

(2018) 08 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 1742 Of 2007, 4779 Of 2008, 4032 Of 2009, 1680 Of 2012

Adim Gowari Samaj Vikas Mandal and Other

APPELLANT

Vs

State of Maharashtra And Other

RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

Constitution of India, 1950 — Article 341, 341(1), 341(2), 342, 342(2)

Citation : (2018) 08 BOM CK 0068

Hon'ble Judges : R.K. DESHPANDE, J; ARUN D. UPADHYE, J

Bench : Division Bench

Advocate : R.S. Parsodkar, P.R. Parsodkar, S.A. Chaudhari, M.J. Khan, R.D. Wakode

Final Decision : Allowed

Judgement

„

R.K. DESHPANDE, J",,,

1. Adim Gowari Samaj Vikas Mandal and Adim Gowari Vikas Samaj Mandal, the two separate Trusts registered under the Maharashtra Public",,,

Trusts Act, 1950, and an individual Smt. Vaishali Prakash Raut have filed Writ Petition No.4032 of 2009 challenging the validity of the Government",,,

Resolution dated 24/4/1985 prescribing the guidelines by way of affinity test to judge the claims of the Gowari community and the direction is sought",,,

to restore the position prevailing prior to 24/4/1985.,,,

2. Writ Petition No.1680 of 2012 is filed by Adivasi Gond Gowari (Gowari) Seva Mandal, which is a Trust registered under the Maharashtra Public",,,

Trusts Act, 1950 and the Society registered under the Societies Registration Act, 1860 challenging the Gazette Notification dated 16/6/2011 issued",,,

by the Government of India including therein Gowari community as the Other Backward Class category from the common Central list in respect of,,

the State of Maharashtra.Â It claims a declaration that the Gowari community and its members have been included in Entry No.18 of the Scheduled,,

Tribes Order in relation to the State of Maharashtra.Â It also seeks a direction to the State Government to instruct the SubÂDivisional,,

Officer/Magistrate to issue the caste certificates to the persons belonging to Gowari community as Scheduled Tribes.Â This petition also challenges,,

the Government Resolutions dated 24Â?4Â?1985, 13Â?6Â?1995 and 15Â?6Â?1995.",,

3. Writ Petition No.4779 of 2008 is filed by Adivasi Gond Govari (Gowari) Seva Mandal, which is a Society registered under the Societies Registration",,,

Act, 1860 and the challenge is to the caste validity certificates issued in the name of the respondent Nos.4 to 19 as Gond Gowari.Â The ground of",,,

challenge is that the Vigilance Cell report in respect of the respondent Nos.4 to 19 reveals that the entries in the documents of the period prior to 1950,,

clearly show them as Gowari and merely on the basis of affinity test, they have been granted validity as 'Gond Gowari Scheduled Tribe'.Â The only",,,

affinity test applied is of the surnames and the Gond Gowaris are identified only by surnames as Salame, Naitam, Holi, Gota, Madavi, etc.",,

4. In Writ Petition No.1742 of 2007 filed by Keshav s/o Vishwanath Sonone, the challenge is to the order passed by the Scheduled Tribes Certificate",,,

Scrutiny Committee, Amravati on 13Â1Â2007 invalidating the claim of the petitioner for 'Gond Gowari Scheduled Tribe'. The documents produced by",,,

the petitioner record the caste of his blood relatives as Gowari.Â The Committee applied the affinity test and it holds that the petitioner has failed to,,

establish that he belongs to Gond Gowari community.Â It further holds that the letter dated 20Â5Â1984 issued by the Government of India stating,,

that Gowari was a subÂ?tribe/synonym of Gond community and, therefore, the certificate will have to be issued in the name of the community, as given",,,

in the Presidential Order, cannot be treated as an amendment to the Presidential Order.Â Such decision, according to the Committee, is contrary to",,,

the decision of the Apex Court in the case of State of Maharashtra v. Milind and others, reported in 2001(1) Mh.L.J. 1.",,

5. In the above petition, the instances are quoted and the validity certificates issued to certain persons as Gond Gowari are produced.Â It is alleged",,,

that though all the documents produced by such persons indicate the caste Gowari and also the Police Vigilance Cell report indicates that affinity with,,

Gond Gowari is not established, the validity certificates are issued.Â Along with the petition, the Police Vigilance Cell reports evidencing it, have been",,,

annexed.Â A list of such 23 candidates belonging to Gowari caste, to whom the Committee has issued the validity certificates as Gond Gowari.",,,

6. In the aforesaid background, the rival contentions raised Â before us need to be seen.Â Â",,,

Rival contentions :,,

7. Shri Narayan Phadnis and Shri Ram Parsodkar, the learned counsels appearing for the petitioners, have urged before us that there is no separate",,,

caste or tribe called as Gond Gowari and Gowaris only are issued the certificates as Gond Gowaris.Â This practice was prevailing till 24Â4Â1985",,,

when the Government Resolution was issued prescribing the guidelines, making a distinction between Gond Gowari and Gowari.Â They have also",,,

pointed out that this Government Resolution along with the other Government Resolutions dated 19Â6Â1985 and 15Â6Â1995 have been set aside by,,

this Court in relation to Mana community in the case of Mana Adim Jamat Mandal v. State of Maharashtra and others, reported in 2003(3) Mh.L.J.",,,

513, which is confirmed by the Apex Court in the case of State of Maharashtra v. Mana Adim Jamat Mandal, reported in (2006) 4 SCC 98.Â The",,,

petitioners are claiming restoration of position prior to 24Â4Â1985.Â In addition to this, the challenge in Writ Petition No.1680 of 2012 is to the",,,

inclusion of Gowari and Gawari at Serial No.168 in the State list of Other Backward Classes, which are not in the Central list prepared on 16Â6Â?",,,

2001.,,,

8. Shri Khan, the learned Assistant Government Pleader, invited out attention to the information contained in Vol. III of the Book on the â??Tribes",,,

and Castes of Central Provinces of Indiaâ? by Russell and Hira Lal in respect of the tribes Gond Gowari and Gond and has placed reliance upon it to,,

urge that both these tribes are different.Â He submits that Gond Gowari is included in the Scheduled Tribes Order of the State, whereas Gowari does",,,

not find place in it. He, therefore, submits that Gowaris cannot be treated as Gond Gowaris so as to make them available the benefits and concessions",,,

meant for the tribals.Â He has relied upon the decision of this Court rendered in

Writ Petition No.1691 of 1990 on 4th 1996, in the case of Adiwasi",,,
 Gowari Samaj Sanghtana v. Union of India].¹ Our attention is also invited to Entry No.18, a cluster of tribes, led by Gond tribe in the Constitution",,,
 (Scheduled Tribes) Order, 1950, which contains Entry Gond Gowari [as 28th Item] and it is submitted before us that only Gowaris having affinity with",,,
 Gonds are covered.² He submits that Gowaris are shown as Special Backward Class in the Government Resolution dated 15th 1995 and as Other",,,
 Backward Class in the Central list prepared on 16th 2001 and accordingly they are getting benefits.,,

Legislative history of tribe Gond, Gond Gowari :",,,

9. Initially after the Independence and bringing into force of the Constitution of India, the President issued the Constitution (Scheduled Tribes) Order",,,
 1950 in exercise of the power conferred by clause (2) of Article 342 of the Constitution of India. By clause (2) of the said Order, it was provided that",,,
 the Tribes or tribal community, or part of, or group within, tribes or tribal communities, specified in Parts I to XXII of the Schedule to the Order shall",,,
 in relation to the States to which those parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof residents in the",,,
 localities specified in relation to them respectively in those Parts of that Schedule.,,

10. Part IV in the said Order was Madhya Pradesh, when Nagpur Division and Berar was a part of it; Nagpur being its capital. Initially, Entry No.12",,,
 therein was "Gond, including Madia (Maria) and Mudia (Muria)".³ By the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act",,,
 No.63 of 1956, the said Entry No.12 was substituted by Entry No.12 in Paragraph 7 of Part VIII(A) of the Schedule to the Order, which was as",,,

follows :,,

1. In (1) Melghat tahsil of the Amravati district.,,

(2) Gadchiroli and Sironcha tahsils of the Chanda district.,,

(3) Kelapur, Wani and Yeotmal tahsils of the Yeotmal district :⁴",,,

12. Gond, including " Arakh or Arrakh, Agaria, Asur, Badi Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta or Koilabhuti, Bhar",,,

Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru or Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria",,,

Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar or Khirwara, Kucha Maria, Kuchaki Maria, Madia (Maria), Mana, Mannewer, Moghya or Mogia",,,

or Monghya, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia or Thotya, Wade Maria or Vade Maria.â??",,,

Thus, the caste Gond Gowari was included in the Scheduled Tribes Order in relation to the State of Maharashtra for the first time by the notification",,,

published in the Gazette of India on 29Â?10Â?1956.,,,

11. In the cluster of tribes, reproduced above, Gond Gowari is included as one of the recognized Scheduled Tribes.Â Clause 7, above the Entry",,,

No.12, however, restricted the status of recognized Scheduled Tribes only to those tribals who were residing in (1) Melghat tahsil of the Amravati",,,

district, (2) Gadchiroli and Sironcha tahsils of the Chanda district, and (3) Kelapur, Wani and Yeotmal tahsils of the Yeotmal district.Â The status of",,,

recognized Scheduled Tribes was not extended to the tribals in Entry No.12 not residing in the aforesaid three districts in the State of",,,

Maharashtra.Â To claim the status of recognized Scheduled Tribes in the State, it was required to be established that the ordinary place of residence",,,

of a tribal or his forefathers was one or more of the areas at Serial Nos. (1) to (3) in clause 7 above the Entry No.12, or that there was an evidence of",,,

their migration in the nonÂ?tribal areas.,,,

12. The Nagpur Division with Berar became part of the Bombay State with effect from 1Â11Â1956 and subsequently on 1Â1Â1960 became the",,,

parts of the State of Maharashtra with Bombay as its capital.Â Thereafter, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act",,,

1976 (Act No.108 of 1976) was passed by the Parliament.Â By this Act, the entire Schedule to the Order, as it stood prior to amendment, was",,,

substituted by a new Schedule consisting of XVI Parts.Â Part IX of the new Schedule relates to the State of Maharashtra, and Entry No.18 of that",,,

Part, substituting",,,

earlier Entry No.12, reads as under :",,,

Â â??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, Kaiki, 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, Khareka, Thatia, Thotya, Wade Maria, Vade Maria.â??",,,

The Act No.108 of 1976 was published in the Gazette on 29â?1976, and the area restriction of Scheduled Tribes in the State of Maharashtra for all",,,

the tribes, including Gond Gowari tribe, was deleted.â? The word 'including' after lead tribe Gond was also deleted and Rajgond was added to the tribe",,,

Gond.â? Resultantly, the members of different tribes or communities included in Entry No.18, are treated and conferred with the status of recognized",,,

Scheduled Tribes, irrespective of their place of residence in the State.â? The net result of such deletion was that the twoâ?fold requirements of",,,

ordinary place of residence in tribal areas and migration to nonâ?tribal areas, was done away with.â?",,,

13. In the decision of the Apex Court in the case of Jaywant Dilip Pawar v. State of Maharashtra & Ors., delivered in Civil Appeal No.2336 of 2011",,,

on 8â?2017, the decision of the Scrutiny Committee that the relatives of the appellants in the said case were not the residents of the area mentioned",,,

in the Presidential Order, 1956, is set aside and it is held that what the appellants were required to establish was that they belong to the community",,,

mentioned in the Schedule of the Act No.108 of 1976.â? It is thus clear that it is no more the requirement of law to establish that either the forefathers",,,

of the claimant were the ordinary residents of the place meant for the tribals in the Constitution (Scheduled Tribes) Order prevailing prior to 1976 or",,,

his forefathers migrated from the said area to the present place of residence.,,

Judicial Pronouncements on Entry No.18 :,,

14. In the year 1967, a dispute arose in the decision of the Apex Court in the case of Dina v. Narayan Singh, reported in 38 ELR 212, (known as 'Dina",,,

I') as to whether Mana community included under Entry No.12 of the Constitution (Scheduled Tribes) Order, 1950, as amended in the year 1956, is a",,,

subâ?tribe of Gond or a subâ?tribe of Maratha or an independent tribe. The appellant in the said decision contested the election as a candidate",,,

belonging to Mana, Scheduled Tribe and not Gond Mana.â? The High Court set aside the election holding that the appellant belonged to Kshatriya",,,

Badwaik Mana, which is a subâ?caste of Maratha and not Gond Mana and, therefore, not eligible to contest the election.",,,

15. The question posed by the Apex Court for consideration in Dina I was whether it was intended to declare under Entry 12 Manas who are not,,

Gonds as members of Scheduled Tribes. The Apex Court confirmed the decision of the High Court.Â It holds that Mana entry is one which is a,,

subÂtribe of Gond or has some affinity with Gonds. It holds that there is a community called Mana who are Marathas and not Gonds â?" known as,,

Kshatriya Mana or Kunbi Mana'.Â Mana community under Entry 12 is neither a subÂtribe of Maratha nor an independent tribe.Â It further holds,,

that the appellant, elected candidate, belonged to Mana, which is a subÂcaste of Maratha.Â The decision of the High Court was maintained and the",,,

appeal was dismissed by the Apex Court.,,,

16. How do we understand Dina's case is to be considered now. In Dina's case, the evidence was permitted to be let in to show what is intrinsic and",,,

extrinsic in entry Mana in the cluster of tribes led by tribe Gond in Entry No.18 in the Constitution (Scheduled Tribes) Order, 1950 in relation to the",,,

State of Maharashtra.Â What the Apex Court held in the said decision is that Â (i) Mana is not an independent tribe which is in the nature of,,

declaration, (ii) Mana is one which has affinity with Gond as its subÂtribe called as Gond Mana, which is intrinsic, and (iii) the other communities, like",,,

Kshatriya Mana, Badwaik Mana, Maratha Mana, Kunbi Mana, etc., are extrinsic tribes not forming part and parcel of Entry Mana.Â Thus, by taking",,,

into consideration the evidence brought on record, the Apex Court classified and deÂ?classified Entry Mana in the Scheduled Tribes Order.",,,

17. The law laid down in Dina's case was reiterated by the Apex Court in its decision in Dadaji alias Dina v. Sukhdeobabu, reported in AIR 1980 SC",,,

150, (popularly known as 'Dina II'), even after deletion of the word 'including' in Entry No.18 of Gond.Â It was an argument that the effect of the",,,

word 'including' is that even the communities not having affinity with Gond are included.Â It is rejected, holding that sometimes the word 'includes' is",,,

used as a synonym for 'means' and not as a word of extension.,,,

18. Subsequently, the controversy cropped up before the Apex Court in Milind's case, cited supra, dealt with by the Constitution Bench of five Judges",,,

in respect of the claim of Halba, Halbi, which is an Entry at Serial No.19 in the Constitution (Scheduled Tribes) Order, 1950 in relation to the State of",,,

Maharashtra.Â The candidate Milind was found to be belonged to Koshti, which

was an independent and distinct caste having no relationship or",,,
identity with Halba, Halbi Scheduled Tribe.Â The High Court held that it was permissible to enquire whether any subÂdivision of a tribe was a part",,,
and parcel of the tribe mentioned therein and that HalbaÂKoshti is a subÂdivision of main tribe Halba, Halbi as per Entry No.19 in the Constitution",,,
(Scheduled Tribes) Order.,,,

19. The Apex Court while reversing the aforesaid view of the High Court in Milind's case found that Entry No.19 in the Scheduled Tribes Order is of,,
Halba, Halbi or whether a particular caste or tribe is Scheduled Caste or Scheduled Tribe, as the case may be, within the meaning of the Entries",,,
contained in the Presidential Orders issued under clause (1) of Articles 341 and 342 of the Constitution of India is to be determined looking to them as,,
they are.Â It was held that clause (2) of the said Article does not permit anyone to seek modification of the said Orders by leading evidence that,,
caste/tribe (A) alone is mentioned in the Order, but caste/tribe (B) is also a part of caste/tribe (A) and as such caste/tribe (B) should be deemed to be",,,
a Scheduled Caste or Scheduled Tribe as the case may be.Â It holds that it is only the Parliament that is competent to amend the Orders issued under,,
Articles 341 and 342 of the Constitution of India.Â The Apex Court in Milind's case overrules the earlier decisions,,

inÂ Bhaiya Ram MundaÂ v.Â Anirudh Patar, reported in (1971) SCR 804, and Dina I, (supra), holding that the said decisions took a contrary view",,,
saying that the evidence is admissible for the purpose of showing what an Entry in the Presidential Order was intended to be.,,,

20. What we understand from the decision in Milind's case is that it was not permissible to enquire whether Halba Koshti is a subÂdivision or,,
synonym of main tribe of Halba, Halbi as per Entry No.19 of the Scheduled Tribes Order.Â The decision of the High Court holding that Halba Koshti",,,
are the part or the group within the tribe Halba, Halbi, though they are not specifically included in the Presidential Order based upon the decisions of",,,
the Apex Court in Bhaiya Ram Munda and Dina I's cases, was overruled.Â However, this decision did not refer to the decision in Dina II.",,,

21. In the decision of this Court in the case of Mana Adim Jamat Mandal's case, cited supra, this Court considered a reference to Mana in the book of",,,
â??Castes and Tribes of Central Provincesâ?, Vol. IV by Russell, at pages

172-176. This Court also considered the Settlement Report of Chanda",,, district for the year 1869 Ch III dealing with aboriginal tribes, and also to the report of the Backward Class Commission (Kalelkar Commission). A",,, reference was also made to the Government Resolutions dated 24-4-1985, 19-6-1985 and 15-6-1995, which clarified that Mana in Entry No.18",,, is a sub-tribe of Gond, called and known as Mani, Mane, etc. It was urged that there is a caste Mana, which is a sub-caste of Mana Kunbi",,, Badwaik Mana, Khand Mana, Kshatriya Mana, Maratha Mana, etc., which is not covered by Entry No.18 Gond, which is the main tribe. As such a",,, distinction was sought to be made between Mana Scheduled Tribe called as Gond Mana and Mana, which is not the sub-tribe of Gond, but is the",,, sub-caste of Mana Kunbi, Badwaik Mana, Khand Mana, Kshatriya Mana, Maratha Mana, etc., for grant of benefits available to the Scheduled",,, Tribes.,,,

22. This Court considered the challenge to the Government Resolutions dated 24-4-1985, 19-6-1985 and 15-6-1995 and it was held that the",,, interpretation of Entry No.18 of Mana or its explanation or clarification or distinction by such Government Resolutions, was impermissible. This",,, Court set aside all these Government Resolutions dated 24-4-1985, 19-6-1985 and 15-6-1995. It was held that Mana in Entry No.18 is a",,, separate tribe which has no affinity with Gonds and this was, in our view, in the nature of declaration. It was held that no evidence can be let in",,, either to show that Mana is one which has affinity with Gonds as its sub-tribe called as Gond Mana or that the other communities, like Kshatriya",,, Mana, Badwaik Mana, Maratha Mana, Kunbi Mana, etc., do not form part and parcel of Entry Mana by creating a sub-division of Mana. It was",,, held that Dina II stood impliedly overruled as it followed Dina I which was expressly overruled in Milind's case.,,,

23. In the case of State of Maharashtra v. Mana Adim Jamat Mandal, reported in (2006) 3 Mh.L.J. (S.C.) 407 = (2006) 4 SCC 98, the Apex",,, Court confirmed the aforesaid view and dismissed the appeal, holding that the decision of the Apex Court in the case of Dina II, in which the",,, distinction was made between Mana on one hand and Gond Mana, Kshatriya Mana, Badwaik Mana, Maratha Mana, Kunbi Mana, etc., on the other",,, hand to deprive the benefits of entry of Mana at Serial No.18 in the Constitution

(Scheduled Tribes) Order, 1950 was impliedly overruled in the",,,
 Constitution Bench decision of the Apex Court in Milind's case.Â It holds that
 Entry 18 of the Schedule clearly signifies that each of the tribes,,
 mentioned therein is deemed to be a separate tribe by itself and not a subÂtribe
 of 'Gond'.Â 'Gond' is a separate tribe, it is not disputed.Â It further",,,
 holds that in Entry 18 of Second Schedule of the Amendment Act of 1976, the
 word 'including' was deliberately omitted, which signifies that each one",,,
 of the tribes specified in Entry 18 is deemed to be a separate tribe by itself.Â
 Therefore, 'Mana' is not a subÂtribe of 'Gond', but a separate tribe by",,,
 itself and is a Scheduled Tribe.,,,

24. In our view, this Court has held and it is confirmed by the Apex Court in the
 aforesaid decisions that even if it is assumed that there was a",,,
 separate entity, which is called as Mana in Vidarbha Region, which has no affinity
 with Gond tribe, that community would also fall within the scope of",,,
 the Scheduled Tribes Order by virtue of the Amendment Act, 1976, and the State
 Government was not entitled to issue orders or circulars or",,,
 resolutions contrary thereto.Â We hold that since under Entry 18, Manas are
 specifically included in the list of Scheduled Tribes in relation to the",,,
 State of Maharashtra, Manas throughout the State must be deemed to be
 Scheduled Tribe by reason of provisions of the Scheduled Tribes Order and",,,
 it is not open to the State Government to say otherwise, as it has purported to
 do in various Government Resolutions.Â It is not open to the State",,,
 Government or, indeed to this Court to embark upon an enquiry to determine
 whether a section of Manas was excluded from the benefit of the",,,
 Scheduled Tribes Order.,,,

25. It is not in dispute that the State of Maharashtra had sought review of the
 judgment delivered by the Apex Court in the case of Mana Adim Jamat,,
 Mandal by preferring Review Petitions No.488 of 2006 and 522 of 2006, which
 were dismissed by the Apex Court on 10Â8Â2006.Â The State",,,
 Government thereafter preferred Curative Petition (C) No.4 of 2008, which was
 also ultimately dismissed on 26Â2Â2008; as a result of which, the",,,
 Government Resolutions dated 24Â4Â1985, 19Â6Â1985 and 15Â6Â1995 on the
 basis of which Mana community was sought to be divided artificially",,,
 into different categories, like Badwaik Mana, Khand Mana, Kshatriya Mana, Kunbi
 Mana, Maratha Mana, Gond Mana, Mani/Mane, etc., for the",,,

grant of benefits available to the Scheduled Tribes, did not survive.",,

26. In our view, the effect of the Constitution Bench decision of the Apex Court in Milind's case, overruling the decisions in Dina I and Dina II's cases",,

on Entry No.18 of the Scheduled Tribes Order of the State, is that each tribe in Entry No.18 is an independent tribe and not a sub-tribe of Gond.Â It",,

cannot, therefore, be clubbed together with the lead tribe Gond.Â The persons belonging to any of the tribes other than Gond are not required to",,

establish their affinity with Gonds.Â It is also not permissible to lay down or prescribe the guidelines or tests to explain, clarify, classify, de-classify",,

or create groups or sub-groups by issuing the Government Resolutions and the Circulars, as has been done on 24-4-1985, 19-6-1985 and 15-6-1995, to determine whether a section of tribe is to be included or excluded for

grant of benefits of the Scheduled Tribes Order.",,

Exceptional principle in interpretation of entries in Scheduled Castes/Scheduled Tribes Order :,,

27. In the decision of the Constitution Bench of the Apex Court in the case of B. Basavalingappa v. D. Munichinnappa and others, reported in AIR",,

1965 SC 1269, it was a case wherein the election of the respondent No.1 against the seat reserved for Scheduled Caste candidate was under",,

challenge on the ground that the respondent No.1 was Voddar by caste, which was not specified in the Constitution (Scheduled Castes) Order, 1950",,

and consequently he was not eligible to contest the said election.Â The Election Tribunal held that the caste Bhovi mentioned in the Scheduled Castes",,

Order was a sub-caste amongst the Voddars and that only this sub-caste was included in the Order and not the entire Voddar caste.Â The election",,

of the respondent No.1 was set aside.Â The High Court allowed the appeal holding that considering the facts and circumstances in existence at the",,

time when the Scheduled Castes Order was passed in the year 1950, Bhovi caste mentioned therein was no other than Voddar caste, and the",,

respondent No.1 being Voddar, must be held to be a member of Bhovi caste mentioned in the Order and accordingly dismissed the election petition.Â",,

The matter was carried to the Apex Court.,,

28. In Basavalingappa's case, it was not in dispute that the Scheduled Castes Order did not include the caste Voddar. The respondent No.1 belonged",,

to Voddar caste and the contention raised in Paragraph 3 of the decision was that

a person is only entitled to stand for election from the scheduled,,
 caste constituency if he is a member of a caste specified in the Order and that it
 is not open to anyone to claim that though he is not a member of a,,
 caste specified in the Order and is a member of some other caste, that other
 caste is included in the caste specified in the Order.Â It was urged that",,
 the High Court was wrong in looking into the evidence that was produced before
 the Tribunal and then coming to the conclusion that the caste Bhovi,,
 mentioned in the Order was meant for the caste Voddar and that such evidence
 should not have been allowed by the Tribunal.Â If such evidence had,,
 not been allowed, the respondent, who is a Voddar by caste, could not stand for
 election as Voddar caste is not mentioned in the Order at all.",,
 29. Though the Constitution Bench accepted the aforesaid contention in
 Basavalingappa's case in principle, its opinion in the facts and circumstances",,
 of the case before it, was otherwise, as specified in Paragraph 7 of the said
 decision, which are reproduced below :",,
 â??(7) But that in our opinion does not conclude the matter in the peculiar
 circumstances of the present case.Â The difficulty in the present case,,
 arises from the fact (which was not disputed before the High Court) that in the
 Mysore State as it was before the reÂorganisation of 1956 there was,,
 no caste known as Bhovi at all.Â The order refers to a scheduled caste known as
 Bhovi in the Mysore State as it was before 1956 and, therefore, it",,
 must be accepted that there was some caste which the President intended to
 include after consultation with the Rajpramukh in the Order, when the",,
 Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that
 the President included the caste Bhovi in the Order though there was,,
 no such caste at all in the Mysore State as it existed before 1956.Â But when it is
 not disputed that there was no caste specifically known as Bhovi in,,
 the Mysore State before 1956, the only course open to Courts to find out which
 caste was meant by Bhovi is to take evidence in that behalf.Â If",,
 there was a caste known as Bhovi as such in the Mysore State as it existed
 before 1956, evidence could not be given to prove that any other caste",,
 was included in the Bhovi caste.Â But when the undisputed fact is that there was
 no caste specifically known as Bhovi in the Mysore State as it,,
 existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one
 has to determine which was the caste which was meant by that word",,

on its inclusion in the Order.Â It is this peculiar circumstance, therefore, which necessitated the taking of evidence to determine which was the caste",,,

which was meant by the word 'Bhovi' used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the re-organisation",,,

organisation of 1956. (Emphasis supplied).,,

It is a well-settled principle of law that no evidence can be let in to include or exclude certain castes or tribes in and from the Constitution (Scheduled",,,

Castes/Scheduled Tribes) Order, 1950 and that the entries in the said Order cannot be interpreted, explained or subdivided artificially by judicial",,,

pronouncement.Â However, in deviation of this principle, the decision of the Constitution Bench in Basavlingappa's case is that when it is not disputed",,,

that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to Courts to find out which caste was",,,

meant by Bhovi is to take evidence in that behalf.Â If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956",,,

evidence could not be given to prove that any other caste was included in Bhovi caste.Â But when the undisputed fact is that there was no caste",,,

specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to determine",,,

which was the caste which was meant by that word on its inclusion in the Order.Â,,

30. The Apex Court then considered the evidence which had been given in Basavlingappa's case to prove that it was Voddar caste which was meant",,,

by the word Bhovi, included in the Order.Â It referred to the communications made to the then Government of Mysore as far back as in 1944 as",,,

belonging to Voddar caste and the order of the then Government of Mysore in February 1946.Â It referred to the resolution passed by the Voddar",,,

caste at a conference in July 1944 in which it was resolved that the name of that caste be changed from Voddar to Boyi, and on the basis of such",,,

resolution, the order was passed on February 2, 1946 as under :",,,

'Government are pleased to direct that the community known as Vodda be in future called Boyi in all Government communications and records.',,

In Paragraph 9 of the said decision, the Constitution Bench of the Apex Court also dealt with the dispute regarding references to Voddar as Vodda",,,

and Bhovi as Boyi.Â It was held that Vodda is Voddar and Bhovi is Boyi holding

that no undue importance can be attached to the spelling.,,

Controversy in these cases :,,

31. Undisputedly, there exists or existed even prior to 1956 Gond and Gowari, two separate, distinct and independent tribes.Â Gond is a recognized",,,

Scheduled Tribes in Entry No.18 of the Scheduled Tribes Order of the State.Â Though Gowari is a separate tribe, it does not find place as a",,,

recognized Scheduled Tribe in the said Order.Â It is the combined community of Gond Gowari, which finds place as 28th Item in the cluster of",,,

tribes.Â Therefore, the questions involved in all these cases are threeÂ-fold as under :",,,

(1) Is it permissible for this Court to hold that it is the Gowari community alone which is meant by 28th Item Gond Gowari in the cluster of tribes in",,,

Entry No.18 in the Constitution (Scheduled Tribes) Order?",,,

(2) Whether there existed any tribe as Gond Gowari as on 29Â10Â1956, i.e. the date of its inclusion as 28th Item in Entry No.18 of the said Order",,,

other than Gond and Gowari?",,,

(3) If there did not exist as such any tribe as Gond Gowari, whether it was Gowari community alone which was included as 28th Item in Entry No.18",,,

of the said Order?",,,

The dispute as to the actual existence of a separate tribe Gond Gowari prior to 1956 and such tribe being a subÂtribe of Gond, the main tribe, persist",,,

even after lapse of 68 years from 28Â10Â1956",,,

i.e. the date of publication of the Constitution (Scheduled Tribes) Order, 1950 in the Gazette of India, as amended in 1956.",,,

Determination of Question No.(1) :,,

32. We now proceed to decide the question No.(1), stated above. If the general principle of law laid down by the Apex Court is to be considered, then",,,

the question No.(1) will have to be answered in the negative.Â However, if the facts and circumstances in these cases are akin to the decision of the",,,

Constitution Bench of the Apex Court in Basavalingappa's case, in our view, it would be permissible for us to determine which was the caste meant",,,

by Gond Gowari included in the Scheduled Tribes Order of the State.Â Consequently, we will have to consider the evidence to that effect on record",,,

as was done by the Apex Court.,,

33. No doubt, in Basavalingappa's case, the Apex Court proceeds on the undisputed factual position that there was no caste known as 'Bhovi' in",,,

existence in the Mysore State prior to 1956, i.e. the date of inclusion of such non-existent caste in the Scheduled Castes Order of the State.",,

However, in our view, the ratio of the Apex Court in the said decision would apply even to the cases where the Court finds that a plea as to existence",,,

of such caste prior to the date of its entry in the Scheduled Tribes Order is found to be frivolous and vexatious, only for the purposes of raising such a",,,

dispute. If on the basis of the material produced by the respondents themselves, a finding can be recorded as to non-existence of such caste/tribe",,,

prior to its inclusion in the Scheduled Castes/Scheduled Tribes Order, the ratio of the decision in Basavalingappa's case can be invoked to hold that it is",,,

the Gowari community which was meant by 28th Item of Gond Gowari in the Entry No.18 of the Scheduled Tribes Order of the State. Thus, we",,,

answer the question No.(1) accordingly",,,

Determination of Question Nos.(2) and (3) :,,

34. On the basis of the authenticated record in the form of various Census Reports, Gazetteer of India, Gazetteers of Districts, and the recitals in the",,,

Book of the Castes and Tribes of the Central Provinces in India by Russell and Hira Lal, we proceed to find out whether there existed Gond",,,

Gowari as a separate tribe prior to 1956 so as to determine whether it is the community of Gowari, which is meant to include by such name.",,,

Establishment of the Central Provinces, British Rule :",,,

35. The Census of India, 1891 Report in respect of the Central Provinces and Feudatories was prepared by Mr. B. Robertson of the Indian Civil",,,

Service, Provincial Superintendent of Census Operations. Part I in Volume XI of the said Census Report deals with British Rule and it states that",,,

previous to the formation of the Central Provinces, British Rule had been established in Saugor and Nerbada territories from the year 1818, and in",,,

Nagpur Province from 1853. In 1861, both were united and the administration of Central Provinces was established. In Para 6 of Part I dealing with",,,

the Area and Administrative Divisions, it is stated that British part of the Province has been for administrative purposes divided into eighteen districts",,,

which again are grouped into four Divisional Commissionership as shown below :,,

Jubbulpore Division : Saugor, Damoh, Jubbulpore, Mandla, and Seoni.",,,

Nerbada Division : Hoshangabad, Narsinghpur, Nimar, Betul, and Chhindwara.",,

Nagpur Division : Nagpur, Wardha, Chanda, Bhandara, and Balaghat.",,

Chhattisgarh Division: Raipur, Bilaspur, and Sambalpur.",,

Establishment of Central Provinces and Berar and Maratha Country :,,

36. In the year 1901, during the British regime, the aforesaid divisions of the Central Provinces British districts continued with additions for the",,

administrative purposes. The addition of fifth Division of Berar consisting of six districts controlled by the Commissioner of Berar under the Resident,,

of Hyderabad was in the year 1903. In the year 1905, six districts of Berar were reduced to four districts consisting of (i) Amravati, (ii) Akola",,

(iii) Buldana, and (iv) Yeotmal. The whole of Berar consisting of four districts, and five districts of Nagpur Division historically, linguistically",,

ethnically and topographically belonged to Maratha country and, therefore, were included in Maratha Plain Division.",,

Establishment of Madhya Pradesh, Bombay and Maharashtra :",,

37. On 24-10-1936 with the establishment of Legislative Assembly of Central Provinces and Berar (C.P. and Berar) with Nagpur as its capital,,

became C.P. and Berar State. It covered some of the present parts of Madhya Pradesh, Chhattisgarh and Maharashtra. It continued to be",,

as such till 1950 when Madhya Pradesh State was constituted with Jubbulpore Division, Nerbada Division, Nagpur Division",,

Chhattisgarh Division and Berar with Nagpur as its capital. On 1-11-1956, Berar and Nagpur became the part of the Bombay State as per the",,

provisions of States Reorganisation Act, 1956 and then ultimately with effect from 1-5-1960, Nagpur Division with Berar became part of the State",,

of Maharashtra, as per the provision of the Bombay State Reorganisation Act, 1960.",,

Classification of Castes and Tribes in 1891 :,,

38. Chapter X in Part I, Volume XI of the Census of India, 1891 Report deals with the Castes, Tribes and Races. All castes and tribes were",,

classified in 53 groups, which were shown under six main heads or classes, as stated in para 162 therein as under :",,

A. Agricultural.,,

B.Â?Â? Professional. C.Â?Â? Commercial.,,

D.Â?Â? Artisan and village menial.,,

E.Â?Â? Vagrant, minor artisans, and performers, etc.",,

F.Â?Â? Races and nationalities.,,

It is stated in the said Para that in the case of some of the tribes of aboriginal descent, all the members of which have now practically taken to",,

agriculture and have come to be regarded as belonging to the Hindu community, it has been thought best to include them amongst Cultivators, in Group",,

II(a), rather than among Forest and Hill tribes Group IV, to which they might otherwise belong. It is stated that there are several castes or tribes",,

which might thus be classified under different groups.,,

39. Para 165 of Chapter X in Part I, Volume XI of Census of 1891 dealing with Class A â?" Agricultural Castes and Tribes states that this class is",,

divided into three groups, showing (1) the military and dominant agricultural castes, (2) other agricultural castes, arranged according as they are, (a)",,

cultivators, (b) cattleÂ?breeders and graziers, and (c) field labourers, and (3) the forest and hill tribes.",,

40. Para 183 deals with Group II(b) of Graziers.Â It states that first in point of numbers as well as of importance comes the Ahir caste, the great",,

pastoral tribe of Northern India.Â The population of Ahirs with its chief subÂdivisions, including Gondi Ahir (518), was shown as 2,02,683.Â In Para",,

183 therein, it is stated that the Ahirs are said to be distinct from the Gaolis.Â They are found all over the northern districts, in the Nerbada valley",,

and in the Satpura districts with the exception of Betul, while in Chhattisgarh they are generally known as Gahras and Rawats.Â It states that the",,

Ahirs of the Central Provinces having come from the north of India, the period of their immigration would in many cases seem to have been very",,

remote.,,

41. Para 184 of Chapter X in Part I, Volume XI of Census of 1891 deals with Gaoli and its subÂdivisions having its population as 56,653 out of which",,

were 4,508 in Wardha, 2,336 in Nagpur, 3,101 in Chanda, and 1,726 in Bhandara.Â It is stated in the said para that Gaolis are found in Saugor in",,

lower Nerbada Valley and in the western part of Maratha Country.Â All their traditions and legends seem to point to Mathura, the classic land of",,

cowherds. In Chhindwara, they are agriculturists as well as keepers of cattle. They are engaged as a general rule in the care of their herds of cattle.

42. In Para 185 in Chapter X of the Report in Part I, Volume XI of Census of 1891, it is stated that the Gowaris, 1,20,247, are the cowherds of the Maratha country, 5,598 being also found in the southern and eastern parts of Seoni, and 2,079 in the Sausar tehsil of Chhindwara. It states that among the Gowaris, no trace of a northern origin was found and none of the subdivisions which have been given for the Ahirs and Gaolis being recorded of the caste. Nearly all of them are returned as Dudh Gowaris, the number of persons so shown amounting to 1,09,260, while other subdivisions given are Injhwari 1,106, Maladhari 910, and Gond Gowari 717. In Bhandara they are described as among the most valuable of the menial classes; they have in their hands the care of all the cattle of the country, and are but seldom employed in actual field work.

43. The population of Gond, classified as the Forest and Hill tribe in the entire Central Provinces, was shown as 22,58,824 in Para 193 of the Census of India, 1891, Volume XI, Part I of the Report with its chief subdivisions and allied tribes. The population of chief subdivisions was shown 6,012 of Ahir (Gondi), 7,403 of Gowari, in the entire Central Provinces. The population of Gond tribe was shown 44,790 in Wardha, 47,526 in Nagpur, 1,68,623 in Chanda, and 93,638 in Bhandara. The separate population figures of Gowaris and Gond Gowaris in the four districts of (i) Nagpur, (ii) Wardha, (iii) Chanda, and (iv) Bhandara in Nagpur Division were shown in the Table XIII in the Census Report of 1891. The strength of Gowaris and Gond Gowaris in the said Census was shown in Nagpur as 13,941 and 11, in Wardha as 10,397 and 60, in Chanda 11,217 and 19, in Bhandara 49,212 and 335 respectively in the part of C.P. and Berar.

44. In Para 267 of Part I, Chapter XI, Volume X of the Census of India, 1911, it is stated that Mr. R.V. Russell, I.C.S., who, as Superintendent of Census Operations, in 1901, initiated the ethnographic survey of C.P. and Berar, has obtained partly by his own researches and partly in the shape of monographs and notes compiled by the officers who had caught his enthusiasm, a vast mass of interesting and valuable knowledge regarding the people of the Provinces. Much of the information acquired has been compiled by

Mr. Russell in the articles of various castes which have been,,
issued with restricted circulation and in the provisional form, and some of it has
been embodied in the issues of District Gazetteer.",,

45. At the census of 1901, the castes were classified according to their social
precedence.Â Table XIII, dealing with the castes in the Census of",,,

India 1901, Volume XIIIÂÂ, Part II, provides districtÂwise and divisionÂwise
population figures of 172 separate castes and their subÂcastes in the",,,

C.P. and Berar.Â At Serial No.3 in this table, is the caste Ahir along with its
subÂcastes Gaoli, Gaolan, Golkar,Â Gowari, KaonraÂ and Rawat.Â",,,

Name,Strength,"Percentage of increase

(+), decrease (Â?)

Ahir,"738,192",+16

Gowari,"157,580",+55

Dhanagar,96283,+2

Gujat,"55,798",+12

Gadaria,40207,+21

Golar,16710,+100

Hatgar,14425,+103

Ghosi,9739,+20

Kuramwar,3792,+20

Bharud,2136,â?|â?|â?|

Gadia,39,â?|â?|â?|

Rewari,38,â?|â?|â?|

Sadgop,6,â?|â?|â?|

Appendix thereto contains alphabetically a list of 1,327 classified and unclassified
castes and tribes in the C.P. and Berar.",,

Appreciation of evidence and our findings :,,

52. As we understand from the various census reports that it is the
occupationÂbased caste system, which is prevalent in India since the ancient",,,

times.Â The agriculture has always been the most important sector of the Indian
economy.Â The people of backward classes in this country",,,

described as â??depressed classesâ?, prior to coming into force of the

Government of India Act, 1935, were essentially engaged in the agricultural",,, operations and the activities â?" allied or subsidiary thereto.Â Based on this, the agricultural castes were divided mainly in four categories â?" (i)",,, cultivators, (ii) cattleÂ?breeders and graziers, (iii) field labourers, and",,, (iv) forest and hill tribes.,,,

53. For the purposes of Entry No.18 in the Constitution (Scheduled Tribes) Order, 1950 in relation to the State of Maharashtra, we are concerned with",,,

the area described or called as â?"Maratha Countryâ? or â?"Maratha Plain Divisionâ?, as referred to in the Census Reports and Gazetteer of India",,,

or the Gazetteers of districts.,,,

This area consists of four districts Â? (i) Nagpur, (ii) Wardha",,,

(iii) Chanda, and (iv) Bhandara in Nagpur Division of Central Provinces, and four districts Â? (i) Amravati, (ii) Akola, (iii) Buldana, and (iv) Yavatmal",,,

of the Berar; covered by the C.P. and Berar.,,,

54. After going through all the Census Reports, Gazetteers right from 1891 and the recitals in the book of the â?"Castes and Tribes of the Central",,,

Provinces of Indiaâ?" by Russell and Hira Lal, we gather the following relevant authenticated information on the tribes in the present case : ",,,

(1) The existence of Gond and Gowari as two separate, distinct and independent tribes in the area of Maratha country in the C.P. and Berar and",,,

subsequent thereto in the States of Madhya Pradesh, Chhattisgarh and Maharashtra since 1891 is not in dispute.",,,

(2) The tribe Gond is classified as the Forest and Hill tribe, whereas the tribe Gowari of herdsman is classified as the tribe of cattleÂ?breeders and",,,

graziers.Â Thus, the Gonds and Gowaris fall in altogether different classes and neither the Gonds have their affinity with Gowaris nor the Gowaris",,,

have affinity with Gonds.,,,

(3) The tribe Gond has several chief subÂ?divisions and allied tribes, including Gondi Ahir or Ahir Gondi, Gaoli and Gowari.Â The tribe Gowari has",,,

also subÂ?divisions, like Dudh Gowari, Gai Gowari, Injhar, Maladhari, Gond Gowari, etc.Â Thus, the Gond Gowari was a combination of two distinct",,,

tribes Gond and Gowari. However, significantly, the tribe Gond Gowari has not been classified as forest and hill tribe.",,,

(4) Russell and Hira Lal states that Gond Gowari is a hybrid caste formed from

the alliance between Gond and Gowari or herdsman of Maratha,,
country.Â It states that Gond Gowari have no subÂtribes and they are lower than
either Gond or Gowari.Â They are often identified with either,,
Gond or Gowari and shown as cultivators and labourers.,,,

(5) Though the separate population figures of Gond Gowari were shown in the
Census of 1891 and 1901 in the Maratha country, in none of the",,,
subsequent Census of 1911, 1921, 1931 and so on till 1956, it finds place along
with figures of its population.Â Russell and Hira Lal states that in the",,,
year 1911, Gond Gowari have amalgamated with Gowari and this is accepted as
their origin.",,,

(6) Russell and Hira Lal states that Gowaris are formed by an alliance between
Gonds and Ahirs or Gaolis and they rank below Ahirs and Gaolis.Â,,
The Census Reports state that Ahir caste was described as great pastoral of
northern India, as it was found all over the northern districts in Nerbada",,,
Valley and Satpura districts with exception of Betul.Â Ahirs were also in the
group of cattleÂbreeders and graziers. Gondi Ahir or Ahir Gondi, Gaoli",,,
and Gowari were shown to be the subÂcastes of Ahir.Â Gaoli was also shown to
be an Â independentÂ Â casteÂ Â ofÂ Â herdsmanÂ Â,,
groupÂ Â of cattleÂ?breeders and graziers.Â,,

(7) Russell and Hira Lal states that in the localities where Gowaris predominate
Ahirs or Gaolis, the regular herdsman caste, are found only in small",,,
number.Â Gowaris are herdsman or grazier caste of Maratha country shown to be
corresponding to Ahirs or Gaolis.Â It is stated that Ahirs or,,
Gaolis of Maratha country have largely abandoned the work of grazing the cattle
and have taken to profitable business of making milk and ghi.Â It,,
states that herdsman duties are relegated to mixed class of Gowaris, produced
by the union of Ahirs and Gonds in forest.",,,

55. The information gathered and compiled, as aforesaid, leads us to hold that
there existed prior to 1911 a separate caste/tribe Gowari formed by an",,,
alliance between Gond and Ahir or Gaoli from the northern districts in Nerbada
Valley and Satpura districts.Â Ahirs or Gaolis of northern districts,,
belonging to a group of cattleÂbreeders and graziers correspond to Gowari of
such group in Maratha country. The respondents are not coming with a,,
case that Gowari in Maratha country is a subÂcaste of Ahir or Gaoli.Â There also
existed prior to 1911 a separate caste/tribe Gond Gowari formed,,

by an alliance between Gond and Gowari from the Maratha country.Â,,

56. The case of the respondents is that Gond and Gowari are two distinct, separate and independent tribes in the State of Maharashtra, having no",,, affinity with each other.Â The classification of Gond and Gowaris being in different groups of tribes, the one ranking below another does not arise.Â",,, There can be no comparison between the two.Â The alliance of Gond and Gowari resulting in its proginee, called as â??Gond Gowariâ?, was not",,, classified as forest and hill tribe, like â??Gondâ?, and, therefore, to treat them as belonging to subÂtribe of Gond, was, in our view, clearly a",,, misconception.Â On the contrary, Gond Gowaris were the herdsmen in Maratha country, classified and fell in the group of graziers.Â Presumably",,, therefore, they possessed the traits and characteristics akin to Gowaris and at any rate not akin to those classified as forest and hill tribe, like",,, â??Gondâ?. The Gond Gowari community was shortÂlived and it got extinct completely prior to the Census of 1911 and no trace of it was found",,, thereafter also in the Maratha country.,,,

57. In our view, the tribe Gond Gowari, which was a small hybrid caste formed by an alliance of Gond and Gowaris was completely extinct before",,, 1911 Census and no trace of it was found either in the Maratha country of the C.P. and Berar or in the State of Madhya Pradesh.Â We, therefore",,, hold that there did not exist any tribe as Gond Gowari as on 29Â10Â1956, i.e. the date of its inclusion as 28th Item in Entry No.18 of the Constitution",,, (Scheduled Tribes) Order in relation to the State of Maharashtra and it was Gowari community alone shown as Gond Gowari.,,,

We, therefore, answer the question Nos.(2) and (3) accordingly.",,,

Other material in support of the aforesaid view :,,

58. We now proceed to deal with the other material available on record in support of the aforesaid view, which we have taken on the questions of law",,, formulated by us. This material includes the attempts made by the State Government to delete the entry Gond Gowari and include Gowari as a,, separate tribe, the report of the Joint Committee of the Parliament submitted after taking into consideration the representations, recording the evidence",,, of individuals and the persons representing various communities, onÂtheÂspot study by visiting various places, the correspondence between the State",,, and the Central Governments, the report submitted by the Research Officers

appointed by the State Government, and the record of the Scrutiny",,,
Committees granting validity certificates to 136 persons in respect of the tribe Gond Gowari.,,,

Attempt to delete entry Gond Gowari and include Gowari as separate tribe :,,

59. In Writ Petition No.1742 of 2007, AnnexureÂT is the letter written on 27Â1Â1967 by the then Chief Minister of the State to the Minister of",,,

Planning and Social Welfare, Government of India, stating that in the existing list of Scheduled Tribes of the State, the Gond Gowari has been included",,,

as a subÂtribe of Gond.Â It states that in the revision of list for Scheduled Tribes, it was a proposal submitted with the letter dated 14Â7Â1965 of the",,,

Education and Social Welfare Department to include Gowari community as a Scheduled Tribe throughout the State. In the meeting of the State,,

Minister representing Scheduled Castes and Scheduled Tribes held at Delhi on 10Â3Â1966, the question was raised that the Gowari community shall",,,

be included as a separate tribe.Â The letter requests to include Gowari community in the list of Scheduled Tribes as a separate tribe by deleting Gond,,

Gowari, which has been included as a subÂ?tribe of Gond in the Advisory Committee's report.",,

60. We gather from the Report of the Joint Committee on the Bill dated 12Â8Â1968, published in the Gazette of India, Extraordinary Part II on 17Â?",,,

11Â1969, recommending the amendment for inclusion in, and the exclusion from, the lists of Scheduled Castes and Scheduled Tribes, of certain castes",,,

and tribes.,,,

In Paragraph 20(v) of the said Report, it is stated as under :",,,

â??20. The Second Schedule.Â?Â?,,

â?!,,,

(vi) The Committee received several memoranda and representations and recorded evidence of several individuals and organisations representing the,,

various communities. They also made onÂtheÂspot study visits in the various States. As a result the Committee have made various modifications in,,

the list of Scheduled Tribes.Â These are indicated in Annexure II.â??",,,

Part VII â?" MAHARASHTRA was proposed to be substituted and its relevant portion is reproduced below :,,

â??Part VII â?" MAHARASHTRA,,

â?!,,,

9. Gowari (in the districts of Amravati, Bhandara, Buldana, Chanda, Nagpur, Wardha and Yeotmal)",,,

22. Gond; Arakh, Bada Madia, Bhatola, Chhota Madia, Dandami Madia, Dhulia, Dhuru or Dhurwa, Dhoba, Dorla, Gaiki, Gaita, Gatta or Gatti, Gond",,,

Burud, Kalanga, Kandra, Khirwar, Koitur, Koya, Kucha Madia, Kuchaki Madia, Machalir Madia, Madia or Maria, Mannewar, Mudia or Muria",,,

Nagarchi, Nagwanshi, Naikâ?pod, Ojha, Sonjhari Jharekha, Thatia or Thotiaâ??"",,,

The Joint Committee recommended inclusion of tribe Gowari as an independent Entry No.9 in the list and exclusion of Item Gond Gowari from Entry,,

No.22 of Gond.Â The Bill could not be passed because the House was prorogued.,,,

61. On 1Â3Â1978, the Ministry of Home Affairs, Government of India, wrote to the Director General with reference to the demand for inclusion of",,,

Gowari community in the list of Scheduled Tribes for the entire State of Maharashtra.Â It states that the Government of Maharashtra has also,,

recommended for inclusion of Gowari community in the list of Scheduled Tribes in the Maharashtra State and the case was examined by the Joint,,

Committee on the Scheduled Castes and Scheduled Tribes Order (Amendment) Bill, 1967.Â The Committee recommended inclusion of Gowari",,,

community as a separate tribe in the districts of Amravati, Bhandara, Buldana, Chanda, Nagpur, Wardha and Yavatmal.Â It was informed that the",,,

recommendations of the Joint Committee will be taken into consideration while preparing a legislation for the comprehensive revision of lists of,,

Scheduled Castes and Scheduled Tribes in due course.,,,

62. On 12Â6Â1979, the Social Welfare, Cultural Affairs, Sports and Tourism Department of the State Government in its letter addressed to the Chief",,,

Legislative Committee Officer, Lok Sabha Secretariat referred to the correspondence ending with the Government Letter No.CBC 1078/43418/DÂV",,,

dated 6Â3Â1979 on the subject of the Scheduled Castes and Scheduled Tribes (Amendment) Bill, 1978 and stated that the tribe Gond Rajgond is",,,

proposed to be separated by inserting comma (,) in between.Â In Paragraph 3, it is stated that as regards the Scheduled Tribes, the communities (i)",,,

Banjara, (ii) Dhargar, (iii) Gowari, (iv) Halba Koshti, (v) Dhiwar, Dheemar, Koli, Bhoi, Kewat, Kahar and Palewar",,,

(vi) Mana and (vii) Otari were previously recommended to the Government of

India for inclusion in the list of Scheduled Tribes for Maharashtra and,,
the same may be considered.Â The details of caste Gowari were given as Item
(iii) as under :,,
â??(iii) GOWARI :Â The community is at present included in the list of
Scheduled Tribes, as Gond Gowari.Â It has been represented to Government",,
that Gowari community is not a subÂgroup of the tribe, Gond, but it is a separate
tribe in itself.Â The State Government had accordingly",,
recommended to the Government of India to show the Gowari tribe separately. A
copy of Chief Minister's D.O. letter dated 27/1/1967 is enclosed.Â,,
The tribe Gowari may now be included as a separate tribe.Â The Joint Committee
on the Scheduled Castes and Scheduled Tribes Orders,,
(Amendment) Bill 1967, had recommended the inclusion of the community as a
separate tribe for Vidarbha area.â??",,
Similar was the proposal in respect of Mana, which is also reproduced below :",,
â??(vi) MANA:Â At present, the community is included in the list of Scheduled
Tribes as subÂtribe of Gond.Â It has been represented to",,
Government that the Mana is a separate tribe distinct from Gond.Â The State
Government have considered the representation and had recommended,,
that the community 'Mana who are not Kunbis', should be included in the list of
Scheduled Tribes for Maharashtra.Â Copies of this Government letter",,
No.CBCÂ1468/2027ÂJ, dated 5/8/1968 and Chief Minister's D.O. letter dated
6/9/1971, are enclosed.Â The State Government still considers that the",,
recommendation already made by this Government deserves consideration.Â The
community may, therefore, be included in the list of Scheduled",,
Tribes for Maharashtra.â??,,
63. On 22Â1984, the Research Officer, Government of India, Ministry of Home
Affairs, wrote a letter to the President of Gowari Samaj Annyay",,
Niwaran Samitee at Nagpur, which is reproduced below :",,
â??No.DD 1701/11/CIÂHCADCD/(8)/Ca.11),,,
Government of India/Bharat Sarkar,,
Ministry of Home Affairs,,
New Delhi Dated 22 May 1984,,
To",,
The President",,

Gowari Samaj Annyay Nirwaran Samittee, Indvih, Behind IB Ward, Fort Ajani, Nagpur-461003.",,,

Subject : - Inclusion of Gowari Community alongwith Gond Community in the list of Scheduled Tribes in the State of Maharashtra.,,,

Sir, ,,

I am directed to refer to your letter dated 5/4/1984 on the above subject and to say that according to the Constitution (Scheduled Tribes) order, 1950",,,

amended from time to time Gowari Community has been included alongwith Gond Community in the list of Scheduled Tribes in Maharashtra in view,,

of this, persons belonging to these communities are entitled to get benefits as scheduled tribes throughout the State of Maharashtra. Further, Gowari",,,

Community in the list of Scheduled Tribes of Maharashtra has been shown alongwith Gond. (the entry is Gond Gowari) because Gowari is a sub",,,

tribe/synonym of Gond Community. In view of this Gowari Community cannot be separated from Gond and the certificates will have to be issued in,,

the name of community as given in the presidential of Order i.e. Gond Gowari. Amendment in the existing list of Scheduled Castes and,,

Scheduled Tribes can be done only through an Act of parliament in view of Articles 341(2) and 342(2) of the Constitution.,,,

Yours faithfully, ,,

Sd/-,,

(Y.P. Marwaha) Research Officer,,

Our findings :,,

64. What we find is that since 1967 the State Government was of the view that Gowari community is included in the list of Scheduled Tribes as Gond,,

Gowari, projecting it to be a sub-tribe of Gond. Hence, it clarified that Gowari is not a sub-tribe of Gond, but it is a separate tribe. The",,,

insistence of the State Government, therefore, was that the Item Gond Gowari need to be deleted from the cluster of tribes led by Entry Gond, and",,,

Gowari tribe need to be included as a separate tribe in the Scheduled Tribes Orders in relation to the State of Maharashtra.,,,

65. The Central Government was also of the clear opinion that the persons belonging to Gond Gowari community both are entitled to get the benefits,,

of Scheduled Tribe throughout the State of Maharashtra. It was of the view that Gowari community in the list of Scheduled Tribes in Maharashtra,,

has been shown or included along with Gond and the Entry is Gond Gowari, because Gowari community is a sub-tribe/synonym of Gond",,

community. The Central Government expressed that Gowari community cannot be separated from Gond and the certificates will have to be issued,,

in the name of the community Gond Gowari, as shown in the Presidential Order. It was of the view that if an amendment is to be made in the Entry",,

as suggested by the State Government, it can only be done through an Act of Parliament.",,

66. Since there was unanimity of the Central and the State Governments on the issue of Gond Gowari, the matter was referred to the Joint Committee",,

for examination. The Joint Committee received several memoranda and representations, recorded evidence of several individuals and organizations",,

representing various communities, and also made on-the-spot study by visiting various States. The Committee suggested the modification of the",,

list of the Scheduled Tribes in relation to the State of Maharashtra. The proposal was that Gowari in the districts of Amravati, Bhandara, Buldana",,

Chanda, Nagpur, Wardha and Yavatmal should be shown as a separate Entry No.9, and from the cluster of tribes led by Entry Gond, the tribe Gond",,

Gowari be deleted. It seems to us that twice,,

such a Bill was moved in the Parliament, but the House was prorogued.",,

Appointment of Research Officers to submit report :,,

67. It is the stand taken in the affidavit filed by the Scrutiny Committee that in the meeting held on 30-12-2005 between Hon'ble the Chief Minister,,

and the Working President of Adivasi Gond Samaj Sanghata to ascertain on the issue as to whether there existed Gond Gowari tribe in the Vidarbha,,

region. It was decided that the enquiry should be conducted by the Tribal Development Department and, therefore, as per the order dated 12-5-2006",,

2006 passed by the State Government, the Committee of the Research Officers Shri S.W. Sawarkar and Shri Vinod Patil was constituted to conduct",,

research in the areas where these Gond Gowari and Gowari people mostly reside, i.e. Kurkheda, Ramgad, Salaitola, Yanglekheda, Gothangao",,

Belgaon, etc., within the district of Gadchiroli and the report of this Committee is placed on record.",,

Our view on the report of Research Officers :,,

68. After going through the report dated 12-5-2006 (wrongly mentioned as

'18Â5Â2006'), we find that the Research Officers visited the areas.Â",,,

The Committee of the Research Officers conducted search of revenue and school records of certain claimants. It is the finding of the said Committee,,

that upon inspection of PÂI Register prior to 1950 in the Taluka Office of Land Records at Kurkheda, no evidence is found of the entry Gond Gowari,",,

but the evidence is of the entries of Gowari or Gowara.Â The Committee also inspected the school records of the period prior to 1950 from the Zilla,,

Parishad Primary School, which included the school admission register and the affidavits.Â It found one entry of Gowari (Gond) made on 1Â7Â1955",,,

and rest of the entries are of Gowara or Gowari, which are also found in the Zilla Parishad Primary Schools at Ramgad, Yenglekheda, Saletola.Â",,,

The Research Officers further record the finding that upon oral interviews of the villagers, it is found that Gond Gowari tribe is a subÂtribe of Gond",,,

and their cultural traits and customs are found similar to those of Gond tribe. It further states that when the information about Gowari tribe is collected,",,

it was found to be an independent tribe, having no similarity in cultural traits and customs with Gonds or Gond Gowaris. The Committee has tried to lay",,,

down the six tests to make out a distinction between Gowaris and Gond Gowaris.,,,

'U' turn by the State Government :,,

69. What transpired subsequent to 1979 remains a mystery. The Social Welfare and Sports Department of the State Government took 'U' turn vide its,,

letter dated 6Â11Â1981 and informed the Joint Secretary to the Government of India, Ministry of Home Affairs, New Delhi, that theÂ tribes â?" (1)",,,

Otari, (2) Gowari, (3) Dhangar and (4) Mana, do not fulfill the criteria of S.Ts. and hence the State Government does not consider it necessary to",,,

include them in the list,,

of S.Ts. of this State and hence the consideration is not recommended.Â In Paragraph 4 of the said communication, reference was made to the",,,

communication dated 12Â6Â1979, referred to above, and it was stated that the State Government has now come to the decision that the",,,

recommendations in paragraphs 2 to 5 thereof do not need any consideration and hence they should be dropped. Needless to state that in Paragraph 3,,

of the communication dated 12Â6Â1979, recommendation was for inclusion of Gowari and Mana as a separate tribe, amongst others, in the",,,

Constitution (Scheduled Tribes) Order.,,

70. On 24-11-1985, the Tribal Department of the State Government issued a resolution prescribing therein the guidelines on the basis of which the,,

caste certificates of the Scheduled Tribe of (a) real tribals, and (b) non-tribals are to be considered. It accompanied a table showing comparative,,

chart of non-tribal castes/tribes, who can possibly obtain the caste certificates illegally, taking the advantage of their similar nomenclature as to that of,,

Scheduled Tribes or its sub-tribes or similar tribes. Item No.8 in the table pertained to Entry No.18 Gond Gowari in the Scheduled Tribes Order of,,

the State, which states that it is a small community of the Gond tribe and there is no separate population of this community, but it is included in the,,

Gond population. This community is found in Kurkheda taluka of Gadchiroli district and the Gond people amongst the Gond community, who keep,,

the cattle, are locally called as Gond Gowari. It states that in the year 1901, its population was about 3,000, and since their original tribe is Gond,,,

their dialect, social tradition, sect, tradition and religious culture are that of Gondi. Their family, race, sect, family deity and surnames are similar to,,

those Gond people.,,

71. In the column of non-tribal caste/tribe in the aforestated table, who can possibly obtain the caste certificate showing the similar nomenclature as,,

to that of Scheduled Tribe, sub-tribe or similar tribe, the names of Gowari, Gawara, Gai-Gowari, Dudh-Gowari are the entries. In the column of,,

ordinary place of residence, the population and general particulars of non-tribal caste/tribe, it is stated that the population of Gowari caste is nearly,,

2,00,000, and this caste is mainly spread in Nagpur, Amravati, Wardha, Yavatmal, Bhandara, Chandrapur and Gadchiroli districts. In the last column of,,

the table, which pertains to 'remark', it is stated that Gowari and its sub-castes have no social relation with Gond. There is no similarity in social,,

cultural, etimological and family traits, characteristics and customs, and Gowaris are taking advantage of the benefits available to Gond Gowaris on the,,

basis of their similarity in the surnames.,,

Protest by Gowaris :,,

72. There was a large scale protest against the Government Resolution dated 24-11-1985 in Nagpur during the Assembly Session on 23-11-1994.,,

The protesters wanted to submit a memorandum to the then Chief Minister of the

State of Maharashtra at Morris College TÂPoint, near Zero Mile",,,
Stone, which resulted in the tragedy of stampede.Â About 114 people from the
Gowari community were killed and more than 500 people were injured",,,
when the police tried to disperse almost 50,000 Gowari protesters by using a
baton charge. Majority of casualties were women and children, who",,,
were crushed to death, as they scrambled to escape the baton charge.Â This
resulted in the setback to the movement.Â To commemorate those",,,
who died, a monument, â??the Gowari Shaheed Smarakâ?? has been",,,
constructed at Morris College TÂPoint, near Zero Mile Stone and a big flyover
ending at the said point is named as â??Gowari Shaheed Flyoverâ??.",,,
The contentions raised by the respondents :,,

73. The stand of the State Government, Scrutiny Committee",,,
as well as the Central Government, as we gather it from the replies and the
documents placed on record, is that the tribe/community Gond Gowari",,,
shown in the cluster of tribes in Entry No.18 is a subÂtribe of Gond, and unless
those Gowaris, who established their affinity with Gonds, which is a",,,
lead tribe in Entry No.18, the claim for Gond Gowari cannot be validated.Â The
Gowari is declared to be a Special Backward Class category, for",,,
which 2% reservations is provided as per the Government Resolution dated
15Â6Â1995. Similarly, Gowari community is also included as Other",,,
Backward Class category in the Central list prepared on 16Â6Â2001.Â It is only if
a person belonging to Gowari community satisfies the affinity test",,,
laid down in the Government Resolution dated 24Â4Â1985, he would be entitled
to issuance of validity certificate as Gond Gowari, which is a tribe",,,
included in Entry No.18 of the Scheduled Tribes Orders.,,,

Adjudication by us :,,

74. We find the aforesaid stand taken by the respondents is contrary to the
information contained in the ancient records of Census Reports and in the,,
book on the â??Tribes and Castes of Central Provinces of Indiaâ? by Russell and
Hira Lal, the reports of investigation and enquiry by the Joint",,,
Committee and the Research Officers of the State Government and the law laid
down by this Court as well as by the Apex Court.Â Our reasons for,,
it are as under :,,

(1) On the research work of the Central and the State Governments, we have

taken a view that the tribe Gond Gowari was completely extinct before",,,

1911 Census and no trace of it, was found either in the Maratha country of the C.P. and Berar or in the State of Madhya Pradesh prior to 1956.",,,

(2) We accept the view taken by the Central and the State Governments that " (a) Gowari community is included in the Scheduled Tribes Order of the State as Gond Gowari and it is wrongly projected as a sub-tribe of Gond, (b) Gowari is an independent tribe and not a sub-tribe of Gond, and (c)",,,

It is the Gowari community which will have to be issued the certificate as Gond Gowari.,,,

(3) There is no reason to discard the report of the Research Officers submitted on 12/18-5-2006. The Research Officers personally visited the core area of residence of Gond Gowaris, inspected the old record of Zilla Parishad Schools and the Land Revenue Department, conducted oral interviews of the villagers, but did not find any Entry as Gond Gowari or any person of this tribe. The Research Officers record the finding that Gowari tribe has no affinity with Gonds.,,,

(4) The stand of the Central and the State Governments both that the tribe Gond Gowari is a sub-tribe of Gond and not an independent tribe, is contrary to the decision of the Apex Court in Mana Adim Jamat Mandal's case, wherein it is held that each tribe in Entry No.18 is an independent tribe and not a sub-tribe of Gond and, therefore, it cannot be clubbed together with the lead tribe Gond. We add to it that the persons belonging to any of the tribes other than Gond in Entry No.18 are not required to establish their affinity with Gonds.,,,

(5) The stand of the State Government that the claim of Gowaris is required to be tested on the basis of the guidelines issued under the Government Resolution dated 24-4-1985, and only those Gowaris, who establish their affinity with Gonds, can be granted certificates as Gond Gowaris, is anomalous. If Gowari establishes his affinity with Gond, he would become Gond and would be entitled to enjoy the benefits as Gond, which is a lead tribe in Entry No.18 of the Scheduled Tribes Order. It would, therefore, not be necessary for him to establish his affinity with Gowari.",,,

(6) We have already held that Gond and Gowari are two distinct, separate and independent tribes, having no affinity with each other. The alliance of Gond and Gowari resulting in its proginee, called as "Gond Gowari" was

short lived and no trace of it was found in the Census of 1911 and",,,
thereafter.,,,

(7) Merely because Gowari is included in Special Backward Class or Other Backward Class, that by itself is not sufficient to reject the claim for Gond",,,

Gowari, a Scheduled Tribe.Â The entries in Special Backward Class or Other Backward Class cannot override the entries in the Constitution",,,

(Scheduled Tribes) Order.,,,

Interim directions by this Court :,,

75. On 19Â7Â2018, after hearing the learned counsels appearing for the parties and gathering the controversy involved, we formulated the moot",,,

questions to be decided in the matter.Â We also expressed that the respondents should file an affidavit stating the authenticity of the guidelines,,

contained in the Government,,

Resolutions dated 24Â4Â1985, 19Â6Â1985 and 15Â6Â1995 to distinguish Gond Gowari from Gowari on the basis of the affinity test.Â We issued",,,

certain directions to the respondents, and the relevant part of the order is reproduced below :",,,

â??8. We, therefore, direct the respondentÂ?Scrutiny Committee to produce before us the following information and documents :",,,

(I) The records of all the claimants who were granted validity certificates for Gond Gowari along with the orders passed containing the reasons to,,

issue validity certificates.,,,

(II) If the records of issuance of validity certificates along with the reasoned orders are not available, an affidavit to that effect be filed, stating either",,,

that it was searched and became untraceable or that it is destroyed.,,,

(III) The Gazetteers available with it indicating the information in respect of the caste/tribe Gond Gowari and Gowari.,,,

Â â?|Â â?| ...,,

(VI) Whether the documents produced by the persons/claimants, who were granted validity certificate of Gond Gowari, indicated exclusively the",,,

caste/tribe Gond Gowari?â??,,

Compliance by the Committee :,,

76. The Committee has filed before us an affidavit in response to the aforesaid order stating in Paragraph 19 that the record pertaining to the validity,,

certificates granted in favour of the respondent Nos.4 to 19 in Writ Petition No.4779 of 2008 was,,

extensively searched, but it has become untraceable.Â The Committee produced the record of 136 claimants along with the documents and the",,,

orders passed while validating their claims for Gond Gowari Scheduled Tribe and it is the specific stand taken in Paragraph 23 of the affidavit that all,,

these 136 claimants were granted validity certificates, as the claimants' traits, customs, religions, deities and rituals are found to be similar to Gond",,,

Scheduled Tribe, and the claimants, who were Gowari, Gowara and Gond Gowari successfully established their affinity with Gond Gowari.",,,

Records of validity certificates of Gond Gowari :,,

77. We have gone through the entire record of 136 claimants and we find the stereoÂtype order passed, validating the claims for Gond Gowari",,,

Scheduled Tribe, which is reproduced below :",,,

â??BEFORE THE SCHEDULED TRIBE CERTIFICATE SCRUTINY COMMITTEE GADCHIROLI DIVISION, GADCHIROLI.",,,

(Order passed under Section 6 of Maharashtra Act. No. XXIII of 2001),,,

Case No.V/11/33/2012,,

(a) Name of the applicantÂ :Â Shri Madhukar Malu Pungati,,

(b) PurposeÂ :Â Election,,

(c) Tribe claimÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â :Â Gond Gowari, Scheduled Tribe",,,

O R D E R,,

(Passed on 19/01/2012),,,

The case of Shri. Madhukar Malu Pungati, (hereinafter referred to as an â??applicantâ?) has been referred to the Scrutiny Committee by the",,,

Tahsildar, Etapalli vide letter dated 16/12/2011 for verification of his tribe claim as belonging to Gond Gowari, Scheduled Tribe.",,,

The Scrutiny Committee verified the proposal submitted by the applicant.Â The applicant has submitted required information in Form â??Eâ? as per,,

Rule 11(1) and documents thereto as mentioned in Part IVÂB along with original caste certificate in support of his tribe claim.,,,

The Scrutiny Committee has perused the information and documents submitted by the applicant and have appreciated the same. The applicant has,,

the documents produced by all such 136 claimants prior to 1950 and subsequent to 1950 are taken into consideration, the same indicate that 39",,,

claimants produced the documents indicating their tribe as Gond Gowari; 53 claimants produced the documents indicating their tribe as Gowari; 29",,,

claimants produced the documents showing their tribe as Gowara; and 9 claimants produced the documents showing their tribe as Gond. This position,,,

is also admitted and demonstrated in the reply filed by the Committee.,,,

Our findings in respect of the claims held as valid by the Committee :,,

78. Perusal of the aforesaid material produced by the Scrutiny Committee in response to our order clearly shows that out of 136 claimants, 98",,,

claimants did not produce any document indicating their caste or tribe as Gond Gowari.Â The documents produced by them indicate their tribe as,,

Gond or Gowari or Gowara. If the claimant establishes his affinity with tribe Gond, he need not establish that he belongs to Gond Gowari in order to",,,

avail the concessions and benefits meant for the Scheduled Tribes.Â Only such Gowaris or Gowaras, who satisfied the affinity test under the",,,

Government Resolution dated 24Â4Â1985, were granted validity certificates as Gond Gowari.Â If the documents having probative value produced",,,

indicate the caste or tribe as Gowari or Gowara, it is impermissible, as a general principle of law, to hold by leading evidence in the form of affinity test",,,

that it is a subÂtribe or synonym of Entry Gond Gowari in the Scheduled Tribes Order.Â If this is to be done, then the decision remains based on the",,,

sole and complete criteria of the affinity test.,,,

79. This Court, in the decision in the case of Mana Admim Jamat Mandal, cited supra, has set aside the Government Resolution dated 24Â4Â1985",,,

laying down the affinity test to classify, deÂclassify or divide Mana group for the purposes of issuance of validity certificate.Â In earlier paras of this",,,

judgment, we have held, while considering the effect of the Constitution Bench decision in Milind's case, overruling the decisions in DinaÂI and",,,

DinaÂII, that no such guidelines can be framed or prescribed to explain, clarify, classify, deÂclassify or create groups or subÂgroups by issuing the",,,

Government Resolution to determine whether a section of tribe is to be included or excluded for grant of benefits of the Scheduled Tribes Order. We,,

are of the view that the classification of tribe Gond Gowari on the basis of the original place of residence, the surnames, etc., as Gori, Gawara, Gai",,,

Gowari, Dudh Gowari, is impermissible.",,,

80. In the decision of the Apex Court in the case of Anand v. Committee for Scrutiny and Verification of Tribe Claims, reported in 2011 (6) Mh.L.J.",,,

(S.C.) 919,Â it is made clear in Para 22 that while dealing with the documentary evidence, greater reliance may be placed on the preÂIndependence",,,

documents, because they furnish a higher degree of probative value to the declaration of status of a caste as compared to the postÂIndependence",,,

documents.Â It adds that in the event of a doubt on the credibility of the document, its veracity has to be tested on the basis of oral evidence, for",,,

which an opportunity has to be afforded to the applicant.Â In respect of the affinity test, the Apex Court has laid down that a cautious approach has",,,

to be adopted, and with the migration, modernization and contact with other communities, these communities tend to develop and adopt new traits",,,

which may not essentially match with the traditional characteristics of the tribe.Â It holds that the affinity test may not be regarded as a litmus test for",,,

establishing the link of the applicant with the Scheduled Tribe.Â The affinity test is to be used to corroborate the documentary evidence and it is not",,,

to be used as the sole criteria to reject the claim.,,,

81. The decision of the Apex Court in the case of Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others, reported",,,

in (1994) 6 SCC 241, lays down in Guideline No.5 the procedure for collecting the traits, characteristics, customs, rituals, etc., prevailing in a particular",,,

community and enquiry is required to be conducted and the statements of the persons having knowledge of social status considered to be genuine",,,

tribals are required to be recorded.Â An opportunity is also required to be given to the claimants to crossÂexamine such persons deposing the affinity",,,

test.Â It can only upon such a test laid down or prescribed, it can be applied as a corroborative test and it cannot be used as a substantive evidence to",,,

reject the claim, which is established conclusively on the basis of the documents produced on record.",,,

82. In our view, the guidelines laid down in the Government Resolution, prescribing the affinity test, are not prepared as per the procedure prescribed",,,

in Guideline No.5 of the decision in Kumari Madhuri Patil's case. The traits, characteristics, customs, rituals, etc., prevailing in the community of Gond",,,

Gowari, have not been collected by making enquiry and recording statements of

the persons of that community.Â Even if any statement is recorded",,,
its veracity is not tested by crossÂexamination at the instance of any claimant.Â
As such, there is no authenticity to the guidelines contained in the",,
Government Resolution dated 24Â?4Â?1985.Â In our view, in the present
matters, the Scrutiny Committee has regarded the affinity test as a litmus test",,
for establishing the link of Gowaris with Gonds, and as per the decision in
Anand's case, cited supra, the affinity test is to be used only as a",,
corroborative piece of evidence and it is not to be used as a sole criteria to reject
a claim.,,

83. Perusal of the record of the Committee shows that 39 claimants produced the
documents, which are in the nature of entries in PÂ1 revenue",,
record pertaining to the period 1922Â?23. However, it is specifically admitted in
the chart produced by the Scrutiny Committee that no vigilance enquiry",,
was made to find out whether such entries existed in the old records.Â Perusal of
the orders passed validating the claims for Gond Gowari, does not",,
show any discussion about all such documents in the orders passed, recording
the reasons in verbatim.Â The question is, if most of the persons",,
belonging to Gowari or Gowara can be issued validity certificates as Gond
Gowari, why the others producing the same kinds of documents should be",,
denied the validity.Â It seems that the scrutiny of the claims by the Committee is
not based upon the relevant, uniform and authenticated guidelines",,
but it is based purely on the whims and caprice of the members of the
Committee.,,

Earlier decision of this Court in the matter of Gond Gowari :,,

84. The Committee has placed reliance upon the decision of the Division Bench of
this Court rendered in Writ Petition No.1691 of 1990 on 4Â4Â1996,,
in the case of Adivasi Gowari Samaj Sanghatana v. Union of India and others.Â
No doubt, that the decision is in respect of Gond Gowari in Entry",,
No.18.Â It holds that the Entry specifically refers to Gond Gowari, and Gowari
simpliciter is not included in the Entry. Â The petitioner, who claims to",,
be Gowari, cannot reasonably claim that his community is included or covered by
such caste of Gond Gowari.Â The Division Bench relies upon the",,
decision of the Apex Court in Dina II, cited supra, and dismissal of the petition is
exclusively based upon it.Â We are of the view that such decision",,
would not come in the way of the petitioner, as the decision in Dina II is

specifically overruled subsequently in Mana Adim Jamat Mandal's case, cited",,,
supra, by the Apex Court.Â The subsequent view taken by the Apex Court completely wipes out the effect of the decision of the Division Bench of",,,
this Court in Adivasi Gowari Samaj Sanghatana's case from its inception.,,,
Appointment of Agency to conduct research :,,

85. It seems that the State Government has now appointed the agency of Tata Institute of Social Sciences, Mumbai to conduct a detailed search about",,,

the Gowari community in the State of Maharashtra and to submit a report.Â Accordingly, an agreement to that effect entered into between the State",,,

Government and Tata Institute of Social Sciences recently on 1Â?3Â?2018 is placed on record.,,,

The issue has assumed public importance.Â According to us, these petitions raise the substantial question of law having public importance relating to",,,

the interpretation of Item 28th of Gond Gowari in Entry No.18 in the Scheduled Tribes Order, for consideration of this Court.",,,

Our view on the appointment of Agency to conduct research :,,

86. These matters are pending before this Court since the year 2008 for adjudication.Â It is only when we took up the matters for final hearing, the",,,

Government has decided to appoint the agency of Tata Institute of Social Sciences, Mumbai to conduct the research work about existence of Gond",,,

Gowari as a separate tribe.Â Instead of appointing such agency, the State Government, if was willing and serious to address the issue, could have",,,

moved the Central Government for revival of earlier proposal to delete the Entry Gond Gowari and include Gowari as a separate tribe in the,,

Scheduled Tribes Order of the State.Â We feel that this is merely an eyeÂwash and a device adopted to project before the Court that the,,

Government is seriously looking into the issue.Â In the absence of genuine efforts in right direction, no fruitful purpose will be served.",,,

87. The Research Officers appointed subsequently by the Government have visited the core areas of Kurkheda, Ramgarh, Salaitola, Yanglekheda",,,

Gothangaon, Belgaon, etc., within the district of Gadchiroli, which, according to the State Government, is the place where the people belonging to Gond",,,

Gowari community reside.Â The report is that there does not exist any such tribe Gond Gowari.Â If in the core area of the residence of Gond,,

Gowari no trace is found, the question of existing such tribe in other parts may

not arise.",,,

Lack of seriousness to address the issue by the State Government :,,

88. So far as the preparation of monument of 'Gowari Shaheed Smarak' at a prime place in the city and to name the Flyover ending at that point,,

as 'Gowari Shaheed Flyover' is concerned, it gives no solace for the lives of 114 people, who died, including the women and children, and 500",,,

persons, who were injured in the course of baton charge. The Government should have re-addressed the issue with seriousness atleast after the",,,

decision of the Apex Court in Mana Adim Jamat Mandal's case, which completely took away the basis of the stand of the State Government that",,,

each tribe in the cluster of tribes led by tribe Gond in Entry No.18 is a sub-tribe/synonym of Gond and, therefore, its affinity with Gond has to be",,,

established. In our view, there was lack of seriousness on the part of the State Government to re-address this issue. If there is no requirement",,,

of Gowaris establishing their affinity with Gonds to stake claim for Gond Gowari, what remains to be considered is that the claimant establishes that he",,,

belongs to Gowari community.,,,

89. We need not delve on the aspect of the locus of the petitioners, as this Court entertained and decided such issue at the instance of Mana Adim",,,

Jamat Mandal, which is confirmed by the Apex Court. Be that as it may, what we find is that the questions raised in the present petitions relate to",,,

the public importance and public interest and we do not find it necessary to dismiss the petitions on the ground of locus.,,,

90. Fortunately, the date of pronouncement of this judgment coincides with the eve of Independence Day. We, therefore, for the reasons stated in",,,

the judgment, proceed to grant declaration of an independent status to the Gowari community, invoking the ratio of the decision of the Constitution",,,

Bench of the Apex Court in the case of B. Basavalingappa v. D. Munichinnappa and others, reported in AIR 1965 SC 1269, and of this Court in the",,,

case of Mana Adim Jamat Mandal v. State of Maharashtra and others, reported in 2003(3) Mh.L.J. 513, and confirmed by the Apex Court in the case",,,

of State of Maharashtra v. Mana Adim Jamat Mandal, reported in (2006) 4 SCC 98. We allow the petitions by an order as under :",,,

Â Â Â Â OÂ RÂ DÂ EÂ RÂ Â,,

(1) We hold and declare that the tribe Gond Gowari was completely extinct

before 1911 and no trace of it was found either in the Maratha Country of,,
C.P. and Berar or in the State of Madhya Pradesh prior to 1956.,,

(2) We hold and declare that there did not exist any tribe as Gond Gowari as on 29-10-1956, i.e. the date of its inclusion as 28th Item in Entry No.18",,,

of the Constitution (Scheduled Tribes) Order, 1950 in relation to the State of Maharashtra and it was Gowari community alone shown as Gond",,,

Gowari, therein.",,,

(3) The tribe Gond Gowari shown as 28th Item in Entry No.18 of the said Order is not a sub-tribe of Gond and, therefore, the claim for its validity",,,

cannot be tested on the basis of the guidelines in respect of affinity test specified in the Government Resolution dated 24-4-1985.,,

(4) The people belonging to Gowari community in the State of Maharashtra cannot be denied the benefits of the Scheduled Tribes, merely because the",,,

Gowari community is shown in the list of Special Backward Classes in relation to the State of Maharashtra in the Government Resolutions dated 13-6-1995 and 15-6-1995 and as Other Backward Class category in the Gazette Notification dated 16-6-2011 issued by the Government of India in,,

the common Central list in respect of the State of Maharashtra.,,

(5) The order dated 13-1-2007 passed by the Scheduled Tribes Certificate Scrutiny Committee at Amravati, invalidating the claim of the petitioner",,,

Keshao s/o Vishwanath Sonone in Writ Petition No.1742 of 2007, is hereby quashed and set aside. The said matter is remanded back to the",,,

Scrutiny Committee to decide it afresh in the light of the decision of this Court.,,

(6) We direct the Registry of this Court to get the entire old record of Census Reports, Parliamentary Debate, Gazetteers, etc., called for the purposes",,,

of these petitions from the Library, scanned, within a period of six weeks, as it has worn out. The record is very important and it needs to be",,,

preserved, as it is also not available on the 'Net'.",,,

91. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.,,

92. Put up these matters after six weeks to see the compliance of the direction in Para (5) of the operative portion.,,