

(2001) 11 AP CK 0098

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5355 of 2001

Andhra Pradesh Scheduled Tribes Employees Association

APPELLANT

Vs

Aditya Pratap Bhanj Dev and Others

RESPONDENT

Date of Decision : 02-11-2001

Acts Referred:

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)
Regulation of Issue of Community Certificates Act, 1993 — Section 11, 5
Andhra Pradesh Scheduled Castes, Scheduled Tribes and Backward Classes — Issue of
Community, Nativity and Date of Birth Certificate Act, 1997 — Section 8
Andhra Pradesh Scheduled Castes, Scheduled Tribes and Backward Classes — Issue of
Community, Nativity and Date of Birth Certificate Rules, 1997 — Rule 3(1)
Civil Procedure Code, 1908 (CPC) — Section 100(4), 100(5), 11, 151, 152
Constitution of India, 1950 — Article 121, 124(4), 136, 14, 141
Evidence Act, 1872 — Section 40, 41, 42, 44
Hindu Adoptions and Maintenance Act, 1956 — Section 2
Hindu Marriage Act, 1955 — Section 2
Hindu Minority and Guardianship Act, 1956 — Section 3
Hindu Succession Act, 1956 — Section 2
Income Tax Act, 1961 — Section 33A, 35
Specific Relief Act, 1963 — Section 34
Suits Valuation Act, 1887 — Section 11

Citation : (2001) 6 ALD 582 : (2001) 6 ALT 433

Hon'ble Judges : V.V.S. Rao, J;Ramesh Madhav Bapat, J;Bilal Nazki, J

Bench : Full Bench

**Advocate : Bojja Tharakam and B. Satish Kumar, for the Appellant; E. Manohar
for T. Lakshminarayana, Government Pleader for SW, C.V. Nagarjuna Reddy, SC
for HC and C.V. Ramulu, SC for CG, for the Respondent**

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is a statewide Association. It is registered and established under the Societies Registration Act, 1860 with the object of safeguarding the rights of the persons belonging to Scheduled Tribes and espouse their cause in regard to their employment. Complaining fraud and misrepresentation the association filed this writ petition praying for a writ of or in

the nature of Mandamus, holding that the appointment of the first respondent herein to the post of District and Sessions Judge, is void, unconstitutional, and also for a prayer to set aside the same.

2. When the writ petition was listed before this Full Bench on 27-3-2001, it was brought to our notice that the first respondent filed W.P. No. 18031 of 1999 questioning a show cause notice dated 16-8-1999, issued by the Mandal Revenue Officer, Parvathipuram (MRO), calling upon him to show cause as to why his application for issuance of Caste Certificate to his children and other family members as belonging to "Konda Dhora", (Scheduled Tribe) should not be rejected for the reasons mentioned therein, In view of this, while ordering notice before admission in the present case, we directed the matter to be listed along with other writ petition. On 17-4-2001 both writ petitions were listed before us. We issued Rule Nisi in the present writ petition. The learned counsel for the first respondent, however, sought permission of the Court to withdraw W.P. No. 18031 of 1999 to enable his client to approach the revenue authorities by filing explanation to the show cause notice. The said writ petition was accordingly dismissed as withdrawn. This writ petition was heard elaborately on six different days over a period of about two months. The learned Senior Counsel, who appeared on behalf of the petitioner and the first respondent, placed before us entire material in support of their respective contentions. The material documents include various sale deeds, executed by father and grandfather of first respondent, official documents, extracts of school admission registers, judgment of the Civil Court as well as the judgment passed by this Court.

PLEADINGS:

3. In the affidavit filed in support of the writ petition, the President of the petitioner-Association, has made the following allegations: The petitioner-Association is espousing the cause of the members of the Scheduled Tribes who are poor, illiterate and uninformed, by taking up issues relating to atrocities committed on them and fight with those who produce false Social Status Certificates to obtain admission in educational institutions and public employment in State and Central Government. The first respondent is holding the post of District and Sessions Judge under the A.P. State Higher Judicial Service. He obtained employment by producing false Social Status Certificate as belonging to Konda Dhora, a Scheduled Tribe, and enjoying the benefit of reservation provided for the STs under the Constitution. The tribals being poor are not in a position to fight with the first respondent, and therefore, the petitioner-Association, which is espousing their cause, has locus standi to file the writ petition.

4. The first respondent was appointed as District and Sessions Judge in the year 1986 in a post reserved, for STs. The family of first respondent hails from "Sodaka" village, Aska Sub-Division, Ganjam District, now in the State of Orissa. They migrated to Salur town in Vizianagaram District. They belong to KSHATRIYA caste. In-several registered documents executed by the grandfather and father

of the first respondent, they were described as belonging to KSHATRIYA. In school admission register, the caste of first respondent was described as ORIYA KSHATRIYA. The younger brother of first respondent was admitted in Pedakomatipeta Municipal High School, and in the school admission register, his caste was described as ORIYA KSHATRIYA. Till 1979, the first respondent described his caste as KSHATRIYA only.

5. The first respondent applied for the post of District Munsif in the year 1981 in the quota reserved for STs. For the said purpose, he obtained a false Social Status Certificate claiming himself to be belonging to Konda Dhora. Though he was selected in ST quota, the A.P. Public Service Commission did not appoint him on the ground that Social Status Certificate produced by him, was a false one, and accordingly cancelled his selection. Aggrieved by the said order of cancellation, the first respondent filed W.P. No. 559 of 1981 before this Court. The said writ petition, however, was dismissed as withdrawn. Later, the first respondent filed suit being O.S. No. 8 of 1985 on the file of the Subordinate Judge, Parvathipuram (for short "the Sub-Court") for a declaration that he belongs to Konda Dhora Tribe. The said suit was decreed on 26-4-1985. The Court of the District Judge, Vizianagaram, dismissed the appeal preferred by the State in A.S. No. 45 of 1985. The second appeal being S.A. No. 722 of 1986, preferred before this Court, was also dismissed by order dated 12-9-1988. However, during the pendency of the second appeal, the first respondent applied to the post of District and Sessions Judge Grade-11 in the year 1986, in the quota reserved for Scheduled Tribes. The first respondent was selected. He was given order of appointment with a rider that his appointment will be subject to the orders that may be passed in the second appeal. The second appeal was dismissed, and by reason of which first respondent has been working as District and Sessions Judge. The petitioner came to know about the fraud when the District Unit of the petitioner-Association placed several documents before it.

6. It was brought to the notice of the petitioner that one Ambati Vincent, Vice President of Adivasi Vikhas Parishat, filed W.P. No. 30827 of 1998 before this Court for issuance of a Writ of Quo Warranto against the first respondent, which was dismissed on 16-6-2000 at the stage of admission holding that Writ of Quo Warranto does not lie. The petitioner was further informed that SLP being S.LP. No. 14473 of 2000, filed before the Supreme Court against the said judgment, was also dismissed at the stage of admission.

7. The Government of Andhra Pradesh conducted an enquiry into the social status of the first respondent and his family members. The enquiry appears to have revealed that first respondent does not belong to Konda Dhora, a Scheduled Tribe, but belongs to KSHATRIYA caste. In the enquiry, the social status of the father, brothers and nephews of the first respondent was ascertained, and it was found that they do not belong to ST. Based on the enquiry report the Revenue Divisional Officer (RDO), Parvathipuram, issued notice to the first respondent and other members of his family to show cause as to why their application for

issuance of Social Status Certificate as belonging to Konda Dhora, a ST should not be cancelled. Further the first respondent and his family members appear to have filed applications before the RDO for issuance of fresh Social Status Certificate in terms of the provisions of the A. P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (A.P. Act 16 of 1993; hereinafter referred to as "the Act"). When on enquiry it was established that the first respondent does not belong to ST, the RDO issued notice to the first respondent directing him to show cause as to why his request for issuance of Social Status Certificate, should not be rejected. Challenging the said show cause notice, the first respondent filed W.P. No. 18031 of 1999, and this Court by order dated 26-8-1999 passed in W.P. M.P. No. 22488 of 1999 suspended the show cause notice.

8. The first respondent does not belong to any of the tribes mentioned in the Constitution (Scheduled Tribes) Order, 1950. He, therefore, played fraud on the Constitution and obtained decree from Sub-Court. The case of the first respondent before the Sub-Court was that he belongs to Konda Raju, which is equivalent to Konda Dhora. The decree of Sub-Court is void ab initio, as it has no jurisdiction to declare a particular community as equal to any other tribe, listed in the Schedule under Article 342 of the Constitution of India. The appointment of the first respondent to the post of District & Sessions Judge is based solely on the judgment of the Sub-Court, as confirmed by the High Court in second appeal, which is void ab initio. The Social Status Certificate obtained from the Tahsildar, Salur in the year 1979, is not valid. Now under the new Act, the first respondent applied for issuance of Social Status Certificate to the RDO, who is the competent authority under the Act, and who after thorough enquiry found that first respondent does not belong to Konda Dhora, but belongs to KSHATRIYA caste. Since first respondent has played fraud on the Constitution, he should not be permitted to hold a post under the Constitution.

9. The fourth respondent-Government of Andhra Pradesh through its Deputy Secretary has filed a brief counter-affidavit inter alia stating that the enquiries conducted by the RDO revealed that B.S. Bhanj Dev, the grandfather of A.P. Bhanj Dev migrated from Orissa State long back and settled in Salur. He has no relationship with the local hill tribes. Alekh Narayana Purshottam Bhanj Dev s/o. Braja Sundar Bhanj Dev has three sons namely, Aditya Pratap Bhanj Dev (first respondent), R.P. Bhanj Dev and G.P. Bhanj Dev. Their date of births and particulars of caste are not traced in Salur Municipality records. The first respondent was born in a place other than in the State of Andhra Pradesh. The caste of the first respondent could not be found. However, the caste of the brothers of first respondent was entered in the records of MUP School, Pedakomatipeta, Salur, as ORIYA KSHATRIYA. The RDO issued a show cause notice on 29-4-1999 to the first respondent to show cause as to why his application for issuance of Social Status Certificate as Konda Dhora, should not be rejected as per the enquiry report available with him. The necessity of causing enquiry arose because the first respondent and his brothers applied for Social

Status Certificate as belonging to Konda Dhora, for their children. As the enquiry in relation to cancellation of Caste Certificate issued to first respondent and his family members is pending before the competent authority, the writ petition is premature.

10. The first respondent filed a lengthy counter-affidavit, affirmed by him on 15-4-2001. He states that the petitioner is not entitled to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, as there is no infringement of any fundamental or statutory right. He states that he was appointed in the year 1987 vide GO Ms. No. 3, General Admn. (S.C.F) Deptt, dated 5-1-1987 and that the petitioner has not explained as to why it waited for 14 long years to file the writ petition. There is no public interest involved in the writ petition. He states that persons inimical to him have set up the petitioner-Association to file the writ petition. Earlier, writ petition being W.P. No. 30827 of 1987, filed against the first respondent for issuance of Writ of Quo Warranto was dismissed, and the SLP there against also stood dismissed, and hence, present writ petition is barred by principles of res judicata.

11. While denying various allegations made in the writ petition the first respondent avers that his forefathers have been permanent residents of Satur village ever since 1890. After obtaining degree in Law, he started law practice in Salur in the year 1976. He applied to A.P.P.S.C. for the post of District Munsif in the quota reserved for Scheduled Tribes, by annexing Community Certificate dated 9-7-1979 issued by the Tahsildar, Salur showing that he belongs to Konda Dhora. The Joint Collector, Vizianagaram, issued a notice dated 22-6-1980 for conducting enquiry with regard to his community. He appeared before the Joint Collector and submitted both oral and documentary evidence in support of his claim that he belongs to Konda Dhora, a Scheduled Tribe. The documentary proof consists of various statutory proceedings from 1903 onwards. He did not receive any communication from the Joint Collector after the enquiry. However, A.P.P.S.C. communicated a Memo dated 21-1-1981 stating that his candidature did not come up for selection for the post of District Munsif as "he does not belong to ST". He, therefore, filed W.P. No. 559 of 1981 challenging the said Memo. At the time of final hearing of the writ petition, it was felt that the proper remedy was to file suit under that provisions of the Specific Relief Act as it involved taking of evidence on the issue whether he belonged to Konda Dhora community or not. Therefore, on 9-8-1981, the writ petition was dismissed as withdrawn. He filed a suit being OS No. 35 of 1982 on the file of the District Munsif, Salur, for declaration that he belongs to Konda Dhora. The same was transferred to the Court of the District Munsif, Gajapathinagaram, as O S No. 138 of 1983, and again from there it was transferred to the Court of Subordinate Judge, Parvathipuram, as OS No. 8 of 1985.

12. The trial Court decreed the suit on 28-4-1985. The appeal being A.S. No. 45 of 1985 filed by the defendants on the file of the Additional District Judge's Court, Vizianagaram, was dismissed on 20-2-1986. The second appeal being S.A.

No. 722 of 1986, was also dismissed on 12-9-1988. During the pendency of the second appeal, he was selected as District & Sessions Judge Grade-11 under ST quota. He was appointed vide GO Ms. No. 3, dated 5-1-1987 with a clause that his appointment would be subject to the result of second appeal. While applying to the post of District & Sessions Judge, he appended the certificate dated 9-7-1979 issued by the Tahsildar, Salur, stating that he belongs to Konda Dhora community, which is a notified ST. After dismissal of the second appeal, the Government issued GO Rt. No. 1700, General Administration (SC.F) Department, dated 30-4-1990 to the effect that first respondent shall be deemed to have been appointed as District & Sessions Judge in the vacancy reserved for ST. Subsequently, he was promoted to the category of District & Sessions Judge Grade-1 in the year 1995.

13. The petitioner-Association has no locus standi to file the writ petition for none of the members of the petitioner-Association are candidates aspiring for appointment to judicial officers posts. As he is working under the control of High Court of Andhra Pradesh, the said authority only can raise the issue. When the proceedings attained finality, parties are bound by the judgment, and applying the principle of "estoppel of cause of action", the writ petitioner is estopped from filing the writ petition. He also states that he did not claim any benefits like scholarship or other financial benefits, as he is ineligible. But as he is eligible for reservation in employment, he claimed reservation as ST, and his children were issued Social Status Certificates as ST by the competent authority on different occasions. He applied for issuance of Social Status Certificates to his children to the MRO in the prescribed form under Act 16 of 1993. The same has not been disposed of till now. The Sub-Collector, Parvathipuram, however, sent copy of the show cause notice dated 16-8-1999 addressed to his brother Sri. Rajender Pratap Bhanj Deo. He sent a reply dated 24-8-1999 to the Sub-Collector, in view of the applications filed by him on behalf of his children, and also because the show cause notice was also served on him. He states that Konda Dhoras reside on the high lands and are known as Pedda Kondalu and those who reside on the plains are known as Chinna Kondalu. He also stated that not a single registered document existed in his name or in the name of his children showing his caste as KSHATRIYA in registered documents in the Sub-Registrar's Office. He also denies that in his school records, and those of his children, caste was noted as ORIYA KSHATRIYA.

14. The first respondent further states that there is no caste as "Konda Raju" in existence, but some Konda Dhoras call themselves as Konda Rajus or KSHATRIYA due to their elevated position as Zamindars and landlords. He denies the allegation that he played fraud on the Constitution. The allegation that he obtained decree to the effect that he should be treated as Konda Dhora is incorrect and baseless. The earlier certificates issued by MRO and JMFC are still in force, and he did not obtain the said certificate on the basis of the judgment of the Civil Court. He further states that he did not obtain appointment to the post of District Judge with the help of false Social Status Certificate, and that only to

create hurdles in his way, representations/writ petitions are being filed by certain interested persons by using the petitioner-Association.

RIVAL CONTENTIONS:

15. Sri. B. Tarakam, learned Senior Counsel appearing on behalf of the petitioner submits that admittedly the forefathers of first respondent migrated from Orissa where there is no caste by name Konda Raju and that the first respondent obtained ST certificate from the Tahsildar, Salur by misrepresentation and fraud. When the said Certificate was not accepted by APPSC at the time of the first respondent's attempt to get appointed as District Munsif, he filed OS No. 8 of 1985 on the file of the Sub-Court for a declaration that the hill tribe community known as Konda Raju is no other than Konda Dhora, a Scheduled Tribe, and accordingly obtained a declaratory decree which itself is a nullity. The first respondent obtained appointment as District Judge by producing false community certificate and decree, which is a nullity. The learned Senior Counsel for the petitioner submits that first respondent committed fraud on the Constitution. The petitioner, which is espousing the cause of ST people has locus standi to file writ petition and seek a writ of mandamus against the first respondent. The learned Senior Counsel in support of his submissions, placed reliance on various judgments of the Supreme Court as well as various documents, which are on record.

Sri E. Manohar, learned Senior Counsel for the first respondent submits that as none of the members of the petitioner-Association is a candidate for any judicial office, a PIL cannot be entertained, and that the petitioner has no locus standi to file this writ petition. He further submits that as long as the certificate issued by the Tahsildar, Salur dated 7-7-1979 is in force, the social status of the petitioner cannot be doubted, and his appointment cannot be set aside. He nextly contends that the conduct of first respondent in describing himself as Konda Raju and obtaining a decree as equivalent to Konda Dhora, does not amount to fraud in law. At the relevant time, according to the learned counsel, the law was not well settled, and therefore, the Civil Court was competent to declare a community, which is not included in the list of Scheduled Tribes as equivalent to a community in the notified list, and therefore, the decree is not a nullity. In any event, it is submitted that a Division Bench of this Court dismissed W.P. No. 30827 of 1999 filed by Ambati Vincent holding that the Social Status Certificate was not obtained by playing any fraud, and that the first respondent did not play any fraud, and in view of this, the question cannot be reopened at the instance of a stranger. He also submits that there are adequate provisions under Act 16 of 1993, and this Court should leave it open to the authorities to enquire about the truth or validity of the community certificate obtained by the first respondent showing that he belongs to Konda Dhora.

16. Sri Naushad Ali learned Government Pleader for Social Welfare reiterated the submissions in the counter-affidavit.

POINTS FOR CONSIDERATION:

In the light of the pleadings, rival submissions, and other materials, the following points arise for consideration:

1. Whether the petitioner has locus standi to invoke PIL jurisdiction of this Court under Article 226 of the Constitution of India?
2. Whether the decree of the Civil Court in OS No. 8 of 1995 declaring that the first respondent as belonging to Konda Dhora is not nullity as one without jurisdiction?
3. Whether the appointment of the first respondent as District & Sessions Judge in A. P. State Higher Judicial Service is not liable to be declared as void, illegal, and unconstitutional on the ground that the first respondent obtained appointment by fraud, and such appointment is vitiated by fraud on the Constitution of India?
4. What is the relief that can be given in the writ petition?

In Re Point No. 1:

Whether the petitioner-association has locus standi to file this Public Interest Litigation.

17. The preliminary objection of the first respondent to this Writ Petition is two-fold; (i) None of the members of the petitioner-association is claiming a judicial post and hence they cannot have any grievance; and (ii) that the issue involved does not have elements of public interest. On this point we are afraid we cannot agree with the learned Senior Counsel for the first respondent.

18. There cannot be any denial that the Constitution ensures due representation to SCs and STs in Legislative bodies as well as in public employment. These provisions are intended to achieve egalitarian social order. While speaking in a Constituent Assembly Sri K.M. Munshi observed:

We want that the Scheduled Tribes in the whole country should be protected from the destructive impact of races possessing a higher and more aggressive culture and should be encouraged to develop their own autonomous life, at the same time, we want them to take a larger part in the life of the country adopted. They should not be isolated communities or little republics to be perpetuated forever.

19. The saga of uplifting of STs started in right earnest. The State action in resorting to positive discrimination in their favour by policy of reservation in public service has not yielded desired results. Many problems and many hurdles did not allow the reservation policy for STs to proceed smoothly. The problem of fake and false claims in the name of STs is resulting in adverse effects on the working of the policy. In Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and Director of Tribunal Welfare,

Government of Andhra Pradesh Vs. Laveti Giri and another, , the Hon''ble Supreme Court denounced the practice of persons claiming benefits conferred on STs by producing fake, false and fraudulent certificates, and observed thus:

The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate,

20. In VASANTH RAO v. GOVERNMENT OF A.P. 1995 (1) ALD 801, this Court described indifferent attitude of the nation towards tribals as follows:

The treatment of tribals is one of the greatest tragedies of Indian history. Taking advantage of their primitive ways of living and social structure the other sections of the society exploited them in the pursuit of wealth and power. They were deprived of their lands and their livelihood to a great extent....From a conspectus of the provisions concerning the scheduled areas and the legislative history, it is fairly clear that for over 125 years the scheduled areas have been treated differently. The tribals inhabiting the scheduled areas needed special protection. Their way of life, their social structure and primitive living made them unfit to be governed by ordinary laws to a great extent. But at the same time, It was not intended that forever these scheduled areas should remain permanent isolated tracts cut-off from the main stream.

21. By reason of geography, economic backwardness, illiteracy and ignorance, most of the STs are not even aware of the benefits available to them. More often than not, Constitutional bodies like UPSC, APPSC etc., are not able to fill up the posts reserved for STs only because there are no qualified candidates available. When such is the case, who can successfully abort fake and false claims? The associations like the petitioner are only the answer. It is not denied before us that the petitioner is a registered association since 1960s and that it is interested in the welfare of STs in general and ST employees in particular. Further, the complaint made is that a fraud is played on the Constitution by first respondent, whereby another ST candidate was denied the benefit, which was guaranteed to him under the Constitution. When we consider the question of locus standi and the question whether the petitioner is "aggrieved" or not these factors should be kept in mind.

22. In referring to precedents on the law of PIL, we need not go beyond 1982 when the Supreme Court in S.P. Gupta Vs. President of India and Others, , laid

down principles of law. The decisions of the Supreme Court and other High Courts on the subject are galore. Instead of referring to these decisions, we may summarise the principles of Public Interest Litigation as would emerge from various judgments of the Supreme Court and other Courts.

i) The Court in exercise of powers under Article 32 and Article 226 as the case may be can entertain a petition moved by anybody interested (not a busy body) in the welfare, of the people, who by the misfortune of; their being in a disadvantaged position and in low visibility area of humanity are not able to knock at the doors of Courts. The Court in such a case, is constitutionally bound to protect the fundamental rights of the disadvantaged people and ordain the State to fulfil the constitutional promises. (See S.P. GUPTA'S case (supra) and People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, ; Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, ; Janata Dal Vs. H.S. Chowdhary and Others,

ii) The common law rule of locus standi as applied under Anglo-Saxon jurisprudence shall be given a go by and the rule of locus standi is relaxed to enable the Court to go into the grievances complained of on behalf of those poor who are not able to approach the Courts to vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. (See FERTILIZER CORPORATION KAMAGAR UNION v. UNION OF INDIA AIR 1981 SC 344, S.P. GUPTA'S case (supra), PEOPLES UNION FOR DEMOCRATIC RIGHTS case (supra), and Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, .

iii) Where issues of grave public importance like constitutional duty and functions and the questions of enforcement of fundamental rights of large number of public are raised, the Court will treat even a letter or a telegram sent to it as PIL by relaxing procedural laws especially the law relating to pleadings. (See Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi, and Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, .

iv) When the Court is called upon to give effect to the Directive Principles and Fundamental Duties, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so, it is the matter for the policy making authorities. The least, the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded in decision-making. (See Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, .

v) In defence to a petition under PIL, the State or the Government are prohibited from raising the untenable grounds as to the maintainability of the petition before the Court. (See BANDHU MUKTI MORCHA'S case (supra)).

vi) The procedural laws do apply to PIL cases. But where the matter is of great importance like environmental protection, the principles of res Judicata do not apply. (See Rural Litigation and Entitlement Kendra Vs. State of U. P., . Notwithstanding this, in view of Section 11 explanation VI of Civil Procedure

Code, the earlier judgment in a similar proceeding operates as *res judicata* in subsequent public interest case. Whether or not *res judicata* applies depends upon the facts and circumstances of each case. (See *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, *Andheri and Others*, .

vii) Whenever there are serious disputes between two maverick groups with regard to a public institution, public interest litigation case is not maintainable. Therefore, a dispute between two warring groups purely in the realm of private law cannot be agitated as a public interest case. (See *Ramsharan Autyanuprasi and another Vs. Union of India and others*, , *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, and *Malik Brothers Vs. Narendra Dadhich and Ors*, .

viii) In an appropriate case, where the petitioner might have moved a Court in his private interest and for redressal of the personal grievances, the Court in furtherance of public interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case. (See *Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others*,

ix) The Court entertaining public interest litigation cannot reject a petition on the ground of non-availability of sufficient material. In such an event the Court has power under Article 32 and Article 226 to appoint Commission, and/or a fact-finding body to assist the Court. (See *BANDHU MUKTI MORCHA'S case (supra)*, *AIR 1989 348 (SC)* , and *A.P. Pollution Control Board Vs. Prof. M.V. Nayadu (Retd.) and Others*, .

x) When lamentable state of affairs in the administration of a public institution established by the State is brought to the notice of the Court it may appoint a special committee to manage the public institution. [See *RAKESH CHANDRA'S case (supra)*].

23. The Supreme Court in a recent judgment rendered in *Vinoy Kumar Vs. State of U.P. and Others*, , held as under:

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

24. The above principles of PIL jurisdiction are well-settled. It is not necessary to quote from those judgments. We may, however, quote a passage from *H.S. CHOWDHARY'S case (supra)*, which is relevant. In the said judgment, the Supreme Court explained scope and object of the "new chapter in justice delivery system" PIL thus:

...the strict rule of *locus standi* applicable to private litigation is relaxed and a broad rule is evolved which gives the right of *locus standi* to any member of the

public acting bona fide and having sufficient interest in instituting of an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivations or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like action popular is of Roman Law whereby any citizen could bring such an action in respect of a public delict,

25. In WADHWA'S case (supra), fraud on the Constitution was alleged against State of Bihar in promulgating and repromulgating Ordinances. The Supreme Court observed that every citizen has a right to be governed by validly made laws and when fraud on the Constitution is committed every citizen can complain to a Constitutional Court. In view of this, it is futile to contend in a matter of this nature that a ST. Welfare Association has no locus standi to approach this Court. We should not lose sight of the constitutional scheme whereunder the role of protecting the citizens including SCs and STs from invasion of their rights is assigned to the Courts. Accordingly, we hold that the case involves public interest and the petitioner-association has locus standi to file this Writ Petition. Point No. 1 is answered accordingly.

In Re Point No. 2

Whether the decree of the Civil Court in OS No. 8 of 1995 declaring first respondent as belonging to Konda Dhora community is not nullity as one without jurisdiction?

26. The facts in relation to this issue are admitted. First respondent after passing his LL.B course enrolled as an Advocate on the rolls of the Bar Council of Andhra Pradesh in 1976. He appeared for the post of District Munsif, (now designated as Junior Civil Judge) in A.P. State Judicial Service in response to an advertisement given by the A.P.P.S.C. In seeking such employment, he produced a community certificate issued by MRO. Though he was selected, he was not appointed, as A.P.P.S.C. doubted the genuineness of the community certificate produced by him. The matter was referred to the District Collector, and on the basis of the report submitted by revenue officials, his selection was cancelled. The Government issued Lr. No. 3249/F9-280-11, dated 9-12-1980 (See para 3 of the judgment in OS No. 8 of 1985) informing all concerned that first respondent cannot be treated as belonging to ST. As per the said Memo, first respondent claimed to belong to Konda Dhora community, based on his relationship with Sri. L.N. Sanyas Raju and Sri S.J. Narayan Jana Dev, who were themselves found not to belong to Konda Dhora community. Based on the said Memo, the A.P.P.S.C. by Memo No. 174/DM/079, dated 21-10-1981 informed first respondent accordingly. This gave cause of action to first respondent to file a suit for declaration that he belongs to Konda Dhora community, which ultimately was numbered as OS No. 8

of 1985 on the file of the Court of Subordinate Judge, Parvathipuram.

27. There cannot be any doubt that the suit was u/s 34 of the Specific Relief Act, 1963. It is rather doubtful as to how the suit for mere declaration without any consequential relief was maintainable. Be that as it may whether jurisdiction of the Civil Court to issue a declaration that a person belongs to a particular caste, which comes under Scheduled Tribe, is ousted by reason of Section 9 of the Code of Civil Procedure, 1908? Section 9 of the CPC lays down that a Civil Court shall have jurisdiction to try all suits of a civil nature "excepting suits of which cognizance is either expressly or impliedly barred". The law is well settled that unless the suit is expressly or impliedly barred, the doctrine of ubi jus ibi remedium (where there is a right there is a remedy) is attracted, (see Most. Rev. P.M.A. Metropolitan and others, etc. etc. Vs. Moran Mar Marthoma and another etc. etc., .

28. We need to address the question as to whether the Civil Court is competent to declare a particular tribe is equivalent to ST in the Presidential Order and/or whether the Civil Court is competent to declare a citizen as belonging to ST, though such a person does not belong to ST, but claims to belong to ST?

29. A person shall be held to be a member of ST, if he belongs to a tribe which under the Constitution (Scheduled Tribes) Order, 1950 has been declared to be a Scheduled Tribe for the area of which such person is a resident. The Constitution provides for special treatment to backward classes notwithstanding Articles 15(1) and 16(1) of the Constitution. The more backward classes like SCs and STs are given constitutional protection by Articles 335, 341 read with V & VI Schedules to the Constitution of India. Reservation to SCs and STs is available "for the purpose of the Constitution"; that is to say for attainment of the constitutional goals of equality, liberty and justice. Article 341 empowers the President of India to specify by notification various castes, races, groups etc. "for the purpose of the Constitution" to be deemed to be SCs in relation to each State or Union Territory as the case may be. Article 342 reads as follows:

Scheduled Tribes :--(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

30. Article 366(25) defines "Scheduled Tribe" as to mean such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are

deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.

31. Therefore, the tribes or tribal communities, which are specified in the notification issued by the President of India under Article 342(1) alone are deemed to be STs for claiming benefits under the Constitution of India. The President of India in exercise of powers under Article 342(1) notified Constitution (Scheduled Tribes) Order, 1950, which was amended by Parliament under Article 342(2) by SCs & STs Order (Amendment) Act, 1976. As per the Constitution (ST) Order in relation to the State of Andhra Pradesh, Konda Dhora community, is ST vide item No. 13 of the said Order. No person who does not belong to Konda Dhora can claim to belong to Konda Dhora either by a process of comparison, or can by a process of equalization, and/or by reason of residence hill/tribal areas, can claim to belong to Konda Dhoras. This is because Article 342 creates legal fiction, which has to be given its fullest effect. By reason thereof, any caste or tribe or tribal community, which does not come within the purview of Constitution (STs) Order, cannot be treated or claimed to be as belonging to ST as per Article 366(25). Further, where a person migrates from a State in respect of which his community is Scheduled Tribe to another State in respect of which his community is not Scheduled Tribe, he will continue to be a member of the Scheduled Tribe only in relation to the State in respect of which his community is Scheduled Tribe. This Constitutional principle is well-settled. (See *Rajesh Arjunbhai Patel Vs. State of Maharashtra and others*, and *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another*, . In *Bhaiyalal Vs. Harikishan Singh and Others*, and *Parsram and Another Vs. Shivchand and Others*, , the apex Court declared the law to the effect that it is not permissible for the Courts to issue directions for exclusion or inclusion of any caste or tribe from the Scheduled Castes or Scheduled Tribes Order, 1950, and that Parliament alone has power to alter the lists of STs under Article 342(2) of the Constitution.

32. The question of jurisdiction of the Civil Courts to pass decree of declaration that a person belongs to ST and/or that a community/tribe claimed by a person is equivalent to a Scheduled Tribe, is no more *res integra*. There are catena of decisions on this point. We may briefly refer to some of these binding precedents.

33. In *B. Basavalingappa Vs. D. Munichinnappa*, , a Constitution Bench of the Supreme Court considered the scope of Article 341(1) and (2) [which is in *pari materia* with Article 342(1) and (2)], and held that it is not open to any person to lead evidence to establish that the caste to which he belongs to is the same as and/or part of another caste, which is included in the Constitution (Scheduled Castes) Order. It was observed:

It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A. It may also be accepted that wherever one

caste has another name it has been mentioned in brackets after it in the Order: [See Aray (Mala), Dakka (Dokkalwar etc.)]. Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order.

34. In BHAIYA LAL'S case (supra), another Constitution Bench of the Supreme Court considered similar issue and after referring to BASAVALINGAPPA'S case (supra) held:

...It is thus clear that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi and so in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dollar caste which is a sub-caste of Chamar caste, cannot be accepted.

35. In PARSRAM'S case (supra), the Supreme Court followed BASAVALINGAPPA'S case and BHAIYA LAL'S case and held that Court cannot give any declaration that a person belongs to Scheduled Caste. In *Srish Kumar Choudhury Vs. State of Tripura and others*, , a three Judge Bench of the Apex Court reiterated that Court to add to or subtract any caste from the Presidential Order. The above principle was again reiterated in *KUMARI MADHURI PATIL'S* case (supra).

36. In *S. Swvigaradoss Vs. Zonal Manager, F.C.I.*, , the Supreme Court observed:

...It is settled law that the Court would look into the public notification under Article 341(1) or 341(2) for a limited purpose. The notification issued by the President and the Act of the Parliament under Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 and the Schedules appended thereto can be looked into for the purpose to find whether the castes, races or tribes are parts of or groups within castes, races or tribes shall be Scheduled Castes for the purposes of the constitution. Under the Amendment Act, 1976, again the Parliament has included or excluded from schedules appended to the Constitution which are now conclusive. Schedule I relates to Scheduled Castes and scheduled II relates to Scheduled Tribes. Christian is not a Scheduled Caste under the notification issued by the President. In view of the admitted position that the petitioner was born of Christian parents and his parents also were converted prior to his birth and no longer remained to be Adi Dravida, a Scheduled Caste for the purpose of Tirunelveli District in Tamilnadu as notified by the President, petitioner cannot claim to be a Scheduled Caste. In the light of the constitutional scheme Civil Court has no jurisdiction u/s 9 of CPC to entertain the suit. The suit therefore, is not maintainable,

37. In *Nityanand Sharma and another Vs. State of Bihar and others*, , the

Supreme Court considered the question as to whether a person who does not belong to or fails to prove that he is a tribe, can claim -to have included in the STs Order on the ground that the community to which he belongs is none other than ST. The question was answered in the negative, holding that:

It is the constitutional mandate that the tribes or tribal communities or parts of groups within such tribes or tribal communities specified by the President, after consultation with the Governor in the public notification, will be Scheduled Tribes subject to the law made by Parliament alone, which may, by law, include in or exclude from the list of Scheduled Tribes specified by the President. Thereafter, it cannot be varied except by Parliament. The specification is for the purpose of the Constitution. For the purpose of the Constitution "Scheduled Tribes" defined under Article 366(25) and the Schedule as substituted by the Second Schedule of Amendment Act of 1976, are conclusive. Though evidence may be admissible to a limited extent of finding out whether the community which claims the status as Scheduled Caste or Scheduled Tribe, was, in fact, included in the Schedule concerned, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe,

38. In *State of Tamil Nadu and others Vs. A. Gurusamy*, , the facts are these: Respondent was described a member of "Thotti" while he was studying in the school. As per the Constitution (Scheduled Caste) Order, "Thotti" was notified as Scheduled Caste at item No. 67. Subsequently, in 1970, the respondent obtained a certificate from RDO indicating him to be "Kattunaicken" as item No. 9 of the list of STs in the State of Tamil Nadu, issued by the President under Article 342(1) read with Article 366(25) of the Constitution. When he applied for permanent certificate, an enquiry was conducted, and it was found that respondent was not a ST, and accordingly the certificate was cancelled. A suit was filed for declaration that he is "Kattunaicken". The trial court granted the decree of declaration, which was affirmed by the appellate Court. The second appeal to the High Court was also dismissed. The State carried the matter in appeal to the Supreme Court. The apex Court allowed the appeal reversing the judgment and decrees of the trial, appellate and second appellate Courts holding that the declaration issued by the Courts below is unconstitutional and without jurisdiction. The apex Court further held:

...By operation of Section 9 of GPC, a suit of Civil nature cognizance which is expressly or by implication excluded cannot be tried by any Civil Court. The declaration of the President of India, under Articles 341 and 342 of the Constitution, with respect of lists of the Scheduled Castes and Scheduled Tribes in relation to a State, that a particular caste or tribe is defined in Article 366(24) or (25) respectively, is conclusive subject to an amendment by the Parliament under Article 341(2) and 342(2) of the Constitution. By necessary implication, the jurisdiction of the Civil Court to take cognizance of and give a declaration stands prohibited....

39. In a latest decision of the apex Court in *STATE OF MAHARASHTRA v. MILIND*, AIR 2001 SC 393, a Constitution Bench again inter alia considered the question whether it is permissible to hold enquiry and let in evidence to decide or declare that any tribe or tribal community is included in the general name even though it is not Specifically mentioned in the concerned entry in the Constitution (Scheduled Tribes) Order? After referring to *BASAVAUNGAPPA*, *BHAIYA LAL*, *NITYANAND SHARMA*, *PARSRAM* and other cases, the Supreme Court laid down the following principles governing this branch of Indian Law:

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Governments or Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, and *DINA v. NARAYAN SINGH* (1968) 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter.

40. In *MILIND'S* case, the facts are as follows: The respondent therein had a certificate showing that he belongs to "Halba" Scheduled Tribe, and based on the same he applied for MBBS degree course in 1985-86 in the reserved category. He was included in the merit list of ST candidates. As per the procedure, the certificate was sent for verification to the scrutiny committee in the Directorate of Social Welfare, Pune. After conducting enquiry, the Directorate concluded that respondent did not belong to "Halba" ST community, and hence certificate issued to him was rejected. The administrative appeal filed by him was dismissed recording that respondent belongs to "Kosti" caste and that he does not belong to "Halba/halbi" Scheduled Tribe. The respondent filed writ petition at the

Nagpur Bench of Bombay High Court to set aside the orders passed by the Director-of Social Welfare and Additional Tribal Commissioner, which invalidated the community certificate given to him as belonging to ST. The High Court allowed the writ petition holding that "Halba Kosti" is sub-tribe of Halba/halbi. Aggrieved by the same, the State of Maharashtra filed appeal before the Supreme Court. A reading of the judgment shows that there were interim orders at the stage of granting special leave permitting respondent to continue the course. By the time, civil appeal was decided on 28-11-2000, the respondent; completed the course and was practising as a doctor. Therefore, the Supreme Court did not annul the admission and observed that the admissions and appointments shall remain unaffected by the judgment. The observations made in Para 37 of reported judgment cannot be taken to be of general application in all the States and in all cases. Those observations are made in the context of that case so as to give respondent the benefit of the MBBS degree. The same cannot be taken to save all the community certificates obtained fraudulently and/or through Civil court declarations. We are making these observations as the learned Senior counsel for first respondent repeatedly drew our attention to para 37 of the judgment to drive home the point that after long lapse of time the Court may not be inclined to annul the appointment.

41. There cannot be any iota of doubt that a suit for declaration of Scheduled Tribe and/or a suit for declaration that an unincluded community be declared as equivalent to a tribe in the Scheduled Tribe Order, is expressly and impliedly barred. The Civil Court has no jurisdiction to pass such a decree.

42. It is axiomatic that a decree passed by a Court without jurisdiction is nullity. The same does not operate as *res judicata* nor does it bind the parties thereto or parties claiming through such a suit. A decree, which is nullity, does not confer any enforceable right. In *Kiran Singh and Others Vs. Chaman Paswan and Others*, , the apex Court observed:

...what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties...

43. The above judgment was referred in *Shri M.L. Sethi Vs. Shri R.P. Kapur, and A.R. Antulay Vs. R.S. Nayak and Another*, .

44. An halfhearted submission is made before us that when the Civil Court decree OS No. 8 of 1985 was passed on 28-4-1985, the law is not well settled as

is now declared in MILIND'S case, and therefore, the decree passed at the relevant time was not without inherent lack of jurisdiction. Reliance was placed on the judgments of the apex Court in BHAIYA RAM MUNDA and ANIRUDH PARAR (supra), which are to the effect that it is permissible to let in evidence, and decide/declare that a tribe is equivalent to another tribe included in the notified list. We are afraid, we cannot accept the submission for reasons more than one. Firstly, the judgment in ANIRUDH'S case was specifically over-ruled in MILIND'S case. Secondly, before the first appellate Court in A.S. No. 45 of 1985, the decision of the Constitution Bench of the apex Court in BHAIYA LAL'S case was cited and the same was not applied on the ground that "it has no application to the facts of the case". Thirdly, even by the date the trial Court, the appellate Court and second appellate court decided the matter, the two Constitution Bench judgments in BASAVAUNGAPPA'S case and BHAIYA LAL'S case declared the law, which was binding on all the Courts. Indeed, as noticed by the Division Bench of this Court in W.P. No. 30287 of 1998 dated 16-6-2000, in the Second Appeal filed by APPSC, and State of AP against the judgment in A.S. No. 45 of 1985, a substantial question of law was formulated as to "whether the Courts below have jurisdiction to give finding that Konda Raju community, Which is known as "Konda Dhora community, which is not included in the Presidential Order"?

45. Sri B. Tarakam, learned senior counsel has placed before us copy of the judgment in OS No. 8 of 1985 on the file of the Subordinate Judge, Parvathipuram. Therein first respondent alleged that he belongs to hill tribe community known as Konda Raju that he is related to L.N. Sanyasi Raju who belongs to Konda Raju by community, and therefore, Konda Raju community of the plaintiff comes under ST. He also alleged that he and his ancestors belong to class of hill rulers who call themselves Konda Rajus, which is same as Konda Dhora living in the Districts of Vizianagaram, Srikakulam and Visakapatnam, who were declared as STs. After narrating the litigation from 1979 when he applied for the post of District Munsif, and the reasons why he was not selected, he asked for declaration that he belongs to caste of Konda Dhoras. It is not denied before us that by reason of being Konda Raju he sought for declaration that the same is equivalent to Konda Dhora, which is included in the Scheduled Tribes Order. We have no manner of doubt to record that the suit as laid was not maintainable, and the Civil Court had no jurisdiction to entertain the suit for it suffered from inherent lack of jurisdiction. Further the judgment of the appellate Court is also void being per incurium as the same ignored the law laid down by the Supreme Court in BHAIYA LAL'S case (supra).

46. Aggrieved by the judgment of the first appellate Court in A.S. No. 45 of 1985, as noticed above, APPSC and State of A.P. filed SA No. 722 of 1996 in which a substantial question of law of general importance as noticed above was formulated, as required under Sub-section (4) of Section 100 CPC. The second appeal was dismissed by brief order dated 12-9-1988, which reads:

The adverse concurrent findings recorded against the appellants are pure

findings of fact based upon a detailed scrutiny of the entire evidence let in by both the parties. No question of law, leave alone a substantial question of law, arises for consideration in this second appeal. It is accordingly dismissed.

47. We have already referred that the decree of Civil Court declaring first respondent - admittedly belonging to Konda Raju as equivalent to Konda Dhora is nullity. We may also observe that as per Sub-section (5) of Section 100 CPC, the second-appeal shall be heard on the substantial question of law as formulated u/s 100(4) of CPC. Therefore, the decree of the Civil Court, as affirmed by the Additional District Judge as well as this Court in second appeal is nullity and the same has to be ignored by all the authorities concerned. We answer point No. 2 accordingly.

In Re Point No. 3

Whether the appointment of first respondent as District & Sessions Judge in A.P. State Higher Judicial Service is not liable to be declared as void, illegal, and unconstitutional on the ground that first respondent obtained appointment by fraud, and such appointment is vitiated by fraud on the Constitution of India?

48. The consideration of this point requires examination of the following questions (i) whether the acts and conduct of first respondent as well as his declaration in plaint may be taken as proof of fraud, and whether there are circumstances which lead to an inference that fraud was played in claiming appointment as ST. (ii) whether the judgment of the Division Bench in W.P. No. 30827 of 1998 has attained finality, and in that background in the absence of any order canceling the community certificate dated 9-7-1979 issued by the Tahsildar, Salur, and the certificate dated 9-11-1979, issued by the Judicial First Class Magistrate, Salur, this Court is precluded from issuing mandamus by declaring that first respondent played fraud in obtaining appointment as District Judge, and (iii) having regard to Act 16 of 1993 and the Rules made thereunder, whether the authorities must be allowed to conduct enquiry u/s 5 of the said Act, or whether this Court itself can examine the material available on record and give relief to the petitioner as prayed for.

3(i) Whether on admitted facts and circumstances, fraud can be inferred:

49. While examining the above issues, it is appropriate to notice various legal aspects of fraud and misrepresentation, and the effect of fraud on Court proceedings and other administrative decisions.

What is fraud and misrepresentation?

50. Fraud is not capable of precise definition. It can be more perceived than explained. The broad contours of the element of legal fraud are, however, well settled. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter. Bigelow on "Fraud" gives the following definition See KERR on the Law of Fraud and Mistake (First Indian Reprint by

ULP) :

Fraud consists" on the one hand (1) in one man's endeavouring by deception to alter another man's general rights; or (2) in one man's endeavouring by circumvention to alter the general rights of another; or on the other hand (3) in one man's endeavouring by, deception to alter another man's particular rights; or (4) in one man's endeavouring by circumvention to alter the particular rights of another.

51. The expression "fraud" is different from "negligence". Negligence is not fraud, but negligence may be evidence of fraud as held by House of Lords in DERRY v. PEEK, (1889) 14 AC 337. Every dishonest act is not fraud, but every act of fraud involves dishonesty and an intention to deceive. Whether deception or deceit practiced by one on the other requires intention of deception depends on circumstances of each case, but as we presently see, in private law/ common law, mere fraud without proof of intention to act mala fide or not to act bona fide and/or without intention to deceive does not vitiate the action nor does it act as stigma on the actor. Such an action is voidable. But in public law, fraud on public authorities, fraud on administrative authorities acting by or under the law fraud on statute or the Constitution does not require proof of bad intention or mala fide. *Fraus et jus nunquam cohabitant* (fraud and justice never dwell together) and *fraus et dolus nemini patrocinari debent* (fraud and deceit defend or excuse no man), are two well known legal maxims which are universally accepted. In a particular situation, without anything else, fraud can be conclusively inferred if a person tries to approbate and reprobate and/or blows hot and cold.

52. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. "It is a fraud in law I if a party makes representations which he knows to be false, and injury ensues although the motive from which the representations proceeded may not have been bad". (See Kerr on Fraud).

53. In DERRY'S case (supra), the House of Lords considered a case where plaintiff took shares in the defendant company believing in the prospectus issued by the plaintiff-company that it has the right to use steam power instead of horses for pulling their tram carriages. When the Board of Trade refused permission to the company to use steam, the plaintiff sued for action of deceit against the Directors alleging fraud. The trial Judge held that defendants were not liable as the statement as to steam power was made in honest belief that it was true. The Court of Appeal reversed, but the House of Lords upheld the decision of the trial Judge. A distinction was drawn between a statement which was made knowing fully well that it was false in a reckless and negligent manner and between a statement which was made believing and having faith that such statement is true. In the leading judgment by Lord Herschell, the law was stated thus:

A man who forms his belief carelessly or is unreasonably credulous may be blameworthy when he makes representation on which another is to act, but he is not in my opinion fraudulent in the sense in which that word was used in all the cases from *PASLEY v. FREEMAN*, 2 Smith's LC 74, down to that with which now I am dealing. Even when the expression "fraud in law" has been employed, there has been present and regarded as an essential element that the deception was wilful either because the untrue statement was known to be untrue or because belief in it was asserted without such belief existing.

It was further held:

In an "action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit,

54. Apart from the principles as to proof of fraud laid down in *DERRY'S* case (*supra*), fraud can also be inferred. Proof of substantial part of misrepresentation is sufficient, and it is not necessary in order to establish fraud that direct affirmative or positive proof of fraud is to be given. In many cases circumstantial evidence is not only sufficient, and it is only proof that can be adduced. (See *Kerr on Fraud*). The burden of proof in such cases is on the person who demurs fraud and who has to prove that he has not made any misrepresentation and/or that such misrepresentation was made under a bona fide belief that it was true.

55. In precedents dealing with the principles of fraud and mis-representation, we have already referred to *DERRY'S* case (*supra*). Yet another celebrated authority is *LAZARUS ESTATE v. BERLY*, (1956) 1 All. ER 341.

56. In the said case, Lazarus Estates enhanced the rent in respect of their flat occupied by the defendant on the ground that they are entitled for such increase "as they had done work of repair so as to qualify them for increase" and "the conditions justifying an increase were fulfilled". The tenant opposed the increase on the ground that the declaration of Lazarus Estates of carrying out repairs was false and fraudulent since to the knowledge of the landlords, repair had not been carried out. When certain documents were sought to be marked in the County Court, objections were raised as to the validity of the documents by the tenant on the ground that they are false and fraudulent. The question before the Court of appeal was whether the documents/ declarations by Lazarus Estates can be challenged on the ground of false and fraudulent or the defendant has to challenge them in criminal Courts. Repelling the contention of Lazarus Estates that they should be challenged in Criminal Court, the Court of appeal ruled:

The landlords argued before us that the declaration should not be challenged in

the Civil Courts at all, even though it was false and fraudulent, and that the landlords can recover and keep the increased rent even though it was obtained by fraud. If this argument is correct, the landlords would profit greatly from their own fraud. The increase in rent would pay the fine many times over. I cannot accede to this argument for a moment "no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever.

Fraud on statute, on public authority & fraud on Constitution:

57. The Constitution of India made special provisions for STs and also laid down procedure for specifying communities as STs "for the purposes of the Constitution". This is intended to subserve a constitutional purpose of achieving "de facto equality" among those people who have been for ages ignored by those who govern. Any attempt by all concerned either to deny the benefits under the Constitution to STs or to allow those people not belonging to STs, the benefits against their disentitlement would amount to mockery of the policy of reservation. It subverts the constitutional philosophy, and therefore, it is a fraud on the Constitution

58. Any action by the authorities or by the people calming under the Constitution which subverts the constitutional purpose must be treated as a fraud on the Constitution for the Constitution did not intend to confer special benefits on those who do not belong to STs. When the Constitutional reservations are implemented, the underlining theme is that unequals cannot be treated as equals, and therefore, the former require steps to remove handicaps. Any attempts to make dents into such purposeful State action must be considered as fraud on the Constitution.

59. In *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, , *Pankaj Bhargava and Another Vs. Mohinder Nath and Another*, and *Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers*, , the Supreme Court considered the effect of fraud in public law and fraud on the statute.

60. In *WADHWA'S* case (supra), a Professor of Political Science and two others challenged the validity of the practice of the State of Bihar in promulgating and repromulgating ordinances on a massive scale. An objection was raised that the petitioners had no locus standi to maintain the writ petition. The objection was overruled by the Supreme Court holding that it is the right of every citizen to insist that he should be governed bylaws made in accordance with the Constitution and not laws made by the executive in violation of constitutional provisions. Following the judgment in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, , the Supreme Court observed that "a constitutional authority cannot do indirectly what it is not permitted to do directly". If there is a

constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge, and that would be "clearly a fraud on the constitutional provision".

61. In PANKAJ BHARGAVA'S case (supra), the permission of the Rent Controller u/s 21 of the Delhi Rent Control Act; which enables the landlord to let out the premises to a tenant, was held by the High Court as marred by fraudulent suppression of facts as the same was merely unspecified sanction of a subsisting tenancy, which had earlier come into existence. It was contended to be "fraud on the statute". While accepting that fraud on statutes vitiates the permission, the following observations were made by the Supreme Court:

The expression "fraud on the statute" is merely a figurative description of a colourable transaction to evade the provisions of a statute and does not, for the purposes of choice of the remedy, distinguish itself from the consequences of fraud as vitiating the permission u/s 21....

62. In SHRISHT DHAWAN'S case (supra), the question was whether permission u/s 21 of Delhi Rent Control Act applied by the landlady was vitiated by fraud and mis-representation. In the main judgment, Sahai, J, referred to DERRY'S case (supra), and observed that fraud in public law is different from fraud in private law, and that the ingredients which established fraud in commercial transactions are of no assistance in determining fraud in Administrative Law. It was also observed that in public law the duty is not to deceive though the colour of fraud in public law assumes different shades in action. It was observed that disclosure of incorrect facts knowingly and deliberately amounts to fraud when the same is used to invoke the exercise of power and procure an order from an authority. It was held:

Fraud and collusion vitiate even the most solemn proceedings in any Civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, "wing me into the easy-hearted man and trap him into snares". It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance, upon it to part with some valuable thing belonging to him or surrender a legal right, a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury." In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick... From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue

yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false.

63. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the Supreme Court while quoting Edward Coke that "Fraud avoids all judicial acts, ecclesiastical or temporal" - reiterated that a judgment or decree obtained by playing fraud on the Court is nullity and nonest in the eye of law, and that such a judgment/decreed - by the first Court or by the highest Court - has to be treated as nullity by every Court, whether superior or inferior. It was also held that it can be challenged in any Court even in collateral proceedings. [See Para 1 in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, . It was further observed that the principle of "finality of litigation" is not available when fraud is alleged. It is apposite to quote the following:

...The principle of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage... A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.

64. In *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, , the Supreme Court after referring to *Lazarus Estates* and other cases observed that "since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by practising fraud upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order". While so observing, it was further held that-

The judiciary in India also possesses inherent power, specially u/s 151 CPC, to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers, which are resident in all Courts, especially of

superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish" unseemly behaviour. This power is necessary for the orderly administration of the Court's business,

65. The Court further observed that fraud could be proved as a fact by direct evidence or by inference drawn from proved facts. The following passage from the decision in. SATISH CHANDRA CHATTERJI v. KUMAR SATISH KANTHA ROY AIR 1923 PC 73, was quoted with approval:

Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them - proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicious and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unraveled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever dexterous knave would escape.

66. In Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, , the apex Court held that person not belonging to SC/ST/BC claims benefits under Articles 15(4) of the Constitution of India in educational institutions or public employment, it would amount to playing fraud on the Constitution. It was observed that reservations for SCs/STs/BCs are not by virtue of any statute, but by virtue of the Constitution, and therefore, every policy of reservation flows from the constitutional scheme. It is opposite to excerpt the following:

Equally promissory estoppel should not be extended, though it may be founded on an express or implied promise stemmed from the conduct or; representation by an office of the State or public authority when it was obtained to play fraud on the constitution and the enforcement would defeat or tend to defeat the constitutional goals. For instance a right to reservation either under Article 15(4) or 16(4) in favour of the Scheduled Castes, Scheduled Tribes or Backward Classes was made with a view to ameliorate their status socially, economically and educationally so as to assimilate those sections into the main stream of the society. The persons who do not belong to those classes, but produce a certificate to mask their social status and secure an appointment to an office or post under the State or public employment or admission into an educational institution maintained by the State or receiving aid from the State, on later investigation, though belated, was found that the certificate produced was false and the candidate was dismissed from the post or office or debarred or sent out from the institution or from the balance course of the study, the plea of promissory estoppel would always be found favour With the Courts and being easily extended in favour of the candidate or party that played fraud on the

Constitution. It would amount not only putting a premium on the fraud on the Constitution, but also a denial to a reserved candidate and the general candidate as well. Therefore, the plea of promissory estoppel should not be extended to such areas.

67. In GURUSAMY'S case (supra), a contention was raised that when a person was given right to enjoy the status of ST, the principle of estoppel applies to him. This was repelled by the Supreme Court as under:

...It is then contended that the respondent has been given the right to enjoy the status right from 1971, and therefore, the principle of estoppel applies to him. We find that it has no force. It is a fraud played on the Constitution. A "person who plays fraud and obtains a false certificate cannot plead estoppel. The principle of estoppel arises only when a lawful promise was made and acted upon to his detriment; the party making promise is estopped to resile from the promise. In this case, the principle of estoppel is inapplicable because there is no promise made by the state that the State would protect perpetration of fraud defeating the Constitutional objective; no promise was made that his false certificate will be respected and accepted by the State. On the other hand he is liable for prosecution. The Courts would not lend assistance to perpetrate fraud on the Constitution, and he cannot be allowed to get the benefit of the fraudulent certificate obtained from the authorities...

68. In UNION OF INDIA v. M. BHASKARAN 1955 Supp. (4) SCC 100, the respondents produced bogus and forged "casual labour service cards" and obtained employment in railway service. The Supreme Court observed that they were guilty of misrepresentation and fraud perpetrated on the employer while getting employment in railway service, and that once fraud was detected, it was open for the employer to remove those who obtained employment by playing fraud. It is necessary to excerpt the following:

Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have

continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity: in their favour or any estoppel against the employer,

69. In *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi*, , persons who were not having qualifications as per the employment notification/advertisement were appointed ignoring the claims of those who were qualified. A contention was raised that the appointing authority can disregard the qualifications in the advertisement and make appointment. While rejecting the same, the Supreme Court observed that appointing of an unqualified person amounts to fraud on public, and the Court should not be a party to the perpetuation of fraudulent practice. It was observed:

It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice,

Fraud on public authorities:

70. We may also briefly indicate the meaning of the expression "fraud on public authorities". We may refer in this context to a judgment in *PALANIAPPA CHETTIAR v. ARUNASALAM CHETTIAR* 1962 AC 294, wherein Privy Council considered the effect of "deceit and fraud" on public administration on the claims made by a person. In the said case the facts are these: Malaya Rubber Regulations, 1934 provided that holdings of rubber growing land of more than Acs. 100-00 be assessed by an Assessment Committee whereas the holding of less than Acs. 100-00 be assessed by local District Officer. Arunasalam Chettiar, who owned Acs. 139-00 of rubber growing land, transferred Acs. 40-00 of land to his son. Palaniappa Chettiar for a purported consideration, which was not in fact paid. This was done to get over the Rubber Regulations and to be assessed by local District Officers. The transfer was duly registered and certificate of title was issued to son. Thereafter, father, having agreed to sell Acs. 40-00 to a third party, asked his son to execute a Power of Attorney so as to enable him to transfer the land to the prospective purchaser. The son refused to do so and the father brought an action before the High Court of the Federation for a declaration that the son is holding Acs. 40-00 rubber land in trust for him. The learned trial Judge upheld the claim of the father and held that son was holding the land on trust for his father. The Court of Appeal of the Federation dismissed son's appeal. Before the Privy Council it was contended that the father had practiced a

deceit on public administration in order to avoid the procedure for assessment as laid down by the Legislation and therefore he is not entitled for declaration because the father resorted to colourable device by which he gave right, title and interest in the property to avoid statutory obligation under the Rubber Regulations. The Privy Council accepted this and Lord Denning speaking for unanimous Judicial Committee held:

That he made the transfer for a fraudulent purpose, namely, to deceive the public administration into thinking that he only held 99 acres of land and his son 40 acres, whereas in truth he himself meant to hold the whole 139 acres, once this disclosure was made by the father, the Courts were bound to take notice of it, even though the son had not pleaded it... But where the fraudulent purpose has actually been effected by means of the colourable transfer, there is no room for repentance. The father has used the transfer to achieve his deceitful end and cannot go back on it. He cannot use the process of the Courts to get the best of both worlds - to achieve his fraudulent purpose and also to get his property back,

Effect of Fraud in Evidence Act

71. While we notice the principles of fraud, it is necessary to refer to Section 44 of the Indian Evidence Act, 1872, which reads:

44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved:--Any party to a suit or other proceedings may show that any judgment, order or decree which is relevant under Sections 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

72. On many occasions, a question arose as to whether a decree obtained by fraud can be challenged in collateral proceedings. Section 44 of Evidence Act makes it clear that either of the parties to a suit or proceedings can establish that any judgment or decree which is relevant for deciding any issue in the suit under Sections 40, 41 or 42 of the Evidence Act, and which stands proved by the adverse party, is nullity being one by a Court not competent, to deliver the judgment and/or judgment was obtained by fraud or collusion.

73. In Asharfi Lal Vs. Smt. Koili (dead) by L.Rs., , the Supreme Court considered the scope of Section 44 of the Indian Evidence Act, 1872 and laid down the principles as under:

....the Privy Council in AIR 1937 1 (Privy Council) , has laid down that Section 44 of the Evidence Act cannot be extended to cases of gross negligence. But in the said case the Privy Council has observed that the Court cannot treat negligence, or gross negligence, as fraud or collusion, unless fraud or collusion is the proper inference from the facts. In other words, in cases where an inference of fraud or collusion can be drawn from the negligence or gross negligence of the next friend it would be permissible for a minor to avoid the judgment or decree passed in the earlier proceeding by invoking Section 44 of the Evidence Act without taking

resort to a separate suit for setting aside the decree or judgment,

74. We may now summarize the principles of law in relation to fraud and misrepresentation.

1. In judicial proceedings, fraud renders a judgment of a Court a nullity and void. Either superior or inferior Court is bound to treat a judgment obtained by playing fraud on the Court a nullity.

2. In proceedings other than judicial, an order obtained by fraud and misrepresentation and/or a determination as a result of fraud cannot be allowed to stand. Fraud unravels everything, and no person can keep an advantage or benefit or privilege obtained by playing fraud.

3. In the field of private law, mere misrepresentation without proof of deceit or intention to deceive cannot vitiate the contract or render the contract void; it is only voidable. In the field of public law, however, fraud on public authorities is a special species of fraud, which without anything further must deny the person the benefit obtained by fraud. Whether intention or no intention, whether mala fide or bona fide, public law does not permit a person to retain the advantage obtained by fraud.

4. The concept of fraud on the statute and fraud on the constitution has similarities more than one. Any action, which subverts the objects and purposes of the Constitution, amounts to fraud on the Constitution.

5. A person who does not belong to SC/ ST/BC secures appointment to an office or post under the State or public employment by producing fake certificate must be held guilty of playing fraud on the Constitution, and such person shall not be entitled to plead doctrine of promissory estoppel or equitable estoppel.

6. The principle of "finality of litigation" cannot be pressed when fraud is alleged to be the basis for the decision/ determination.

7. Fraud, can be challenged in any Court even in collateral proceedings. The principle of estoppel and doctrine of res judicata have no application when fraud is the basis of judgment sought to be nullified under which right or privilege is claimed.

8. Fraud can either be proved by established facts or inference can be drawn from admitted and/or undisputed facts. When fraud is inferred u/s 44 of the Indian Evidence Act, 1872, the Court as well as the authority alleging fraud can ignore a decision obtained by fraud.

75. We have to keep the above principles in mind when we examine the issue relating to fraud.

Acts and conduct of first respondent:

76. The first respondent was appointed as District Judge in a vacancy reserved for ST, and such reservation was with reference to the Constitution (Scheduled

Tribe) Order, 1950 which itself forms part of the Constitution, and since fraud alleged is with reference to Constitution (Scheduled Tribes) Order, 1950, not only deceptive assertions and false representations, but also admitted facts, incidents and circumstances become decisive to infer fraud in a case of this nature.

77. The learned counsel for the petitioner has placed reliance on various registered documents to which the ancestors as well as the father of first respondent were parties. Reliance has also been placed on the attested copies of "school admission registers" showing the relevant entries in relation to first respondent, his two brothers and sister. The two community certificates issued by the Tahsildar, Salur and JFCM, Salur, in the year 1979 as well as the averments of first respondent in the plaint in OS No. 8 of 1985 are also before us. The deposition on oath of first respondent as PW 1 in the suit is also placed before us. In the said deposition, first respondent admitted that he and his family originally - belonged to Orissa State, that his great grandfather late Jagan Mohan Bhanj Samanth Thatraj came as illatom son-in law (See Ramnath Iyer's LAW LEXICON (1997 Edn.) Page 869: In Andhra Area, illatom son-in-law is a boy brought into family with a view to give a daughter in marriage and is customarily recognized as an heir in the absence of natural born son.) of Zamindar of Salur, and that he is claiming to belong to Konda Dhora community only by virtue of his relationship with Zamindar of Salur and that from 9th class to University level his caste was not mentioned in the school registers. So as to avoid elaborate discussion of the documents, we have tabulated various details, from the documents from 1903 to 1988.

THE STATEMENT SHOWING THE CASTE/COMMUNITY DESCRIBED BY HIS ANCESTORS & FIRST RESPONDENT IN VARIOUS DOCUMENTS

S.No.	Year/Date	Description of the document	Vendee/Vendor	Lessee/lessor	Relationship with R-1	Community Described/claimed	Remarks
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1.	1903	Reg. Lease deed	D.No.445/1903				
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		Broja Sunder Bhanj Deo	S/o. Late Jagannatha Bhanj Samthu Thataraju				
		Grandfather	Kshatriya				

2.	1933	Reg. Lease deed	D.No.568/1933				
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		Broja Sunder Bhanj Deo	S/o Late Jagannatha Bhanj Samthu Thataraju				
		Grandfather	Kshatriya				

3.	1943	Reg. Sale deed	D.No.1340/1943	Suryamani Jana Devamma	W/o Broja Sunder Bhanj Deo	Grandmother	Kshatriya
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4.	1950	Reg. Sale deed	D.No.1399/1950	A.N. P. Bhanjdeo	S/o Broja Sunder Bhanj Deo	Father	Kshatriya
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5.	1958	Reg. Lease deed	O.No.1399/1958	A.N.P. Bhanjdeo	S/o Broja Sunder Bhanj Deo	Father	Kshatriya
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A 29-6-1960 Admn. Register Govt. Jr. College, Salur A.P. Bhanjdeo S/o A.N.P. Bhanjdeo Self Oriya Kshatriya

As per true copy of Admn. Register given on 20-7-86 oy Principal Government College (earlier school)

7. 28-6-1961 Admn. Register M.U.P. School. Salur Rajendra Pratap Bhanj Deo S/o A.N.P. Bhanjdeo Brother Oriya Kshatriya

As per true extract of Admn. Register given by Head Master of MUP School on 5-3-1999. Pedakomatipeta

8. 28-6-1961 Admn. Register M.U.P. School, Salur Geeta Sri Jamma Bhanj Deo D/o A.N.P. Bhanjdeo Sister Oriya Kshatriya -do-

9. 13-7-1961 Admn. Register M.U.P. School, Salur Jetendra Pratap Bhanj Deo S/o A.N.P. Bhanjdeo Brother Oriya Kshatriay -do-

10. 9-7-1979 Caste Certificate by Tahsildar, Salur A.P. Bhanjdeo S/o A.N.P. Bhanjdeo Self Konda Dhora

The certificate was issued as per the information furnished by first respondent

11. 9-11-1979 Caste Certificate J.M.F.C., Salur A.P. Bhanjdeo S/o A.N.P. Bhanjdeo Self Konda Dhora On what basis this certificate was issued is not clear.

12. 6-4-1982 Plaint in OS 35/82 on the file of Dist. Munsif, Salur A.P. Bhanjdeo S/o A.N.P. Bhanjdno Self Konda Raju

(i) Later suit was transformed to Court of Subordinate Judge, Parvathipuram. First respondent claimed that Konda Raju is equivalent to konda Ohota

A) The plaint allegations are summarised in the judgment of Subordinate Court, Parvathipuram

78. The table shows that in all the registered documents, the grandfather and father of first respondent were described as KSHATRIYA". In 1960, in Zilla Parishad School, Salur, (in 6th class), in the admission "register, first respondent was described as ORIYA KSHATRIYA. In the two certificates, dated 9-7-1979 and 7-11-1979, issued by the Tahsildar and JMFC, Salur respectively for the first time, the petitioner was certified to belong to "Konda Dhora".

79. It is well settled that in the matter of date of birth of a person, and such other things, the entries in the school registers, and other documents are relevant. It is also appropriate to take judicial notice that in pre-independent India, and indeed even now in rural India, it is customary to describe a person with caste, father's name and sometimes by the name of the village in which he resides. The various documents to which a reference is made in the table, are relevant for deciding the status as to community/caste/tribe of a person. In KUMARI MADHURI PATIL'S case (supra), the Supreme Court emphasized the

importance of entries in school registers as under:

The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records, as the then census rules insisted upon. Undoubtedly, Hindu social order is based on hierarchy and caste was one of the predominant factors during pre-constitution period. Unfortunately instead of dissipating its incursion it is being needlessly accentuated, perpetrated and stratification is given legitimacy for selfish ends instead of being discouraged and put an end to by all measures, including administrative and legislative. Be it as it may, people are identified by the castes for one or the other is a reality. Therefore, it is no wonder that caste is reflected in relevant entries in the public records or school or college admission register at the relevant time and the certificates are issued on its basis. The father of the appellants admittedly described himself in 1943 and thereafter as a Hindu Koli. In other words his status was declared a Koli by caste and Hindu by religion. Kolis are admittedly OBCs, His feigned ignorance of the ancestry is too hard to believe. The averment in the affidavit that the entries were mistakenly made as Hindu Koli is an obvious afterthought,

80. Be that as it may, when the petitioner applied for the post of District Munsif, the certificate issued and relied on by first respondent dated 9-7-1979 issued by the Tahsildar was doubted. After conducting enquiry, the District Collector reported to the Government, and the Government in Memo No. 3249/F-280-11, dated 9-12-1980 held that first respondent cannot be treated as ST. Based on the same, the APPSC informed that first respondent has not come up for selection and that he cannot be considered in the vacancy reserved for STs. At that stage, the fact that first respondent does not belong to Konda Dhora became final by reason of decision of Government as well as the Service Commission.

81. Be it noted that even according to first respondent from 9th class to University level, his caste was not recorded anywhere in the school records, and for the first time the Tahsildar, Salur issued certificate dated 9-7-1979, which was doubted by the Government as well as the APPSC. At that stage, first respondent who admittedly had earlier appeared before the Joint Collector, Vizianagaram, pursuant to show cause notice dated 22-6-1980 claimed that he belonged to Konda Dhora, filed suit so as to sustain the community certificate dated 9-7-1979. In the plaint, he did not claim himself to be Konda Dhora. He specifically alleged that he belongs to Konda Raja community, and that the said community is equivalent to Konda Dhora community. He also claimed relationship with Zamindar of Salur. Even according to first respondent's sworn deposition before the Civil Court, the Zamindar of Salur was himself found not belonging to Konda Dhora community.

82. Before the Civil court, the entire case of first respondent was that he

migrated from Orissa State, that he belongs to Konda Raju community, and that the said Konda Raju is none other than Konda Dhora community. The Civil Court has no jurisdiction to declare Konda Raju as Konda Dhora, but a decree was passed. We have already dealt with this aspect of the matter earlier, and therefore, it is not necessary to consider the same again. In this part of the judgment we are concerned with the acts and conduct of first respondent as well as the incidents to know whether misrepresentation amounting to was made.

83. It is reasonable to infer that first respondent knew all along that his grandfather and his father belong of KSHATRIYA. [See observations of Supreme Court in para 10 in KUMARI MADHURI PATIL'S case (supra)] But still by placing some undisclosed material before the Tahsildar, Salur and JMFC, Salur, he obtained Konda Dhora ST certificate. After conducting enquiry into the issue of certificate, when the Government as well as the APPSC were informed that first respondent cannot be treated as ST, he filed suit claiming himself to belong to Konda Raju. Though the two community certificates obtained by him in 1979 are marked as Exs. A1 and A2 in the suit, they lost their probative value as first respondent claimed himself to belong to Konda Raju. Further, various registered documents in the name of the ancestors were not placed before the Civil Court. Having approached the Civil Court for declaration that he belonged to Konda Dhora," it was his duty to place all the material before the Civil Court. [See CHENGALVARAYA NAIDU'S case (supra)]. Though in the school admission register, he was described as belonging to ORIYA KSHATRIYA, he deposed that his caste was not mentioned in the school register the said that he cannot say whether caste was recorded or not). We have perused the record placed before us by the learned Standing Counsel for the High Court, including the application of the first respondent for the post of District Judge. His SSLC certificate mentions that he belongs to "Hindu" religion and does not mention that he belongs to ST. Before the Civil Court, Ex.A. 17, in Hindi, purported to be SSLC certificate was produced; whereas when he applied for the post of District Judge, he produced HSSLC certificate showing him as Hindu. We fail to understand when he admittedly studied 6th to University level in Andhra Pradesh (see deposition) why he produced SSLC certificate, Ex.A. 17, which is in Hindi. Be that as it may, the HSSLC certificate produced before the High Court at the time of making application for the post of District Judge was withheld from the Civil Court. It was done so presumably because "STs are not considered as Hindus". (See Section 2 of Hindu Marriage Act, 1955, Section 2 of Hindu Adoption and Maintenance Act, 1956, Section 2 of Hindu Succession Act, 1956, and Section 3 of Hindu Minority and Guardianship Act, 1956).

84. The family of first respondent till the coming into force of the Constitution of India and till 1979 never claimed any status as belonging to ST. Indeed, the attested copy of the school register shows that two brothers and one sister of first respondent were described as ORIYA KSHATRIYA. For the first time first respondent in 1979 obtained Konda Dhora ST certificate. These are clear pointers to show that first respondent did not belong to Konda Dhora, and fraud and

misrepresentation played primary role in the issue of Social Status Certificate and passing of decree.

85. At this stage, we may also point out the stand of first respondent in these proceedings before this Court. In the counter, filed by first respondent in these proceedings, presumably to get over various documents placed before us by the petitioner, first respondent avers that there is no single registered document existing in his name or in the name of his children noting KSHATRIYA in the registered documents. He also states that there is no caste as Konda Raju in existence and that some Konda Dhoras call themselves as Konda Rajus or KSHATRIYAS due to their elevated position. These averments on oath are quite contrary to the solemnly verified averments made in the plaint as extracted by the learned trial Judge in the judgment in OS No. 8 of 1985. In para 14 of the counter-affidavit, he even denies the allegation that he obtained decree to the effect that he should be treated as Konda Dhora. This is contrary to record and cannot be countenanced, nor can be appreciated by this Court!

86. A person whose grandfather and father belong to KSHATRIYA and/or ORIYA KSHATRIYA claim to belong to Konda Dhora and when his claim was rejected by the Government as well as the APPSC, he called himself Konda Raju and obtained a decree that he belongs to Konda Dhora. These facts speak for themselves and without any further proof, they must be held as amounting to fraud and misrepresentation. Needless to say that these acts of fraud were motivated only to get the benefits under Article 16(4) of the Constitution of India, which are available to STs as notified by Constitution (Scheduled Tribes) Order, 1950.

87. The question as to whether this Court in exercise of its jurisdiction under Article 226 of the Constitution of India has the power to correct an error caused by fraud is no more res integra. The Supreme Court in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, , decided this question. In the said case, a father and son claimed compensation before the Motor Accidents claims Tribunal alleging that in an accident caused by an Ambassador car, insured with United India Insurance Company, they suffered injuries. Finding the driver guilty of negligent driving, the Tribunal awarded a sum of Rs. 3,55,000/- to father and a sum of Rs. 1,52,000/- to the son with interest at the rate of 12% per annum. The awards became final, and the owner of the car and/or Insurance Company did not file appeal. Four months after the award, the Insurance Company was informed by an informant that father and son, the claimants in the earlier proceedings before the Motor Accidents Claims Tribunal suffered injuries while operating their tractor, and to that effect they gave statement before the police. Immediately, the Insurance Company made enquiries and moved the Tribunal under Sections 151, 152 and 153 CPC praying to recall the awards passed by the Tribunal. The petition was dismissed by the Tribunal holding that the Tribunal has no power to recall the awards. The Insurance Company then moved the Allahabad High Court for quashing the awards. A learned single Judge dismissed the writ petition holding that there is no power of review in the Motor Vehicles

Act, and that writ jurisdiction is not attracted. The Insurance Company moved the Supreme Court. While allowing the appeals of the Insurance Company, after referring to the cases in LAZARUS ESTATES, CHENGALRAYA NAIDU and SATYAM FIBRES (supra), the Supreme Court addressed a question as to what is the legal remedy when a party to a judgment or order of the Court, which later is discovered to have been obtained by fraud? The Supreme Court held that in a given case where fraud is alleged, the High Court can correct the errors caused by fraud even in exercise of power under Article 226 of the Constitution. It is useful to extract the following:

For a High Court in India to say that it has no power even to consider the contention that the awards secured are the by-products of stark fraud played on a tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and people's faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the plea and found them unsustainable on merits, if they are meritless. But when the courts are preempted the Insurance Company by slamming the doors against them, this Court has to step in and salvage the situation.....The allegation made by the appellant Insurance Company, that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for the said allegation has not been specifically-denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claimant must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to a Serious miscarriage of justice.

88. We have repeatedly asked the learned Senior Counsel Sri. E. Manohar whether the acts and conduct of first respondent on the admitted facts do not amount to fraud. The answer is that even the averments in the plaint are correct the same do not amount to fraud as great grandfather of first respondent belong to Konda Dhora. We are afraid, we cannot agree with the learned Senior Counsel. Even in his deposition before the Civil Court, first respondent did not claim that his great grandfather Jagan Mohan Bhanj Deo belonged to Konda Dhora. It is also admitted that there is no community called Konda Dhora in Orissa State from where first respondent's family migrated to Salur 100 years ago. First respondent made attempts to get public employment as District Munsif in 1979-80 by producing certificate from Tahsildar, Salur, and when the same was enquired into, and found to be not valid, first respondent again made attempts by approaching the Civil Court and got decree, which is nullity. Therefore, on the admitted facts, we must hold that first respondent resorted to fraud and misrepresentation in procuring public employment as District Judge by fraudulently claiming Constitutional reservation claiming as ST as belonging to

Konda Dhora, a Scheduled Tribe.

3(ii) Judgment of the Division Bench in W. P. No. 30827 of 1998:

89. The learned Senior Counsel for first respondent has invited our attention to the judgment of the Division Bench of this Court in W.P. No. 30827 of 1998, dated 16-6-2000 in AMBATI VINCENT v. BHANJ DEO, (hereinafter referred to as VINCENT case), to submit that the judgment of the Civil Court declaring that first respondent belongs to Konda Dhora community was accepted as valid, and that this Court in VINCENT case did not accept the allegation of fraud. The teamed Senior Counsel for the petitioner refuted this contention. According to him, the writ petition was filed for writ of quo warranto, and therefore, the Court was not concerned with the acts and conduct of first respondent in procuring a community certificate from the Tahsildar, and was also not concerned with the question of fraud. In any event, the learned counsel submits that the judgment of the Division Bench in VINCENT case was rendered sub silentio and that it is per incuriam being contrary to large number of decisions of the Supreme Court on the point that a Civil Court is not competent to declare a particular community as ST.

90. Ambati Vincent, a member belonging to ST, filed the aforementioned writ petition seeking a writ in the nature of writ of quo warranto against first respondent as he procured appointment stating that he is a ST. The Division Bench of this Court noticed that no argument was addressed in Second Appeal on the question framed. After referring to BASAVALINGAPPA, BHAIYA LAL, MADHURI PATIL, and NITYANAND SHARMA, the Division Bench, however, did not decide the question whether or not the Civil Court decree is nullity. The main question adverted to was whether in the facts and circumstances of that case a writ of quo warranto could be issued. It was held that appointment of first respondent was made in accordance with the constitutional requirement envisaged by Article 233, writ of quo warranto would not lie. It was observed:

...The decree in the suit was contested in appeal. The very same question which is raised herein was formulated as a question of law in the second appeal, but as already noted, there is nothing to show that such question was argued. Be that as it may, the second appeal was dismissed and the Government acted on it. There was a move to cancel the certificate well before his appointment, but it was not done. The fact remains that the certificate remained in force all through and continues to remain effective. The certificate issued by the Tahsildar was strengthened and fortified by the Judgment and decree of Civil Court to which the State was party. The judgment of the Civil Court may be wrong or illegal in the light of the law laid down by the Supreme Court in some of the cases cited by the learned counsel for the petitioner. Even then, it is not open to this Court in a quo warranto proceeding to go beyond that judgment by reopening the whole issue, more so when the Court which granted the decree did not lack initial or inherent jurisdiction. We repeat that it is not a case of fraud and it is not a case where the appointing authority was kept in the dark of the material facts... Thus

the appointment order backed by the certificate and the decree of the Civil Court constituted sufficient material to appoint him against a post reserved for ST. It cannot be said that first respondent had no legal authority and title to hold office. Nor can it be said that he is a usurper of public office.

91. We are unable to, with great respect, agree with two observations made hereinabove. The first observation that the certificate was not cancelled may not be correct. The Civil Court in the judgment dated 26-4-1985 referred to a Memo issued by the Government of Andhra Pradesh in Social Welfare Department being Lr. No. 3249/F-28-11, dated 9-12-1980, which was extracted in the written statement filed by the APPSC (see para 3 of the judgment of the learned Subordinate Judge, Parvathipuram). The said letter as extracted in the judgment reads:

Having regard to the fact that social status of A.P. Bhanj Deo as belonging to Konda Dhora is found to have been passed on his relationship with Sri. L.N. Sanyas Raju and S.J. Narayan Jana Dev, who themselves are not found to belong to Konda Dhora, I am to inform that A.P. Bhanj Deo also cannot be treated as ST.

92. Basing on the above letter, the APPSC issued Memo dated 21-1-1981 informing first respondent that he cannot be treated as ST. In our opinion, the certificate issued by Tahsildar, Salur on 9-7-1979 stood cancelled, which was the basis for the JMFC, Salur to issue a community certificate dated 9-11-1979.

93. Further, as mentioned earlier, by reason of Rule Nisi, the learned Standing Counsel for High Court has placed before us the entire record, including his application for the post, relating to the appointment of first respondent. On perusing the record, we find that first respondent did not produce the certificate issued by Tahsildar, Salur, dated 9-7-1979 or the certificate dated 9-11-1979 issued by the JMFC, Salur. The assertion made by first respondent in para 7(a) of his counter-affidavit that he appended the certificate issued by the Tahsildar, Salur dated 9-7-1979 is an incorrect statement. When he applied for the post of District Judge Grade-II, he produced a copy of Higher Secondary and Multipurpose School leaving Certificate and also ST certificate dated 22-3-1980 purportedly issued by JMFC, Salur. First respondent did not state anything in the application about the pendency of the appeal against the decree in the suit. Be that as it may, as found from the file, the ST certificate produced along with the application form for the post was issued by JMFC and the same does not disclose any basis for the same. All the same, the appointment of first respondent was not based on the certificate dated 9-7-1979 issued by the Tahsildar, Salur.

94. The appointment was not made on the basis of the certificate, issued by the MRO, which was cancelled by the Government; but it was made on the basis of the Civil Court decree. Indeed, in GO Ms. No. 3, GAD, dated 5-1-1987, while appointing first respondent, it was made clear that the appointment is subject to result of second appeal filed by the Government in the High Court of A. P. against the decree in OS No. 8 of 1985 relating to his status as ST. After second appeal

was dismissed on 12-9-1988, first respondent himself addressed a letter on 29-7-1988 to the Chief Secretary of the Government of A. P. through the Registrar (Admn.) of the High Court of A.P. informing that the second appeal was dismissed on 12-9-1988, and requesting Government to make necessary entries in the relevant records as his appointment as District Judge, Grade-11 was made subject to the result of the second appeal. First respondent did not even refer to certificate issued by Tahsildar, Salur, and indeed, if appointment was made based on certificate issued by Tahsildar, there was no necessity for the Government to make provisional appointment in GO. Ms. No. 3, nor was it necessary for first respondent to address a letter to the Government to regularize his appointment. Therefore, there cannot be any doubt that the first respondent abandoned his claim based on the certificate issued by MRO, Salur, and appointment of first respondent was not based on the community certificate issued by the Tahsildar, Salur and JMFC, Salur. But it was based on the decree in OS No. 8 of 1985. First respondent himself never claimed appointment in ST vacancy placing reliance on the certificate issued by the Tahsildar, Salur, and his claim was made only on the Court decree, as admitted by him in the letter dated 27-9-1988 addressed to the Chief Secretary to the Government of A.P.

95. Further more, the holding of this Court in VINCENT case that Civil Court did not lack initial or inherent jurisdiction was rendered per incurium. While considering point No. 2, we have referred to various precedents on the point, and hence, in the light of those authorities, the observations made by the Division Bench are per incurium. In support of this, we may refer to two authorities.

96. In State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , the Supreme Court explained the doctrines of per incurium and sub silentio. The question before the apex Court was whether the seven-judge Bench judgment in SYNTHETIC AND CHEMICALS LTD v. STATE OF U.P., , was concerned with the legislative competence of the State Legislature to levy taxes on sale or purchase of goods with reference to Entry 54 of List II of VII Schedule to the Constitution of India. The Allahabad High Court placing reliance on the seven-judge Bench decision in SYNTHETIC AND CHEMICALS LTD (supra) struck down the levy of tax on sales of alcohol. A two judge-bench held that the conclusion of law by the Constitution Bench that no sales or purchase tax could be levied on industrial alcohol was per incurium, and not a binding precedent. The Supreme Court also held that the conclusion of the Constitution Bench was a precedent sub silentio and without argument, and therefore, it cannot be characterized as a binding precedent. It was also held that the principles of res judicata are not applicable. Sahai, J, who wrote a separate concurrent opinion observed:

Incuria" literally means "carelessness". In practice per incurium appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The quotable in law" is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". (Young v. Bristol Aeroplane Co. Ltd. (1994) 1 KB 718 : (1994) 2 All. ER 293), Same has been

accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu Vs. Rajdewan Dubey and Others*, , this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

97. While observing that a Court is not bound by earlier decision when it is rendered without any argument, without any reference to crucial words of the rule, and without any citation of authority, it was opined:

... The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not *ratio decidendi*. In *B. Shama Rao Vs. The Union Territory of Pondicherry*, , it was observed, it is trite to say that a decisions binding not because of its conclusions but in regard to its ratio and the principles, laid down therein". Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or "authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

98. In a recent judgment in *Arnit Das Vs. State of Bihar*, , a two-judge Bench of the apex Court while referring to *SYNTHETICS* case (*supra*) held:

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the *ratio decidendi*. This is the rule of *sub silentio*, in the technical sense when a particular point of law was not consciously determined.

99. In view of the above authorities, with great respect we hold that the observations of the Division Bench in *VINCENT* case to the effect that Civil Court did not lack initial or inherent jurisdiction in granting decree of declaration is *per incuriam*, and is not correct law. The Division Bench was mainly concerned with the *factum* as to whether first respondent placed material before the appointing authority (Government of A. P.). Having regard to the fact that it was brought to the notice of the Court an appeal is pending against the judgment and decree in Civil suit, which was even mentioned in the provisional appointment order in GO. Ms. No. 3 that first respondent's appointment is subject to result of Second appeal, the Division Bench came to the conclusion that as the material facts were disclosed, fraud cannot be inferred. In view of this, we can agree with the submission that *VINCENT* case has attained finality.

100. In these proceedings, the situation is altogether, different. We have already shown in tabular form that community of first respondent and his ancestors went on changing from 1903 till 1976. Till 1979, first respondent never claimed any reservation as ST. It may be a coincidence, but the fact remains that for the first time in the appointments of District Judges, reservation was provided in the relevant special rules only in 1976. We cannot lose sight of this when we consider the acts, omissions and conduct of first respondent. The SLP being SLP (C) No. 14473 of 2000, filed against the judgment of this Court in VINCENT case was dismissed on 27-9-2000. What is its effect on these proceedings?

101. In *State of Manipur Vs. Thingujam Brojen Meetei*, , the apex Court considered the effect of dismissal of SLP in limini and held:

It is no doubt true that SLP (Civil) No. 285 of 1993 filed by the State of Manipur against the decision of the High Court in *N. Arun Kumar Singh v. State of Manipur*, Cr No. 2978/ 91/235/91, decided on 27-3-1982, was dismissed by this Court by order dated 15-2-1993. The said SLP was, however, dismissed in limini without expressing any opinion on the merits of the impugned judgment. The dismissal of a SLP by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of the correctness of the decision sought to be appealed against. The effect of such a non-speaking order of dismissal without anything more only means that this Court has decided only that it is not a fit case where the SLP should be granted. Such an order does not constitute law laid down by this Court for the purpose of Article 141 of the Constitution. (See: *Rup Diamonds and Others Vs. Union of India and Others*, ; *Nawab Sir Mir Osman Ali Khan v. CWT*, 1986 Supp. SCC 700 and *Supreme Court Employees' Welfare Assn. v. Union of India*,). The High Court was, therefore, in error in holding that by dismissing the SLP against the judgment in *N. Arun Kumar Singh v. State of Manipur* this Court has affirmed the said decision of the High Court and the said view of this Court is binding under Article 141 of the Constitution.

102. In a recent judgment in *Kunhayammed and Others Vs. State of Kerala and Another*, , a three-Judge Bench of the Supreme Court elaborately considered the legal implications and the impact of an order rejecting the SLP under Article 136 of the Constitution of India, and laid down the law as under:

A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, it is non-speaking order, i.e. it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal...

103. The apex Court also reiterated that when SLP is dismissed, the same does not amount to confirmation by the Supreme Court against the order in which leave was sought for.

104. The submission that principles of res judicata apply is without any substance. When the decree of Civil Court is nullity and when the acts and conduct of first respondent amount to fraud on the Constitution, it is futile to contend that by reason of principles of res judicata and estoppel, the petitioner should be non-suited.

105. In this context, we may also refer to the decision of the Supreme Court in A.R. ANTULAY'S case. In the said case, by a judgment dated 16-2-1994 in R.S. Nayak Vs. A.R. Antulay, , a constitution Bench of the Supreme Court withdrew special cases against Antulay and transferred the same to Bombay High Court with a request to the learned Chief Justice to assign the cases to a sitting Judge of the High Court for holding trial on day to day basis. This was challenged before a seven-Judge Bench in A.R. ANTULAY'S case (supra). One of the submissions was that a wrong decision or direction by the Court inter parties cannot be challenged subsequently. This argument was repelled by the Supreme Court - both on the principle of jurisdiction as well as per incuriam. It was held:

In our opinion, we are not debarred from reopening this question and giving proper directions and correcting the error in the present appeal when the said directions on 16th February, 1984 were violative of the limits of jurisdiction and directions have resulted in deprivation of fundamental rights of the appellant guaranteed by Articles 14 and 21 of the Constitution... We are of the opinion that this Court is not powerless to correct its error, which has the effect of depriving a citizen of his fundamental rights, and more so, the right to life and property. It can do so in exercise of inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in deprivation of fundamental rights of a citizen or any right of the petitioner, (see paras 49 and 50 in A.R. Antulay Vs. R.S. Nayak and Another, .

106. Sri. E. Manohar, learned Senior Counsel for first respondent vehemently contended that as long as the community certificate dated 9-7-1979 is not cancelled, mandamus as prayed for cannot be issued. Indeed, in the counter-affidavit filed by first respondent he stated as follows:

...The further allegation that with the help of the said judgment I obtained a certificate of Social Status that I belong to Scheduled Tribe Community is also baseless and incorrect. The earlier certificates given in the year 1979 by the competent authorities viz., Tahsildar, Salur, and the Judicial First Class Magistrate, Salur are still in force. I submit that I did not obtain the said certificate on the basis of the judgment in OS No. 35 of 1982, for the purpose of

my appointment as District and Sessions Judge, Grade-II. I never applied for the issuance of a social status certificate for me to the Sub-Collector, Parvathipuram at any time, (see para 14 of counter of first respondent)

107. The above averment, however, establishes fraud played by first respondent. When certificate issued by Tahsildar, Salur in 1979 was genuine, and the same was not cancelled, we really are not able to understand as to why first respondent again approached the Civil Court by filing suit in which he claimed to belong to Konda Raju community, and which according to him is synonymous to Konda Dhora community. As already seen, the Government issued Memo dated 9-12-1980 declaring that first respondent cannot be treated as ST. The said order of the Government was not challenged, and therefore, the submission of the learned Senior Counsel cannot be countenanced. As already noticed, first respondent did not enclose certificate dated 9-7-1979 issued by Tahsildar, when he applied for the post of District Judge.

3(iii) Whether High Court should leave the matter to the authorities to take action under Act 16 of 1993

108. At the outset we may refer to the provisions of the Act and Rules. Till recently, the procedure for issue of Community Certificates to SCs, STs and BCs was governed by various executive instructions, issued by the Government from time to time. The Government realised that in large number of cases, candidates for employment in government departments and in public sector undertakings produced false caste certificate and secured appointments against vacancies reserved for SCs and STs. From time to time, the competent authority for issuance of community certificates to SCs, STs or BCs or to allot them was changed. The procedure become unwieldy as the practice of producing fake and false certificates by Unscrupulous candidates became rampant totally denying the benefits to genuine SC and ST candidates. Therefore, the Government came forward with a legislation, and enacted Act 16 of 1993.

109. The Act regulates issue of Community Certificates to persons belonging to SCs., STs., and BCs. In exercise of the power under Sub-section (1) of Section 20 of the Act, the Governor had made Rules in G.O. Ms. No. 58, Social Welfare, dated 12-8-1997 known as A.P. Scheduled Castes, Scheduled Tribes and Backward Classes -Issue of Community, Nativity and Date of Birth Certificates Rules, 1997. The competent authority shall issue community certificate on receipt of applications. Section 4 of the Act provides for issue of certificates by the competent authority. Rule 5 of the Rules provides for elaborate enquiry/ verification before an integrated community certificate is issued u/s 4 of the Act. When any authority has a reason to believe either suo motu or on a written complaint that any community certificate was obtained fraudulently, it is only the District Collector who can initiate enquiry under the Act. Such enquiry shall be conducted in accordance with Rules 8 and 9 of the Rules. Section 21 of the Act provides that unless a community certificate is cancelled in accordance with the provisions of the Act, the community certificate issued by any authority shall be

valid and the same shall be deemed to have been issued under the provisions of the Act.

110. Rule 19 of the Rules is to the effect that if there is likely to be delay in finalizing the enquiry either for issue of integrated community certificate or for cancellation of such certificate duly following the procedure contemplated u/s 5 read with Rules 8 and 9, the competent authority may inform the Principal or the educational institution to admit the candidate (in the case of educational institutions) on the basis of the declaration given by the candidate and that such admission shall be provisional for a period of three months from the date of communication from the competent authority. There is no such rule, which enables the person to continue in employment when it is discovered that he got employment by using a fraudulent ST certificate.

111. As already noticed, first respondent opposes the writ petition on the grounds that ST Community Certificate issued by the Tahsildar, Salur, has not been cancelled, that the decree passed by the Civil Court is not nullity, that in view of the judgment of the Division Bench of this Court, the issue cannot be reopened, and that in view of statutory alternative remedy available under Act 16 of 1993, the writ petition must be dismissed.

112. We have already examined the issues in relation to all the defences, except the last one. The examination of the question of alternative remedy in this case is not a simple one for the reasons to be noticed hereinafter. First respondent is holding high judicial office of District Judge Grade-I in A. P. State Higher Judicial Service. Is it possible for the authorities under the Act to conduct an impartial enquiry when first respondent holds an high office of District Judge Grade-I? There is a Civil Court decree as well as the judgment of the Division Bench of this Court which may not enable the authorities under the Act like the District Collector, Joint Collector and other members of the Scrutiny Committee to consider the various documents, which we have considered hereinabove and arrived at a finding that first respondent obtained employment claiming to be ST by playing fraud. Having regard to the nature of judicial office, first respondent is holding, can this Court ignore the allegations of fraud and misrepresentation made against him in obtaining appointment as District Judge? It is well settled that having regard to Articles 233, 234 and 235 of the Constitution of India, under which "the control" of District and Subordinate Judiciary absolutely vests in the High Court. In the background of this constitutional position, can this Court ignore the constitutional provisions and allow the revenue authorities to conduct enquiry into the allegations made against first respondent. These are the factors, which have a bearing upon the issue.

113. We have analyzed the provisions of the Act and the Rules to show that the District Collector may either suo motu or on written complaint by any person after enquiry cancel a community certificate obtained fraudulently before or after commencement of this Act. Any order passed by the Collector is appealable u/s 7(1) of the Act. Pursuant to a show cause notice, if a person who obtained

fraudulent community certificate discharges his initial burden cast on him u/s 6 of the Act, the District Collector u/s 9 has to refer the matter to Scrutiny Committee, which at District Level consists of five members with Joint Collector as Chairman. The Scrutiny/Review Committee at the State Level consists of six members with Principal Secretary to Government in Social Welfare Department as Chairman. The State Level Committee monitors the functioning of the District Level Committee and also renders necessary advice to the Government on various policy decisions to be taken for streamlining the procedure in relation to issuing of community certificate. Be that as it may, under Rule 9, the District Collector is required to refer any case of fraudulent community certificate to the Chairman of District Level Scrutiny Committee if the person discharges initial burden. If the person fails to produce any material to the satisfaction of the District Collector, the Collector without referring to Scrutiny Committee can even cancel the community certificate obtained fraudulently before or after coming into force of the Act after considering the explanation to the show cause notice issued. A reading of Section 5 with Rules 8 and 9 makes this very clear.

114. In a case of this nature, in our considered opinion, it is not necessary to refer the matter or relegate the petitioner to alternative remedy available under the Act. Indeed, we may notice that in the field of Public Law, the scope of mandamus is wide, and the Court can use it freely to prevent injustice or breach of duty (See Administrative Law by HWR Wade and C.F. Forsyth, 8th Edition). The availability of effective alternative remedy is not always a bar for exercise of jurisdiction to issue a mandamus. As observed by Prof. H.W.R. Wade "the Courts have grown accustomed to awarding mandamus more freely, even where some other remedy exists".

115. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , the apex Court held:

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely where the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been a violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

116. The apex Court after referring to its earlier judgments rendered during the evolutionary era of the Constitutional Law starting from Rashid Ahmed Vs. The Municipal Board, Kairana, , K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , STATE OF U.P. v. MOH. NOOH, AIR 1958 SC 86, A.V. VENKATESWARAN, COLLECTOR OF CUSTOMS, BOMBAY v. RAMCHAND SOBHAJ WADHWANI, AIR 1961 SC 3506 and Calcutta Discount Company

Limited Vs. Income Tax Officer, Companies District, I and Another, , held:

Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

Delay and laches:

117. A submission was made that first respondent was appointed as District Judge more than a decade and a half ago, and therefore, the writ petition, filed by the petitioner to set aside the appointment of first respondent is not maintainable. For reasons more than one we cannot agree with this contention. Firstly, the allegations of fraud and misrepresentation have been made against first respondent, to which we have already adverted. In such an event, a decision, which is obtained by fraud, and an appointment, which is obtained by fraud, cannot be allowed to be enjoyed. In *Re P. SHYAM RAO*, 1984 (2) ALT 386, a learned Judge of this Court (PA. Choudhary, J) observed:

Where no innocent third party interests have crept in, and where nature of fraud or misrepresentation is so glaring and patent crying out for judicial correction, and where assignee himself was privy to the fraud, it become the duty of the authority to take action immediately the moment fraud is detected and discovered. It is for that reason the statute gave power without reference to any time limit...The theory of arbitrary cancellation and the improper exercise of jurisdiction, are all in my opinion, inapplicable to a case of this nature,

118. In *KAZI LHENDUP DORJI v. CENTRAL BUREAU OF INVESTIGATION*, 1994 Supp. (2) SCC 116, a writ petition under Article 32 of the Constitution of India as Public Interest Litigation by a former Chief Minister of Sikkim to quash a notification issued by the Government of Sikkim withdrawing the consent of the Government issued to CBI u/s 5, was challenged. It was inter alia opposed on the ground that the writ petition is barred by delay, in that the notification was issued in 1987 and the writ petition was filed in 1993. This submission was rejected by the Supreme Court holding:

...Having regard to the seriousness of the allegations of corruption that have been made against a person holding the high public office of Chief Minister in the State which have cast a cloud on his integrity, it is of utmost importance that the truth of these allegations is judicially determined. Such a course would subserve public interest and public morality because [he Chief Minister of a State should not function under a cloud. It would also be in the interest of respondent 4 to have his honour vindicated by establishing that the allegations are not true. The cause of justice would, therefore, be better subserved by permitting the petitioner to agitate the issue raised by him in the writ petition than non-suiting

him on the ground of laches,

119. In BHASKARAN'S case (supra), the respondents who obtained employment in Indian Railways by fraud contended that as they were continuing in service for a considerable time, their appointments may not be disturbed. The Supreme Court did not agree with the submission, and held:

Therefore, even independently of Rule 3(1)(i) and (iii) of the rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer,

120. We may also refer to judgment of the Supreme Court in TRIPURA SUNDARI'S case (supra), wherein the apex Court held that no Court should be a party to the perpetuation of fraudulent practice. We must, therefore, hold that when fraud and misrepresentation are alleged, delay and laches in filing the writ petition are not a bar for this Court to entertain a writ petition.

121. As already observed, this matter has been placed before this Full Bench for obvious reasons - that the second appeal filed by the State against the judgment of the District Judge, confirming the judgment of the District Munsif, was dismissed, and that the writ petition filed by Ambat Vincent against the first respondent was also dismissed. Further, we have already admitted the writ petition and heard it finally, and in such a case, the first respondent cannot be permitted to raise the ground of alternative remedy. In *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, , the Supreme Court laid down that:

An order u/s 35 of the Income Tax Act is appealable. It is true that a petition to revise the order could be moved before the Commissioner of Income Tax. But Hirday Narain moved a petition in the High Court of Allahabad and the High Court entertained his petition. Hirday Narain could have moved the Commissioner in revision because at the date on which the petition was moved the period prescribed by Section 33-A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income Tax Officer u/s 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits,

122. Therefore, the availability of alternative remedy under Act 16 of 1993 does not debar the remedy under Article 226 of the Constitution of India. Further, as already observed by us, there is decree of Civil Court as well as judgment of the Division Bench of this Court, We fail to understand as to how the remedy available under the Act could be effective in the background of the allegations of fraud and misrepresentation as well as the judgment of the Civil Court and the judgment of the Division Bench of this Court. Therefore, we are convinced that

any order relegating the petitioner to avail remedies u/s 5 of the Act would occasion failure of justice, and it would be improper for us to do so. We have yet another reason to reject the contention of Sri. E. Manohar, the learned Senior Counsel appearing on behalf of the first respondent that there is effective alternative remedy.

123. Any allegation that a District Judge resorted to fraud in getting employment amounts to serious misconduct. When such serious misconduct is alleged against a District Judge, does the Constitutional scheme permit the executive or other authorities to take into the matter? In *Daya Shankar Vs. High Court of Allahabad and Others through Registrar and Others*, , a District Munsif was found copying while appearing for LL.M. examination. After conducting enquiry, the High Court of Allahabad recommended to the State Government to remove the petitioner from service. Accordingly, the State Government removed the petitioner from service as District Munsif. The same was challenged in a petition under Article 32 of the Constitution of India. The Supreme Court while dismissing the writ petition observed as under:

...The conduct of the petitioner is undoubtedly unworthy of judicial officer. Judicial officers cannot have two standards, one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy...

124. In *All India Judges' Association and Others Vs. Union of India and Others*, , dealing with the nature of judicial office especially the office of a Judge at District and Subordinate level, the Supreme Court observed:

...Initially, there was also no clear demarcation between the judicial and executive services and the same officers used to perform judicial and executive functions. Since the then Government had failed to make the distinction between the two services right from the stage of the recruitment, its logical consequences in terms of the service conditions could not be avoided. With the inauguration of the Constitution and the separation of the State power distributed among the three branches, the continuation of the linkage has become anachronistic and is inconsistent with the constitutional provisions. As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive but between the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged...

125. In *C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee and Others*, , the petitioner sought for a direction restraining the Bar Council of Maharashtra and Bombay Bar Association from coercing first respondent therein to resign from the office of the Judge. A prayer was also made seeking directions to CBI to conduct investigation into the allegations made against him, and if the allegations are found to be true, to direct the Speaker of Lok Sabha to initiate impeachment proceedings against first respondent. It was contended that accusations against

first respondent without proper investigation by an independent agency would seriously damage the image of the Judiciary, and that Judges are not to be judged by the bar. While observing that independence of judiciary is not limited only to independence from the executive pressure or influence, and that within its sweep it takes independence from any other pressure or prejudices, the Supreme Court observed:

Our Constitution permits removal of the Judge only when the motion was carried out with requisite majority of both for Houses of Parliament recommending to the President for removal. In other words, the Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by Parliament. In *Sub-Committee of Judicial Accountability Vs. Union of India and others*, , this Court at p. 54 held that the removal of a Judge culminating in the presentation of an address by different Houses of Parliament to the President, is committed to Parliament alone and no initiation of any investigation is possible without the initiative being taken by the Houses themselves. At p. 71 it was further held that the constitutional scheme envisages removal of a Judge on proved misbehaviour or incapacity and the conduct of the Judge was prohibited to be discussed in Parliament by Article 121. Resultantly, discussion of the conduct of a Judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose.

126. The removal of District Judge, is regulated by the Rules made by the Governor under proviso to Article 309 read with relevant Discipline Rules. In the matter of disciplinary action against District Judges, the position is very stringent. The scope of the power of control of High Court under Articles 233, 234 and 235 of the Constitution of India is subject-matter of catena of judgments of the apex Court. In *STATE OF WEST BENGAL v. NARENDRANATH BAGCHI*, AIR 1996 SC 447, *Samsher Singh Vs. State of Punjab and Another*, , *Baldev Raj Guliani Vs. The Punjab and Haryana High Court and Others*, , *Ranjit Prasad Sinha Vs. State of Bihar and Another*, . In *T. Lakshmi Narasimha Chari Vs. High Court of Andhra Pradesh and another*, , the apex Court categorically held that the disciplinary control over the District Judiciary including initiation and conduct of enquiry into allegations of misconduct absolutely vests in the High Court, and that having regard to Articles 233, 234 and 235 of the Constitution of India and the relevant Rules, the Governor/ Government can only pass the order of removal, dismissal etc., as recommended by the High Court. The following observations demand excerption:

Applying the settled legal principle to the undisputed facts in the case of both these subordinate judicial officers who held the substantive rank of directly appointed district Munsif at the time of issuance of the order of removal from service by the High Court itself, it is plain that the order of removal from service in the case of each of them had to be made by the Governor and not by the High Court itself. It is equally plain that the recommendation of the High Court for

their removal from service after the charges of misconduct were found proved in the disciplinary enquiry, was binding on the Governor who had to issue the order of removal in accordance with the recommendation made by the High court...

127. Further, we may notice that in the matter of (i) appointment and recruitment, (ii) confirmation, deputation and promotion, (iii) transfer, disciplinary proceedings, (iv) compulsory retirement, (v) extension of age of superannuation as per All India Judges case (supra), (vi) conferment of selection grade/super time scale, and (vii) correction of date of birth, it is only the High Court which has the ultimate say. We are not referring to various authorities in this regard. However, we may refer to one area where the constitution requires a consultative and coordinated approach by the High Court as well as the Government in making Rules and Articles 233 or 234/235 read with proviso to Article 309.

128. In *Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court*, , *Darshan Lal Vs. State of Jammu and Kashmir*, , *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, , *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, , *B.S. Yadav and Others Vs. State of Haryana and Others*, and *State of Bihar and Another Vs. Bal Mukund Sah and Others*, , the apex Court categorically held that power of the Governor to make Rules under proviso to Articles 309 of the Constitution of India or the power of the State to make legislation under Article 309 is circumscribed by the constitutional provisions like Articles 233 and 234 of the Constitution of India. In *BAL MUKUND SAH* (supra) Majmudar, J, speaking for the majority held:

It is, therefore, obvious that the State Legislature has no role to play while controlling appointments of District Judges under Article 233 or appointment of Civil Judges to Subordinate Judiciary at grass-root level under the District Judiciary and it is only the Governor who is entrusted with the said task which he has to undertake after consultation with the High Court and by framing appropriate rules for recruitment to judiciary at grass-root level as enjoined by Article 234 and can only act on recommendation by the High Court for direct recruitment from the Bar for being appointed as District Judges as laid down by Article 233 Sub-article (2). There is no third method or third authority which can intervene in the process of can have its say, whether legislative authority or executive authority, as the case they be, independently of the complete scheme of such recruitment as envisaged by the aforesaid two Articles,

G.P. Pattanaik, J, in his concurrent opinion held:

...While Article 309 deals with recruitment and conditions of service of persons serving the Union or the State, a particular category of post forming the Judicial Wing has been carved out in Chapter VI in Articles 233 - 235 so far as the question of recruitment is concerned. When Article 309 itself uses the expression "subject to the provisions of this Constitution" it necessarily means that if in the Constitution there is any other provision specifically dealing with the topics

mentioned in said Article 309, then Article 309 will be subject to those provisions of the Constitution. In other words, so far as recruitment to the judicial services of the State is concerned, the same being provided for specifically in Chapter VI under Articles 233 - 237, it is those provisions of the Constitution which would override any law made by the appropriate legislature in exercise of power under Article 309 of the Constitution. The State Legislature undoubtedly can make law for regulating the conditions of services of the officers belonging to the Judicial Wing but cannot make law dealing with recruitment to the judicial services since the field of recruitment to the judicial service is carved out in the Constitution itself in Chapter VI under Articles 233 and 236 of the Constitution,

129. We have briefly adverted to this branch of Indian Constitutional Law because if the enquiry (if at all it is necessary and required) ultimately has to result in the action as contemplated u/s 11 of Act 16 of 1993, it is only the High Court, which can take action and not any other authority. Section 11 of the Act reads:

11. Benefits secured on the basis of false Community Certificate to be withdrawn :--(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes or secures any appointment in the Government, local authority or in any other company or Corporation owned or controlled by the Government or in any aided institution against a post reserved for such Castes, Tribes or Classes or enjoys any other benefit intended exclusively for such Castes, Tribes or Classes, by producing a false Community Certificate, be liable to be debarred from the concerned educational institution or as the case may be, discharged from the said service forthwith and any other benefit enjoyed by him as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered as an arrear of land revenue.

(3) Any degree, diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a false community certificate shall also stand cancelled on cancellation of the community certificate obtained by him.

(4) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures any benefit reserved for Scheduled Castes, Scheduled Tribes or Backward Classes other than those mentioned in Section 12 by producing a false community certificate shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than one thousand rupees but which may extend up to five thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned

in the judgment, impose a sentence of imprisonment for a lesser term or fine.

130. Therefore, u/s 11, the result of obtaining a false and fraudulent community certificate and securing admission and/or employment/appointment in any Government or Government controlled company would be (i) discharge from service forthwith, (ii) recovery of the amount paid by the Government by way of scholarship or financial benefit, (iii) cancellation of degree, diploma or any other educational qualification acquired, and (iv) penal action attracting rigorous imprisonment for not less than six months which may extend to two years with fine up to Rs. 5,000/-. Section 11, we must say, recognizes the common law principle that any decision of a Court or a public authority is nullity, and a person, who is beneficiary of fraud cannot be allowed to retain such benefit, and that deceit and misrepresentation is a common law offence, which is now recognized u/s 11.

131. Therefore, there cannot be any doubt that any action against first respondent will have to be by the Government/Governor, and such action shall be in strict compliance with the recommendation made by the High Court. In effect, the ultimate decision will be that of High Court which makes recommendation to the Governor either to appoint a person as District Judge or to remove or dismiss/discharge a person holding office of District Judge.

132. In these circumstances, it would also be embarrassing and agonizing for a District Judge like first respondent to face enquiry before the District Collector or the Scrutiny Committee. In any event, as we have summarized by way of tabular column, there are admitted facts before us, and therefore, it would be futile for relegating the petitioner to alternative remedy.

133. For these reasons, we must hold that the allegations made by the petitioner in the affidavit accompanying the writ petition and the various averments made by first respondent in the counter-affidavit would lead to an irresistible conclusion that on admitted facts, first respondent failed to place the entire material before the Tahsildar, Salur, before obtaining community certificate in 1979. We must hold that, as observed in CHENGALVARAYA NAIDU (supra), that it was incumbent and it was the duty of first respondent to place all the materials before obtaining a decision/determination that he belongs to Konda Dhora, and having regard to the fact that though he allegedly obtained certificate as Konda Dhora, he went to Civil Court alleging to be Konda Raju, which is equivalent to Konda Dhora, and therefore, first respondent played fraud. In such an event, the question of bona fide or the intention to deceive are irrelevant. As already observed by us, in the field of Public Law, the intention of the person, even if it is bonafide, if he makes a misrepresentation knowing fully well, the same amounts to fraud. Any claim to reservation as ST by any person is only with reference to the Constitution (Scheduled Castes) Order, 1950, which is the organic law (lois organiques) under the Constitution (See Modern Constitutions by K.C. Wheare. (First Indian Reprint 1984 - Oxford - pp 3-4)). Therefore, it is fraud on the Constitution, as observed by the Supreme Court in VASANT KUMAR VORA'S case

(supra).

In Re Point No. 4

What is the relief to be given in the writ petition?

134. The petitioner prayed for a writ in the nature of mandamus declaring that the appointment of first respondent to the post of District and Sessions Judge is void, illegal and unconstitutional, and to set aside the same by passing necessary appropriate orders. We have considered Section 11 of the Act, which results in various consequences noticed hereinabove, including discharge from service forthwith. Though Act 16 was passed in 1993, it came into force w.e.f. 16-5-1997. By reason of Section 11 of the Act, the position is very clear as to what could be the relief that can be given in the writ petition. In this context, we may also refer to various judgments of the Supreme Court, especially with reference to the relief granted when fraud was the basis for obtaining SC/ST community certificate to get appointment or seat in educational institutions. We may also passingly make a reference to the general principles about the effect of fraud. As seen above in *LAZARUS ESTATES*, Lord Denning observed that "fraud unravels everything, and no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, and a person cannot be allowed to keep an advantage obtained by fraud. This principle has been followed in catena of decisions including in judgments of the Supreme Court in *CHANGALVARAYA NAIDU* and *SATYAM FIBRES* (supra).

135. In *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, , the apex Court held that a statute cannot be allowed to be used as an instrument of fraud. The following observations are apposite;

An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provisions. Lord Selbome in *MADDISON v. ALDERSON*, (1883) 8 App. Cases 467, said that Courts of equity would not permit the statute to be made an instrument of fraud.

136. As already observed by us, the Constitution (Scheduled Tribe) Order, 1950 promulgated by the President under Article 342(1), which was later amended by Parliament under Article 342(2), being organic law, is part of the Constitution, and no Court of equity can allow the Constitution to be used as an instrument of fraud. Keeping this in view, we may now examine the relief granted by Court in cases where fraud was alleged in obtaining appointment or admission in educational institutions.

137. In *MADHURI PATIL'S* case (supra), the appellant and her sister wrongly and fraudulently claimed and obtained admission into BDS and MBBS course in 1992 on the basis of a community certificate that they belong to Mahadev Kholi, a Scheduled Tribe. The Verification Committee conducted an enquiry and rejected their claim as belonging to ST, as a result of which, the certificates issued by the

Executive Magistrate were cancelled and confiscated. The appellant challenged the same before the High Court and the same was dismissed. Referring to the entries in the school registers as well as other documents the Supreme Court came to the conclusion that appellant's father was shown in the school register as belonging to Hindu Kholi and not Mahadev Kholi, and that she claimed admission wrongly, it was observed:

The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate.

138. By the time the Supreme Court decided the case, Madhuri Patil had completed two years of BDS course, and her sister had almost completed MBBS course. Therefore, the Supreme Court allowed the second appellant to complete her course in MBBS, and held that she will not be entitled to any future benefits on the basis of fraudulent social status. In regard to appellant No. 1, the apex Court declared that she cannot continue her studies with her social status as ST, and that she cannot be given any concession, which she might have got on that account, and that she be continued as general candidate if she was eligible for obtaining admission as general candidate.

139. In LAVETI GIRTS case (supra), the apex Court reiterated the principles in MADHURI PATIL (supra), and noticing fraud played on the Constitution by plainsman to wear the mask of false status to corner the constitutional benefits of reservation, declared that respondent shall not be entitled to any employment or any other advantage on the basis of his false status as ST, as the respondent completed his engineering course by depriving a real tribal of the benefit of education as an engineer. The Supreme Court observed:

As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc., of the concerned educational institution responsible for making the admission or the appointing authority, should cancel the admission/ appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post,

140. In MILIND'S case, the Constitution Bench of the apex court held that notification issued by President under Article 342 is final, and cannot be modified or amended by any authority. However, having regard to the fact that respondent had prosecuted his studies during the pendency of the writ proceedings, declared that the judgment shall not affect the MBBS degree obtained by him, and it was made clear that respondent cannot take advantage of Constitution (Scheduled Tribes) Order, 1950 any further or for any constitutional purpose.

141. Therefore, even before Act 16 of 1993 came into force, we have law laid down by the apex Court that all cases of fraudulent ST claims should be scrutinized at the earliest with utmost expedition and promptitude and the persons who wore SC/ ST mask though they did not belong to those reserved classes, must be denied the benefits by withdrawing the same forthwith. Indeed, in our considered opinion, in these proceedings under Article 226 of the Constitution of India, this Court cannot allow any fraud on the Constitution to perpetrate itself any longer.

142. As we have already observed, by virtue of Articles 233, 234 and 235, as interpreted by the Supreme Court in various judgments arising under these Articles, the ultimate authority is the High Court in all matters concerning conditions of service of all District Judges and Subordinate Judges. Indeed, first respondent in para 10 of his counter-affidavit admits that after joining as Judicial Officer he is working under the control of High Court of A.P., and it is only the High Court, the controlling authority that can raise the issue relating to his working as Judicial Officer and nobody else.

143. We have already recorded our conclusions and findings on various issues, which are raised before us. It is, therefore, only appropriate that the High Court of Andhra Pradesh must consider the case of the first respondent as to whether the decree obtained by the first respondent for getting appointment as District Judge is valid and legal and as to whether any action should be taken against him, including action as contemplated u/s 11 of the Andhra Pradesh (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 in the light of our judgment.

144. In the result, for the aforesaid reasons and in the light of our conclusions and findings, we dispose of the writ petition accordingly. There shall be no order as to costs.

Bilal Nazki, J.

145. I have gone through the draft judgment prepared by my brother Justice V.V.S. Rao. With utmost respect I have not been able to persuade myself to agree with some of the conclusions drawn by V.V.S. Rao. J, therefore the necessity of writing a separate judgment.

146. The facts have been dealt with in detail by Justice V.V.S. Rao in his judgment, therefore, I will refer to only those facts which are necessary for

pronouncing my views. The Writ petition has been filed for the following reliefs;

"It is prayed that this Hon''ble High court may be pleased to issue a Writ of Mandamus or any other Writ, order or direction more in the nature of Mandamus holding that the appointment of Respondent No. 1 to the post of District and Session Judge as void illegal and unconstitutional and set-aside the same and pass such other order or orders which is this Hon''ble High Court may deem fit just and necessary in the circumstances of the case.

It is further prayed that this Hon''ble Court may be pleased to direct the Respondents 2, 3 & 5 not to consider the name of the respondent No. 1 for appointment to the post of Judge of this Hon''ble High Court during the pendency of the Writ petition."

147. This Writ petition has been filed by Andhra Pradesh Scheduled Tribes Employees Association represented by one E. Anjaneyulu who claims to be the President of the Association. He also claims that the Association is a registered association. During the hearing of the matter it was stated by the learned counsel for the petitioner that the association had been formed in the year 1964. Now, in the light of the prayer made by the petitioner the other facts will have to be appreciated.

148. The respondent No. 1 was appointed as District and Sessions Judge in the year 1986. He was appointed against a vacancy reserved for Scheduled Tribes. The case of the petitioner is that the respondent No. 1 did not belong to Scheduled Tribe, he obtained appointment on wrong representation of being a member of Scheduled tribe, therefore Writ petition should be allowed. There was some controversy about the caste of the respondent No. 1 before his appointment and he filed a suit being O.S. No. 8/85 in the Court of Subordinate Judge, Parvathipuram. The suit was filed for a declaration that the plaintiff (respondent No. 1 herein) belongs to hill tribe community known as "Konda Raju". It was stated in the plaint that, Ex-Zamindar of Salur Sri L.N. Sanyasiraju was a Konda Raju by community and the plaintiff was related to said zamindar of Salur and therefore he is a member of the scheduled tribe Konda Raju. The filing of the suit had been necessitated by the fact that the petitioner who had obtained a certificate being D.Dis. No. 2223/79, dated 9-7-79 had applied for the post of District Munsiff. He applied for this post on the strength of the certificate issued to him, but he received a notice on 22-6-80 from the Joint Collector, Vizianagaram calling upon him to appear for an enquiry in respect of the fact whether he belongs to scheduled tribe or not. He appeared before the Joint Collector, Vizianagaram and according to him submitted his evidence. The Joint Collector did not pass any order. But, he received a memo No. 174/DM/0/79, dated 21-1-81 from the A.P. Public Service Commission intimating him that his candidature for the post of District Munsiff was not considered as against scheduled tribe vacancy as he did not belong to schedule tribe and he was considered under open category and he was not able to get selected. The plaintiff submitted that, no enquiry was conducted therefore he filed the suit. Before filing

the suit he had filed a Writ petition being W.P. No. 559/81 seeking quashing of the proceedings of the A.P. Public Service Commission. While hearing the Writ petition the High Court observed that the plaintiff should file a suit for declaration before the Civil Court in respect of the caste of the plaintiff therefore he withdrew the Writ petition with liberty to file a suit for declaration with respect to his caste. The High Court passed the following order :

"Sri V. Jagannadha Rao, learned counsel for the petitioner, advised by withdraws the writ petition with liberty to the petitioner to institute a suit in an appropriate court for declaration of his status. The writ petition is accordingly dismissed, but without costs."

After this Writ petition, the plaintiff in the suit i.e, respondent No. 1 in this Writ petition gave a notice u/s 80 C.P.C to the Government and eventually filed the suit. The State of Andhra Pradesh, A.P. Public Service Commission and the Tahsildar concerned were made defendants in the suit. On the basis of the pleadings the following issues were framed by the trial court;

1. Whether the plaintiff belongs to Kondadora community?
2. Whether the plaintiff is entitled to the declaration as he prayed for?
3. To what relief?

The trial court issued the decree in favour of the plaintiff and an appeal was preferred by the defendants being A.S. No. 45/85 on the file of Additional District Judge, Vizianagaram. The appeal was dismissed on 20th February, 1986. Then the matter was taken to the High Court in Second Appeal being S.A. No. 722/86. It was also dismissed on 12-9-88. During the pendency of these proceedings, applications were invited for the posts of District & Sessions Judges Grade-II. The respondent No. 1 applied and he was appointed by the Government of Andhra Pradesh by an order dated 5-1-87. When the appointment order was issued the Government was in know of the fact that the status of the respondent No. 1 with regard to his caste was in dispute, therefore the order of appointment was made subject to the result of the Second Appeal filed by the Government. After the dismissal of the Second Appeal the Government passed the order G.O.Rt. No. 1700, dated 30th April, 1990 stating therein that the respondent No. 1 shall be deemed to have been appointed as District & Sessions Judge Grade-II in the vacancy reserved for the Scheduled Tribes.

149. So, in a way the controversy got settled. But, in between one Sri Maheswara Rao, Legal Adviser, Scheduled Tribe Employees Association submitted a petition to the A.P. State Legal Services Authority on 18-9-98. This petition was sought to be treated as Public interest litigation petition. In this petition also it was stated that respondent No. 1 was not a member of the Konda dora community. The Legal Services Authority called remarks of the respondent No. 1. He submitted his points of view and the Chairman, Legal Services Authority wrote the following;

"In view of the documentary evidence in his favour and particularly the judgment and decrees of the trial Court, First appellate court and the High Court reiterating the stand of Judicial Officer that he is a "Konda Dhora" (Scheduled Tribe) no further action is warranted."

After this order by the Legal Services Authority another Writ petition came to be filed against the respondent No. 1 being W.P. No. 30827/98. It was also a public interest litigation and it sought a writ of quo-warranto. In this Writ petition it was contended that the respondent No. 1 belongs to "Ksharriya" caste which was not notified as scheduled tribe and that the respondent No. 1 did not belong to "Konda dora" community. Fraud was also alleged to have been committed by respondent No. 1. The present Writ petition is basically revolving around the allegation that though the respondent No. 1 knew that he did not belong to "Konda dora" community he obtained a decree from the Court and as such played fraud, therefore all the judgments passed in favour of respondent No. 1 would not stand in the way of the court to declare the selection of respondent No. 1 as District & Sessions Judge way back in 1986 as illegal.

150. My brother Justice V.V.S. Rao framed three points for consideration. I have no dispute with the points so framed and as a matter of fact these were the points which were argued at the Bar. But, I do not agree with the conclusions arrived at by Justice V.V.S. Rao on point Nos. 2 and 3. The first question is, whether the decree of the Civil Court in O.S. No. 8/95 was a nullity and without jurisdiction. In my view, this question is not for a debate. I agree that this question could be reopened if fraud was proved. On first principles let me examine whether in this case fraud was proved.

151. The Tahsildar concerned gave a certificate to respondent No. 1 that he belongs to a particular community. The respondent No. 1 applied for the post of District Munsiff? He was not considered against the reserved category as the Public Service Commission was of the view that he was not a member of reserved community. He filed a Writ petition. In the Writ petition itself he was given liberty by the High Court to file a suit. When he filed the plaint he did not at all submit to the Court that he was a member of Konda dora community. His case was that, he was member of "Konda Raju" community which was synonymous to the "Konda dora" community. On the basis of evidence, this was found correct by the trial court, upheld by the appellate Court and this High Court dismissed the Second Appeal. Now, whether the Court was right in passing a decree or not is a matter, in my view, which cannot be gone into particularly after almost after two decades of the filing of the suit.

152. I am not going to refer to all the judgments which were referred to by my learned brother. There is no dispute with regard to the principles laid down by those judgments, but those judgments are relevant if fraud is proved. I fail to understand at what stage the respondent No. 1 played fraud with Court. He has come with clean hands to the Court. A certificate had been issued in his favour which was not taken into consideration by the Public Service Commission. He

filed a Writ petition and then he filed a suit stating all the facts which were necessary for the adjudication of the dispute. The judgments have become final. I am also of the view that even the question relating to fraud has also become final. After disposal of the suit, first appeal and the second appeal another Writ petition seeking writ of quo-warranto was filed which was decided by a Division Bench of this Court. The Division Bench dismissed the Writ and an appeal was taken to the Supreme Court. The Supreme Court dismissed the appeal in limini. It is true that by dismissing the appeal in limini the Supreme Court has not put a seal of approval on the judgment of Division Bench but if the Division Bench has come to a finding that there was no fraud, I am afraid, we cannot reopen that question again. The Division Bench was of the view;

"The appointment of the first respondent as District and Sessions Judge was made in accordance with the Constitutional requirements envisaged by Article 233. It is not as if the appointment was procured by playing fraud or misrepresentation. The material facts turning on the controversy which at one point of time loomed large were disclosed. The appointing authority was well aware of these facts. Initially, the appointment order was issued subject to the result of the Second Appeal filed by the State Government. On dismissal thereof, there was a further affirmation of the appointment. The certificate issued by the competent Revenue authority which is a legal requirement was produced at the time of appointment. To obviate the doubts lingering in the minds of the concerned authorities, the first respondent filed a suit and obtained a declaration of his social status as Scheduled Tribe. The decree in the suit was contested in appeal. The very same question which is raised herein was formulated as a question of law in the second appeal. But, as already noted, there is nothing to show that such question was argued. Be that as it may, the Second Appeal was dismissed and the Government acted on it. There was a move to cancel the Certificate well before his appointment. But, it was not done. The fact remains that the certificate in force although and continues to remain effective. The certificate issued by the Tahsildar was strengthened and fortified by the judgment and decree of Civil Court to which the State was a party. The judgment of the Civil Court may be wrong or illegal in the light of the law laid down by the Supreme Court in some of the cases cited by the learned counsel for the petitioner. Even then, it is not open to this court in a quo warranto proceeding to go behind that judgment by reopening the whole issue, more so when the court which granted the decree did not lack initial or inherent jurisdiction."

In view of this clear finding of Division Bench of this Court, what is sought to be achieved in this Writ petition is to nullify the judgment of the Division Bench. Since the petitioners who filed earlier Writ petition failed in Supreme Court, they want to convert this High Court into an appellate Court which cannot be and should not be permitted. Judgments have finality. As has been stated herein above, I have not been able to convince myself that the respondent No. 1 has at any stage even tried to play fraud with the Court. Therefore, it is not open for us to reopen the issue after two decades. It is curious to note that the petitioner

association has been formed in the year 1964 and it claims to be the champion of the interests of scheduled tribes. It did not know for two decades that a person who did not belong to their community has been appointed as District Judge under scheduled tribe category. This cannot be believed. They have been in know of it all through and they have been trying to get the respondent No. 1 out of service and filing petition after petition. Once the earlier petition was dismissed, once the Supreme Court did not entertain the S.L.P, by another name same reliefs are sought from this Court. If one sees the reliefs claimed in the Writ petition the intention of the petitioner becomes clear.

153. It appears that this is another face of Mr. Ambati Vincent who filed earlier Writ petition because the pleadings are similar. Not only the pleadings are similar but the petitioner in this Writ petition knows about every detail of the earlier cases, but still the petitioner did not come to this Court because Mr. Vincent was fighting it out. The petitioner in this Writ petition even knows that Mr. Ambati Vincent had also made a representation to the President of India. One can understand that a person comes to know about the cases pending in a Court but I wonder how the petitioner also knows that Mr. Vincent had filed a representation before the President of India. Having failed up to the Apex. Court they devised this method of trying to reopen the whole controversy. The Writ petitioner wants that the respondent No. 1 should not be considered for appointment as a Judge of the High Court. Can such a direction be given by us. Whether we can direct constitutional authorities like the President of India, Chief Justice of India and the Chief Justice of High Court not to consider respondent No. 1 for appointment as Judge of the High Court.

154. Now, I will only refer to one fact before closing my judgment. That, a certificate had been issued in favour of the respondent No. 1 in the year 1979. The finding of the Division Bench of this Court is that this certificate is still operative. This certificate has not been challenged even now. The certificate issued in the year 1979 was issued on the basis of enquiry. I do not want to go into the correctness of the judgment of the trial court in the suit or the appellate court. I do not also want to go into the correctness of the judgment of the Division Bench. I have only applied my mind to the fact that whether at any stage the plaintiff was responsible for any fraud on the Court. With respects and humility, I reiterate, if it was proved that the respondent No. 1 had played fraud on the Court it would be sufficient to nullify the decree. Fraud is a question of fact and if fraud is not proved all the judgments relied upon by the learned counsel for the petitioner would not help him. On facts, let us examine what is the evidence for fraud. The evidence, if any, has to be seen and examined in the light of the pleadings. I have gone through the whole of the Writ petition. The petitioner did not allege fraud having been committed by respondent No. 1 at all. In para-11 while referring to pronouncements of the Supreme Court the petitioner said, "It is further stated that persons who played fraud on Constitution should not be permitted to hold a post under the Constitution" Nowhere fraud is pleaded at all in the Writ petition. There are no facts shown to

the Court on the basis of which one can come to a conclusion that there was fraud. In the same paragraph again it has been stated that it was the admitted case that respondent No. 1 belonged to the Kshatriya caste but claimed as Konda Raju and obtained equality with Konda Dora. Reference was made by the learned counsel for the petitioner to a photostat copy of a school certificate in which the respondent No. 1 had been described as "Oriya Kshatriya. This certificate was Ex.A7 in the suit. It has not even been placed as a material paper in the Writ petition. It was not even pleaded in the Writ petition. The difficulty in this case is that the documents which have been referred to are not strictly speaking even the material on record. They have never been pleaded in the Writ petition. There was no chance to the respondent No. 1 to give a response to that material. Even it was brought to our notice at the time of hearing. But, what would be the effect even if the respondent No. 1 had claimed at one stage that he was a Kshatriya. Would it still amount to fraud. The answer lies in a Constitution Bench judgment of Supreme Court reported in Shri V.V. Giri Vs. Dippala Suri Dora and Others, . The controversy before the Supreme Court was whether the 1st respondent in that petition had ceased to be a member of Scheduled tribe at the material time because he had become a Kshatriya. The Supreme Court said;

"That takes us to the alternative contention raised by the appellant against the validity of respondent 1's election. That contention is that respondent 1 had ceased to be a member of the scheduled tribe at the material time because he had become a kshatriya. In dealing with this contention it would be essential to bear in mind the broad and recognised features of the hierarchical social structure prevailing amongst the Hindus. It is not necessary for our present purpose to trace the origin and growth of the caste system amongst the Hindus. It would be enough to state that whatever may have been the origin of Hindu castes and tribes in ancient times, gradually status came to be based on birth alone. It is well known that a person who belongs by birth to a depressed caste or tribe would find it very difficult, if not impossible, to attain the status of a higher caste amongst the Hindus by virtue of his volition, education, culture and status. The history of social reform for the last century and more has shown how difficult it is to break or even to relax the rigour of the inflexible and exclusive character of the caste system. It is to be hoped that this position will change, and in course of time the cherished ideal of casteless society truly based on social equality will be attained under the powerful impact of the doctrine of social justice and equality proclaimed by the Constitution and sought to be implemented by the relevant statutes and as a result of the spread of secular education and the growth of a rational outlook and of proper sense of social values; but at present it would be unrealistic and Utopian to ignore the difficulties which a member of the depressed tribe or caste has to face in claiming a higher status amongst his co-religionists. It is in the light of this background that the alternative plea of the appellant must be considered.

The caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the member of

the caste into which he seeks an entry. There is no evidence on this point at all. Besides the evidence produced by the appellant merely shows some acts by respondent 1 which no doubt were intended to assert a higher status; but unilateral acts of this character cannot be easily taken to prove that the claim for the higher status which the said acts purport to make is established. That is the view which the High Court has taken and in our opinion the High Court is absolutely right."

So, the Supreme Court in a way found that, once the social, educational, economical status of a person belonging to a deprived class got raised it was not unusual for such persons to profess that they were Kshatriya. I do not see any fraud in such a thing. I have already held that I am not going to deal with the evidence or correctness or incorrectness of the earlier judgments but I have adverted to this aspect of the case only to analyse as to what has been pleaded to show to this Court that respondent No. 1 has committed fraud.

155. Since there is no evidence to come to a conclusion that any fraud has been played it is unnecessary to go into the question whether the fraud is a fraud simplicitor, fraud against the statute, fraud against the constitution or fraud against the people. It is well settled that even if a bonafide wrong judgment has become final it cannot be reopened.

156. On the scope and ambit of Article 342 of the Constitution vis-a-vis the jurisdiction of the Civil Court my brother Justice V.V.S. Rao referred to a latest judgment of Supreme Court in State of Maharashtra v. Milind, AIR 2001 SC 393. This judgment was by a Constitutional Bench. The judgment starts with framing of two questions which are:

"1) Whether at all, it is permissible to hold enquiry and let in evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned entry in the Constitution (Scheduled Tribes) Order, 1950?

2) Whether "Halba Koshti" caste is a sub-tribe within the meaning of entry 19 (Halba/Halbi) of the said Scheduled Tribes Order relating to State of Maharashtra even though it is not specifically mentioned as such?"

In para-2 of the judgment the Court noted;

"2. On 8-1-1988 this Court passed the following order:-

"The prayer of the Union of India to be impleaded as party in both the appeals and writ petition as party respondent is granted. The name of the Union of India may be shown as the party respondent when the matter is listed.

Both the sides agree that this matter involves a question which has been decided by the Constitution Bench consisting of 5 Hon''ble Judges of this Court and that there is also a subsequent judgment of a Division Bench of 2 Hon''ble Judges of

this Court. One of the points raised is that there is a conflict between the two judgments. Under the circumstances, both sides state that this is a fit case for being referred to the Constitution Bench. We accordingly direct that this matter be placed before the Hon"ble Chief Justice for placing the same before the Constitution Bench. Both the sides state that the matter is very urgent and the matter be listed for early hearing. This request may, however, be addressed to the Constitution Bench."

The order of reference made by the Bench of Supreme Court to the Constitution Bench itself shows that the law was not settled till Milind's case (supra). Even after settling the law, in the Milind's case they did not disturb the respondent No. 1. The respondent No. 1 (before the Supreme Court) in this case had obtained a certificate of being a member of Scheduled Tribe and had joined the medical college. It would be interesting to note para-37 of the judgment.

"37. Respondent No. 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as doctor. In this view and at this length of time it is for nobody's benefit to annul his Admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to respondent No. 1. If any action is taken against respondent No. 1, it may lead depriving the service a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the decree obtained by him and his practising as a doctor. But, we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order, In other words, he cannot take advantage of the Scheduled Tribes order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (c) No. 16372/85 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

In the light of this legal position I do not consider it necessary to go through the evolutionary process with regard to interpretation of Article 342 of the Constitution of India.

157. For these reasons, I do not find merit in this Writ petition which is accordingly dismissed.

R.M. Bapat, J.

158. I have perused the draft judgments prepared by my esteemed brothers, Bilal Nazki, J. and V.V.S. Rao. J. In fact, having regard to the importance of the matter, I have had discussed the case with my brother judges informally as well as formally on two occasions. After having given my anxious consideration, I am not able to agree with the view taken by my learned brother, Bilal Nazki, J. I am in full agreement with all the conclusions on facts and questions of law reached

by my learned brother. V.V.S. Rao, J. I also agree with the ultimate order and direction proposed by my learned brother, V.V.S. Rao, J. The writ petition is accordingly disposed of. There shall be no order as to costs.