy* to prepare and

procure the said fake *caste certificates* and/or documentation on which the *caste certificates* were based.

74. The question, therefore, which needs to be examined, is as to whether any criminal prosecution of the present petitioner, in the face of the materials collected during investigation and furnished to the petitioner to sustain the charge-sheet, is possible under Sections 466, 468 and/or 120B IPC? This question is besides the question of maintainability, which has been discussed above in the light of the provisions contained in the Maharashtra Act. As regards prosecution of a person, who obtains a *false caste certificate* by furnishing false information or filing false statement or documents or by any other fraudulent means, Section 11 of the Maharashtra Act makes it clear that if a person obtains a fake *caste certificate* by furnishing false information or by filing fake statement or fake document or by other fraudulent means, he shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years or with fine, which shall not be less than two thousand rupees, but which may extend up to twenty thousand rupees, or both. In short, thus, the Maharashtra Act, as a special enactment, having provided for punishment of a person, if he obtains a fake *caste certificate* by furnishing false information or by filing fake statement or fake document or by other fraudulent means it is doubtful if, in a case of present nature, prosecution of a person, under the Indian Penal Code, would be maintainable when he obtains a fake *caste certificate* by furnishing false information or by filing fake statement or fake document or by other fraudulent means.

75. Thus, what is, however, crystal clear is that there being no allegation against the petitioner that the petitioner was a part of the *criminal conspiracy* aforementioned, the question of launching a case, against the petitioner, under Sections 466 and 468, read with Section 120B IPC, does not arise at all.

76. To put it a little differently, in the light of the definition of 'forgery', as contained in Section 463 IPC, it is worth noticing that in order to sustain an accusation of *forgery* against the petitioner, it is necessary that he has been, at least, alleged to have been a part of a *criminal conspiracy* to commit *forgery*, especially, when it is not alleged that the petitioner had committed the *forgery*. True it is that a First Information Report is not expected to be an encyclopaedia of the prosecution's case. However, the present one is a case, wherein *charge-sheet* has already been submitted; but even the *charge-sheet* does not allege that the petitioner had committed *forgery* and/or was a part of the conspiracy to commit *forgery* and/or became, at any stage, a part of the *criminal conspiracy*, which his parents and the principal of the school concerned had allegedly entered into and executed. When there is no allegation, far less material, to show that the petitioner was a part of the alleged *criminal conspiracy*, the accusations or allegations, made against the petitioner, as far as Sections 466 and 468, read with Section 120B, are concerned, the same cannot stand. This becomes transparent if paragraph 4(ii) of the *charge-sheet* is read inasmuch as paragraph 4(ii) states, "*Pramod Chandra Bisaria (A-3), Late Vishavambhar Shiv Prasad Sharma (A-4) & Manjula Bisaria (A-5) entered into a criminal conspiracy and made false documents showing the caste of A-1 & A-2 as 'Hindu/BC-Bansor' while*

getting A-1 and A-2 admitted in the Maharana Pratap Vidyalyaya, Jalgaon in 1985”.

77. At the cost of repetition, one can, therefore, observe that there is no allegation whatsoever against the petitioner of either committing ‘*forgery*’ himself, or having been a party to a *criminal conspiracy* to commit ‘*forgery*’, or his being a part of the *criminal conspiracy* to procure false or fake documents. All the allegations, in this regard, having been directed against the parents of the petitioner and the principal of the school concerned, the petitioner, who was barely 7 years old at the relevant point of time, cannot be roped in inasmuch as the petitioner was born in the year 1975 and his younger brother was barely 6 years old, when the alleged conspiracy was entered into and acted upon. Mr. Kabir has great substance, when he submits that when there is not even an allegation that the petitioner had been a part of the *criminal conspiracy*, which his parents and principal of the school concerned had entered into, no reference to the provisions of Section 82 and/or 83 IPC is even necessary and no prosecution for offence of commission of *forgery* under Section 465 IPC against the petitioner can be sustained. In other words, Mr. Kabir rightly points out that when the petitioner is not alleged to have committed *forgery* or he is not alleged to be a part of the *criminal conspiracy* to commit *forgery* or procure a false document, such as, a *false caste certificate*, his prosecution for *forgery*, as envisaged by Section 465 IPC, for commission of offence of *forgery*, is impermissible. When the petitioner cannot be prosecuted, for commission of the offence of *forgery* under Section 465 IPC, can he, in the face of the allegations made in the *charge-sheet*, be prosecuted for offences under Sections 420, 466, 468, 471, 474 and 120B IPC or is his prosecution for offences allegedly

committed by him under Sections 420, 466, 468, 471, 474 and 120B IPC maintainable ?

78. While on the question of *forgery*, it needs to be noted that Section 466 IPC punishes an act of *forgery* of record of Court or of public register, etc., and Section 468 punishes an act of *forgery*, which is committed for the purpose of *cheating*. In the present case, when the petitioner is not alleged to have committed *forgery* or when he is not alleged to have been a part of the *criminal conspiracy* to commit *forgery*, he cannot be prosecuted for forging any record by taking recourse to Section 466 IPC either.

79. Before proceeding further, it may be pointed out that it has been alleged, at para 3(xviii) of the *charge-sheet*, that the petitioner had changed his name from Sachin Pramod Bisaria to Abhishek Chandra. In this regard, it is noteworthy that the change, in the name of the petitioner, was notified, on 07.11.1996, in the Gazette of Government of Maharashtra. Mere changing of name is not an offence unless it can be shown to be a part of a *criminal conspiracy*.

80. In the present case, there is no allegation of *criminal conspiracy* against the petitioner as far as the offence of *forgery* is concerned. Hence, neither the criminal prosecution nor any departmental enquiry can be sustained against the petitioner for his changing of name from Sachin Pramod Bisaria to Abhishek Chandra, particularly, when the petitioner, and even his brother, had changed their respective names in accordance with the procedure established by law and when the same were duly notified in the official Gazette. Mr. Kabir is not entirely incorrect, when he points out that the sole reason for insertion of this wholly irrelevant aspect is to exhibit some element of the mental state

of the petitioner to try and represent himself as someone else, who he was not, with the status of *Scheduled caste*/Scheduled Tribe. It is really irrelevant as to whether the petitioner changed his name or not inasmuch as it is an admitted position that the petitioner's father was, initially, a member of the *kayastha* community (general category) and the change of the name of the petitioner, in the year 1996, or of his brother, in the year 1998, cannot, in the absence of anything else, be said to have any bearing on the *caste certificate* issued to them. In fact, the *caste certificates* were issued in favour of the petitioner and his brother prior to the change of their names. Thus, the change in the name cannot be a circumstance, in the absence of any other material, to saddle the petitioner with the accusation, even *prima facie*, of conspiracy to commit *forgery*.

81. Coming to Sections 177, 420, 471 and 474 IPC, it needs to be noted that the *charge-sheet*, in question, seeks to implicate the petitioner with the offences aforementioned by making allegations, which are contained in paragraph 3(xix)(a) to paragraph 3(xxxii)(d) and against his brother in paragraph 3(xxxii)(a) to paragraph 3(xxxii)(d). All these offences, correctly points out Mr. Kabir, revolve around the basic offence that the petitioner had made certain false statements in his application form with regard to (a) his caste, (b) his academics at St. Vincent's High School, Pune, (c) father's name being Pramod Chandra and not Pramod Chandra Bisaria and (d) his father, originally, belonged to Pune, Maharashtra. For the purpose of convenience, and, in terms of the arguments placed before this Court, the four issues are dealt with in two parts, issues (a) and (d) being

dealt with together and, similarly, issues (b) and (c) being dealt with together.

82. In order to attract the penal provisions of Sections 177, 420, 471 and 474 IPC, the foundation of the prosecution's case lies in the allegation that the petitioner had made false declaration with regard to his caste and had used a *caste certificate*, which had been wrongfully or illegally procured by the other accused persons, i.e. his parents and the principal of the school, which I have already discussed above. In other words, what is alleged is that the petitioner has made a declaration that he belongs to *scheduled caste*, when he actually belongs to, and knew fully well to have belonged to, Hindu *Kayastha* Community (General Category) and, thus, cheated by dishonestly inducing the Union Public Service Commission (in short, the UPSC) to allow him entry into the IAS and, for this purpose, used fake *caste certificate* as genuine, while knowing that the said certificate was forged.

83. While considering the above allegations, it is well to remember that neither the father nor the grandfather of the petitioner was ever treated as a member of the *scheduled caste* and there is no dispute in this regard. As a matter of fact, it is even admitted by the petitioner that his father and grandfather were never treated as a member of the *scheduled caste*. What is, however, indispensable to note is that the petitioner claims that his father and his grandfather belonged to *Bansor* caste. This fact is acknowledged and admitted, in the order, dated 25.12.2002, which the *Scheduled caste*, Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class *Caste certificate* Verification Committee, Pune Division, Pune, has passed.

This finding, rendered by the appropriate authority under the Maharashtra Act, has not yet been disturbed or varied.

84. What is, now, of paramount importance to recall is that, on 27.07.1977, *Bansor* community was recognized as *scheduled caste* by Presidential Order. Thus, it is not in dispute that the father and grandfather of the petitioner did not belong to *scheduled caste* inasmuch as *Bansor* community came to be designated as a *scheduled caste* in the year 1977. By operation of law, when the Presidential Order came into effect, *Bansor* community came to be designated, as a *scheduled caste*, in the State of Maharashtra. The School Leaving Certificate, dated 24.12.1976, of the petitioner's father, Pramod Chandra Bisaria, issued by the Head Master, Ganesh Primary School, Ghorpadi, Pune, shows his caste as Hindu *Bansor*. Similarly, even the School Leaving Certificate of the grandfather of the petitioner, Ganesh Prasad Besarya, issued by the Headmaster, Ganesh Primary School, Ghorpadi, Pune, showed his caste as Hindu *Bansor*.

85. Thus, it is evident from the admissions made in the counter-affidavit of the CBI itself that the petitioner's father and grandfather had, in fact, studied at Pune, though it has been stated, in the counter-affidavit by the CBI, that these details could not be verified except that the petitioner's grandfather had subsequently shifted to Lucknow in course of his employment and the petitioner's father had gone with him. Notwithstanding the fact that the certificates, as indicated above, were issued in favour of the petitioner's father and grandfather indicating that they belonged to *Bansor* community, what is imperative to note is that the certificates, in question, were, admittedly, obtained by the petitioner's father and the *charge-sheet*

does not even allege that the petitioner was ever a part of the *criminal conspiracy*, which had made the petitioner's father obtain the said certificate as a member of *Bansor* community. Even with regard to the commission of *forgery*, which I have already discussed above, there is neither allegation nor any material on record to show that the petitioner knew that his father had made any false statement or obtained any '*forged*' document, because the petitioner was, at the relevant point of time, barely seven years old. It is also not in dispute that the caste status of the petitioner was duly verified by the competent authority, i.e., the caste verification committee under the Maharashtra Act.

86. It has already been pointed out above that in the Maharashtra Act, specific provisions have been made to challenge and get cancelled a *caste certificate* issued. There is a complete mechanism, prescribed in the Maharashtra Act, as regards cancellation of a *caste certificate*.

87. It transpires from the counter affidavit of the CBI that various allegations have been made to the effect that the verification of the status of the petitioner's father and grandfather was not proper and the certificate of validity, which was given, on 14.03.1991, by a competent authority, is claimed by the CBI to have been issued without going into the genuineness of the information furnished to the authority concerned. The immediate consequence flowing from this accusation is that the basis of the *caste certificate* is false and the *caste certificate*, as a result thereof, is false. This is nothing, but amounting to challenging the correctness or validity or authority of the act of issuance of the *caste certificate* by the authority concerned. If anyone challenges the *caste certificate* or authority of the verification

thereof made by an authority, which was, at the relevant point of time, competent to issue the certificate, the remedy of such a person lies, as laid down in **Kumari Madhuri Patil's** case (*supra*) in challenging the same by way of a writ petition under Article 226 or else, the decision of the authority concerned, shall be, and shall remain, final.

88. In the present case, genuineness of a *caste certificate*, which has been granted in favour of the petitioner's brother was put to challenge and has been decided by the competent authority under the Maharashtra Act and the decision rendered by the authority concerned, on 25.12.2002, has never been challenged by the CBI or by any other person. Admittedly, the CBI has never challenged, by way of a writ petition under Article 226, the correctness, legality or validity of the *caste certificate* issued in favour of the petitioner. Viewed from this angle too, it becomes clear that without the High Court having declared, under Article 226, that the *caste certificate* is false and/or that the statements made therein are false, the allegation, made against the petitioner that his *caste certificate* is false, cannot be said to have any legal foundation or basis and must, as a sequel, fail.

89. One can also not ignore is that at no point of time, the CBI or any other authority took requisite steps, in accordance with law, to challenge the verification of the caste certificate, which the Caste Scrutiny Committee had done, and, to use Mr. Kabir's language, the CBI has rather jumped straight to the conclusion of falsity of the certificate, which, in the facts and circumstances of the case, cannot but be regarded as mere surmises, conjecture or suspicion.

90. What follows from the above discussion is that the caste status of the father and grandfather of the petitioner were verified by the Caste Scrutiny Committee under the Maharashtra Act and they accepted that the petitioner's father and grandfather belonged to *Bansor* community. This caste was, admittedly, not declared as a *scheduled caste* till 1977. Thus, the entry of the petitioner into the IAS, on the basis of the *caste certificate*, which has been issued, as indicated hereinbefore, and verified by the Caste Scrutiny Committee, which is the competent authority, cannot be said to be illegal or based on any false document. The *caste certificate* was issued in favour of the petitioner by a competent authority. Hence, the certificate, in question, can neither be regarded as a forged document nor is the certificate alleged by the CBI to be a forged one. This apart, the said certificate cannot be regarded or contended to be a false document until the time either the Scrutiny Committee, under the Maharashtra Act, or a High Court, in exercise of its power under Article 226 of the Constitution of India, holds the said certificate to be a false certificate. Mr. Kabir has considerable force in his argument, when he submits that the *caste certificate*, in question, cannot be termed as a false *caste certificate* in the absence of any finding having been rendered, in this regard, by an appropriate authority, under the Maharashtra Act, or by a High Court under Article 226 and, when the said certificate is not yet proved to be a *false caste certificate*, the petitioner cannot be prosecuted on the ground that he had used the said certificate knowing that the said *caste certificate* was a *false certificate*. This apart, there is not even an iota of material on record indicating, directly or indirectly, that the petitioner had known, in any manner whatsoever, that the said *caste*

certificate, issued in his favour, was a false one provided that the *caste certificate* is a false one.

91. What needs to be borne in mind is that a *charge-sheet* has already been filed against, amongst others, the petitioner. For the purpose of sustaining the *charge-sheet*, an investigation has been conducted. The investigation must, therefore, reveal some material, howsoever small that material may be, that the petitioner knew that his said certificate was a false one, particularly, when he was, admittedly, not a party to the alleged *criminal conspiracy* to obtain the said certificate. In the absence of any such material, as indicated hereinbefore, it is not only difficult, but impossible to maintain the *charge-sheet* as against the petitioner. On the other hand, the petitioner has placed on record, as already indicated above, the decision of *Scheduled caste*, Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class *Caste certificate* Verification Committee, Pune Division, Pune. So long as the said decision, rendered, on 25.12.2002, is not put to challenge in the manner as the Maharashtra Act prescribes or before the High Court by taking recourse to Article 226, the certificate, in question, cannot be regarded as false and so long as the certificate cannot be regarded as false, the question of the petitioner using the certificate knowing the same to be false or the question of the petitioner inducing the UPSC or the Government of India to let the petitioner enter into the IAS cannot but be regarded as mere allegation having no legal foundation and must necessarily fail.

92. While dealing with the offence under Section 420 IPC, it needs to be borne in mind that *mens rea* is an essential ingredient of an

offence of *cheating*. In the present case, when the petitioner was, admittedly, not a part of the criminal conspiracy to commit '*forgery*' and it is not the petitioner, who had obtained the *caste certificate*, in question, there can be no prosecution of the petitioner for offence under Section 420 IPC. In the absence of any cogent accusations, indicating that the petitioner had, at any stage, come to know, or had any reason to believe, that the *Caste Certificate*, which had been obtained by his father, was a false one, the petitioner's prosecution, under Section 420 IPC is impermissible. This is besides the fact that the accusation against the petitioner is, otherwise also, not sustainable on the ground that falsity, or otherwise, of the *caste certificate* is, in the light of **Kumari Madhuri Patil's** case (supra) and the discussions held above, for the Scrutiny Committee, under the Maharashtra Act, to adjudicate upon, determine and decide.

93. If the CBI had any doubt or suspicion as to the validity of the petitioner's *caste certificate* or the validity or correctness of decision of the statutory authority, as described above, it was open to them to challenge the correctness of the said certificate or the correctness of the decision of the statutory authority by taking recourse to Article 226, which, admittedly, the CBI has not done. Hence, neither the Government of India, nor the CBI nor even the State Government derives any right or authority to make accusation that the certificate, in question, is false.

94. What is required to be noted, now, is that even if the *caste certificate* was found to be false, it would not have been sufficient to prosecute the petitioner for an offence under Section 420 or Section 471 IPC inasmuch as it is for the CBI to show that though the

petitioner was, admittedly, not a party to the *criminal conspiracy*, which his parents and the principal of the school aforementioned had allegedly entered into, yet the petitioner knew that his certificate was a false one and/or that the same was based on false or forged document. In the absence of any such tangible material on record, no fraudulent or dishonest intention can be imputed to the petitioner merely because the petitioner happens to have placed reliance on a document, or used a document, which had been obtained by his father, as indicated above, from the competent authority and the validity thereof has been upheld and affirmed by the competent authority. The petitioner cannot, therefore, be regarded to have committed any offence of *cheating* punishable under Section 420 by inducing the UPSC or the Central Government to let him enter into the IAS.

95. As the petitioner was, admittedly, not a part of the *criminal conspiracy* to commit any *forgery*, his prosecution under the penal provisions of Section 471, which punishes a person for fraudulently or dishonestly using as genuine any document, which he knows, or has reason to believe, to be a forged document, would not be attracted in the present case, particularly, when there is no material, howsoever insignificant, that the petitioner had, at any stage, knowledge or information that the *caste certificate*, which he was relying upon, was a false document.

96. Even assuming, for a moment, that the *caste certificate*, in question, is a false one, the petitioner's prosecution under Section 474 IPC as well is bad in law inasmuch as the petitioner cannot be said to be in possession of a document, which he knew to be '*forged*'. Without a person having the knowledge, or having the reason to believe, that a

document, in his possession, is a '*forged*' one, his prosecution under Section 471 IPC is impermissible in law. In fact, the document, in question, i.e., the *caste certificate*, is not alleged to be a '*forged*' one. The document was, admittedly, issued by a competent authority. In short, when a document is not alleged to be forged by the petitioner or the petitioner is not alleged to be a part of the *criminal conspiracy* pursuant whereof, the document, in question, was obtained by his father, the petitioner cannot, in the absence of any other material, be said to have had the knowledge that the document, in question, was a forged one. Thus, the petitioner's prosecution under Section 474 IPC too, as indicated above, is bad in law. The offences under Section 471 IPC, therefore, fails and so does the offence under Section 420 IPC. The offence under Section 474 IPC cannot stand even the briefest scrutiny of law inasmuch as no ingredient for the offence under Section 474 IPC can be said to exist. The petitioner was not, admittedly, a part of the *criminal conspiracy* to obtain a *forged* document nor is the petitioner claimed to be a party to the obtaining of a *false caste certificate* and in the absence of any of these two primary ingredients and, at the same time, when there is nothing else on record to show the knowledge of the petitioner, as alleged, it is not possible to hold even tentatively, that the petitioner has used the *caste certificate*, in question, with the knowledge that the same was forged or based on false information. It may be noted, in this regard, that these views of this Court are in addition to the fact that there is no decision by any competent Court or authority that the *caste certificate*, in question, is a false one or that the *caste certificate* was obtained on the basis of false information or forged documents.

97. It is also alleged against the petitioner by the CBI that the petitioner had given his father's name incorrectly and his own academic career too was also not properly described, while filing up the UPSC mains examination form. It is submitted, on behalf of the petitioner, that the petitioner's father's name had been adequately shown and the petitioner's academic career could not be fully shown for the simple reason that the form did not clearly provide space and instructions for the same and the petitioner had committed a *bona fide* error as explained in para 58 of the writ petition, which is reproduced below:

“58. Your humble petitioner firmly believes that he belongs to the SC community and he did not furnish any false information nor cheat anyone. Your humble petitioner urges that while filling up the UPSC mains examination form, he wrote that he studied from 1st to 10th in Vincents High School as there was insufficient space to write the names of all the schools he had studied. At the time of filling up the mains form, the exact dates of leaving and joining the schools were not known off-hand on the finger tips. The father of your humble petitioner was an IPS officer who was on transferable jobs and thus your humble petitioner studied in various schools but could not recollect the exact dates of joining and leaving the schools and this does not tantamount to furnishing false information because he had passed class 10th from the same school which he mentioned in the application form.”

98. It is submitted by Mr. Kabir, learned counsel for the petitioner, that even if it is assumed that it is correct that the petitioner had not filled up the names of all the school, where he had earlier studied, the same does not change the situation inasmuch as the petitioner's schooling is not the subject-matter of prosecution, for, the prosecution

is based upon, and revolves around, the alleged *false caste certificate*, which the petitioner, according to the prosecution, had submitted.

99. There is, indeed, force in the above submission, made on behalf of the petitioner, that when falsity of the *caste certificate* is the basis for launching of the prosecution and it is, again, the *caste certificate*, which forms the basis of issuance of the impugned memoranda directing the petitioner to show cause, it pales into insignificance whether the petitioner had or had not filled up, in the form aforementioned, his school's name correctly; more so, because the allegation of incorrectly filling up the form cannot lead to prosecution of the petitioner unless the allegation of the petitioner having knowingly submitted, and relied upon, a *false caste certificate* and obtaining thereby entry into the IAS is supported by materials on record, because the FIR has crystallized into a *charge sheet* and, hence, the *charge sheet* must disclose the materials on the basis of which the allegations made are intended to be supported.

100. When, therefore, falsity of the *caste certificate* is found to be either baseless and/or not open to challenge in any forum other than by way of making appropriate application or complaint to the Scrutiny Committee under the Maharashtra Act or to the High Court under Article 226 if the Scrutiny Committee decides the issue incorrectly, the proposed prosecution and, consequently, the proposed departmental action against the petitioner cannot be allowed to survive. To this extent, Mr. Kabir is not incorrect, when he refers to, and relies upon, the case of **Parminder Kaur Vs. State of U.P. (AIR 2010 SC 840)**, wherein a Division Bench of the Supreme Court has, in fact, quashed a proceeding under, *inter alia*, similar provisions, namely, Sections

420, 463, 464, 465, 467, 468 and 471 on the ground that the proceeding was nothing but an abuse of the process of law, for, even if it is assumed that there was any wrongful mistake in the documentation, the petitioner would not have gained anything thereby and the said changes or errors did not result in any illegal gain to the appellant or illegal loss to anybody and such innocuous materials would not directly cause any offence to be made out. This is squarely the position with regard to the said aspect of the CBI's case inasmuch as it would appear that the offences aforementioned cannot be said to have been made out merely because description of the petitioner's academic career, in primary school, has not been correct. The allegation, so made, remains an innocuous material, which has no bearing on the main allegation of falsity of caste certificates, and, hence, if the main prosecution case fails, these smaller details and allegations would not re-build the case against the petitioner.

101. It is also relevant to note that the *charge-sheet* alleges commission of offence under Section 177 IPC against the petitioner and others. This *charge-sheet*, in so far as it relates to an offence under Section 177 IPC, is clearly not maintainable inasmuch as Section 195 CrPC states, in no uncertain words, “....*that no Court shall take cognizance of any offence, punishable under Sections 172 to 188 (both inclusive) of the IPC, or of any abetment of or attempt to commit such offence or of any criminal conspiracy to commit such offence, except on the complaint, in writing, of the public servant concerned or of some other public servant to whom he is administratively subordinate.*”

102. Section 195 CrPC, thus, prescribes the condition precedent for taking of cognizance of an offence under Section 177 IPC. Obviously,

a complaint, in terms of the definition of '*complaint*', contained in Section 2(d) CrPC, does not include a *charge-sheet*.

103. Clearly, therefore, no cognizance of an offence, under Section 195 CrPC, can be taken on the basis of a *charge-sheet* filed for prosecution of a person under Section 177 IPC. Mr. Kabir, learned counsel for the petitioner, is, therefore, not incorrect when he submits that the *charge-sheet*, in so far as Section 177 IPC is concerned, is not maintainable. [See **Bajranglal Parikh and Ors. Vs. State of Assam**, reported in **2008 (Suppl) GLT 486**].

104. What crystallizes from the above discussion is that, apart from the fact that the two impugned memoranda suffer from the infirmities, as indicated above, the basic question, which keeps staring at us, is whether prosecution of the petitioner is possible without determination of the question as to whether the *caste certificate*, in question, is or is not sustainable in law ? The answer to this question has to be, in the light of the discussions held above, an emphatic '*no*'. There can be no escape from the conclusion that so long as the *caste certificate*, in question, is not cancelled, withdrawn or revoked by the competent authority under the Maharashtra Act, or is not set aside or quashed by the High Court of competent jurisdiction under Article 226 of the Constitution of India, the sanctity of the *caste certificate*, its correctness, truthfulness or validity cannot be questioned in any criminal prosecution, where the falsity of the *caste certificate* becomes an issue for decision. This apart, in the facts and attending circumstances of the present case, and the law as discussed above, none of the penal provisions, which the CBI has referred to, and relied upon, is attracted. The continuation of the prosecution of the

petitioner will be nothing but abuse of the process of the Court. As the two impugned memoranda, served upon the petitioner, are based on the FIR, which the CBI had lodged, culminating into *charge-sheet*, the two memoranda shall, if allowed to survive, lead to abuse of the process of the Court and cause serious miscarriage of justice, which Article 21 guarantees to avoid.

105. On finding that the criminal prosecution, which has been launched against the petitioner, is not sustainable in law, it clearly follows that since the impugned memoranda, served on the petitioner, are wholly based on the criminal prosecution, the impugned memoranda, too, would not be sustainable. The consequence is that the impugned memoranda have to be set aside. Yet another consequence, flowing from the conclusion so reached, is that the criminal prosecution too shall be quashed.

106. It has been contended, on behalf of the CBI, that this Court does not have territorial jurisdiction to quash the criminal prosecution. The question, which, therefore, arises, is this: Had the criminal prosecution, as in the present case, been within the territorial jurisdiction of this Court, would it have been impermissible for this Court to quash the prosecution in exercise of its powers under Article 226? The answer to this question has to be in the negative.

107. In fact, to a pointed query made by this Court, even Mr. Lodh, learned counsel for the CBI, could not dispute that if this Court reaches the finding that the criminal prosecution is bad in law, the consequence would be to quash the criminal proceeding if the prosecution be within the territorial jurisdiction of this Court. Merely because, therefore, of the fact that the criminal prosecution is

launched at Delhi, will this Court lose its power to quash the criminal prosecution? This question brings us back to clause (2) of Article 226, which I have already discussed above, and which vests in the High Court the power under Article 226 if the cause of action or part thereof has arisen within the territorial jurisdiction of the High Court.

108. In the present case, there is no doubt in my mind that cause of action or part thereof has arisen within the territorial limits of this High Court and if cause of action or part thereof has arisen within the territorial limits of this Court, should this Court deny to exercise its power under Article 226, in respect of a prosecution, merely because the prosecution is being conducted at Delhi. It needs to be noted, in this regard, that in the absence of clause (2) of Article 226, the CBI could have contended that this Court does not have territorial jurisdiction, because the criminal prosecution is not within the limits of territorial jurisdiction of this Court.

109. In the face of, however, the re-inclusion of clause (2) of Article 226, it logically follows that even if a part of the cause of action has arisen within the territorial limits of this High Court, this High Court cannot refuse to give relief, which is within its competence. Because cause of action or part thereof has arisen within the territorial limits of this Court, it would bring, within the territorial limits of this Court's jurisdiction, criminal prosecution, wherever the criminal prosecution may be pending. Considered from this angle, it becomes clear that there is no legal impediment in exercising power, under Article 226, by this Court, in the fact situation of the present case, in respect of the criminal prosecution, which is pending, against the petitioner, in Delhi. The resultant effect is that it is not impermissible, but the obligation of this Court to exercise its power, under Article 226, in the

facts and attending circumstances of the present case and quash the criminal prosecution pending in Delhi.

110. In the result and for the reasons discussed above, the two impugned memoranda as well as the FIR and the *charge-sheet*, which the CBI has submitted, and the criminal prosecution, lying against the petitioner, are hereby set aside and quashed.

111. With the above observations and directions, this writ petition stands disposed of.

112. No order as to costs.

JUDGE

Rk/dutt