

(2018) 08 SC CK 0065

In the Supreme Court Of India

Case No : CIVIL APPEAL NO.1085 OF 2013 With CIVIL APPEAL NO(S) 99359937, 10081, 8141, 8802, 1086, 9048, 36324 OF 2014

Bir Singh

APPELLANT

Vs

Delhi Jal Board & Ors

RESPONDENT

Date of Decision : 30082018

Acts Referred:

Constitution of India, 1950 — Article (1), 1(1), 14, 15, 15(1), 15(4), 16, 16(4), 19, 134A, 141, 166, 239, 239A, 239AA, 330, 332, 335, 338, 338A, 341, 341(1), 342, 342(1), 342(2), 366, 367, 372A
General Clauses Act, 1897 — Section 3(8), 3(58)
Government of Union Territories Act, 1963 — Section 18
Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 19
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 4, 6A
Delhi Administration Subordinate Service Rules, 1967 — Rule 3, 3(3)

Citation : (2018) 8 JT 463 : (2018) 10 Scale 284 : AIR 2018 SC 4077 : (2018) 10 SCC 312 : (2018) 10 SCR 513

Hon'ble Judges : R. BANUMATHI, J;RANJAN GOGOI, J;N.V. RAMANA, J;MOHAN M. SHANTANAGOUDAR, J;S. ABDUL NAZEER, J

Bench : Full Bench

Advocate : D. N. Goburdhan, Praneet Ranjan

Judgement

RANJAN GOGOI, J

1. Leave granted in Special Leave Petition (Civil) No.36324 of 2017.
2. In State of Uttaranchal vs. Sandeep Kumar Singh and others (2010) 12 SCC 794 [Civil Appeal No.4494 of 2006) the following question arose for consideration of this Court:

"Whether a person belonging to a Scheduled Caste in relation to a particular State would be entitled or not, to the benefits or concessions allowed to Scheduled Caste candidate in the matter of employment, in any other State?"

3. In the course of the deliberations that took place this Court noticed the Constitution Bench judgments of this Court in Marri Chandra Shekhar Rao vs.

Dean, Seth G.S. Medical College and others (1990) 3 SCC 130 and Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another vs. Union of India and another (1994) 5 SCC 244. The view of a three Judge Bench of this Court in S. Pushpa and others vs. Sivachanmugavelu and others (2005) 3 SCC 1 was also noticed and the same was perceived to be somewhat contrary to the view expressed by the Constitution Bench in the above two cases. This Court also took note of the fact that a two judge Bench of this Court in Subhash Chandra and another vs. Delhi Subordinate Services Selection Board and others (2009) 15 SCC 458 held that the dicta in S. Pushpa (supra) is an obiter and does not lay down any binding ratio. The Bench hearing the case i.e. State of Uttaranchal vs. Sandeep Kumar Singh and others (supra) took the view that "it was not open to a two judge Bench to say that the decision of a three judge Bench rendered following the Constitution Bench judgments to be per incuriam". In this regard, the canons of judicial discipline carved out by this Court in Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another (2005) 2 SCC 673 were recalled and eventually in paragraph 13 of the opinion rendered in State of Uttaranchal vs. Sandeep Kumar Singh and others (supra) the reference of the question noted below was made to a larger Bench:

"13. A very important question of law as to interpretation of Articles 16(4), 341 and 342 arises for consideration in this appeal. Whether the Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution has any bearing on the State's action in making provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State, is not adequately represented in the services under the State? The extent and nature of interplay and interaction among Articles 16(4), 341(1) and 342(1) of the Constitution is required to be resolved."

4. The said Civil Appeal No.4494 of 2006 (State of Uttaranchal vs. Sandeep Kumar Singh and others) was disposed of by the larger Bench of this Court by order dated 6th August, 2014, in the light of the findings of the High Court recorded in paragraph 4 of the High Court order to the effect that the order impugned suffers from an apparent illegality as the appointing authority of the petitioner therein is the University and the University had acted at the dictate of the State Government, which has no power to ask for cancellation of an appointment made in accordance with the advertisement. In the aforesaid order dated 6th August, 2014 this Court took the view that the conclusions recorded in paragraph 4 of the High Court order cannot be said to be legally flawed and accordingly closed the said Civil Appeal (No. 4494 of 2006) on the aforesaid basis. The question referred was not answered.

5. However, the question arising and referred to in the State of Uttaranchal vs. Sandeep Kumar Singh and others (supra) was felt to be surviving and subsisting in the present appeals also. Accordingly, by an order of the Court dated 7th August, 2014, the very same question as formulated in paragraph 13 of the

judgment in *State of Uttaranchal vs. Sandeep Kumar Singh and others* (supra), as extracted above, has been referred for an answer by a five judge Bench of this Court. That is how we are in seisin of the matters.

6. The factual matrix need not detain us and a brief resume will suffice. The question as to whether a policy in furtherance of the enabling provision contained in Article 16(4) of the Constitution of India could extend to giving of benefits beyond the Scheduled Castes and Scheduled Tribes of a State/Union Territory enumerated in the Presidential Orders framed/issued under Articles 341 and 342 of the Constitution of India had arisen in the bunch of writ petitions filed before the High Court of Delhi against the order/orders of the Central Administrative Tribunal. The learned Tribunal following *Marri Chandra Shekhar Rao* (supra) and *Action Committee* (supra), in preference to the view expressed in *S. Pushpa* (supra) (three judge Bench) held that insofar as the Union Territory of Delhi is concerned, a migrant Scheduled Caste person would not be entitled to the benefits conferred on members of the Scheduled Castes enumerated in the list for the Union Territory of Delhi by the Presidential Order (i.e. the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956) in question. The Delhi High Court sitting in a Full Bench (perhaps in view of the importance of the question) found the decision in *S. Pushpa* (supra) to be more directly relatable to the issue at hand i.e. being one of services in the Union Territory and, therefore, felt to be bound by the decision of the three judge Bench of this Court in *S. Pushpa* (supra). While doing so, the Delhi High court in paragraph 66 of the judgment emphasised on the necessity of an authoritative pronouncement on the issue(s) arising. Accordingly, certificate to appeal under Article 134A of the Constitution was granted by the High Court. Paragraph 66 of the judgment of the Full Bench of the Delhi High Court will require a specific notice and is, therefore, reproduced below:

"66. This court summarizes its conclusions, as follows: (1) The decisions in *Marri*, *Action Committee*, *Milind* and *Channaiah* have all ruled that scheduled caste and tribe citizens moving from one State to another cannot claim reservation benefits, whether or not their caste is notified in the state where they migrate to, since the exercise of notifying scheduled castes or tribes is region (state) specific, i.e. "in relation" to the state of their origin. These judgments also took note of the Presidential Notifications, which had enjoined such citizens to be "residents" in relation to the state which provided for such reservations.

(2) The considerations which apply to Scheduled Caste and Tribe citizens who migrate from state to state, apply equally in respect of those who migrate from a state to a union territory, in view of the text of Articles 341 (1) and 342 (1), i.e. only those castes and tribes who are notified in relation to the concerned Union Territory, are entitled to such benefits. This is reinforced by the Presidential Notification in relation to Union Territories, of 1951. Only Parliament can add to such notification, and include other castes, or tribes, in view of Articles 341 (2), Article 342(2) which is also reinforced by Article 16(3). States cannot legislate on

this aspect; nor can the executive Union or state, add to or alter the castes, or tribes in any notification in relation to a state or Union Territory, either through state legislation or through policies or circulars. Differentiation between residents of states, who migrate to states, and residents of states who migrate to Union Territories would result in invidious discrimination and overclassification thus denying equal access to reservation benefits, to those who are residents of Union Territories, and whose castes or tribes are included in the Presidential Order in respect of such Union Territories. The Pushpa interpretation has led to peculiar consequences, whereby:

(i) The resident of a state, belonging to a scheduled caste, notified in that state, cannot claim reservation benefit, if he takes up residence in another state, whether or not his caste is included in the latter State's list of scheduled castes;

(ii) However, the resident of a state who moves to a Union Territory would be entitled to carry his reservation benefit, and status as member of scheduled caste, even if his caste is not included as a scheduled caste, for that Union Territory;

(iii) The resident of a Union Territory would however, be denied the benefit of reservation, if he moves to a State, because he is not a resident scheduled caste of that State.

(iv) The resident of a Union Territory which later becomes a State, however, can insist that after such event, residents of other states, whose castes may or may not be notified, as scheduled castes, cannot be treated as such members in such newly formed states;

(v) Conversely, the scheduled caste resident of a state which is converted into a Union Territory, cannot protest against the treatment of scheduled caste residents of other states as members of scheduled caste of the Union Territory, even though their castes are not included in the list of such castes, for the Union Territory.

(3) The ruling in Pushpa is clear that if the resident of a state, whose caste is notified as Scheduled caste or scheduled tribe, moves to a Union Territory, he carries with him the right to claim that benefit, in relation to the Union Territory, even though if he moves to another state, he is denied such benefit (as a result of the rulings in Marri and Action Committee). The ruling in Pushpa, being specific about this aspect visàvis Union Territories, is binding; it was rendered by a Bench of three judges. (4) The later ruling in Subhash Chandra doubted the judgment in Pushpa, holding that it did not appreciate the earlier larger Bench judgments in the correct perspective. Yet, Subhash Chandra cannot be said to have overruled Pushpa, since it was rendered by a smaller Bench of two judges. This approach of Subhash Chandra has been doubted, and the question as to the correct view has been referred to a Constitution Bench in the State of Uttaranchal case.

(5) By virtue of the specific ruling applicable in the case of Union Territories, in Pushpa, whatever may be the doubts entertained as to the soundness of its reasoning, the High Courts have to apply its ratio, as it is by a formation of three judges; the said decision did notice the earlier judgments in Marri and Action Committee. Article 141 and the discipline enjoined by the doctrine of precedent compels this Court to follow the Pushpa ruling.

(6) In matters pertaining to incidence of employment, such as seniority, promotion and accelerated seniority or promotional benefits, flowing out of Articles 16 (4A) and (4B) of the Constitution, there may be need for clarity, whichever rule is ultimately preferred i.e the Pushpa view or the Marri and Action Committee view. In such event, it may be necessary for the guidance of decision makers and High Courts, to spell out whether the correct view should be applied prospectively. Furthermore, it may be also necessary to clarify what would be meant by prospective application of the correct rule, and whether such employment benefits flowing after recruitment, would be altered if the Marri view is to be preferred."

7. Civil Appeal Nos.99359937 of 2014 from the decision of the Calcutta High court pertain to claims made by persons belonging to Uraons and Mundas members of the Scheduled Tribes communities who have migrated to the Union Territory of Andaman & Nicobar Island. The High Court rejected the claim of reservation made by the aforesaid migrants Scheduled Tribes communities confining such benefits to the Scheduled Castes communities enumerated in the list appearing in the Presidential Order pertaining to the Union Territory of Andaman & Nicobar Island.

8. Before delving into the constitutional provisions which would be necessary to be dealt with for answering the reference a brief look at the preconstitutional position on the issue would throw considerable light and provide a sound insight to the multi faceted questions that the reference has given rise to.

9. The caste system in India, which is the bane of a just social order, has a long history which can be traced to the earliest times. Ancient Hindu religious scriptures refer to the practice. Division of Society based on birth and the calling/ profession of a person has continued to dominate Hindu thinking and way of life and is perhaps one of the thorny problems inherited by the British Administration which had tried to resolve the same by giving legal recognition to what came to be termed as the "depressed classes". Such recognition was in the form of a protective regime which extended to representation in the Legislature and in the services under the State. Exercises in finding out the numerical strength of the depressed class in the early 20th Century (By Southborough Committee) revealed a grim picture indicating such number to be as high as 20 per cent of the majority population (Hindu) in eight (08) Indian Provinces of Madras, Bombay, Bengal, United Provinces, Punjab, Bihar and Orissa, Central Provinces and Assam. The above figure did not include primitive or aboriginal tribes who later came to be known as the Scheduled Tribes and included in the list of

Scheduled Tribes under the different Presidential Orders issued from time to time.

10. The Government of India Act, 1935 (hereinafter referred to as "1935 Act") (also referred to as "the Constitution Act") brought into force the expression "Scheduled Castes" for the first time in Indian Constitutional history. Entry 26 Part I of the First Schedule to the 1935 Act stipulates that "the Scheduled Castes mean such castes, races or tribes or parts of or groups within the castes, races or tribes, being castes, races, tribes, parts or groups, which appear to His Majesty in Council to correspond to the classes of persons formerly known as 'the depressed classes', as His Majesty in Council may specify".

11. Thereafter a Gazette Notification was published on 6th June, 1936 promulgating the Government of India (Scheduled Castes) Order, 1936 notifying the list of castes that are to be considered as "the Scheduled Castes" across the territory of India. A look at the Schedule which consisted of nine (09) parts i.e. Madras, Bombay, Bengal, United Provinces, Punjab, Bihar, Central Provinces, Assam, Orissa would indicate that identification of the different castes for inclusion as Scheduled Castes in the Schedule to the 1935 Act was based on an elaborate exercise conducted for each of the Provinces so much so that while some castes have been identified as Scheduled Castes throughout a Province, others have been so identified to limited areas within a province. The post constitutional exercise by the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, as originally enacted under Articles 341 and 342 of the Constitution, was basically an exercise in recasting the Schedule to the 1935 Act. The subsequent amendments to the aforesaid two Orders, from time to time, have been necessitated to bring the position in tune with the amendments to the First Schedule to the Constitution made at different points of time by creation of new States and alterations in the area and boundaries of existing States.

12. Article 366 of the Constitution which defines expressions appearing in the Constitution specifically defines 'Scheduled Castes' [clause (24)] to mean "such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution". Similarly, clause (25) of Article 366 defines "Scheduled Tribes" 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".

13. Part XVI of the Constitution of India deals with special provisions relating to certain classes. Article 330 provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People (Lok Sabha) whereas Article 332 contains similar provisions so far as the Legislative Assemblies of the States are concerned. Article 335 of the Constitution provides that "the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the

affairs of the Union or of a State". By the Constitution (Eighty Second) Amendment Act, 2000 a proviso to Article 335 was added to provide that the members of the Scheduled Castes and Scheduled Tribes may be granted relaxation in qualifying marks in any examination or standards of evaluation can be lowered in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State. Article 338 of the Constitution provides for a National Commission for Scheduled Castes which is invested with the following duties:

"(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;

(c) to participate and advise on the planning process of socioeconomic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State; the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards; deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio economic development of the Scheduled Castes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by the rule specify."

14. Similarly, Article 338A provides for a National Commission for Scheduled Tribes which is vested with similar duties as in the case of the Commission for the Scheduled Castes.

15. Article 341(1) of the Constitution empowers the President with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, to specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

16. In case of Scheduled Tribes the President has been similarly empowered under Article 342(1) of the Constitution. Sub clause (2) of Article 341 and Article 342 empowers the Parliament by law to include in or exclude from the list of

Scheduled Castes/Scheduled Tribes specified in the Notification issued under clause (1) thereof any caste, race or tribe/tribal community or part of or group within any caste, race or tribe/tribal community. It is further provided that except as provided i.e. by Parliament by law(s) made, the notification issued under Article 341(1) or Article 342(1) shall not be varied by any subsequent notification. The constitutional mandate, therefore, appears to be that any caste, race or tribe/tribal community or part of or group within any caste, race or tribe/tribal community as has been specified in the Presidential Order under clause (1) of Article 341 or Article 342 can be altered only by Parliament by law(s) made.

17. Article 341 and Article 342 also makes it clear that the caste, race or tribe or part of or group within any caste, race or tribe as specified in the Presidential Order under Article 341(1) or a tribe or tribal community as may be specified in the Presidential Order under Article 342(1) shall be deemed to be Scheduled Castes/Scheduled Tribes for the purposes of the Constitution in relation to that State or Union Territory, as the case may be. The above position is further made clear by clause (2) of the two Presidential Orders which are in the following terms.

"Clause 2 of the Constitution (Scheduled Castes) Order, 1950

2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in Parts I to XXV of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of that Schedule.

Clause 2 of the Constitution (Scheduled Tribes) Order, 1950

2. The Tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in Parts I to XXII of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof residents in the localities specified in relation to them respectively in those Parts of that Schedule."

18. There are various parameters by which a caste/race is recognized as 'Scheduled Caste/Scheduled Tribe' in a State/Union Territory or a particular part thereof. There is no doubt that before the Presidential Orders were issued under Article 341(1) or under Article 342(1), elaborate enquiries were made and only after such enquiries that the Presidential Orders were issued. While doing so, the Presidential Orders not only provided that even specified parts or groups of castes, races or tribes/tribal community could be Scheduled Castes/Tribes in a particular State/Union Territory but also made it clear that certain castes or tribes or parts/groups thereof could be Scheduled Castes/Tribes only in specified/particular areas/districts of a State/Union Territory. The reason for such an exercise by reference to specific areas of a State is that judged by standards of educational, social backwardness, etc. races or tribes may not stand on the same footing throughout the State. The consideration for specifying a particular caste

or tribe or class for inclusion in the list of Scheduled Castes and Scheduled Tribes or Backward Classes in any given State depends on the nature and extent of the disadvantages and social hardships suffered by the concerned members of the class in that State. These may be absent in another State to which the persons belonging to some other State may migrate.

19. The Presidential Orders which enumerate lists of castes/races, tribes recognized as 'Scheduled Caste/Scheduled Tribe' cannot be challenged or agitated in a court of law except, perhaps, on the limited ground as held in *M. Nagaraj and others vs. Union of India and others* (2006) 8 SCC 212. A few illustrations may clarify the position. The question whether Dohar caste is a sub caste of Chamar caste which is recognized as a scheduled caste came up for consideration in *Bhaiya Lal vs. Harikishan Singh* AIR 1965 SC 1557. This Court held that the court cannot enquire into whether Dohar caste is a sub caste of Chamar caste and whether the same must be deemed to have been included in the Presidential Order. In *Bhaiya Lal* (supra), this Court held that before issuing notifications under Articles 341 and 342, an elaborate enquiry is made and as a result of the enquiry social justice is sought to be done to the castes, races or tribes as may appear to be necessary. It was further held that only Parliament is empowered to amend the Notification under Articles 341(2) and 342(2) of the Constitution, as is underlined by the expression "but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification" occurring in each of the said provisions. In *Bhaiya Lal* (supra), this Court held as under:

"10...The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational are backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the

purpose of issuing the public notification in question..."

20. Whenever States' reorganization had taken place in the past, Parliament had exercised its powers under Article 341(2) and Article 342(2) and provided for specific Castes/Tribes that were entitled to be recognised as Scheduled Castes and Scheduled Tribes in relation to the reorganized States/Union Territories. The Scheme of the Constitution (Scheduled Castes) and (Scheduled Tribes) Orders makes it clear that Parliament's intention was to extend the benefits of reservation in relation to the States/Union Territories only to the castes, races or tribes as mentioned in the Presidential Orders.

21. The Orders of 1950 was amended by the Constitution (Scheduled Castes and Scheduled Tribes Order), by the Amendment Act, 1956 (Act 63/1956). Another amending Act was enacted by parliament in 1976. Earlier, orders had been made for the first time in relation to certain territories, such as the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959. Further, amendments had taken place as and when parliament reorganized states, through separate Reorganisation Acts, which led to large scale modification of the Presidential Orders. Illustratively, when new States/Union Territories were formed such as, Nagaland, Pondicherry, or Sikkim, the Scheduled Castes or Scheduled Tribes Orders were made in relation to the new States/Union Territories, for instance, the Constitution (Nagaland) Scheduled Tribes Order, 1970 after the reorganisation of Assam; the Constitution (Sikkim) Scheduled Castes Order, 1978; the Constitution (Sikkim) Scheduled Tribes Order, 1978) upon creation of the State of Sikkim; the recent ones being upon creation of the States of Uttarakhand, Chhattisgarh, and Jharkhand. Likewise, when previous Union Territories (such as Goa, Mizoram and Arunachal Pradesh) were constituted into States, consequential amendments were made to the Scheduled Castes and Tribes Orders. All such amendments/enactments were made by Parliament.

22. Though in a different context i.e. in relation to Backward Classes this Court in *M.C.D. v. Veena and Ors.* (2001) 6 SCC 571, has specifically held that migrants are not entitled for reservation as Other Backward Classes (OBCs) in the States/ Union Territories where they have migrated. The relevant portion of the judgment that may be noticed is as hereunder:

"6. Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of

disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs."

23. A Constitution Bench of this Court in *Marri Chandra Shekhar Rao* (supra) had the occasion to consider the question as to whether a member of the Gouda community which is recognised as "Scheduled Tribe" in the Constitution (Scheduled Tribes) Order, 1950 for the State of Andhra Pradesh would be entitled to admission in a medical institution situated in the State of Maharashtra. This Court noticed the fact that the father of the petitioner in *Marri Chandra Shekhar Rao* (supra) was an employee in Fertilizer Corporation of India, a public sector undertaking and thereafter in Rashtriya Chemicals and Fertilizers Limited, a Government of India undertaking. He belonged to the Gouda community, a recognized Scheduled Tribe of Andhra Pradesh.

On his appointment he was stationed at Bombay. The petitioner came to Bombay at the age of nine years. He completed his studies in Bombay; he submitted an application for his admission in the medical institutions run by Bombay Municipal Corporation which was denied. This denial of admission was based on the Government of India circular dated 22nd February, 1985, according to which a person who migrates from one State to another is entitled to the benefit of being Scheduled Castes/Scheduled Tribes in the State of origin and not in the State to which he or she migrates. The appellant was held not entitled to be admitted to the Medical College on the basis that he belonged to a Scheduled Tribe in his original State i.e. Andhra Pradesh.

24. After referring to various provisions of the Constitution of India, the background in which the Presidential Orders were issued and several earlier judgments of this Court, it was held as under:

"9. It appears that Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and growth. It is, therefore, necessary in order to make them equal in those areas where they have so suffered and are in the state of underdevelopment to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community. Extreme social and economic backwardness arising out of traditional practices of untouchability is normally considered as criterion for including a community in the list of Scheduled Castes and Scheduled Tribes. The social conditions of a caste, however, varies from State to State and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country. This, however, is a different problem whether a member or the

Scheduled Caste in one part of the country who migrates to another State or any other Union territory should continue to be treated as a Scheduled Caste or Scheduled Tribe in which he has migrated. That question has to be judged taking into consideration the interest and wellbeing of the Scheduled Castes and Scheduled Tribes in the country as a whole."

25. In Marri Chandra Shekhar Rao (supra), rejecting the contention that a member of Scheduled Castes/Scheduled Tribes should get the benefit of the status 'for the purpose of the Constitution throughout the territory of India', it was observed that if such contention is to be accepted the expression "In relation of that State" would become nugatory.

26. Marri Chandra Shekhar Rao (supra) was followed by another Constitution Bench of this Court in Action Committee (supra). After referring to Articles 14, 15(1), 15(4), 16(4) and 19 and Part XVI of the Constitution of India and the decisions governing the field and also Articles 341 and 342, it was held as under:

"3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

....

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits

admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitutionmakers as is evident from the choice of language of Articles 341 and 342 of the Constitution...."

27. Marri Chandra Shekhar Rao (supra) and Action Committee (supra) were followed in Subhash Chandra and another (supra). After referring to various judgments on the point and also the various circulars, this Court in Subhash Chandra and another (supra) held as under:

"69. Both the Central Government and the State Government indisputably may lay down a policy decision in regard to reservation having regard to Articles 15 and 16 of the Constitution of India but such a policy cannot violate other constitutional provisions. A policy cannot have primacy over the constitutional scheme. If for the purposes of Articles 341 and 342 of the Constitution of India, State and the Union Territory are on a par on the ground of administrative exigibility (sic) or in exercise of the administrative power, the constitutional interdict contained in clause (2) of Article 341 or clause (2) of Article 342 of the Constitution of India cannot be got rid of.

.....

75. If a caste or tribe is notified in terms of the Scheduled Castes Order or the Scheduled Tribes Order, the same must be done in terms of clause (1) of Article 341 as also that of Article 342 of the Constitution of India, as the case may be. No deviation from the procedure laid down therein is permissible in law. If any amendment/alteration thereto is required to be made, recourse to the procedure laid down under clause (2) thereof must be resorted to."

28. In Marri Chandra Shekhar Rao (supra), the Constitution Bench observed that the expression "in relation to that State" must be read meaningfully and harmoniously.

It was observed that if a member of Scheduled Castes/Scheduled Tribes gets the benefit of that status throughout the territory of India, the expression "in relation to that State" would become nugatory. If the special privileges or the rights granted to scheduled castes or scheduled tribes in a particular State are to be made available in all the States and if such benefits are to be carried from State 'A' to State 'B' on migration, the mandate of Article 341/342 would get compromised. Such a consequence must be avoided for it is a fundamental rule of interpretation, be it of a statutory enactment or of the Constitution, that wherever and whenever there is a conflict between two provisions, the same should be so interpreted as to give effect to both. ".....Nothing is surplus in a Constitution and no part should be made nugatory.....". [Marri Chandra Shekhar Rao (supra)]

29. The issue has to be viewed from another perspective. If a member of a Scheduled Caste/ Scheduled Tribe of Andhra Pradesh who had migrated to

Maharashtra is to be given the benefit of reservation it will amount to depriving a member of a Scheduled Caste/Scheduled Tribe of Maharashtra by reducing the reservation earmarked for them. It is in this context, in Marri Chandra Shekhar Rao (supra), that the Constitution Bench observed as under:

"14.But having regard to the purpose, it appears to us that harmonious construction enjoins that we should give to each expression "in relation to that State" or "for the purposes of this Constitution" its full meaning and give their full effect. This must be so construed that one must not negate the other. The construction that reservation made in respect of the Scheduled Caste or Tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State would be the most correct way of reading, consistent with the language, purpose and scheme of the Constitution. Otherwise, one has to bear in mind that if reservations to those who are treated as Scheduled Caste or Tribe in Andhra Pradesh are also given to a boy or a girl who migrates and gets deducted (sic inducted) in the State of Maharashtra or other States where that caste or tribe is not treated as Scheduled Caste or Scheduled Tribe then either reservation will have the effect of depriving the percentage to the member of that caste or tribe in Maharashtra who would be entitled to protection or it would denude the other non Scheduled Castes or non Scheduled Tribes in Maharashtra to the proportion that they are entitled to. This cannot be logical or correct result designed by the Constitution."

30. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'.

31. In *S. Pushpa* (supra), the Pondicherry Government had appointed Selection Grade Teachers in 1995 under the Scheduled Castes quota from amongst the scheduled castes candidates registered in the employment exchange in Pondicherry but also extended the benefit of reservation to scheduled castes candidates of other States and Union Territories. The Chennai Bench of Central Administrative Tribunal ("CAT" for short) quashed the selection process holding that migrant Scheduled Castes/Scheduled Tribes candidates could not be considered for appointment for posts within the union territory of Pondicherry. In *S. Pushpa* (supra) the issue was with regard to the extent of benefit that Scheduled Castes candidates of other States/Union Territories would be entitled to in Pondicherry. This Court held that in the matter of providing reservation, it

was open to the Pondicherry Government to apply or adopt a policy to give the benefit of reservation to migrant Scheduled Castes and Scheduled Tribes. In paragraphs 17 and 21 in *S. Pushpa (supra)*, it was held as under:

"17. We do not find anything inherently wrong or any infraction of any constitutional provision in such a policy. The principle enunciated in *Marri Chandra Shekhar Rao* cannot have application here as UT of Pondicherry is not a State. As shown above, a Union Territory is administered by the President through an Administrator appointed by him. In the context of Article 246, Union Territories are excluded from the ambit of the expression "State" occurring therein. This was clearly explained by a Constitution Bench in *T.M. Kannian v. ITO*. In *New Delhi Municipal Council v. State of Punjab* the majority has approved the ratio of *T.M. Kannian* and has held that the Union Territories are not States for the purpose of Part XI of the Constitution (para 145). The Tribunal has, therefore, clearly erred in applying the ratio of *Marri Chandra Shekhar Rao* in setting aside the selection and appointment of migrant SC candidates.

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21.Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory. This article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognised as backward classes of citizens and none else. If a State or Union Territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognised as such in relation to that State or Union Territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union Territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the Schedule to the Presidential Order issued for such Union Territory. The UT of Pondicherry having adopted a policy of the Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law."

32. The upshot of the aforesaid discussion would lead us to the conclusion that the Presidential Orders issued under Article 341 in regard to Scheduled Castes and under Article 342 in regard to Scheduled Tribes cannot be varied or altered by any authority including the Court. It is the Parliament alone which has been vested with the power to so act, that too, by laws made. Scheduled Castes and Scheduled Tribes thus specified in relation to a State or a Union Territory does

not carry the same status in another State or Union Territory. Any expansion/deletion of the list of Scheduled Castes/Scheduled Tribes by any authority except Parliament would be against the constitutional mandate under Articles 341 and 342 of the Constitution of India.

33. Article 16(4) is an enabling provision. It enables the State to provide to backward classes including Scheduled Castes and Scheduled Tribes reservation in appointments to public services. Such reservation is to be provided on the basis of quantifiable data indicating the adequacy or inadequacy, as may be, of the representation of such classes in Government service. The data which is the basis of the satisfaction of the State being verifiable, is open to judicial scrutiny on the limited ground of relevance of the circumstances on which the satisfaction is moulded. The policy decision to provide reservation, of course, is beyond the pale of judicial review.

34. It is an unquestionable principle of interpretation that interrelated statutory as well as constitutional provisions have to be harmoniously construed and understood so as to avoid making any provision nugatory and redundant. If the list of Scheduled Castes/Scheduled Tribes in the Presidential Orders under Article 341/342 is subject to alteration only by laws made by Parliament, operation of the lists of Scheduled Castes and Scheduled Tribes beyond the classes or categories enumerated under the Presidential Order for a particular State/Union Territory by exercise of the enabling power vested by Article 16(4) would have the obvious effect of circumventing the specific constitutional provisions in Articles 341/342. In this regard, it must also be noted that the power under Article 16(4) is not only capable of being exercised by a legislative provision/enactment but also by an Executive Order issued under Article 166 of the Constitution. It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes enumerated in the Presidential orders for a particular State/Union Territory within the geographical area of that State and not beyond. If in the opinion of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the Lists for that particular State, constitutional discipline would require the State to make its views in the matter prevail with the central authority so as to enable an appropriate parliamentary exercise to be made by an amendment of the Lists of Scheduled Castes/Scheduled Tribes for that particular State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution could be a possible trigger point of constitutional anarchy and there fore must be held to be impermissible under the Constitution.

35. The decision in *S. Pushpa* (supra) may now be taken up to understand the basis on which the conclusion recorded therein was recorded. In *S. Pushpa* (supra) a distinction was found by this Court in the constitutional status of a Union Territory and a State in relation to the Union/Central Government. The

provisions of Article 239 and 239A of the Constitution; Section 3(8) of the General Clauses Act, 1897 defining 'Central Government' and the provisions of the Government of Union Territories Act, 1963 were considered to arrive at the following conclusion:

"14. The effect of these provisions is also that the Administrator (Lt Governor of Pondicherry) and his Council of Ministers act under the general control of and are under an obligation to comply with any particular direction issued by the President. Further, the Administrator (Lt Governor of Pondicherry) while acting under the scope of the authority given to him under Article 239 of the Constitution would be the Central Government."

36. It is on the aforesaid basis that the concerned Notification/Government Order dated 16th February, 1974 by which it was provided that Scheduled Castes/Scheduled Tribes candidates from outside the Union Territory of Pondicherry should also be considered for appointment to posts reserved for Scheduled Castes/Scheduled Tribes in the Union Territory Administration and the communication of the Government of India dated 6th October, 1995 to the same effect were upheld.

37. The First Schedule to the Constitution, as original enacted, provided for three (03) categories of States i.e. Part 'A', Part 'B' and Part 'C' States to comprise the territory of India. The States Reorganization Act, 1956 and the consequential Constitution (Seventh Amendment) Act, 1956 drastically altered the provisions of the First Schedule to the Constitution by establishment of new States; alteration in the area and boundaries of existing States and also by abolition of the three (03) categories of States; and by classification of certain areas as Union Territories. Pursuant thereto the Government of Union Territories Act, 1963 was enacted to provide for Legislative Assemblies and Councils of Ministers for certain Union Territories and for certain other incidental matters. It will not be necessary to specifically deal with the provisions of the aforesaid Act in any great detail except to say that in course of time most of the Union Territories (except for Pondicherry), which had been provided with their own Legislatures and Councils of Ministers have graduated to become fullfledged States on the basis of enactment of several State Reorganisation Acts details of which have been mentioned (para 21). The Union Territory of Pondicherry, as on date, stands out as sole Union Territory which has a Legislature and Council of Ministers, apart from Delhi.

38. Delhi, which was one of the original Union Territories, came to be called as "National Capital Territory of Delhi". This change was introduced by the Constitution (SixtyNinth Amendment) Act, 1991 with effect from 1st February, 1992 by insertion of Article 239AA in Part VIII of the Constitution (i.e. Special provisions with respect to Delhi). Article 239AA(3)(a) empower the Legislative Assembly of the National Capital Territory of Delhi to make laws with respect to any matters enumerated in the State List or in the Concurrent List (i.e. List II and List III of the Seventh Schedule to the Constitution of India) subject to

certain exceptions. It is here that the Union Territory of Delhi i.e. National Capital Territory of Delhi is enjoined a special status inasmuch as power to enact laws on any of the subjects in List II and List III is a constitutional conferment as opposed to the position in the erstwhile Union Territories and the present day Union Territory of Pondicherry where the power to frame/make laws has been conferred on the Union Territory Legislatures by a Parliamentary enactment i.e. Section 18 of the Government of Union Territories Act, 1963. The above narration has been considered necessary only to make the discussion complete. We make it clear that we are not entering into any discussion as to the special position/status of Delhi, if any, by virtue of the provisions contained in Article 239AA as the said issue does not arise for consideration in the present reference.

39. The above view coupled with the scope and ambit of the present reference may also not require us to go into the correctness of the view expressed by this Court in paragraph 14 of the decision in *S. Pushpa* (supra) (as already extracted). The resolution of the question formulated for an answer is capable of being reached by adopting an entirely different perspective which we intend to do hereinafter.

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40. The federal nature of the Constitution finds broad manifestation in two principal areas i.e. division of legislative power and exercise thereof by the Union and the constituent States and secondly, which is more relevant and important to the subject in hand, is the constitutional provisions relating to services under the Union and the States as dealt with in Part XIV of the Constitution.

41. The subject finds an elaborate study by Dr. D.D. Basu in "Commentary on the Constitution of India" 8th Edition, 2011, Volume 9, Page 9858. According to Dr. D.D. Basu, "In India though the Union and the States have their own public services, (vide Entry 70 of List I and Entry 41 of List II) there is no clearcut bifurcation in the administration of the Union and the State laws as in the U.S.A. The State officials administer the State laws as well the Union laws applicable within that State whereas the members of the Union Services while working within a State, also carry out State laws, insofar as they may be applicable. The second peculiarity of the Indian federal system of administration is that though the federal and State Governments have civil services of their own to manage their own households, there are certain services known as the All India Services, which are common to both the federal and State Governments.

The organisation of the Civil services in the Indian federal system may be demonstrated as thus:

All India Services

Central Civil State Civil Services

Services

Central Secretariat Subordinate Services

Services"

42. At the State Level, as Dr. D.D. Basu points out, "the State Civil Services administer the subject solely belonging to the State Governments, according to the federal distribution of subjects thus including the Judicial, Executive, Medical, Engineering, Police, Education branches. Their members are under the exclusive control of the respective State Governments and their duties are confined to the territories of the State by which they have been appointed, unless sent on deputation to the Union Government". 8th Edition, Volume 9, 2011, Page 9860. These State Civil Services may be Administrative Services, Forest Services etc. [illustratively, in case of Himachal Pradesh, Himachal Pradesh Administrative Service (HPAS) is a type of service, so is, Himachal Pradesh Forest Service (HPFS). The recruitment to these services is conducted by way of Civil Services Examinations organised by the Statespecific Public Service Commission e.g. in case of Himachal Pradesh, it is Himachal Pradesh Public Service Commission. As stated earlier, persons inducted into the State Service of a particular State cannot be transferred to any other State. These officers are concerned with only the affairs of the state in which they are appointed. These services (like HPAS, HPFS) may, for convenience, be called as Superior Services/Higher Services with reference to a State. But in addition to these higher services, there are also services that may, again for convenience, be called as Subordinate Services/Lower Level Jobs. The posts in these services are like those of Clerks, School Teachers; Drivers, Attendants, Safai Workers, etc. For the purpose of recruitment of Subordinate Servants, states have in place Statespecific Selection Commissions.

43. At the Federal Level, civil administration is carried out by the members of (1) All India Services (specifically provided for in Article 312); (2) Central Civil Services (although, not specifically provided for in the Constitution but are regulated by creation of statutory Rules framed under the proviso to Article 309). These are again Superior Services and the selection/recruitment is by the Union Public Service Commission.

ALL INDIA SERVICES

There are three All India Services (AIS) (a) Indian Administrative Service (IAS); (b) Indian Forest Service (IFoS); (c) Indian Police Service (IPS). As regards AIS, Dr. D.D. Basu 8th Edition, 2011, Volume 9, Page 9858. says that, "the peculiarity of the AIS from the federal standpoint is that

(a) Though they are recruited and their conditions of service are determined by the Union Government, they have to administer both Union and the State subjects, accordingly as their services are placed at the disposal of the Union or a State Government, in connection with the affairs of the Union or the State, as the case may be.

(b) While serving in a State, they are controlled by the State Government, except as regards the imposition of the penalty of dismissal, removal or compulsory retirement, which can be awarded only by the Union Government.

(c) In a sense, this system is an exception to the usual federal precedent inasmuch as it is intended to fill up the strategic posts both under the Union and State Governments by men of superior calibre, recruited on a uniform basis, through the UPSC. Thus, while a Deputy Collector may be a member of the State Civil Service, the Additional Collector and the Collector may be members of the Indian Administrative Service. The category of AIS thus breaks through the federal division so far as the administrative services in India are concerned. In fact, the principal agents of a State administration are members of the AIS and it would be a mistake to suppose that the AIS exist for the administration of the Union subjects. Broadly, speaking, the administration of a State is run both by the members of the AIS and State Services, the latter supplying only the intermediate and subordinate tiers.

(d) Though the bulk of recruitment to the AIS is by competitive examination, a certain proportion is selected by promotion from amongst members of the State Civil Services.

(e) Though a member of AIS may be required to serve anywhere in India, on recruitment, he is usually assigned to a State or States jointly, or, in a technical language, is included in a State cadre or Joint cadre and continues to serve there until or unless he is called upon to serve the Union Government, in any of its Departments.

(f) While employed under a State, again, the members of the AIS do not have to work only in the Secretariat of the State but also in the Districts as already stated and members of these services are expected to acquire experience of the business in the district as well as Secretariat administration and there is a constant interchange of officers between the Secretariat and the Districts, just as there is such an interchange between the States and the Union Secretariats on the other hand."

44. Therefore, the members of the All India Services are common to the Union and the States and they serve, by turn, both the Union and State Governments. The members of these services although recruited by the Centre their services are placed under various State cadres. "It is evident from Article 312(1) that the members of the AIS are common to the Union and the States. Curiously, however, there is a cadre for the Indian Administrative Service only in the States, according to the Indian Administrative Service (Cadre) Rules, 1954 and there is no separate cadre for members of this service in the Government of India. Each members of the Indian Administrative Service therefore, belongs to the cadre of one State or the other." D.D. Basu, 8th Edition, 2011, Volume 9, Page 10585.

45. There are many State Cadres e.g. Bihar Cadre, Rajasthan Cadre and Joint Cadres like AGMUT (for Arunachal Pradesh + Goa + Mizoram + the 7 Union

Territories). These officers remain in the allotted Cadres till they retire. They are not normally to be transferred from one State Cadre to another State Cadre though they have the accountability to serve both under the State and the Centre.

46. At this juncture, the Union of India's Affidavit may also be referred to, which states with reference to AIS that, "the conditions of service of these services (AIS) are regulated by the DoPT by way of executive and statutory instructions, statutory rules formulated under Article 309 of the Constitution and Act of Parliament etc. The functional control of some of the services rests with other Ministries and Departments also. The Ministry of Home Affairs exercises functional control on IPS and the Ministry of Environment & Forest & Climate Change exercises functional control on IFoS. Members of these services are allocated a cadre under a State or Union Territory and they serve the Union as well as the State, whichever is allotted to them. Thus their services are All India Services. Their recruitment is by the Union Public Service Commission and as they serve the Union as well as the States, their recruitment is on pan India basis. Every citizen of this country having the required qualification is eligible to be considered for the appointment. It is pertinent to note that before selection in the AIS, there is no specification or indication of the cadre in Union, Union Territory or State, which they may serve. Upon selection alone, they would be allocated cadre depending upon the merit and the preferences they would have made at the time of applying. Upon selection they could be allocated to serve through any of the 25 states or 7 Union Territories of Delhi; Puducherry; Chandigarh; Daman & Diu; Dadra & Nagar Haveli; Andaman & Nicobar; Lakshadweep coupled with the states of Arunachal Pradesh, Goa and Mizoram" Para 5 of the Affidavit..

47. CENTRAL CIVIL SERVICES

The Central Civil Services (CCS), as Dr. D.D. Basu points out, "are engaged in administering the Union subjects, such as the Posts and Telegraphs, Customs and Excise, Income Tax. In short, these constitute all the administrative services in the Central Departments which have not so far been included in the list of All India Services. They are under the exclusive control of the Union Government. Besides the Central Services, there are other Services intended for work solely in the Central Secretariat, or, in other words, those who are to manage the offices of the Central Departments. Both the Central Civil Services and Central Secretariat Services are subdivided into Class I, II, III, IV, (= Group A, B, C, D Rule 6A of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides that, "All reference to Central Civil Services/Central Civil Posts, Class I, Class II, Class III and Class IV in all Rules, Orders, Schedules, Notifications, Regulations, Instructions in force, immediately before the commencement of these rules shall be construed as references to Central Civil Services/Central Civil Posts, Group 'A', Group 'B', Group 'C' and Group 'D' respectively, and any reference to "Class or Classes" therein in this context shall

be construed as reference to "Group or Groups", as the case may be.") according to the rank and responsibilities of the officers... Members of the Central Services are also sent on transfer or deputation to States where offices relating to the Union subjects or Public Sector Undertakings relating thereto are located." 8th Edition. Volume 9, Page 9859. All that we would like to add is that though the members of these services are concerned only with the affairs of the Union/ Centre they discharge such duties in the offices and establishments of the Union Government as may be located in the States and the Union Territories. The Central Civil Services (Classification, Control and Appeal) Rules, 1965 [CCS Rules, 1965] (enacted under the proviso to Article 309) are the governing statutory Rules with reference to these services. Rule 4 of CCS Rules, 1965 classifies the Central Civil Services into four types

- (i) Central Civil Services, Group A (45 services as per the Schedule to the Rules);
 - (ii) Central Civil Services, Group B (33 services as per the Schedule to the Rules);
 - (iii) Central Civil Services, Group C (5 services as per the Schedule to the Rules);
 - (iv) Central Civil Services, Group D (1 service as per the Schedule to the Rules)
- Para 6 of the Affidavit .

48. CCS Group A:

The Affidavit of the Union of India says that, "recruitment to Group A services is made by UPSC. The recruitment is again on all India basis. This is the reason the personnel belonging to these 45 services work in the posts of Union and the Union Territories (UT) across the length and breadth of the country. The Cadre Controlling Authority of Group A services are the respective ministries of the Government of India. For example, the first service being the Archaeological Service, the Cadre Controlling Authority is the Ministry of Culture, Central Government. Another example, the 12th service being the Indian Foreign Service and this is controlled by Ministry of External Affairs. No. 16 is the Indian Revenue Service and it is controlled by the Ministry of Finance. The members of these services being recruited pursuant to the Central Service Exams conducted by the UPSC are allocated to the respective services. Whichever Ministry seeks recruitment to the service in this Group, sends requisition to UPSC as per procedure prescribed and UPSC accordingly advertises for the post in Group A. Every citizen of India is eligible to apply as per the qualifications and requirements in the notification. DOPT is the nodal Ministry for regulating the conditions of service of all Central Civil Services as per Allocation of Business Rules. As per the conditions of service, every employee is required to give an undertaking agreeing to the conditions of all India transfer liability at the time of joining service. Central Civil Services employees belonging to Group A serve the Union of India and that is the reason why these services are across the length and breadth of the country, wherever there is an office of the Central Government. Member of the Groups A service are governed by CCS Rules of 1965 as well as Central Civil Services (Conduct) Rules 1972; Central Civil

Services (Pension) Rules 1972 and such other Rules made by the Central Ministries."

49. CCS Group B:

As mentioned earlier, there are 33 Group B Services. Amongst these, are the Union Territory Services listed at No. 28 and No. 29 and known as the 'Delhi and Andaman and Nicobar Islands Civil Service' abbreviated as 'DANICS' and 'Delhi and Andaman and Nicobar Islands Police Service' (Grade II) abbreviated as 'DANIPS'. While at this stage we may have also a look at Union Territory services in some detail.

UNION TERRITORY SERVICES

50. The Government of India (Ministry of Home Affairs) by way of a notification dated 6th August, 2003, and in the exercise of the proviso to Article 309, enacted 'the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Havel (Civil Service) Rules, 2003 [DANICS Rules, 2003]. As also, 'the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Havel (Police Service) Rules, 2003 [DANIPS Rules, 2003].

51. The DANICS/DANIPS Rules, 2003 define:

* 'Administration' to mean the Government of the National Capital Territory of Delhi in respect National Capital Territory of Delhi and Union Territory Administration in respect of the Union Territories of Andaman & Nicobar Islands; Lakshadweep; Daman & Diu; Dadra & Nagar Haveli [under Rule 2(a)]

* 'Commission' to mean the Union Public Service Commission [under Rule 2(h)].

* 'Scheduled Castes and Scheduled Tribes' to have the same meaning as are assigned to them by Articles 366(24) and 366(25) [under Rule 2(n)].

The DANICS/DANIPS Rules, 2003, further, state that posts in Junior Administrative GradeI, Junior Administrative GradeII, Selection Grade will be Central Civil Services (Group A), whereas Entry Grade shall be Central Civil Services (Group B) [Rule 3]. The vacancies in DANICS/DANIPS shall be filled in on the basis of the Civil Services Examination conducted by UPSC [Rule 7]. Every member of DANICS/DANIPS allocated to an Administration shall be posted against a duty post¹⁸ under the Administration by the Administrator [Rule 12]. More importantly, the Government of India shall, from time to time, allocate a member of DANICS/DANIPS to any Administration for posting [Rule 12]. Nothing in the Rules affects reservations, relaxation in age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and other special categories of persons in accordance with the orders issued by the Government of India from time to time in this regard [Rule 17: the Saving clause]. The Sanctioned Strength for DANICS and DANIPS is in the DANICS/DANIPS Rules, 2003 (approximately 398 DANICS; approximately

355 DANIPS).

Duty Posts are mentioned in the Schedule to these Rules. To name a few, these are Joint Director of Social Welfare/Delhi; Joint Director of Education/Delhi; Deputy Medical Superintendent of Lok Nayak Jai Prakash Narain Hospital/Delhi; Registrar of Cooperative Societies/Port Blair; Assistant Commissioner of Police/Delhi; Deputy Superintendent of Police/Andaman & Nicobar; Chief of Police/Dadra & Nagar Haveli etc.

52. As per the Union of India's Affidavit, DANICS and DANIPS are 'Union Territory Services' Page 4, Para (ii)(a) of the Affidavit. The Affidavit says, "...at Serial 28 and 29 of the Schedule (to CCS Rules, 1965), we have the Union Territory Services known as DANICS and DANIPS". The Affidavit, further, says that, "DANICS/DANIPS Officers are posted in Delhi; Andaman & Nicobar Islands; Lakshadweep; Daman & Diu; Dadra & Nagar Haveli. The recruitment to all the Union Territories for these Group B posts are common. They are also centralised and the Appointing Authority is none other than the Ministry of Home Affairs (Joint Secretary). For the recruitment to these services, it is the very same examination meant for AIS and CCS Group A. Any citizen of India is eligible to apply, subject to the conditions prescribed. As per the Service Rules, transfer undertakings throughout the Union Territories covered under DANICS/DANIPS is taken from these officers. This is the reason why the Union of India while inviting applications for recruitment considers all candidates, including reserved candidates on all India basis. Group B Cadre of DANICS/DANIPS is the Feeder Cadre for IAS and IPS respectively (i.e. AIS). They retire invariably in these Offices, some of them reaching high positions in the Central Government. Recruitment to AIS; CCS Group A; CCS Group B (Gazetted) is conducted through UPSC. In the Civil Services Examination, the applicants are common when the applications are made. Every aspirant seeks recruitment to the services and it is only as per the marks and ranking that allocations are made eventually to AIS; CCS Group A; CCS Group B. Therefore, when UPSC undertakes the recruitment, it is naturally a pan India recruitment and therefore, it is necessary to seek applications including from reserved candidates from all over India." Page 4, 5 of the Affidavit.

53. But it is not the Members of the All India Services (AGMUT Cadre); Central Civil Services (Group 'A' and 'B') and the 'DANICS' and 'DANIPS' who alone are the public servants in the States and the Union Territories engaged in the discharge of duties in connection with the affairs of the Union. There are and bound to be public servants that work the subordinate services.

CCS Group C:

54. At the subordinate level these are the Group 'C' posts. In the Schedule to CCS Rules, 1965, there are 5 such services. The Union of India's Affidavit says that, "These posts, in so far, as they relate to services under the Union of India are concerned are recruited by the Staff Selection Commission (which is the

Recruiting Agency under the DoPT). The members of CCS Group C get promoted to CCS Group B. Recruitment to posts in this group arise out of requisition made by the concerned ministries all over India. These requisitions, upon reaching, the Staff Selection Commission are processed and selection takes place and appointments are made. Even from these appointees, undertaking for all India transfer liability is taken. As these are posts under the Central Government and these employees are liable to be transferred anywhere in the country and the recruitment being centralised for all such posts in the country, it has been consistent policy of the Union of India to have pan India eligibility."

55. With regard to CCS Group D posts, in the affidavit of the Union it is stated that "the posts under this category are primarily of what used to be Class IV employees now referred to as the Multi Tasking staff. In recent years, Central Pay Commission has recommended against any further recruitment to these posts in Group D. Further it has also been recommended that the existing posts will be merged with Group C. Hence, this is now a vanishing cadre." Page 6, para iv.a. of the Affidavit.

56. The broad picture that emanates from the above discussion and narration is that insofar as the services in connection with the affairs of the Union is concerned (Central Services), wherever the establishment may be located i.e. in the National Capital Territory of Delhi or in a State or within the geographical areas of Union Territory, recruitment to all positions is on an All India basis and reservation provided for is again a pan India reservation. This by itself, from one perspective, may appear to be in departure from the rule set out in Part XVI of the Constitution of India (Articles 341 and 342). However, the close look undertaken hereinbefore indicates such a position is fully in accord with the constitutional structure of a federal polity.

NATIONAL CAPITAL TERRITORY OF DELHI

57. In case of National Capital Territory of Delhi, especially, to make the picture even clearer, a reference may be made to 'Delhi Administration Subordinate Service Rules, 1967'. Rule 3 of the aforesaid Rules is to the following effect:

"3. Constitution of service and its classification. (1) On and from the date of commencement of these Rules, there shall be constituted one Central Civil Service, known as the Subordinate Service of the Delhi Administration.

(2) The Service shall have four Grades, namely

Grade I

Grade II

Grade III

Grade IV

(3) The posts in Grade I shall be Central Civil posts, Class II Group 'B' (Gazetted)

and those in Grades II, III and IV shall be Central Civil posts Group 'C' (Non Gazetted).

(4) Members of the service shall, in the normal course be eligible for appointment to various Grades of the service to which they belong and not to the other service."

Subordinate services in the National Capital Territory of Delhi are, therefore, clearly Central Civil Services. The Affidavit of the Union also points out this feature by stating that, "The posts in CCS Group C are in the subordinate services. The equivalent in the Union Territory of Delhi is the Delhi Administrative Subordinate Services (DASS) and the Recruiting Agency in the place of Staff Selection Commission is the Delhi Subordinate Service Selection Board (DSSSB). Members of the Delhi Administrative Subordinate Services are the Feeder Cadre for Central Civil Services Group B (DANICS). It is for these reasons that the policy (of pan India eligibility) consistently adopted." Page 6, Para (b) of the Affidavit.

58. A combined reading of these provisions of the DASS Rules, 1967 and CCS Rules, 1965, therefore, more than adequately explains the nature of Subordinate Services in the NCT of Delhi. These clearly are General Central Services and perhaps, it is owing to this state of affairs that the Union of India in its Affidavit has stated that, "Members of the Delhi Administrative Subordinate Services are the Feeder Cadre for Central Civil Services Group B (DANICS). It is for these reasons that the policy (of pan India eligibility) is consistently adopted."

59. While examining the validity of reservation of seats in medical colleges for local candidates in Delhi, this Court in *Dr. Jagdish Saran and Others Vs. Union of India* (1980) 2 SCC 768 had made certain observations with regard to the special status that the capital city enjoys, which today, has come to be known as the National Capital Territory of Delhi. The observations of this Court in paragraphs 10 and 56 may be usefully recapitulated and, therefore, is set out below:

"10. The capital city is not just a part of India. It is miniaturised India, a fact often forgotten by the administration in the field of culture and education, especially visavis regional, minorities. It is magapolitan and people from all parts flock to this outsized city. But we cannot exaggerate this factor, for the presence of the farther regions like the South and the Northeast, populationwise, is minimal and precarious. Shri Balakrishnan insisted that the University was sustained by Central Government finances, collected from the whole country, and the benefits must likewise belong to all qualified students from everywhere. These are valuable aspects to shape policy but the court must test constitutionality and no more. To that extent alone we will weigh these factors in moulding our verdict.

xxx xxx xxx

56. We may windup by articulating the core thought that vitalises our approach.

Anyone who lives inside India can never be considered an 'outsider' in Delhi. The people in the States are caught in a happy network of mutuality, woven into a lovely garment of humanity, whose warp and woof is India. This is the underlying fundamental of the preambular resolve registered in our National Parchment. So we insist that blind and bigoted local patriotism in xenophobic exclusivism is destructive of our Freedom and only if compelling considerations of gross injustice, desperate backwardness and glaring inequality desiderate such a purposeful course can protective discrimination gain entrance into the portals of college campuses. The Administration has a constitutional responsibility not to be a mere thermometer where mercury rises with populist pressure but to be a thermostat that transforms the mores of groups to stay in the conscience of the nation viz. the Constitution."

60. The Affidavit of the Union does not touch upon the details of Subordinate Services in other Union Territories. Neither the authorities of the other Union Territories have laid before the Court any relevant material in this regard. We, therefore, refrain from addressing the issue in question as far as other Union Territories are concerned and have confined our discussions and the consequential views only to the National Capital Territory of Delhi.

61. Accordingly, we answer the question referred in terms of the views expressed in para 34 of this opinion. We further hold that so far as the National Capital Territory of Delhi is concerned the pan India Reservation Rule in force is in accord with the constitutional scheme relating to services under the Union and the States/Union Territories.

62. In view of the conclusions reached as above, it will not be necessary to remit Civil Appeal Nos. 1085 of 2013, 10081 of 2014, 8141 of 2014, 8802 of 2012, 1086 of 2013 and Civil Appeal arising out of Special Leave Petition (Civil) No.36324 of 2017 (pertaining to Delhi) for further consideration by the appropriate Bench. Accordingly, we dispose of the said appeals (pertaining to Delhi) in terms of the present order.

So far as Civil Appeal Nos.99359937 of 2014 pertaining to the U.T. of Andaman and Nicobar Island are concerned the issue may be decided by the appropriate Bench in the light of the views expressed herein on adequate and sufficient materials being placed before the Bench by the contesting parties.

R. BANUMATHI, J.

Reference Order:

I have gone through the judgment proposed by His Lordship Justice Ranjan Gogoi. I agree with the following conclusions arrived at in paras (30) and (34) and the reasonings thereon.

"A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'.....".

".....It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes enumerated in the Presidential orders for a particular State/Union Territory within the geographical area of that State/Union Territory (Union Territory added by me) and not beyond."

With due respect, I do not agree with the conclusion arrived at in para (61) and the reasonings thereon.

".....So far as the National Capital Territory of Delhi is concerned the panIndia Reservation Rule in force is in accord with the constitutional scheme relating to services under the Union and the States/Union Territories."

For agreeing with the conclusion arrived at in paras (30) and (34) and for differing from the conclusions in para (61) and the reasonings thereon, I have given my own reasonings.

2. The extent and nature of interplay and interaction under Articles 16(4), 341(1) and 342(1) of the Constitution of India was referred to the Constitution Bench in *State of Uttaranchal v. Sandeep Kumar Singh and Ors.*, (2010) 12 SCC 794, with the following reference:

"13. A very important question of law as to interpretation of Articles 16(4), 341 and 342 arises for consideration in this appeal. Whether the Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution has any bearing on the State's action in making provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State, is not adequately represented in the services under the State? The extent and nature of interplay and interaction among Articles 16(4), 341(1) and 342(1) of the Constitution is required to be resolved."

3. Territory of India: Article 1(1) of the Constitution of India declares that India, that is Bharat, shall be a Union of States. As amended by the Constitution Seventh (Amendment) Act, 1956.

Article 1 of the Constitution reads as under:

1. Name and territory of the Union. (1) India, that is Bharat, shall be a Union of States.

(2) The States and the territories thereof shall be as specified in the First Schedule.

(3) The territory of India shall comprise (a) the territories of the States;

(b) the Union Territories specified in the First Schedule; and (c) such other territories as may be acquired.

4. Under the Constitution of India, as initially enacted, the States were divided into Part A States, Part B States, Part C States and the territories in Part D.

Substantial changes were made by the Constitution (Seventh Amendment) Act, 1956 which incorporated the recommendations of the States Reorganisation Commission and was to have effect in concert with the States Reorganisation Act, 1956. The four categories of States that existed were reduced to two categories. The first of these categories Part A and Part B States comprised one class, called "States". The second category comprised the areas which had earlier been included in Part C and Part D States; these areas were called "Union Territories". Some additions and deletions were made to the existing lists. Now as per Schedule I, there are twenty-nine States and Seven Union Territories.

5. The expression "State" is not defined in the Constitution. It is defined in the General Clauses Act, 1897 which is made applicable to the interpretation of the Constitution by Article 367. As on the date of the commencement of the Constitution, clause (58) in Section 3 of the General Clauses Act, 1897 defined "State" in the following words:

"3. (58) 'State', shall mean a Part A State, a Part B State or a Part C State."

The said definition was amended by the Adaptation of Laws Order No. 1 of 1956 issued by the President in exercise of the power conferred upon him by Article 372A of the Constitution introduced by the Constitution Seventh (Amendment) Act, 1956. The amended definition 'State' reads thus:

"3. (58) 'State',

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State; and

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union Territory."

6. Clause (30) in Article 366 defines the "Union Territory" in the following words:

"366. (30) 'Union Territory' means any Union Territory specified in the First Schedule and includes any other territory comprised with the territory of India but not specified in that Schedule."

7. Clause (24) of Article 366 defines "Scheduled Castes" and clause (25) of Article 366 defines "Scheduled Tribes". The latter means "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". Article 341(1) of the Constitution empowers the President, in consultation with the Governor of the State concerned, to specify Scheduled Castes by public notification. Equally, Article 342(1) of the Constitution empowers the President "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". Article 342(2) of the Constitution empowers "Parliament, by law, to 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." Until the Presidential Notification is modified by appropriate amendment by Parliament in exercise of the power under Article 341(2) of the Constitution, the Presidential Notification issued under Article 341(1) is final and conclusive and any caste or group cannot be added to it or subtracted by any action either by the State Government or by a Court on adducing of evidence. In other words, it is the constitutional mandate that the tribes or tribal communities or parts of or 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 law made by the Parliament.

8. The President of India alone is competent or authorized to issue an appropriate Notification in terms of Article 341(1) and Article 342(1). Cumulative reading of Articles 338, 341 and 342 indicate that:

a) Only the President could notify castes/tribes as Scheduled Castes/Tribes and also indicate conditions attaching to such declaration. A public Notification by the President specifying the particular castes or tribes as SC/ST shall be final for the purpose of Constitution and shall be exhaustive.

b) Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, the Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification.

Ref. Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India (UOI) and Anr. (1994) 5 SCC 244.

9. It is stated that before notification was issued under Article 341(1) and Article 342(1) notifying certain caste/race or group as Scheduled Caste/Scheduled Tribe, an elaborate enquiry was made and also after such enquiry, the Presidential Order was issued. While doing so, Presidential Order not only specified parts or groups of caste, races or tribes but also made the said specification by reference to different areas in the State. By perusal of the Presidential Order, it is clear that some caste/race is actually confined with reference to a particular area; for instance, confined to a particular taluk in a district. The reason for such specification by reference to different areas in the State being educational, social

backwardness, races or tribes cannot be the same throughout the State. The consideration for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes and Scheduled Tribes or Backward Classes in a given State would depend on the nature and extent of the disadvantages and social hardships suffered in that State. These may be absent in another State to which these persons belonging to other States may migrate.

10. Whenever States' reorganization took place in the past, Parliament exercised its powers under Articles 341(2) and 342(2) and provided for specific Castes/Tribes that had to be Scheduled Castes and Scheduled Tribes in relation to the reorganized States/Union Territories. The Constitution Scheduled Caste Orders and the Constitution Scheduled Castes (Union Territories) Order, also clarify that Parliament's intention was to extend benefits of reservation in relation to the States/Union Territories in terms of the castes, races or tribes mentioned as per the Presidential Orders themselves.

11. Presidential Order which provided for castes/races, tribes recognized as 'Scheduled Caste/Scheduled Tribe' and their interpretation cannot be challenged or agitated in a court of law. The question whether Dohar caste is a subcaste of Chamar caste which is recognized as a Scheduled Caste came up for consideration in *Bhaiya Lal v. Harikishan Singh*, AIR 1965 SC 1557, wherein this Court held that the court cannot enquire into whether Dohar caste is a subcaste of Chamar caste and whether the same must be deemed to have been included in the Presidential Order. In *Bhaiya Lal's* case, this Court held "...that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice..." and while doing so, the notification not only to specify parts or groups of castes, races or tribes but to make specification by reference to different areas in the State. In *Bhaiya Lal's* case, the Supreme Court held that only the Parliament is empowered to amend the Notification under Articles 341(2) and 342(2) of the Constitution.

12. Presidential Notification (Scheduled Caste) Order 1950:

The List of Scheduled Castes is contained in the Constitution (Scheduled Castes) Order 1950. The Presidential Notifications of 1950 and 1951 (as amended) in relation to Scheduled Castes and Scheduled Tribes of various States, very importantly provided that:

"2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in [Parts I to XXV] of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule."

The Presidential Notification of 1950 was amended by the Constitution (Scheduled Castes and Scheduled Tribes Order), Amendment Act, 1956, (Act

No.63 of 1956). Another amending Act was enacted by Parliament in 1976. Further, amendments had taken place as and when Parliament reorganized States like Bombay, Andhra Pradesh, Uttarakhand, Chhattisgarh and Jharkhand through separate Acts. All these were Parliamentary enactments. Presidential Notification pertaining to Union Territories, Scheduled Castes (Union Territories) Order, 1951 specifies Scheduled Castes resident in the Union Territories of Delhi, Chandigarh and Daman and Diu. When new Union Territories were formed such as Pondicherry, Sikkim, Goa, Daman and Diu, Arunachal Pradesh, Mizoram, the Scheduled Castes or Scheduled Tribes Orders were made in relation to those new Union Territories.

13. The Constitution (Scheduled Tribes) Order, 1950: In exercise of the powers conferred by clause (1) of Article 342 of the Constitution of India the President has, after consultation with the Governors of the States concerned, made the Constitution (Scheduled Tribes) Order, 1950, specifying the tribes or communities which shall be deemed to be Scheduled Tribes in the States mentioned therein. This Order has been amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976), the Constitution (Scheduled Tribes) Order (Amendment) Act, 1991 (16 of 1991), the Constitution (Scheduled Tribes) Order (Second Amendment) Act, 1991 (39 of 1991), the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 (32 of 2002), the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 (10 of 2003), the Constitution (Scheduled Tribes) Order (Amendment) Act, 2003 (47 of 2003), the Constitution (Scheduled Tribes) Order (Amendment) Act 2006 (48 of 2006), the Constitution (Scheduled Tribes) Order (Amendment) Act, 2008 (14 of 2008) and the Constitution (Scheduled Tribes) Union Territories Order (Amendment) Act, 2008 (2 of 2009). As it stands amended, it specifies the Scheduled Tribes resident in the States of Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Orissa, Rajasthan, Tamil Nadu, Tripura, West Bengal.

Ref. Election Manual (1984), p.44 quoted in Commentary on the Constitution of India 8th Ed. by Durga Das Basu.

14. Article 16(4) is only an enabling provision to provide reservation to backward classes. Clause (4) of Article 16 of the Constitution cannot be made applicable for the purpose of grant of benefit of reservation for Scheduled Castes or Scheduled Tribes in a State or Union Territory, who have migrated to another State or Union Territory and they are not members of the Scheduled Castes and Scheduled Tribes in the State to which they have migrated. The Presidential Orders made under Article 341 and Article 342 have an overriding status. The presence of Articles 338, 338A, 341, 342 of the Constitution clearly shows that it precludes any tinkering or deviation from the list of castes or tribes notified in the Presidential Order which are reserved for that State or that Union territory.

15. India is huge. There is Unity in Diversity. Diversity in terms of language, culture, demography, geographical area, development of regions, opportunities

available to individuals for education and to make social and economical advancement etc. Some States are well developed; some other States are developing; few other States are underdeveloped. All the affirmative action of the States is to provide equality of opportunity to the socially and economically disadvantaged group. Under Article 15(4) of the Constitution, State is empowered to make special provisions for the advancement of any socially and educationally backward class of citizens or for the Scheduled Castes or Scheduled Tribes. Article 16 of the Constitution of India lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16(4) of the Constitution empowers the State to make provisions to provide reservation to the backward classes in employment or appointment to any posts and thereby to create equally opportunities for their socioeconomic empowerment and their emancipation. Article 16(4) speaks of one type of reservation namely reservation of appointments/posts.

16. Article 16(4) of the Constitution is an enabling provision directed towards achieving equality of opportunity in services under the State. Observing that Article 14 of the Constitution is the genus while Article 16 is the species, in *E. P. Royappa v. State of Tamil Nadu and Anr.*, (1974) 4 SCC 3, it was held that:

"85.Article 16 embodies the fundamental guarantee that

there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits....."

17. The Constitution Bench of nine Judges in *Indira Sawhney and Ors. v. Union of India and Ors.*, (1992) Supp 3 SCC 217, observed that Article 16(4) of the Constitution is aimed at 'protective equality' and it was held as under:

"563. Thus, Article 16(1) and (4) operate in the same field. Both are directed towards achieving equality of opportunity in services under the State. One is

broader in sweep and expansive in reach. Other is limited in approach and narrow in applicability. Former applies to 'all' citizens whereas latter is available to 'any' in Article 16(4) read together indicate that they are part of same scheme. The one is substantive equality and other is protective equality. Article 16(1) is fundamental right of a citizen whereas Article 16(4) is an obligation of the State. The former is enforceable in a Court of law, whereas the latter is 'not constitutional compulsion' but an enabling provision. Whether Article 16(4) is in substance, 'an exception', 'a proviso', or an 'emphatic way of putting the extent to which equality of opportunity could be carried', or 'presumed to exhaust all exceptions in favour of backward class', or 'expressly designed as benign discrimination devoted to lifting to backward classes', but if Article 16(1) is the positive aspect of equality of opportunity', Article 16(4) is a complete Code for reservation for backward class of citizens as it not only provides for exercise of power but also lays down the circumstances, in which the power can be exercised, and the purpose and extent or its exercise. One is mandatory and operates automatically whereas the other comes into play on identification of backward class of citizens and their inadequate representation."

18. Article 16(4) of the Constitution is not an exception; but a facet of Article 14 and Article 16(1) of the Constitution; it enables the State to effectuate equality of opportunity to any backward class. As held in *Chattar Singh and Ors. v. State of Rajasthan and Ors.* (1996) 11 SCC 742 in paras (17) and (18), that "....It gives power to the state to effectuate the opportunity of equality to any backward class of citizens.The object of reservation for the Scheduled Casts and Scheduled Tribes is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps. Therefore, they are always treated dissimilar and they do not form an integrated class with Dalits and Tribes for the purpose of Article 16(4) or 15 (4)..."

19. In *State of Kerala and Anr. v. N.M. Thomas and Ors.* (1976) 2 SCC 310 in para (178), it was held that "...differences and disparities exist among men and things and they cannot be treated alike by the application of the same laws but the law has to come in terms with life and must be able to recognize the genuine differences and disparities that exist in human nature. Legislature has also to enact legislation to meet specific ends by making a reasonable and rational classification..".

20. A Constitution Bench of this Court in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and Ors.*, (1990) 3 SCC 130 had the occasion to consider the question as to whether a member of Gouda community which is recognised as "Scheduled Tribe" in the Constitution (Scheduled Tribes) Order, 1950 would be entitled to admission in a medical institution situated in the State of Maharashtra. Based on the Government of India circular dated 22.02.1985, the appellant was denied admission to the Medical College on the ground that Marri Chandra Shekhar Rao was not a 'Scheduled Tribe' in the migrated State i.e.

State of Maharashtra.

21. After referring to various provisions of Constitution of India, background in which the Presidential Order was issued and earlier judgments, in Marri Chandra Shekhar Rao's case, it was held as under:

"9. It appears that Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and growth. It is, therefore, necessary in order to make them equal in those areas where they have so suffered and are in the state of underdevelopment to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community. Extreme social and economic backwardness arising out of traditional practices of untouchability is normally considered as criterion for including a community in the list of Scheduled Castes and Scheduled Tribes. The social conditions of a caste, however, varies from State to State and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country. This, however, is a different problem whether a member or the Scheduled Caste in one part of the country who migrates to another State or any other Union territory should continue to be treated as a Scheduled Caste or Scheduled Tribe in which he has migrated. That question has to be judged taking into consideration the interest and wellbeing of the Scheduled Castes and Scheduled Tribes in the country as a whole."

22. Marri Chandra Shekhar Rao case was followed by another Constitution Bench of this Court in Action Committee on issue of caste certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India and Anr. (1994) 5 SCC 244. In Action Committee's case, it was held as under:

"3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

....

16. We may add that considerations for specifying a particular caste or tribe or

class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitutionmakers as is evident from the choice of language of Articles 341 and 342 of the Constitution...."

Marri Chandra Shekhar Rao's case and Action Committee's case were followed in Subhash Chandra and Anr. v. Delhi Subordinate Services Selection Board and Ors., (2009) 15 SCC 458. In Subhash Chandra case, the Supreme Court reiterated that "If a caste or tribe is notified in terms of the Scheduled Castes Order or the Scheduled Tribes Order, the same must be done in terms of clause (1) of Article 341 as also that of Article 342 of the Constitution of India, as the case may be. No deviation from the procedure laid down therein is permissible in law. If any amendment/alteration thereto is required to be made, recourse to the procedure laid down under clause (2) thereof must be resorted to."

23. In Marri Chandra Shekhar Rao's case, it was held that a Scheduled Caste or Scheduled Tribe of any State which depends on the nature and extent of disadvantages and social hardships suffered by the caste, tribe or class in that State or area may be nonexistent in another State. The inclusion of the castes, races or tribes is mainly based on the degree of disadvantages or hardships faced by the castes, races or tribes in that State or in some cases or in part area of the State. For instance, in the Presidential Order relating to the State of Tamil Nadu, the caste Kanikaran, Kanikkar (in Kanyakumari District and Shenkottah and Ambasaundram taluks of Tirunelveli district) are notified as Scheduled Castes. This shows that the President can specify castes, races or tribes or parts thereof in relation not only to the entire State but in relation to the parts of the State. The President has been authorised to limit the notification to parts of the State or groups within castes, races or tribes. In Marri Chandra Shekhar Rao case, the Constitution Bench therefore held that the expression "in relation to that State" must be read meaningfully; otherwise the expression "in relation to that State" would come nugatory.

24. The Presidential Order issued under Article 341 of the Constitution in regard to Scheduled Castes and Article 342 of the Constitution in regard to Scheduled

Tribes cannot be varied by anyone or by the Court. Only the Parliament by law include or exclude from the list of Scheduled Castes or Scheduled Tribes specified in a notification issued under Article 341(1) and Article 342(1) of the Constitution respectively any caste, race or tribe or parts or group within any caste, race or tribe. The Scheduled Castes or Scheduled Tribes thus specified in relation to one State or Union Territory does not carry their status in another State or Union Territory. When the Scheduled Castes or Scheduled Tribes are specified for each State and in some cases, specific areas of the State or Union Territory, neither the State legislature nor the courts can include or exclude other Scheduled Castes or Scheduled Tribes so specified in some States or Union Territories which would be against the mandate of Articles 341 and 342 of the Constitution and the Presidential Orders issued thereon. If that is permitted, it would amount to addition or alteration of the Presidential Order which is violative of the Constitutional Scheme.

25. *State of Maharashtra v. Milind and Ors.* (2001) 1 SCC 4, dealt with a question as to whether the notified Scheduled Tribe being Halba or Halbi as contained in item 19 of the Presidential Order would include "HalbaKoshti". This Court held that addition of "HalbaKoshti" in the Presidential Order would amount to amendment thereto which is impermissible in law. In Milind's case, it was held as under:

"33.....The jurisdiction of the High Court would be much more restricted while dealing with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order, considering the language of Articles 341 and 342 of the Constitution. These being the parameters and in the case in hand, the Committee conducting the inquiry as well as the Appellate Authority, having examined all relevant materials and having recorded a finding that Respondent 1 belonged to "Koshti" caste and has no identity with "Halba/Halbi" which is the Scheduled Tribe under Entry 19 of the Presidential Order, relating to the State of Maharashtra, the High Court exceeded its supervisory jurisdiction by making a roving and indepth examination of the materials afresh and in coming to the conclusion that "Koshtis" could be treated as "Halbas". In this view the High Court could not upset the finding of fact in exercise of its writ jurisdiction. Hence, we have to essentially answer Question 2 also in the negative. Hence it is answered accordingly."

26. When the Parliament restricts the benefit of reservation by inclusion of a caste as a Scheduled Caste to a State or part of State i.e. certain specified districts in a State, the Court cannot express any opinion as to its correctness. Hence, as regards the inclusion of caste "Mochi" in the list of Scheduled Castes within a particular area as per Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002, it was held that it was not for the Court to render any opinion in regard to the correctness of the same. [vide *Shree Surat Valsad Jilla K.M.G. Parishad v. Union of India and Ors.* (2007) 5 SCC 360].

27. The executive instructions/circulars issued by the Government of India also

reiterate to wellsettled position. The circular No. BC16014/1/82SC & BCDI dated 06.08.1984 of the Ministry of Home Affairs addressed to all State Governments and UT Administration states that SC and ST on migration from the State of his origin to another State will not lose his status as SC/ST; but will be entitled to the concession/benefits admissible to the SC/ST from the State of his origin and not from the State where he has migrated. The relevant portion of the said circular reads as under:

No. BC16014/1/82SC & BCDI

Government of India/Bharat Sarkar

Ministry of Home Affairs/GrihMantralaya

New Delhi, the 6th August, 1984

To,

The Chief Secretaries of All State

Governments and U.T. Administrations.

Subject: Verification of claim of candidates belonging to Scheduled Castes and Scheduled Tribes and migrants from other States/Union Territories Form of certificateAmendment to.

Sir,

.....

2. The instructions issued in this Ministry's letter of even number dated the 18.11.1982 will continue. It is, however, clarified that the Scheduled Caste/Scheduled Tribe person on migration from the State of his origin to another State will not lose his status as Scheduled Caste/Scheduled Tribes but he will be entitled to the concessions/benefits admissible to the Scheduled Castes/Scheduled Tribes from the State of his origin and not from the State where he has migrated.....

Yours faithfully

Sd/

Joint Secretary to Govt. of India

28. The same thing was reiterated in the circular dated 22.02.1985 issued by the Ministry of Home Affairs which has also clarified that a Scheduled Caste/Scheduled Tribe person who has migrated from the State of origin to some other State for the purpose of seeking education, employment, etc. will be deemed to be a Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated.

29. My Conclusion for agreeing with the view taken in paras (30) and (32): It is

now settled law that a person belonging to Scheduled Caste/Scheduled Tribe in State 'A' cannot claim the same status in another State 'B' on the ground that he is declared as a Scheduled Caste/Scheduled Tribe in State 'A'. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India are to be meaningfully interpreted. A given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to that State or Union Territory for which it is specified. Thus, the person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he was declared Scheduled Caste in State 'A'. Article 16(4) has to yield to the Constitutional mandate of Articles 341 and 342.

Union Territories:

30. Part VIII of the Constitution of India deals with Union Territories. Article 239 provides that the Union Territory shall be administered by the President acting through an Administrator to be appointed by him. Article 239 reads as follows:

"239. Administration of Union Territories

(1) Save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union Territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers."

31. Article 239A was inserted by the Constitution (Fourteenth Amendment) Act, 1962. Article 239A of the Constitution of India empowers the Parliament to create by law legislatures and Council of Ministers in the then Union Territories of Himachal Pradesh, Manipur, Goa, Daman & Diu and Pondicherry. Arunachal Pradesh and Mizoram were added later. With Himachal Pradesh, Manipur, Tripura, Goa and Mizoram all becoming fullfledged States, the only Union Territory left under Article 239A is Pondicherry. Now, Union Territory of Pondicherry (Puducherry) also has a legislature and Council of Ministers.

32. Article 341 empowers the President "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 castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution, be deemed to be Scheduled Caste in relation to that State or Union Territory as the case may be." Equally Article 342(1) empowers the President "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 the Constitution be deemed to be Scheduled Tribes in relation to that

State or Union Territory, as the case may be". Articles 341(2) and 342(2) of the Constitution empower the Parliament alone by law to include or exclude from the list of Scheduled Castes/Scheduled Tribes specified by notification issued under Articles 341(1) and 342(1) of the Constitution of India. Until the Presidential Notification is modified by appropriate amendment by Parliament in exercise of the power under Articles 341(2) or 342(2) of the Constitution, the Presidential Notification issued under Articles 341(1) and 342(1) of the Constitution is final and conclusive. No caste or group can be added to it or subtracted by any action either by the State Government or by a Court on adducing of evidence. Articles 341 and 342 of the Constitution do not make any distinction between a 'State' or 'Union Territory'.

33. Constitution (Scheduled Castes) (Union Territories) Order, 1951: In exercise of powers under Clause (1) of Articles 341 and 342 of the Constitution, the Presidential Notifications were issued specifying Scheduled Castes in relation to various Union Territories. List of Scheduled Castes are declared in relation to each Union Territory separately. Presidential Notification pertaining to Union Territories, Scheduled Castes (Union Territories) Order, 1951 specifies Scheduled Castes resident in the Union Territories of Delhi, Chandigarh and Daman and Diu. The Presidential Order provided that:

"Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes, specified in *[Parts I to III] of the Schedule to this Order shall, in relation to the *[Union territories] to which those parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule."

As and when there is reorganisation of the Union Territories, in exercise of the powers conferred under Article 341(1) of the Constitution, the President has made various orders.

34. The Constitution (Scheduled Tribes) (Union Territories) Order, 1951²⁶: In exercise of the powers conferred by clause (1) of Article 342 of the Constitution of India, as amended by the Constitution (First Amendment) Act, 1951, the President made the Constitution (Scheduled Tribes) (Part C States) Order, 1951, specifying the tribes or communities which shall be deemed to be 'Scheduled Tribes' in Part C State. This Order was adapted for the Union Territories by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956. Ref. Ibid., p.53, quoted in Article 342 of commentary on the Constitution of India 8th Ed. by Durga Das Basu.

35. When new territories were formed, such as Pondicherry (Puducherry), or Sikkim, the Scheduled Castes or Scheduled Tribes Orders were made in relation to the new territories. In exercise of the powers under Articles 341(1) and 342(1), the President has made the orders The Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962; The Constitution (Dadra and Nagar

Haveli) Scheduled Tribes Order, 1962; The Constitution (Pondicherry) Scheduled Castes Order, 1964; The Constitution (Goa, Daman and Diu) Scheduled Caste Order, 1968; The Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968; In the case of Goa, the Goa, Daman and Diu Reorganisation Act, 1987 (Act No.18 of 1987), by Section 19 amended the Scheduled Castes and Scheduled Tribes Orders.

36. Union Territories do not become merged with the Central Government: The Union Territories are centrally administered by the President acting through an administrator. As held by this Court in *New Delhi Municipal Council v. State of Punjab & Ors.* (1997) 7 SCC 339, the President, who is the executive head of a Union Territory while administering the Union Territory, does not function as the head of the Central Government, but as the head of the Union Territory under powers specially vested in him under Article 239 of the Constitution thereby occupying a position analogous to that of a Governor in a State. Though the Union Territories are centrally administered under the provisions of Article 239, they do not become merged with the Central Government as has been held by this Court in *Satya Dev Bushahri v. Padam Dev and Ors.* AIR 1954 SC 587. They are centrally administered; but they retain their independent identity [*Chandigarh Administration and Anr. v. Surinder Kumar and Ors.* (2004) 1 SCC 530]. The Union Territory does not entirely lose its existence as an entity though large control is exercised by the Union of India. [*Government of NCT Delhi v. All India Central Civil Accounts, Jao's Association and Ors.* (2002) 1 SCC 344]

37. View taken in *Pushpa and Chandigarh Administration* not correct view: Reliance was placed upon *Pushpa's* case to contend that Article 16(4) is not controlled by the Presidential Order issued under Article 341(1) or Article 342(1) to the Officers appointed to the post in the Union Territories need not be confined to only such Schedule Castes/Schedule Tribes of the particular Union Territory. In *Pushpa's* case, the Supreme Court was confined with the question as to whether, selection and appointment already made to migrants' Schedule Caste candidates of other States against the quota reserved for the Schedule Caste candidates in the Union Territory of Pondicherry was legal and valid. In *S. Pushpa and Ors. v. Shivachanmugavelu and Ors.* (2005) 3 SCC 1, Pondicherry Government appointed Selection Grade Teachers in 1995 under the Scheduled Castes quota not only from the Scheduled Castes candidates of Pondicherry but also such candidates of Scheduled Castes from other States. In *Pushpa's* case, this Court upheld the policy of the Pondicherry Government extending the benefit of reservation of SC/ST seats even to those candidates who came from other States. The Pondicherry Government proceeded on the basis that since Central Government jobs were open to all SC/ST candidates irrespective of origin of their States, the same may apply to jobs with a Union Territory as well. In *Pushpa's* case, this Court held that in the matter of providing reservation, it was open to the Pondicherry Government to extend the benefit of reservation to migrant Scheduled Caste and Scheduled Tribe candidates and that the same will not be an infraction of clause (4) of Article 16 of the Constitution of India.

38. In Pushpa's case, the principle that "when members of Scheduled Castes/ Scheduled Tribes migrate to another State, they do not carry with them the special privileges and advantages", was held not applicable in case of Union Territories. In para (21) of Pushpa's case, it was held as under:

"21.....Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory. This article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognised as backward classes of citizens and none else. If a State or Union Territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognised as such in relation to that State or Union Territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union Territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the Schedule to the Presidential Order issued for such Union Territory. The UT of Pondicherry having adopted a policy of the Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law." In my considered view, the above observation in Pushpa's case is not a correct view. The judgment in Pushpa's case is contrary to the views taken in Marri Chandra Shekhar Rao's case. The judgment in Pushpa's case is contrary to the views taken in Marri Chandra Shekhar Rao's case. Facts of Pushpa's case disclose that the Government of Pondicherry had throughout proceeded on the basis that being a Union Territory all orders regarding reservation for SC/ST in respect of post/services under the Central Government were applicable to post/services as under the Pondicherry administration. The decision in Pushpa's case therefore cannot be taken to be an authoritative pronouncement. Clause (2) of Article 341 of the Constitution empowers Parliament alone by law to include or exclude from the lists of Scheduled Castes specified in a notification issued under clause (1) of Article 341. No executive action or order or modification or variance of the same is possible and any such variance would be against the constitutional scheme.

39. In Pushpa's case, the posts advertised were of Selection Grade Teachers under the Pondicherry Services and not for Central Government jobs. It may be that Pondicherry is a Union Territory; but the posts/services exclusively coming under Pondicherry administration is meant only for the Scheduled Casts/ Scheduled Tribes as notified under the Presidential Order for Pondicherry. In fact, Pondicherry (Union Territory) itself by referring to Subhash Chandra's case has

taken the decision that reservation benefits to posts/services arising under the Union Territory of Pondicherry will be confined only to the Scheduled Castes/Scheduled Tribes notified by virtue of Presidential Order. The said Government Order of the Pondicherry Government was upheld by this Court in *Puducherry Scheduled Caste People Welfare Association v. Chief Secretary to Government, Union Territory of Pondicherry and Ors.* (2014) 9 SCC 236, wherein this Court held as under:

"13. It is important to bear in mind that it is by virtue of the notification of President under Article 341(1) that the Scheduled Castes come into being. The members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new status by virtue of Presidential Order. Clause (2) of Article 341 empowers Parliament alone by law to include or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) by the President. By no executive power, amendment, modification, alteration or variance in the Presidential Order is permissible. It is not open to the executive to do anything directly or indirectly which may lead to any change in the Presidential Order. Once Presidential Order has been issued under Article 341(1) or Article 342(1), any amendment in the Presidential Order can only be made by Parliament by law as provided in Article 341(2) or Article 342(2), as the case may be, and in no other manner. The interpretation of "resident" in the Presidential Order as "of origin" amounts to altering the Presidential Order."

40. The principle in *Pushpa's case* was not accepted in *Subhash Chandra's case*. It was held that although Union Territory is administered by the Union Government, sociopolitical aspect of the Union Territory cannot be mixed up with administrative aspect. In *Subhash Chandra's case*, it was held that if the principle applied in *Pushpa's case* is to be given a logical extension, it will lead to an absurdity, that the Scheduled Castes Order in a State/Union Territory brought under the control of the President under Article 341 of the Constitution could be altered by virtue of a notification issued in pursuance of Article 16(4) of the Constitution, which is not in consonance with the Constitutional Scheme.

41. Let us refer to the facts of *Chandigarh Administration and Another v. Surinder Kumar and Others* (2004) 1 SCC 530. Ministry of Home Affairs, Government of India issued various circulars pertaining to the Scheduled Castes and Scheduled Tribes. The circular dated 22.02.1985 regarding "Issue of Scheduled Caste/Scheduled Tribe certificate to migrants from other States/Union Territories", issued by the Ministry of Home Affairs clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of seeking education, employment, etc. will be deemed to be a Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated. Based on the aforesaid circular of the Government of India, the Home Secretary, Chandigarh Administration vide his letter dated 28.07.1986 sought clarification from the Government of India, Ministry of Home Affairs, as to

whether, these instructions are applicable in the Union Territory of Chandigarh. Chandigarh Administration received the reply dated 26.08.1986 from Ministry of Welfare stating that there is no discrimination in the employment under the Central Government between the Schedule Caste/Schedule Tribes of one State or another and Union Territories and that the same may be followed by the Chandigarh Administration. The letter dated 26.08.1986 stated that Scheduled Castes/Scheduled Tribes of any other State/Union Territory would be entitled to the benefits and facilities provided in the services under the Union Territory of Chandigarh. Further the said circular leaves it to the Chandigarh Administration to seek further clarification. The above letter of Government of India is in clear violation of Constitutional scheme.

42. Pursuant to the said letter, Chandigarh Administration sought clarification from the Department of Personnel and Training. However, they have not received any response. The clarification was issued by the Home Secretary, Chandigarh Administration vide letter dated 7. 09.1999. The said letter had given a clarification based on the Government of India circular dated 02.02.1985 stating that a Schedule Caste/Schedule Tribe of any other State or Union Territory would not be entitled to the benefits of reservation in the services in the Chandigarh Administration and that the benefit of reservation to persons belonging to reserved categories in other States in the Chandigarh Administration is to be discontinued with effect from 07.09.1999. In Chandigarh Administration case, the Supreme Court took the view that the stand taken by Chandigarh Administration discontinuing the benefits of reservation with effect from 07.09.1999 was untenable. With due respect, I am not in agreement with the view taken in Chandigarh Administration case . The letter dated 26.08.1986 sent by the Ministry of Welfare/Kalyan Mantralaya is contrary to the letter dated 22.02.1985 sent by the Ministry of Home Affairs and also against the Constitutional scheme.

43. It was held in Subhash Chandra that Chandigarh Administration and Pushpa proceeded on the basis that Marri Chandra Shekhar Rao and Action Committee would have no application in relation to Union Territories. Observing that both Articles 341 and 342 not only refer to the State but also to the Union Territory. In para (64) of Subhash Chandra's case, it was held as under:

"64. Although Union Territories are administered by the Central Government, yet it is difficult to conceive that the sociopolitical aspect can be mixed up with the administrative aspect. Article 341 leads to grant of constitutional rights upon a person whose affinity to a caste/tribe would attract the Constitution (Scheduled Castes) Order or the Constitution (Scheduled Tribes) Order. Once a person comes within the purview of presidential promulgation, he would be entitled to constitutional and other statutory or administrative benefits attached thereto. In our opinion, such sociopolitical rights created in our Constitution cannot be segregated keeping in view the administrative exigencies."

44. As per the scheme of the Constitution under Articles 341, 342 and 239 of the

Constitution, only those Scheduled Castes/Scheduled Tribes as notified in the Presidential Notification for the respective Union Territory can legitimately claim the benefit of reservation in that Union Territory. Even though the Union Territories are centrally administered, though the administrator/Lieutenant Governor so far as the administrative aspects of the Union Territories, each Union Territory has its own identity. Each of the Union Territories would be bound by their respective Presidential Order of Scheduled Castes/Scheduled Tribes for giving benefit of reservation to Scheduled Castes/Scheduled Tribes in employment. Only those persons, who come within the purview of the Presidential Notification, would be entitled to constitutional and other statutory benefits of reservation in the respective Union Territory. If the benefit of reservation is to be extended to Scheduled Castes/Scheduled Tribes from all over the country then it would amount to inclusion of caste, races or tribes to the Presidential Order pertaining to that Union Territory. As discussed earlier, such inclusion or exclusion in the

Presidential Order can be done only by the Parliament in the manner as indicated in Articles 341(2) and 342(2) of the Constitution of India. By no executive order, amendment, alteration or variance in the Presidential Order is permissible.

Whether there can be PAN India reservation of SCs and STs to services under various Union Territories of India

45. Under Central Civil Services (Classification, Control and Appeal) Rules, 1965 [CCS(CCA) Rules, 1965], there are four categories of services namely:

- (i) Central Civil Services, Group A;
- (ii) Central Civil Services, Group B;
- (iii) Central Civil Services, Group C; and
- (iv) Central Civil Services, Group D

Central Civil Services Group A:

46. As per the Schedule to Central Civil Services (CCA) Rules, 1965, under Group 'A', there are forty five services inter alia like (i) Archaeological Service (Serial No.1); (ii) Central Health Service (Serial No.5); (iii) Indian Defence Accounts Service (Serial No.11); (iv) Indian Foreign Service (Serial No.12); (v) Indian Meteorological Service (Serial No.13); (vi) Indian Postal Service (Serial No.14); (vii) Indian Posts and Telegraphs Traffic Service (Serial No.15); (viii) Indian Revenue Service (Serial No.16); (ix) Indian Salt Service (Serial No.17); (x) Directorate General of Mines Safety (Serial No.19); (xi) Indian Telecommunication Service (Serial No.22); (xii) Central Legal Service (Grades I,II, III and IV) (Serial No.25); (xiii) Delhi and Andaman and Nicobar Islands Civil Service, Grade I (DANICS) (Serial No.28); (xiv) Delhi and Andaman and Nicobar Islands Police Service, Grade II (DANIPS) (Serial No.29); (xv) Company Law Board Service (Serial No.38); (xvi) Labour Officers of the Central Pool

(Serial No.39); and (xvii) Armed Forces Headquarters Civil Services (Serial No.44).

47. By reading of the categories of services, the said services of Group 'A' are concerned only with the services of the Union of India and the appointment to Group 'A' services are made by the President. The Cadre Controlling Authority of Group 'A' services are the respective ministries of the Government of India. Recruitment to Group 'A' services is made by the Union Public Service Commission (UPSC) and the recruitment is on all India basis. So far as the recruitment to Group 'A' services is concerned, Union of India in its counter affidavit has stated as under:

"a. Recruitment to Group A services is made by the UPSC.

This recruitment is again on all India basis.....

b. Whichever ministry seeks recruitment to the service in this Group sends requisition to UPSC as per procedure prescribed and UPSC accordingly advertises for the post in Group A. Every citizen of India is eligible to apply as per the qualifications and requirements in the notification.

c. DoPT is the nodal ministry for regulating the conditions of service of all Central Civil Services as per Allocation of Business Rules. As per the conditions of service, every employee is required to give an undertaking agreeing to the conditions of the all India transfer liability at the time of joining the service.

d. Central Civil Services employees belonging to Group A serve the Union of India and that is the reason why these services are across the length and breadth of the country, wherever there is an office of the Central Government.

e. Member of the Group A service are governed by Central Civil Services (Class, Control & Appeal) Rules, 1965 as well as Central Civil Services (Conduct) Rules, 1972 & Central Civil Services (Pension) Rules, 1972 and such other rules made by the central ministries."27

Central Civil Services Group B:

48. Under Rule 5, the Central Civil Services Group 'B' are 27 Para No. 6(i) of the Counter Affidavit filed by the Union of India at Pg. No.34 specified in the Schedule and there are thirtytwo such services mentioned. Some of the thirtytwo services of Group 'B' and their appointing authorities are as under:

PART II Central Civil Services, Group 'B'

(Except for Civilians in Defence Services)

Description of service (2)

Appointing Authority (3)

Description of service (2)

Appointing Authority (3)

Section Officer Grade of the Central Secretariat Service excluding Section Officers with Group 'A' status. (Serial No.1)

President

Postal Superintendents' Service, Group 'B' (Serial No.7)

DirectorGeneral Posts

Postmasters' Service, Group 'B' (Serial No.8)

DirectorGeneral Posts

Customs Preventive Service, Group 'B' Chief Inspectors (Serial No.15)

Collector of Customs

Botanical Survey of India, Group 'B' (Serial No.18)

Chief Botanist, Botanical Survey of India

Income Tax Service, Group 'B' (Serial No.17)

Commissioner of Income Tax

Geological Survey of India, Group 'B' (Serial No.19)

DirectorGeneral , Geological Survey of India

Survey of India, Group 'B' (Serial No.20)

Surveyor General of India

Zoological Survey of India, Group 'B' (Serial No.21)

Zoological Survey of India

Central Electrical Engineering Service Group 'B' (Serial No.22)

Director General (Works), Central Public Works Department

Central Engineering Service, Group 'B': (Serial No.24) (i) Posts in the Ministry of Irrigation and Power. (ii) Posts in the Central Water and Power Commission (iii) Posts in the Chambal Control Board (iv) Posts in the Farakka Barrage Control Board (v) Posts in the Ganga Discharge Circle

Joint Secretary, Chairman, Central Water and Power Commission Joint Secretary, Ministry of Irrigation and Power Commissioner (Ganga Basin), Ministry of Irrigation and Power Commissioner (Ganga Basin), Ministry of Irrigation and Power

Indian Salt Service, Group 'B' (Serial No.26)

Joint Secretary, Ministry of Production

Delhi and Andaman and Nicobar Islands Civil Service, Grade II. (DANICS) (Serial

No.28)

Joint Secretary, Ministry of Home Affairs

Delhi and Andaman and Nicobar Islands Police Service, Grade II. (DANIPS)
(Serial No.29)

Joint Secretary, Ministry of Home Affairs

General Central Service, Group 'B' (Serial No.32) (i) Post in any Ministry of Department of Government of India, other than the post in respect of which specific provision has been made by a general or special order of the President. (i a) Posts outside a Ministry or Department of Government of India, other than the posts in respect of which specific provision has been made by a general or special order of the president.

(ii) Posts in Union Territories other than Delhi Administration, the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindive Islands

(iii) Delhi Administration All posts

(iv) The Andaman and Nicobar Islands All Posts

(v) The Lakshadweep Administration All Posts

Secretary in the Ministry or Department In respect of posts in an office under the control of a Head of Department directly under the Government. Head of the Department In respect of other posts Secretary in the Ministry or Department Administrator Chief Secretary Chief Commissioner Administrator

All Group 'B' posts of the Departmentalised Accounts Offices of the Government of India. (Serial No.33)

Chief Controller of Accounts or Joint Controller General of Accounts in a Ministry or Department where there is no Chief Controller of Accounts

Recruitment to Group 'B' services are conducted by the UPSC. The appointing authority to various Group 'B' services is the President of India/respective Ministries/respective Heads like Ministry of Home Affairs, Collector of Customs, Commissioner of Customs etc.

49. In Serial Nos. 28 and 29 of the Schedule, we have the Union Territories Service known as Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Services (DANICS) and Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Police Services (DANIPS). In the counter affidavit filed by the Union of India, it is stated as under:

"a.DANICS/DANIPS officers are posted in Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli. The recruitment to all the Union Territories for these Group B posts are common. They are also

centralised and the appointing authority is none other than Ministry of Home Affairs, Government of India. The recruitment to these services is the very same examination meant for the All India Services (IAS/IPS) on the one hand and the Central Civil Services Group A on the other. Any citizen of India is eligible to apply, subject to the conditions prescribed. As per service rules, transfer undertakings throughout the Union Territories covered under DANICS/DANIPS is taken from these officers.

b. This is the reason why the Union of India while inviting applications for recruitment considers all candidates, including reserved candidates on all India basis. Group B cadre of DANICS and DANIPS is the feeder cadre for IAS and IPS respectively. They retire invariably in these offices, some of them reaching high positions in the central government.

c. As indicated above recruitment to the All India Services, CCS Group A as well as CCS Group B (Gazetted) is conducted through UPSC in the Civil Services Examination, the applicants are common when the applications are made, every aspirant seeks recruitment to the services and it is only as per the marks and ranking that allocations are made eventually to All India Services, Group A and Group B. Therefore, when UPSC undertakes the recruitment, it is naturally a PAN India recruitment and therefore it is necessary to seek applications including from reserved candidates from all over India."²⁸

Central Civil Services Group C:

50. There are five services under Central Civil Services Group 'C' under CCS (CCA) Rules. Some of the posts noted in Group 'C' and

their appointing authorities are as under:

PART III Central Civil Services, Group 'C'

(Except for Civilians in Defence Services)

Description of service (2)

Appointing Authority (3)

Description of service (2)

Appointing Authority (3)

Central Secretariat Clerical Service, Upper Division and Lower Division Grade (Serial No.1)

Deputy Secretary or Director, Cadre Authority

General Central Service, Group 'C' (Serial No.4)

(i) Posts in the Ministry/Department of Government other than the posts in respect of which specific provision has been made by a general or special order of the President

(ii) Posts in nonSecretariat Office other than posts in respect of which specific provision has been made by a general or special order of the President

(iii) Posts in Union Territories

(iv) All Group 'C' posts of the Departmentalized Accounts Office of the Government of India

Deputy Secretary or Director in the Ministry/Department of Government Head of Office Head of Office of such other authority as may be specified by the Administrator. Controller of Accounts or Deputy Controller General of Accounts in a Ministry or Department where there is no Controller of Accounts.

Insofar as Group 'C' services of Union of India are concerned, they are recruited by the Staff Selection Commission (SSC) which is the recruiting agency under DoPT. Members of these services get promoted to CCS Group 'B'. In the counter affidavit filed by the Union of India, it is stated as under:

"a.Recruitment to posts in Group C arise out of requisition

made by the concerned ministries all over India. These requisitions upon reaching the Staff Selection Commission are processed and selection takes place and appointments are made. Even from these appointees undertaking for all India transfer liability is taken. As these are posts under Central Government and these employees are liable to be transferred anywhere in the country and the recruitment being centralised for all such posts in the country, it had been consistent policy of the Union of India to have PAN India eligibility.

b. The posts in CCS Group C are in the subordinate services. The equivalent in the Union Territory of Delhi is the Delhi Administrative Subordinate Services (DASS) and the recruiting agency in the place of Staff Selection Commission is the Delhi Subordinate Service Selection Board (DSSSB). Members of Delhi Administrative Subordinate Services are the feeder cadre for Central Civil Services Group B (DANICS). It is for these reasons that the policy is consistently adopted."29

Central Civil Services Group D:

51. Class IV employees now referred to as MultiTasking Staff (MTS) come under this category. Some of the posts noted in Group

'D' and their appointing authorities are as under:

PART IV Central Civil Services, Group 'D'

(Except for Civilians in Defence Services)

Description of service (2)

Appointing Authority (3)

General Central Service, Group 'D' (Serial No.1)

(i) Posts in Ministries or Departments of Government other than posts in respect of which specific provision has been made by a general or special order of the President. (ii) Posts in nonSecretariat Offices other than posts in respect of which specific provision has been made by a general or special order of the President.

(iii) Posts in Union Territories

(iv) All Group 'D' posts of the Departmentalized Accounts Offices of the Government of India

Under Secretary Head of Office Head of Office or such other authority as may be specified by the Administrator Deputy Controller of Accounts or Assistant Controller General of Accounts in a Ministry or Department where there is no Deputy Controller of Accounts.

52. As pointed out earlier, there is centralised recruitment conducted by UPSC for the Central Civil Services in Group 'A' and Group 'B'. For this centralised recruitment, applications are invited from candidates across the country and Scheduled Castes/Scheduled Tribes of all the States/Union Territories are entitled to apply for the reserved posts. Recruitment to various posts in Group 'A' and Group 'B' (Gazetted) categories for services in States/Union Territories are presently filled only through UPSC by centralised recruitment. After recruitment, the Group 'A' and Group 'B' officers are posted across the country wherever there are offices of Central Government.

53. Services mentioned at Serial No.28 that is Delhi and Andaman and Nicobar Islands Civil Service, Grade II (DANICS) are Group 'B' civil services. DANICS officers are posted at Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli. DANICS Group 'B' civil service officers are directly recruited through the Central Civil Services examination conducted by UPSC. Since DANICS is a centralised recruitment conducted through UPSC naturally applications are invited from the candidates across the country including reserved candidates of Scheduled Castes/Scheduled Tribes.

54. Delhi, Andaman and Nicobar Islands Police Services (DANIPS) are recruited directly through centralised civil services examination conducted by UPSC. DANIPS are posted at Delhi and other Union Territories Andaman and Nicobar Islands, Lakshadweep Islands, Daman and Diu and Dadra and Nagar Haveli. The cadre strength is controlled by the Ministry of Home Affairs, Government of India. Twothirds of DANIPS are filled by direct recruitment and remaining are promoted from nongazetted police officers of Union Territory of Delhi and other Union Territories. Since, DANIPS officers are recruited through a centralised recruitment conducted through UPSC, applications are invited from candidates from across the country including reserved candidates of Scheduled Castes and Scheduled Tribes of all the States and Union Territories. Thus, up to Group 'B' (Gazetted) of Central Civil Services including the Group 'B' (Gazetted) services of Union Territories, there is Centralised Civil Services Examination

conducted by UPSC with PAN INDIA reservation.

55. Serial No.32, Group 'B' of CCS (CCA) Rules refers to General Central Services. At the risk of repetition, we may usefully refer to Serial No.32 which reads as under:

Serial No. 32 General Central Service, Group 'B'

(i) Post in any Ministry or Department of Government of India, other than the post in respect of which specific provision has been made by a general or special order of the President.

Secretary in the Ministry or Department

(ia) Posts outside a Ministry or Department of Government of India, other than the posts in respect of which specific provision has been made by a general or special order of the president.

In respect of posts in an office under the control of a Head of Department directly under the Government.

Head of the Department In respect of other posts Secretary in the Ministry or Department

(ii) Posts in Union Territories other than Delhi Administration, the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindive Islands

Administrator

(iii) Delhi Administration All posts

Chief Secretary

(iv) The Andaman and Nicobar Islands All Posts

Chief Commissioner

(v) The Lakshadweep Administration All Posts

Administrator

As seen from the above, Serial No.32(i) and (ia) relates to the posts under the Government of India for which the appointing authority is the Secretary in the Ministry or Department/Head of the Department respectively. Serial No.32 (ii) of Central Civil Services (CCA) Rules, 1965 relates to "Posts in Union Territories other than Delhi Administration, the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindive Islands". The appointing authority is shown to be the 'Administrator'. Serial No.32 (iii) to (v) relate to 'All posts' in Delhi administration, Andaman and Nicobar Islands and the Lakshadweep administration respectively. Serial No.32(ii) posts in the Union Territories (other than Delhi Administration, the Andaman & Nicobar Islands and the Laacadive, Minicoy and Amindive Islands) Group 'B' (Gazetted) posts for which recruitment

is conducted by UPSC. Since there is centralised recruitment conducted by UPSC for Group 'B' (Gazetted), naturally applications are invited from the candidates across the country including reserved candidates of Scheduled Castes/Scheduled Tribes from all the States/Union Territories. Up to the level of Group 'B' (Gazetted) of Central Civil Services, since there is centralised recruitment for which there is PAN INDIA reservation of Scheduled Castes and Scheduled Tribes, Scheduled Castes/Scheduled Tribes from any State/Union Territory are entitled to apply for the reserved posts for Group 'B' examinations conducted by UPSC.

56. When it comes to services under Union Territories, there are so many other services like teaching, clerical cadre, police services, Medical Officers, Health Services, Stenographers, Typists, services under the Revenue department, services under publicsector undertakings, services under the municipalities and the corporations in the Union Territories and various other services which are concerned with the administration of Union Territories. These services under the Union Territories would fall under Group 'B', Group 'C' and Group 'D' and their recruitment is within the exclusive domain of the respective Union Territories. Though the government servants under the Union Territories are governed by Central Civil Services Rules, the services under the Union Territories are essentially different from All India Services. For recruitment to services under respective Union Territories, there are different modes of recruitment for the different Union Territories.

57. This Court posed the question whether there is other category of employees in UT administration and what is the practice followed for recruitment. In response to the question, Union of India, on instructions, filed the following response:

SCOPE OF SC/ST RESERVATION IN UTs

1.

Puducherry

Reserved posts confined to local reserved candidates.

2.

Chandigarh

Reserved posts filled up by candidates from all India.

3.

Daman & Diu

Reserved posts confined to local reserved candidates for Group C posts. For Group B it is opened to candidates from all India but local candidates get additional 20 marks.

4.

Dadra & Nagar Haveli

Reserved posts confined to local reserved candidates for Group C posts. For Group B it is opened to candidates from all India but local candidates get additional 20 marks.

5.

Lakshadweep

Reserved posts confined to local reserved candidates.

6.

A & N Islands

For Group C posts locally reserved.

7.

NCT of Delhi

Reserved posts filled up by candidates from all India.

For the above response that there is PAN India reservation of the reserved candidates for recruitment by Union Territories of Chandigarh, Dadra and Nagar Haveli and NCT of Delhi, no authenticated documents were produced to substantiate the same. When there are Presidential Orders notifying the Scheduled Castes/Scheduled Tribes for Union Territories of Chandigarh, Dadra and Nagar Haveli, calling for application from the Scheduled Castes/Scheduled Tribes candidates from all over India for the reserved posts of services under various Union Territories, be it Group 'B' or Group 'C', is not in accordance with the constitutional scheme.

58. For Group 'B' and Group 'C' posts falling within the services of the Union Territories, recruitment is made by the Staff Selection Board of respective Union Territories. For instance, let me refer to the Staff Selection Board of UT Administration of Daman and Diu whose home page reads as under:

"In exercise of the powers conferred by the provision of Article 239 of the Constitution of India, the Administrator of Daman & Diu is pleased to make following rules to regulate the method of recruitment to all Group 'B' and 'C' categories of posts under the Administration of Daman & Diu.

It aims to "ensure a uniform and transparent process and procedures for recruitment of all Group 'B' and 'C' categories of posts under the Administration of Daman and Diu through an autonomous body, without disturbing the existing recruitment processes and procedures and for ensuring that cumulative outcome of the recruitment is to provide just and fair opportunities to all the candidates and for matters connected therewith or incidental thereto." <https://daman.nic.in/staffselectionboarddamandiu.aspx#downloads> (27.06.2018).

59. In response to the question posed by the court, Union of India filed response affidavit stating that in Union Territories Daman and Diu and Dadra and Nagar Haveli, for Group 'B', it is opened to candidates from all over India. Local candidates with domicile certificate get additional twenty per cent marks. Response filed by the Union of India that there is PAN India reservation for Group 'B' services of Daman and Diu and Dadra and Nagar Haveli, no authenticated documents/format of any application for Group 'B' posts conducted by Daman and Diu was produced before us. Even assuming that there is such PAN India reservation for recruitment of Group 'B' conducted by the Union Territory of Daman and Diu, when there are Scheduled Castes/Scheduled Tribes as notified in the Presidential Order (Reorganisation Act, 1987 in respect of SCs/STs), there cannot be PAN India reservation as it is not in accordance with the constitutional scheme.

60. Pointing out that services in the Union Territories are different from All India Services and that the mode of recruitment are also different, in para (29) of Subhash Chandra and another v. Delhi Subordinate Service Selection Board and others (2009) 15 SCC 458, it was held as under:

"29. Concededly, in respect of education or service, there exists a distinction between State Services and Staterun institutions including the Union Territory Services and Union Territoryrun institutions on the one hand, and the Central Civil Services and the institutions run by the Central Government on the other. Whereas in the case of the former, the reservation whether for admission or appointment in an institution and employment or appointment in the services or posts in a State or Union Territory must confine to the members of the Scheduled Castes and Scheduled Tribes as notified in the Presidential Orders but in respect of All India Services, Central Civil Services or admission to an institution run and founded by the Central Government, the members of the Scheduled Castes and Scheduled Tribes and other reserved category candidates irrespective of their State for which they have been notified are entitled to the benefits thereof. It is not denied or disputed that services in the Union Territory is essentially different from All India Services. It is also beyond any controversy that machinery for recruitment is also different. Indisputably again, not only the conditions of recruitment but also conditions of service differ."

I am in full agreement with the view taken by Justice Sinha in Subhash Chandra case.

61. Rule 3 of Delhi Administration Subordinate Services (DASS) Rules, 1967 deals with constitution of services and its classification in Delhi Administration. As per Rule 3(3) of DASS Rules, the post in Grade I, Class II Group 'B' (Gazetted) and those in Grades II, III and IV shall be Central Civil Services Posts. But as noted earlier, as per Serial No.32 General Central Service, Group 'B', insofar as Delhi Administration All Posts (Serial No. 32 (iii)), the Appointing Authority is the Chief Secretary. The subordinate services in the National Capital Territory of Delhi though "Central Civil Services", they are neither All India Services nor

services under Union of India so as to attract Pan India Reservation.

62. Even in the counter affidavit filed by the Union of India, by referring to Group 'C' services, it is stated that CCS Group 'C' are in the subordinate services and there are equivalent services in the Union Territory of Delhi. For recruitment of other employees in the Union Territory of Delhi, there is Delhi Administrative Subordinate Services (DASS) and the recruiting agency is Delhi Subordinate Staff Selection Board (DSSSB). Members of Delhi Administrative Subordinate Services are stated to be the feeder cadre for Central Civil Services Group 'B' (DANICS). Merely because members of Delhi Administrative Subordinate Services are the feeder category for DANICS, PAN India reservation cannot be extended to Delhi Subordinate Services or to services under various Union Territories. Likewise, merely because, DANICS and DANIPS (Serial Nos. 28 and 29 of Group 'B' Services) are the feeder category for IAS and IPS, it cannot be said that the Pan India Reservation is applicable to services under National Capital Territory of Delhi. Para No. 6(iii) of the Counter Affidavit filed by the Union of India at Pg. No.6.

63. So far as Group 'B' and Group 'C' posts falling under the services of the Union Territories, recruitment is done by the respective Staff Selection Board of respective Union Territories. Serial No.4 (iii) 'Posts in Union Territories' of Group 'C' in CCS (CCA) Rules is shown and the appointing authority is stated as Head of the Office of such other authority as may be specified by the Administrator. Merely because the posts in the Union Territories and the appointing authority are shown in Group 'C' in CCS (CCA) Rules, that does not mean that those Group 'C' and Group 'D' posts are available for the Scheduled Castes and Scheduled Tribes of all the States/Union Territories. For recruitment of Group 'B' and Group 'C' posts of services under the respective Union Territories, since the examination is conducted by the respective Union Territories like Delhi Subordinate Staff Selection Board and other Union Territories Staff Selection Boards of respective Union Territories, reservation of posts of Scheduled Castes/Scheduled Tribes must be confined only to those Scheduled Castes/Scheduled Tribes as notified in the Presidential Order of the respective Union Territories. For recruitment of Group 'B' and Group 'C' posts under various Union Territories including Union Territory of Delhi, there cannot be PAN INDIA reservation of Scheduled Castes/Scheduled Tribes, lest, it would defeat the very object of the Presidential Orders issued specifying the Scheduled Castes/Scheduled Tribes for respective Union Territories.

64. As pointed out earlier, services under the Union Territories though they are Central Government services, they are services under the respective Union Territories and not under the direct control of Union of India/different Ministries. Procedure for recruitment to the various posts for the services of Union Territories are different as followed by respective Union Territories. The persons appointed for the services of Union Territories might be governed by CCS (CCA) Rules; but they are employees of respective Union Territories. The appointing

authorities are the authorities under the administration of Union Territories and not under the Ministries of Union of India. Central Civil Services are the services directly under Union of India. Contrarily, various services under the Union Territories are the services under the respective Union Territories. Such services under Union Territories cannot be said to be Central Civil Services that is services under Union of India to extend the benefit of PAN India reservation for recruitment to the services under respective Union Territories including Union Territory of Delhi.

65. In exercise of the powers conferred by clause (1) of Article 341, the President issued the Constitution (Scheduled Castes) Union Territories Order, 1951 in the Presidential Order specifying Scheduled Castes in relation to Delhi and the thirtysix castes/groups notified are as under:

Part 1 Delhi

Throughout the Union Territory

Adi Dharmi 19. Kachhandha

Agria 20. Kanjar or Giarah

Aheria 21. Khatik

Balal 22. Koli

Banjara 23. Lalbegi

Bawaria 24. Madri

Bazigar 25. Mallah

Bhangi 26. Mazhabi

Bhil 27. Meghwal

Chamar, I 28. Naribut

Chanwan Chmanr,

Jatya or Jatav

Chamar, Mochi

Ramadasia,

Ravidasi, Reghgrh

or Raigharh

Chohra (Sweeper) 29. Nat (Rana), Badi

Chuhra (Balmiki) 30. Pasi

Dhanak or Dhanuk 31. Perna

Dhobi 32. Sansi or Bhedkut

Dom 33. Sapera

Gharrami 34. Sikligar

Julaha (Weaver) 35. Singiwala or

Kalbelila

Karbirpanthi 36. Sirkiband

In relation to Delhi, there are thirtysix castes notified as Scheduled Castes in the Presidential Order. The members of the Scheduled Castes in Delhi are drawn from castes, races and by virtue of the Presidential Order pertaining to Delhi, they attain the status of the Scheduled Caste. In view of the Presidential Order issued for the Scheduled Castes to Delhi, only those Scheduled Castes can claim the benefit of reservation in the employment under the Union Territory of Delhi who are notified in the Presidential Order. Neither the Delhi Government nor the court can add any caste or group to the list of Scheduled Castes notified in the Presidential Order. Once a Presidential Order has been issued under Article 341(1) of the Constitution, any addition or deletion to the Presidential Order can only be made by the Parliament by law as provided under Article 341(2) and in no other manner. Merely because, Delhi Subordinate Services is a feeder category for DANICS, there cannot be Pan India Reservation of the SCs and STs for the services under Group 'C' and 'D' categories, for which recruitment are made by the Delhi Subordinate Staff Selection Board (DSSSB).

66. Likewise, the Presidential Order has notified the following Scheduled Castes for the Union Territory of Chandigarh, Daman and Diu, Puducherry and Dadra and Nagar Haveli:

Part II Chandigarh

1. Adi Dharmi 19. Khatik

2. Bangali 20. Kori or Koli

3. Barar, Burar or 21. Marjia or Marecha

4. Berar 22.

Batwal, Barwala Mazhabi

5. Bauria or Bawaria 23. Megh

6. Bazigar 24. Nat

7. Balmiki, Chura or 25. Od

8. Bhangi 26.

Bhanjra Pasi

9. Chamar, Jatia 27. Perna

Chamar, Rehgar,

Raigar, Ramdasi

151

10 or Ravidasi 28.

Chanal Pherera

.

11 Dagi 29. Sanhai

.

12 Darain 30. Sanhal

.

13 Dhanak 31. Sansoi

.

14 Dhogri, Dhangri or 32. Sansi, Bhedkut

. Siggie or Manesh

15 Dumna, Mahasha or 33. Sapela

. Doom

16 Gagra 34. Sarera

.

17 Gandhila or Gnadil 35. Sikligar

. Gondola

18 Kabirpanthi or 36. Sirkiband

. Julaha

PART III Daman and Diu

The Schedule Puducherry

Bhangi (Hadi) 4. Mahyavanshi

Adi Andhra 9. (Vankar)

Pallan

Chambhar, Mochi 5. Mang

Adi Mahar 10. Parayan, Sambavar

Dravida

Chakkiliyan 11. Samban

Jambuvulu 12. Thoti

Kuravan 13. Valluvan

Madiga 14. Vetan

Mala, Mala 15. Vetriyan

Masti

Paky 16. Puthirai Vannan

The Schedule Dadra and Nagar Haveli

Bhangi 3. Mahar

Chamar 4. Mahayavanshi

67. Let me take the case of Andaman & Nicobar Islands. The Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959 has notified the following tribes or tribal communities who have been included in the Schedule for the Andaman & Nicobar Islands:

The Schedule

The Andamanese 4. Sentinelese

(including Chariar or

Chari, Kora, Tabo or

Bo, Yere, Kede, Bea

Balawa, Bojigiyab,

Juwai and Kol

Jarawas 5. The Nicoberese

Onges 6. The Shompens

When Andaman & Nicobar Islands is recruiting persons to the services of Group 'B', 'C' and 'D' under its administration, it has to necessarily follow the policy of recruiting members from amongst the Scheduled Tribes who are notified as Scheduled Tribes in the Presidential Notification for Andaman and Nicobar Islands. It will not be appropriate to extend the benefit of reservation to the SCs and STs from other States/Union Territories, lest it would deprive the notified Scheduled Tribes of the Andaman and Nicobar Islands.

68. It may be that the candidates recruited by the respective Union Territories for Group 'B' and Group 'C' may become the feeder categories for further promotion

in Group 'A' and Group 'B' of All India Services respectively in the Central Civil Services. The fact that the candidates who are recruited by the respective Union Territories become the feeder categories for further promotion in the Central Civil Services is not a ground for extending the benefit of all India reservation to the Scheduled Castes/Scheduled Tribes for the reserved posts in the respective Union Territories. Be it noted that the candidates recruited by the various State Governments under Group 'A' of respective State services become the feeder category for IAS and IPS. The persons recruited for Group 'B' and Group 'C' by the respective Union Territories stand on the same footing as that of the candidates so recruited by the various States where only the Scheduled Castes/Scheduled Tribes of the respective States can apply.

69. A letter dated 10.05.2013 by Special Secretary (Services) addressed to all the Secretaries/Heads of Departments of NCT of Delhi has been filed by the Union of India. The letter relates to the subject "Reservation policy to be followed with regard to SCs/STs in civil posts under GNCTD". The said letter refers to the judgment in Pushpa's case and states that the Ministry of Law and Justice has opined that the law declared by the Supreme Court in Pushpa's case applies to the NCT of Delhi and that Pushpa's case cannot be ignored. Relevant portion of the said letter reads as under:

"GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (SERVICES DEPARTMENT BRANCHIV) 7TH LEVEL, BWING, DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI 110002

No. F. 19(6)/2012/SIV/883 Dated: 10052013

.....

The Government of National Capital Territory of Delhi follows the guidelines and instructions issued by the Government of India from time to time in matters regarding reservation to Scheduled Castes and Scheduled Tribes in recruitment to various civil posts in Government of Delhi.

Ministry of Home Affairs, Govt. of India, in the context of order dated 11.02.2005 of Hon'ble Supreme Court of India in case titled S. Pushpa & Ors. Vs. Sivachanmugavelu & Ors. stated vide their letter dated 01.06.2005 that the matter has been examined in consultation with the Ministry of Law & Justice (Department of Legal Affairs). That the Ministry had opined that the law declared by the Supreme Court of India cited above, applies to the National Capital Territory of Delhi. This was accordingly conveyed to the departments vide this department's letter No.F.16(73)/97SIII/710 dated 30.06.2005, stating that all the Scheduled Castes/Scheduled Tribe candidates irrespective of their nativity, are eligible for reservation to the civil posts under Govt. of NCT of Delhi, which are reserved for SC/ST candidates and appropriate action for recruitment may be taken accordingly.

Subsequently, in view of order dated 04.08.2009 of Hon'ble Supreme Court in

the matter of Sarv Rural & Urban Welfare Society vs. Union of India & Ors. and of the Hon'ble High Court dated 12.09.2012 in WP(C) No.5390/2010 under consideration in the Ministry of Home Affairs, Govt. of India.

Now, Ministry of Home Affairs, Govt. of India, vide its letter No.14012/09/2012 DelhiI dated 03.04.2013 has informed that the subject matter has been re examined in consultation with Ministry of Law & Justice. In this matter Learned Attorney General for India has given his opinion dated 18.02.2013 (copy enclosed), which is selfexplanatory and has been approved by the Hon'ble Minister of Law & Justice, Govt. of India. The opinion, inter alia, states that having regard to the order in the State of Uttaranchal's case, till this issue is resolved by a larger bench, the decision in S. Pushpa case cannot be ignored. Ministry of Home Affairs has conveyed that it has been decided to proceed according to this opinion.

Copy of above mentioned letter of the Ministry of Home Affairs is circulated for information & necessary action accordingly.

Yours faithfully,

(Kailash Chandra)

Spl. Secretary (Services)

Dated: 10052013

....."

70. PAN India reservation probably is followed by NCT of Delhi in its recruitment based on the above letter dated 10.05.2013. Since I have taken the view that the decision in Pushpa's case is not a correct decision extending PAN India reservation for the reserved posts recruited by NCT of Delhi or any other Union Territories is against the Presidential Orders issued under Articles 341 and 342 of the Constitution of India and against the constitutional scheme.

71. As discussed earlier in para (8), in case of Union Territories, though administrative control to certain extent is exercised by the Union of India, Union Territories do not lose their identity as an entity. The existing practice of PAN INDIA reservation followed in Delhi and Chandigarh is against the constitutional scheme and also against the executive instructions dated 06.08.1984 and 22.02.1985 issued by the Ministry of Home Affairs.

72. As pointed out earlier, the Ministry of Home Affairs in its circular dated 06.08.1984 addressed to all the State Governments and Union Territories administration stated that SCs and STs on migration from the State of his origin to other State will not lose his status as SCs/STs; but will be entitled to the concession/benefits to the SCs/STs from the State of his origin and not from the State where he has migrated. The same thing was reiterated in the letter dated 22. 02.1985 of the Ministry of Home Affairs, Government of India. If PAN India reservation is to be extended to the Union Territories like Delhi, Chandigarh,

Puducherry, Andaman & Nicobar Islands or Daman & Diu for Group 'C' and 'D' services for which recruitment are made by the respective Union Territories, the very object of the Constitutional Scheme of upliftment of the SCs/STs of these Union Territories will be defeated. All India reservation to the services under the Union Territories including the Union Territory of Delhi will be against the mandate of Articles 341 and 342 of the Constitution and against the Constitutional Scheme.

73. Marri Chandra Shekhar Rao and Action Committee are applicable to the States and they are applicable with equal force to the Union Territories including Union Territory of Delhi. There cannot be any distinction between the States and the Union Territories. Likewise, there can be no distinction between Union Territory of Delhi and other Union Territories. When Presidential Orders of Scheduled Castes/Scheduled Tribes are notified for various Union Territories including Union Territory of Delhi extending PAN India reservation to the employment falling under the services of Union Territories including Union Territory of Delhi, will be against the Constitutional scheme and the law laid down in Marri Chandra Shekhar Rao and Action Committee.

74. Article 16(4) of the Constitution has to yield to the constitutional mandate of Articles 341 and 342 of the Constitution. The Presidential Order issued under Article 341 in regard to Scheduled Castes and Article 342 in regard to Scheduled Tribes cannot be varied by anyone or by the Court. Only the Parliament by law include or exclude from the list of Scheduled Castes or Scheduled Tribes specified in the notification issued under Article 341 (1) and Article 342(1) respectively any caste, race or tribe or parts or group within any caste, race or tribe. The Scheduled Castes or Scheduled Tribes thus specified in relation to one State or Union Territory does not carry the status in another State or Union Territory. When the Scheduled Castes or Scheduled Tribes are specified for each State in relation to one State or Union Territory, neither the State legislature, the administration of the Union Territories and nor the courts can include or exclude other Scheduled Castes or Scheduled Tribes so notified in the Presidential Order. Providing all India reservation to the services of Union Territories including Union Territory of Delhi, would be against the mandate of Articles 341 and 342 and the Presidential Orders issued thereon. If that is permitted, it would amount to addition or alteration of the Presidential Order which is impermissible and violative of the Constitutional Scheme.

75. It is the responsibility of each State/Union Territory to provide for such reservation/affirmative action by positive discretion to bring backward classes/Scheduled Castes and Scheduled Tribes in the respective States/areas to provide socioeconomic empowerment. If the reservation to the Scheduled Castes and Scheduled Tribes are to be extended to all categories of Scheduled Castes and Scheduled Tribes all over India or to the migrants then there is every possibility of the Scheduled Castes and Scheduled Tribes of other developed States and Union Territories squandering reservations to the Scheduled Castes and

Scheduled Tribes who are disadvantaged in the respective States/Union Territories including Union Territory of Delhi. If this is permitted, it would defeat the very object of providing reservation to the disadvantaged Scheduled Castes and Scheduled Tribes in a particular State or Union territory. The enabling provision of Article 16(4) of the Constitution has to yield to the constitutional scheme of Article 341 and Article 342 of the Constitution.

76. Conclusion:

Insofar as the States, I agree with the majority view that a person who is recognised as a member of Scheduled Castes/Scheduled Tribes in his original State, will be entitled to all the benefits of reservation under the Constitution in that State only and not in other States/Union Territories and not entitled to the benefits of reservation in the migrated State/Union Territory.

Marri Chandra Shekhar Rao and Action Committee are applicable to the States and they are applicable with equal force to the Union Territories including Union Territory of Delhi. There cannot be any distinction between the States and the Union Territories. Likewise, there can be no distinction between Union Territory of Delhi and other Union Territories. When Presidential Orders of Scheduled Castes/Scheduled Tribes are notified for various Union Territories including Union Territory of Delhi extending PAN India reservation to the employment falling under the services of Union Territories including Union Territory of Delhi, will be against the Constitutional scheme and the law laid down in Marri Chandra Shekhar Rao and Action Committee.

Since there is centralised recruitment upto Group 'B' (Gazetted) services conducted by UPSC for the Central Civil Services posts in the States/Union Territories of India, there has to be necessarily PAN India reservation for Scheduled Castes/Scheduled Tribes for those recruitment conducted by UPSC. So far as Group 'B' and Group 'C' posts falling under services of Union Territories including Union Territory of Delhi for which recruitment is conducted by the respective Union Territories, benefit of reservation in employment (Article 16(4)) is to be extended only to those Scheduled Castes/Scheduled Tribes specified in the Presidential Order of the respective Union Territories. Insofar as the posts recruited by the Staff Selection Board of the respective Union Territories including the Union Territory of Delhi, there cannot be PAN India reservation for Group 'B', Group 'C' and Group 'D' posts falling under the services of various Union Territories and such PAN India reservation would be against the constitutional scheme and Marri Chandra Shekhar Rao and Action Committee.