
(1997) 08 GAU CK 0026
In the Gauhati High Court
Case No : Civil Rule No. 2659 of 1996

Debananda Deori

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226, 341, 341, 342

Citation : (1997) 2 GLJ 367 : (1997) 3 GLT 151

Hon'ble Judges : M.Ramakrishna, J and P.C.Phukan, J

Bench : Division Bench

Advocate : D.S.Bhattacharyya, B.K.Sharma, N.N.Saikia, G.Deka,
K.N.Choudhary, N.S.Deori, Advocates appearing for Parties

Judgement

M. Ramakrishna, C.J.—This is a writ petition presented under Article 226 of the Constitution of India seeking for a writ of Mandamus directing the respondents 1 to 5, for issuance of Scheduled Tribe Certificates to the people belonging to Deori Community, as Scheduled Tribes in the State of Arunachal Pradesh. in terms of the Constitution (Scheduled Tribes) Order. 1950 and/or any other appropriate writ or direction, as to this Court may deem fit and proper in the circumstances of the case. This petition has been presented by the President. Deori Tribal Welfare Association (DTWA). Mahadevpur. Lohit District. Arunachal Pradesh, in a representative capacity, treating this as a public interest petition for the reasons set out in the writ petition.

2. The first respondent is the State of Arunachal Pradesh, represented by its Chief Secretary. Itanagar. The second respondent is the Secretary to the Govt of Arunachal Pradesh. Political Department. Itanagar. The third respondent is the Chief Secretary to the Govt of Arunachal Pradesh. Itanagar. The fourth respondent is the Union of India, represented by the Secretary to the Govt of India. Ministry of Welfare. Shastri Bhawan. New Delhi. The fifth respondent is the Joint Secretary. Ministry of Welfare, Govt of India. Shastri Bhawan, New Delhi. The sixth respondent. General Secretary. Arunachal Pradesh Indigenous Tribal's

Rights (Protection) Organisation. (APITRO). Itanagar, came to be added by an application by way of amendment with the permission of the Court.

3. The general averments in the writ petition as can be gathered from the petition are, that Chapter X of the Census Report of 1971 provides details about the Scheduled Castes and Scheduled Tribes population of Arunachal Pradesh. It is stated therein that earlier the territory of Arunachal Pradesh was a part of the State of Assam, wherein the 16 castes treated as Scheduled Castes in the State of Assam were also treated as Scheduled Castes of Arunachal Pradesh. Similarly, according to the existing Rules and Orders made by the Govt of India, the tribal population, who have been considered as Scheduled Tribes within the State of Assam, and presently living in Arunachal Pradesh, are to be treated as Scheduled Tribes of Arunachal Pradesh. Indeed, it is pointed out that in the 1961 Census, 80 Scheduled Tribes of Arunachal Pradesh has been listed. As against this, in the 1971 Census it is seen that the names of as many as 110 tribes are being listed as Scheduled Tribes of Arunachal Pradesh. It is seen from Appendix 4 to the writ petition that in the 1971 Census Entry 21 of the List of Communities treated as Scheduled Tribes of Arunachal Pradesh, the name "Deori" is found, which indicates that according to the Govt of India authorities, who have conducted census in 1971, people belonging to "Deori" community were treated and listed as Scheduled Tribes in that State.

4. In the 1981 Census held in Arunachal Pradesh. the lists of Scheduled Castes and Scheduled Tribes in Arunachal Pradesh State have been furnished. It is stated therein that the castes which are Scheduled in Assam under "the Scheduled Castes and Scheduled Tribes Lists (Modification) Order. 1956, (Part II of Schedule I) are to be treated as Scheduled Castes in Arunachal Pradesh. The following are the Scheduled Castes in Assam which are also to be treated as Scheduled Castes in Arunachal Pradesh.

- (1) Bansphor (2) Bhuinamali, Malli
- (3) Brittial Bania, Bania (4) Dhupi, Dhobi.
- (5) Dugia, Dholi (6) Hira
- (7) Jalkeot (8) Jhalo, Malo, Jhalo, Malo.
- (9) Kaibartta, Jaliya (10) Lalbegi
- (11) Mahara (12) Mehtar, Bhanghi
- (13) Muchi. Rishi (14) Namasudra
- (15) Patni (16) Sutradhar.

5. In the list of Scheduled Tribes in Arunachal Pradesh in 1981 Census, it is seen that Entry 21 relating to the community of "Deori" remained the same and there has been no change whatsoever.

6. In 1991 Census also this Entry 21 of the List of Scheduled Tribes of Arunachal

Pradesh remained the same. The averment of the writ petitioner is that the population of "Deori" community having been treated as Scheduled Tribes in the erstwhile Assam State continued to be treated as such in the reorganised State of Arunachal Pradesh by virtue of the North Eastern Areas (Reorganisation) Act, 1971 and the amendments thereto.

7. It is further stated that in 1991 Census, out of the population of Arunachal Pradesh about 11,000 people, both male and female, are considered to be belonging to the community of "Deori", being treated as Scheduled Tribes. Although earlier the competent authority, namely, the Assistant Commissioner, used to issue Scheduled Tribes certificates to persons belonging to "Deori" community for the purposes of obtaining reservation in admission to schools and colleges and for appointment in Govt jobs and for other purposes, they have now refused to issue such certificates and there has been restriction imposed by the Govt of Arunachal Pradesh for issuing such certificates.

8. It is pointed out that a representation was sent to the Secretary, Political Department, Govt of Arunachal Pradesh, Itanagar with a copy of the Secretary, Govt of India, Ministry of Welfare in June, 1993 by a sitting MLA of Arunachal Pradesh. Pursuant to this representation, a reply was sent by the Hon'ble Chief Minister of Arunachal Pradesh to the Union Welfare Minister on 27th August, 1993, a copy of which is produced at Annexure E to the writ petition. In the said letter it is pointed out that in Part XVIII of the Constitution (Scheduled Tribes) Order, 1950 relating to the State of Arunachal Pradesh, the community of "Deori" has not been included as Scheduled Tribe. Therefore, it cannot be interpreted to mean or include the tribes or tribal communities or parts of or group within the Tribes of "Deori", who are not as such specified in the Constitution (Scheduled Tribes) Order, 1950. It is stated that as "Deori" are not specified in the Presidential Order, they cannot be deemed to be Scheduled Tribes in Arunachal Pradesh. Aggrieved by this, the petitioners have approached this Court for seeking relief.

9. A detailed counter affidavit by way of statement of objections has been filed on behalf of the State of Arunachal Pradesh, respondents 1, 2 and 3. Similarly, there are affidavits presented on behalf of respondents 4 and 5 and respondent No.6.

10. On the pleadings in the instant case having been completed, the matter has been set down for hearing.

11. In the statement of objections presented on behalf of the State of Arunachal Pradesh. the specific stand taken therein is that it is true, that there is a big chunk of population in Arunachal Pradesh State representing the community of "Deori", but at no point of time the people of "Deori" community had been recognised as Scheduled Caste or Scheduled Tribe. It is stated that from the very beginning when in 1838 the British occupied Assam including the territories which now constitute the State of Arunachal Pradesh. efforts were made to

preserve the tribal society in its pristine form and protect it from any outside interference in its culture, values and socioreligious norms. In 1914, during the British Raj, the Govt of India issued a notification to the effect that the Assam Frontier Tracts Regulation, 1880, would extend to the hills inhabited or frequented by Abors (now Adis), Miris, Mishmis, Singphos, Khamphtis, Bhutias, Akas and Daflas (Nishing) tribes. These hill areas were separated from the then Darrang and Lakhimpur districts of the province of Assam and the North Eastern Frontier Tract came into existence comprising of three administrative units, namely, the Central and Eastern Sections, the Lakhimpur Frontier Tract and the Western Section.

12. That in 1919, the Central and Eastern Section was renamed as the "Sadiya Frontier Tract" and the Western Section as "Balipara Frontier Tract". The Lakhimpur Frontier Tract, however, continued to be known as such till 1937. Under the Govt of India Act, 1935, the administrative status of the North East Frontier Tract was effected under the Govt of India's (Excluded and Partially Excluded Areas) Order, 1936. These Frontier Tracts were declared as Excluded Areas of Assam under section 91 (1) of the Govt of India Act 1935 and were administered by the Governor of Assam in his discretion under section 92 (1) of the Act. Under section 92 (2) of this Act, the Governor has the power to make regulations for peace and good governance of the tribes.

13. After presenting the historical development of these Tracts rights from 838 till the Govt of India Act, 1935, in the statement of objections it is stated that in 1954, all these Tracts together with Naga Tribal Areas were formed into the North East Frontier Agency (NEFA) by the North East Frontier Areas (Administration) Regulation, 1954, which remained as such till 1972. In 1957, by the Naga Hills Tuensang Area Act, 1957, the Tuensang Frontier Division was transferred to Nagaland. Until then, the administration of this area was under the control of the Ministry of External Affairs, Govt of India and later it was put under the control of the Ministry of Home Affairs. In 1965, the President of India promulgated the North East Frontier Agency (Administration) Regulation, 1965 under the provisions of Article 240 (2) read with paragraph 18 of the Sixth Schedule to the Constitution of India, whereby the various Frontier Divisions were renamed districts.

14. It is further stated that till 1972, the Governor of Assam was administering these areas as an Agent of President of India. Under the provisions of section 7 of the North Eastern Areas (Reorganisation) Act, 1971, the status of Union Territory was granted to these areas and it was named as the Union Territory of Arunachal Pradesh with effect from 21st January, 1972, and thereafter it ceased to be a Tribal Area within the State of Assam. It is stated that the Governor of Assam, who until then administered the area as the Agent of the President of India under paragraph 18 of the Sixth Schedule to the Constitution, also ceased to function as such from that date. The provisions of the Govt of Union Territories Act, 1963 came to be applied to the Union Territory of Arunachal Pradesh and the

President administered the Territory through the Administrator appointed under the provisions of Article 239 of the Constitution of India. When the Legislative Assembly was duly constituted in 1975, the Administrator, who was designated as Chief Commissioner till then, came to be designated as the Lt Governor. By the State of Arunachal Pradesh Act, 1986, Arunachal Pradesh was made a fullfledged State with effect from 20th February, 1987. Under the provisions of section 46 of the said Act, all laws in force immediately before the appointed date in the existing Union Territory of Arunachal Pradesh shall continue to be in force in the State of Arunachal Pradesh. These are the historical developments that took place from 1957 till 1987.

15. Referring to the provisions specifically made available under the Indian Constitution as well as the Fifth and Sixth Schedule to the Constitution with a view to make a special provision for the Scheduled Castes and Scheduled Tribes in order to provide a special treatment for the development of these sections of the people living in this area, it is stated that under Part X of the Constitution read with the Sixth Schedule, which is required to be implemented, every principles enshrined in these constitutional provisions are required to be followed both in letter and spirit with a view to protect the autonomy of the area and the indigenous tribal population alongwith their rights to protect, maintain and continue their environment in which they have been subsisting for over hundreds of years.

16. In paragraph 25 of the statement of objections it is specifically stated that:

"That this deponent therefore states that the status given to this area as a "backward tract" and "excluded area" and "tribal area" are only to give protection and insulation to the people and properties. This is coming down since centuries and even when the Union Territory status was given to this territory in 1972, the entire tribal area referred to in Part B of the Table under paragraph 20 to the then Sixth Schedule was shown as the area comprising the Union Territory of Arunachal Pradesh and therefore continued the tribal status given to the area under the Sixth Schedule.

The special status and the ethnicity of the State has been maintained by declaring that the State would be administered under Part X of the Constitution of India."

17. In paragraph 27, it is stated thus :

"That the deponent states in reply to para 1 of the writ petition that the answering respondents are not aware of any Association called "Deori Tribal Welfare Association" (DTWA) or that the present petitioner Shri Debananda Deori is the President of the so called Deori Tribal Welfare Association. So far as the answering respondents are aware the "Deori" Tribal Welfare Association is not a registered body and it has no locus to file the writ petition."

This is with a view to raise the preliminary objection as to the maintainability of

the writ petition under Article 226 of the Constitution of India. We will presently refer to them.

18. Referring to the Constitution (Scheduled Tribes) Order, 1950, in paragraph 28 it is stated that :

"...It is denied that the "Deori", tribe is included as Scheduled Tribe in the State of Arunachal Pradesh within the meaning of Article 342 of the Constitution of India or within the meaning of the Constitution (ST) Order, 1950 as notified vide notification No. SRO 510 dated 6.9.1950. It is stated that the Deori community is not an indigenous tribe of Arunachal Pradesh."

19. Referring to the provisions of Article 342 of the Constitution of India and also the powers of the President, the Parliament and Union of India visavis the power of the State Govt, based upon the pleadings in the writ petition, Mr. NN Saikia, learned Advocate General appearing for the State of Arunachal Pradesh argued that regard being had to the Constitution (Scheduled Tribes) Order, 1950 and the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, made by the President of India under Article 342 (1) of the Constitution, as amended to date in accordance with the provisions of Article 342 (2), as referable to Arunachal Pradesh, which lays down the specific Scheduled Tribes in relation to Arunachal Pradesh (formerly, the North East Frontier Agency), the entry relating to the Scheduled Tribes in Arunachal Pradesh in Part III of the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, provides as follows :

"All tribes of the Union Territory including : 1. Abor, 2. Aka, 3. Apatani, 4. Dafla, 5. Galong, 6. Khampti, 7. Khowa, 8. Mishmi, 9. Momba, 10. Any Naga Tribes, 11. Sherdukpen, 12. Singpho."

20. Mr. Saikia further pointed out that in the light of the above provisions of the law made by the President under Article 342 (1) of the Constitution, "Deori" community not being one of the twelve tribes whose names have been explicitly mentioned in the Order, from the wording of the entry it would be seen that it is covering all tribes in the State and not only those whose names have been explicitly mentioned therein. Mr. Saikia pointed out that regard being had to the power conferred upon the President of India by the provisions of Article 342 (1) and the Parliament under Article 342 (2) of the Constitution, it is for the Union of India to pass necessary law either to include in or exclude from the list any tribe or tribal community. In other words, the argument is that regard being had to the language employed in the provisions of Article 342 including the Presidential Order of 1950, the power is vested either with the Parliament or with the President of India to do so.

21. Thus, it is argued on behalf of the State that the petitioner has not been able to make out a case to seek for a writ of Mandamus.

22. Mr. K.N. Choudhury, learned Senior Central Govt Standing Counsel, was

directed to take notice on behalf of the Union of India. He accordingly appeared on behalf of respondents 4 and 5, filed counter and argued.

23. Having regard to the facts and circumstances, including the pleadings in the writ petition, the following questions arise for our consideration in this writ petition :

(1) Whether the writ petitioner has been able to establish a case satisfying this Court that there is a need for this Court to issue a direction to the State of Arunachal Pradesh to consider the representation made by the petitioner and to pass appropriate orders ?

(2) Whether the writ petitioner has been able to make out a case to issue a writ of Mandamus as prayed for ?

(3) Whether the respondents have been able to make out a case raising preliminary objections that the writ petition as brought before this Court is not maintainable for want of locus standi ?

24. We will take up the second point for consideration, to begin with.

25. The argument advanced by Mr. Deori, learned counsel for the petitioner in their representative capacity, is that

Whenever a petition invoking the provision of Article 226 of the Constitution of India is presented in a representative capacity by a large number of persons seeking collective benefits under the Constitution, instead of the Courts taking a pedantic view raising technical grounds, the Court must take a lenient view in order not only to maintain the petition, but also to give relief to the petitioners. In other words, generally speaking, if a matter of this type is to come before the Court, the Court must take a sympathetic view regarding being had to the prayer put forward for the benefit of a large number of persons and not with selfish motive. In such case, the Courts of law must take a comprehensive view to grant relief to the citizens, not to deny the same based upon certain technical grounds.

26. The learned counsel has pointed out that in the State of Arunachal Pradesh regarding being had to the fact that a big chunk of the population, nearly about 11,000 people belonging to the "Deori" community are in a very backward condition not only socially, politically and economically, but also in the percentage of literacy. Indeed, the Govt of Arunachal Pradesh also has taken a sympathetic view in granting certificates of Scheduled Tribes to persons belonging to the "Deori" community recognising them as such with a view to confer certain benefits, particularly, to enable the students seeking reservations in the High Schools, Colleges, specially in technical colleges, such as. Engineering and Medical Colleges, including seeking for jobs in the Govt. It is stated that unfortunately in the recent past there has been a different trend altogether, in that, the Govt of Arunachal Pradesh prohibited the authorities from granting such certificates to the students belonging to the said community of "Deori". It is stated therefore that if a big chunk of the population, numbering about 15,000,

both male and female, is denied an opportunity to put forward their case seeking for the benefits accrued to them by virtue of the Constitution and the Ow ST laws, the submission is that the Court must consider such a situation in order to extend such benefits to them.

27. In order to maintain the legal argument, Mr. Deori has placed reliance upon the following authorities :

(1) Dadaji vs. Sukhdeobabu & others, AIR 1980 SC 150; (2) Marri Chandra Shekhar Rao vs. Dean, Seth GS Medical College & others, (1990) 3 SCC130; (3) Palghat Jilla Thandan Samudhaya Samrakshna Samithi & another vs. State of Kerala & another, (1994) 1 SCC 359; (4) Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra & another vs. Union of India & another, (1994) 5 SCC 244, (5) Heikham Surchandra Singh & others vs. Representative of "Lois" Kakchirig Manipur (A Scheduled Caste Uplift Body) & others, (1997) 2 SCC 523.

28. Let us take one of the latest decisions of the Supreme Court. In Falghat Jilla Thandan Samudhaya Samrakshna Samithi & another vs. State of Kerala & another, reported in (1994) 1 SCC 359, a Bench of three Judges of the Supreme Court had the occasion to lay down the following law :

"... the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid.

... It is not for the State Govt or for this Court to enquire into the correctness of what is slated in the report that has been made thereon or to utilise the report to, in effect, modify the Scheduled Castes Order. It is open to the State Govt, if it so deems proper, to forward the report to the appropriate authority to consider whether the Scheduled Castes Order needs amendment by appropriate legislation. Until the Scheduled Castes Order is amended, it must be obeyed as it reads and the State Govt must treat Thandans throughout Kerala as members of the Scheduled Castes and issue community certificates accordingly." (emphasis supplied)

29. In the light of the law laid down by the Supreme Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi case (supra), neither the Supreme Court nor this Court has the power either to amend or to modify or alter the Scheduled Castes Order or the Scheduled Tribes Order, as it has been promulgated under Article 341 or 342 of the Constitution, as the case may be. However, the Supreme Court ruled that it is open to the State Govt, if it so deems proper, to forward the report of the competent authority whether the Scheduled Castes Order or the Scheduled Tribes Order needs amendment by appropriate legislation. Thus, in the light of the Jaw laid down by the Supreme Court, it is not possible for this Court to accede to the contention of Mr. Deori, learned counsel for the petitioner to issue a Mandamus as sought for in the writ

petition.

30. Similar is the view taken by the Supreme Court in *Heikham Surchandra Singh & others vs. Representative of Lois" Kakching Manipur (A Scheduled Caste Uplift Body) & others*, reported in (1997) 2 SCC 523. It is seen therefrom that being had to the provisions of Article 341 (1) and (2) of the Constitution, until Presidential notification is amended by Parliament in exercise of power under Article 341 (2), the notification issued under Article 341 (1) is final and conclusive and it cannot be altered or modified by addition of any caste or by subtraction of any caste or community by any action either by the State Govt or by the Court on the basis of evidence adduced before it. It is further stated in paragraph 16 of the judgment that only those who satisfy the criteria laid down therein will be entitled to the issuance of Scheduled Castes certificates until the amendment is duly made by Parliament under Article 341 (2) of the Constitution. However, the Supreme Court directed the State Govt to furnish to the President the report submitted by the Commission, referred to therein, and all other material for appropriate action by the Central Govt by laying before Parliament to effect necessary amendment to the Scheduled Castes and Scheduled Tribes Order, 1950 under Article 341 (2) of the Constitution.

31. Therefore, in the light of the foregoing we must hold and answer point No.(2) that in a matter of this kind while interpreting the provisions of Article 341 or 342 of the Constitution and the Presidential Order of 1950, or 1951, as the case may be. it is not possible for this Court to interfere with the same with a view to either amend or alter the names of the communities or tribes found in the Order and to include in or to exclude the name of any community or tribe from the Lists of Scheduled Castes or Scheduled Tribes, as the case may be. Thus, therefore, it is not possible to issue a writ of Mandamus to the respondents, as prayed for.

32. We will now take up the question of locus standi, which is raised as the preliminary objection by the respondents in this case: Mr. N.N. Saikia. Learned Advocate General appearing for the State Govt as well as Mr. B.K. Sliarma. Learned counsel appearing for respondent No.6. which party came to be added by amending the petition, advanced the common argument in regard to locus standi of the writ petitioner and submitted that the claim to file the writ petition in a representative capacity cannot be considered as thy claim of the community of "Deori" at large, as there is a contradiction of the person claiming to be the President of the Deori Tribal Welfare Association and the person referred to in the course of the writ petition representing the "Deori" community in general. It is further submitted that in the absence of producing a copy of the Articles of Association, it is not possible for the Court to ascertain as to what is the common object of this Association. Lastly, it has been pointed out that in the absence of the Association having not been registered under the Societies Registration Act, 1860, the Court may not take cognizance of such petition.

33. Mr. Deori, learned counsel for the petitioner, with a view to satisfy this Court in regard to the preliminary objection and the locus standi. has pointed out that

there cannot be a hard and fast rule applied in a Court of law to ascertain the locus standi of a petition presented in the nature of public, interest litigation. Secondly, he pointed out that the view taken by the Supreme Court in a large number of cases for the last about two decades is that if an ordinary petition or a post card addressed to the Chief Justice of India sent by an aggrieved person is to be registered and treated as writ petition under public interest litigation, why the Court should apply a hard and fast rule in regard to this petition where a collective benefit is sought for on behalf of a large number of Scheduled Tribes persons living in the State of Arunachal Pradesh.

34. It is true that Mr. Deori conceded that as on the date when the writ petition was presented in June, 1996, the Association referred to above was not registered under the Societies Registration Act, 1860, but that does not disentitle the petitioner to maintain the writ petition. It appears to us that there is some force in the submission of learned counsel for the writ petitioner. It is pointed out that right from the judgment of the Supreme Court in *SP Gupta vs. President of India & others*, reported in AIR 1982 SC 149, upto the law declared by the Supreme Court in *Janata Das vs. HS Clowdhury & others*, reported in (1992) 4 SCC 305, the view taken by the Supreme Court is in favour of the writ petitioner. The view taken by the Supreme Court in the first case, namely, *SP Gupta & others vs. President of India & others*, AIR 1982 SC 149, as stated in paragraph 17 of the judgment, is that

"It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal Wrong or injury caused to such person or determinate class of persons." (emphasis supplied)

35. Although the above statement of law declared by the Supreme Court in *SP Gupta* case (supra) has been neutralised to a little extent as on today, merely because the petition as brought by the petitioner in representative capacity through the Association duly constituted, but has not been registered under the Societies Registration Act, 1860, it would not be proper for the Court to throw away the petition on that ground, inasmuch as, if there is a legally arguable point sought to be made out in the petition, we are of the view that the same is required to be examined with a view to give relief to the petitioners rather than reject the petition on a pedantic view. IT us, therefore, we are of the view that

the preliminary objection as has been raised by the respondents in the instant case in regard to the locus standi deserves to be rejected and we reject the same.

36. We will now consider point No.(1) formulated above as to whether the petitioner has been able to make out a case to seek for a direction to the State Govt to consider the representation submitted by them. We have already referred to the view taken by the Supreme Court in Palghat Jilla Thandan Samudhaya Samrakshna Samiithi case, reported in (1994) 1 SCC 359, regard being had to the facts and circumstances and the question of law arising for being considered by the Supreme Court in that case, it was pointed out by the Supreme Court that it is open to the State Govt, if it so deems proper, to forward the report to the appropriate authority to consider whether the Scheduled Castes Order needs amendment by appropriate legislation. In other words, although the Supreme Court has pointed out that neither that Court nor this Court under Article 226 of the Constitution will have the power to interfere with a view to alter, or modify, or add to the list of Scheduled Castes or Scheduled Tribes any community or tribe in the Scheduled Castes Order or the Scheduled Tribes Order, as the case may be, as declared by the President of India under Article 341 or 342 of the Constitution, nevertheless, the Supreme Court pointed out that in a case where it deems fit it may issue an order by way of direction to the State Govt enabling the State Govt to consider as to whether the Scheduled Castes Order or the Scheduled Tribes Order, as the case may be, needs amendment by appropriate legislation.

37. We may mention here that apart from the power conferred upon the Parliament and the President of India, regard being had to the language employed in Article 342 and the Presidential Order, 1950, it is these authorities who are competent to amend the Order; but, nevertheless, we may also keep in mind that regard being had to the power conferred upon the Scheduled Castes or Scheduled Tribes Commissioner, as the case may be, appointed by the President of India, that authority is competent to collect and record evidence with a view to making out a case and thereby recommend a particular community or tribe to be included in the list to the President. In that view of the matter, this Court can make a recommendation to the State Govt to consider the representation made by the petitioners in the instant case and to consider whether the Scheduled Tribes Order, 1950 needs amendment by appropriate legislation with a view to incorporate by adding the community of "Deori" in the State of Arunachal Pradesh to be included in the Presidential Order of 1950 under Article 342 of the Constitution and in which event, the State Govt. on being satisfied, may recommend accordingly to the President of India.

38. We may also mention here that the stand taken by the respondent No.6, inter alia, is only for the purpose of opposing the petition on the ground that as bonafide indigenous Scheduled Tribes people of the State of Arunachal Pradesh, they are entitled to the benefits conferred by the Constitution, and if these benefits are to be taken away by other persons who have not been included in

the list of Scheduled Tribes, then there will be grave injustice to them. This is the only ground on which the 6th respondent opposes the petition. We are of the view that apart from the claim put forward by the petitioners seeking the constitutional benefits accrued to them by virtue of the provisions under Article 15 and 16 of the Constitution, as the Supreme Court has pointed out in more than one case, the Court must also consider the distributive jurisprudence with a view to distribute the benefits accrued to large number of persons who have been left out from the list and are also found to be deserving and entitled. Thus, therefore, we do not see any justification in accepting the submission made by the learned counsel appearing for respondent No.6 on this ground.

39. In view of the foregoing, we make the following order :

(1) This petition is partly allowed for the reasons stated above.

(2) A direction shall issue to the respondent No. 1, State of Arunachal Pradesh, through the Chief Secretary, Govt of Arunachal Pradesh, that the representation said to have been made by the petitioner shall be considered by the Govt with a view to find out as to whether the list of Scheduled Tribes in Arunachal Pradesh as found in the Presidential Orders of 1950 and 1951 needs amendment so as to include the community of "Deori" in the list of Scheduled Tribes in Arunachal Pradesh.

(3) In the event of the Govt of Arunachal Pradesh finding it feasible to do so, a recommendation may be made to the President of India to include the community of "Deori" in the List of Scheduled Tribes in Arunachal Pradesh with a view to confer the benefits available under the Constitution of India in that behalf.

(4) It is made clear that the first respondent shall consider and take a decision not later than six months from the date on which a copy of this order is received in person.

40. A copy of this order be prepared and served upon Mr. NN Saikia, learned Advocate General by the Registrar (Judicial) within one week.

41. Ordered accordingly. Parties to bear their own costs.