

(2007) 03 BOM CK 0093

In the Bombay High Court

Case No : Writ Petition No. 3668 of 2006

Hitesh Dasiram Murkute

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Bombay State Reorganization Act, 1960 — Section 26, 27
Constitution of India, 1950 — Article 14, 15(4), 16, 19, 19(1)
Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis),
Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation
of Issuance and Verification of) Caste Certificate Act, 2000 — Section 18, 19
Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate
Rules, 2003 — Rule 5, 5(1)
Representation of the People Act, 1951 — Section 20

Citation : (2007) 4 BomCR 784 : (2007) 5 MhLj 454

Hon'ble Judges : Joshi A.H., J; Chavan R.C., J

Bench : Division Bench

Advocate : Nitin Sambre, for the Appellant; Bharti Dangre, A.G.P. for
Respondents Nos. 1, 2, 5 and 6 and V.P. Thakre, Respondent No. 3, for the
Respondent

Judgement

Chavan R.C., J.—Rule. By consent made returnable forthwith.

2. By this petition the petitioner, a student of engineering with respondent No. 4 college, takes exception to the communication dated 8.12.2005 by the Caste Scrutiny Committee, informing the petitioner that he was not entitled to have his claim as belonging to caste Kalar (OBC) examined by the committee since he was a migrant. The petitioner, therefore, seeks direction to the committee to decide his caste claim within stipulated time since absence of decision of his caste claim has hampered his educational career. He also sought direction to the university and college to declare his result of first year examination, to which he was provisionally admitted, subject to verification of his caste claim, and to allow him to continue his education as a candidate belonging to O.B.C., or in the alternative as a candidate of open category.

3. Respondent No. 3 university filed submission stating that failure of the petitioner to produce caste validity certificate resulted in withholding his result for the first year.

4. On behalf of respondent No. 6, Divisional Caste Scrutiny Committee, it was submitted that petitioner's family is originally resident of Madhya Pradesh and since the petitioner could not produce proof of residence in Maharashtra prior to 1967, the committee did not decide the caste claim of the petitioner in light of Government Resolution dated 24.8.1995 and 21.8.1996. The committee therefore, prayed for dismissal of the petition.

5. We have heard learned Advocate Mr. Nitin Sambre, for the petitioner, learned A.G.P. Mrs. Dangre, for respondents Nos. 1, 2, 5 and 6 as well as learned Advocate Mrs. Thakare, for respondent No. 3.

Law Considered as settled:

6. We have also considered Government Resolutions dated 24.8.1995 and 21.8.1996 which state that the caste claims of persons who were not originally residents of State of Maharashtra and who have migrated from other states should not be examined by the committee. First resolution was issued after the decision of the Supreme Court in *Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another*, . The import of this decision was considered by this Court in *Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others*, . This judgment was challenged before the Supreme Court. The judgment of the Supreme Court in *Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others*, duly considered the judgment in *Action Committee v. Union of India* with reference to the question of migrants. The case pertained to persons residing on the date of Presidential Notification in different parts of the same erstwhile state, which upon reorganisation became parts of different states. The petitioner therein, Sudhakar, hailed from Pandhurna, District : Chhindwara and claimed at Chandrapur (Maharashtra State) to belong to Halba, Scheduled Tribe. Both Pandhurna, District: Chhindwara (M.P.) and Chandrapur (Maharashtra) belonged to erstwhile Madhya Pradesh. In the new states of both Maharashtra as well as Madhya Pradesh, "Halba" was recognised as solemn affirmation Scheduled Tribe.

7. In this context, the Supreme Court allowed the appeal and directed the employer of the petitioner to refer the petitioner's caste claim to the Caste Scrutiny Committee, holding in paragraph 5 of the judgment as under:

But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and denied facilities for development and growth in several States. They are required protective preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantageous and

developed sections of the community. The question is as to whether the appellant being a Scheduled Tribe known as Halba/Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in the Chhindwara region, apart of which, on States" reorganization, has come to State of Maharashtra, was entitled to the benefit of reservation ? It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution of India should be given as effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in other State whose Governor has not been consulted; but it is another thing to say that when an area dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of the Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of States" Reorganization Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the District of Chhindwara and the part of area of Chandrapur at one point of time belonged to the same region and under the Constitutional Scheduled Tribes Order, 1950 as it originally stood the Tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganization might have agreed for inclusion of the said Tribe Halba/Halbi as a Scheduled Tribe in the State of Maharashtra having regard to the said fact in mind.

(emphasis supplied.)

8. This decision was followed by this Court in Santosh Padoti v. Caste Scrutiny Committee reported at 2006 (Supp.) Bom. C.R. 797 : 2006 (2) All. M.R. 60, where too the petitioner's father was permanent resident of a village in Rajnandgaon District, now in Madhya Pradesh, and had shifted and settled at Totladoh, now in Maharashtra State. Both these places were parts of erstwhile Madhya Pradesh (C.P. & Berar). Petitioner's tribe "Gond" was recognised as Scheduled Tribe in Maharashtra as well as Madhya Pradesh. Therefore, relying on judgment of the Supreme Court in Sudhakar Vitthal, this Court held that the petitioner was entitled to have his caste claim examined.

9. In view of this position of law, declared by this Court, following judgment of the Supreme Court in Sudhakar Vitthal's case, the petitioner in this case may be entitled to have his caste claim examined. The petitioner himself is shown to have been born at Mayo Hospital, Nagpur on 12.3.1987, in the birth certificate Annexure-II. Petitioner's father is shown to be resident of village Rampura,

Tahsil : Lanji, District : Balaghat in Madhya Pradesh. According to the petitioner, his father, shifted to Nagpur in the year 1984 where he is serving as Senior Personal Assistant in MOIL. Since both, village Rampura, Tahsil: Lanji, District : Balaghat as well as city of Nagpur formed part of erstwhile State of C.P. & Berar (Madhya Pradesh) and since caste Kalar is shown to be included in the OBCs of Madhya Pradesh as well as Maharashtra, the petitioner's case is squarely covered by the decision of the Supreme Court in Sudhakar Vitthal.

Unsettlement by Bankimchandra-II.

10. However, the learned A.G.P. brought to our notice judgments of Division Benches of this Court in (i) Bankimchandra Makanbhai Patel Vs. State of Maharashtra and Another, (hereinafter referred to as "Bankimchandra-II" and unreported judgments in (ii) Chetna Tank Vs. Committee for Scrutiny of Caste Certificates of Persons and Others, : W.P. No. 2569/2005, decided on 24.6.5 at Nagpur and (iii) Mrs. Savitri v. State W.P. No. 7792/5 decided on 22.3.2006 at Bombay, which take a contrary view on similar set of facts. The learned A.G.P. pointed out that the Bench deciding Bankimchandra had not followed the decision of the Apex Court in Sudhakar Vitthal, observing that issue of effect of provisions of States Reorganization Act, 1956 and Bombay State Reorganization Act, 1960 was not brought to the notice of the Apex Court. It is therefore, necessary to carefully consider the judgment in Bankimchandra II and two other unreported judgments, referred to above. Bankimchandra was born on 15.8.1979 at Pitha, District : Valsad, Gujrat, where his father too had been born on 2.6.1953. The petitioner's father got employed with the Western Railway and from 23.1.1976 he shifted to Maharashtra. On 4.2.1997 the petitioner had been granted domicile certificate for State of Maharashtra. The petitioner claimed to belong to Dhodia tribe which is recognised as Scheduled Tribe both in Maharashtra and Gujrat. The petitioner sought admission to Engineering course from Scheduled Tribe category and applied to the Caste Scrutiny Committee for validation of his caste claim. The Committee invalidated his claim. He challenged that order by filing Writ Petition No. 4897 of 1997 (Bankimchandra I). Under interim relief the petitioner completed his engineering course. The petition itself was disposed of by judgment on 14.10.2004, where the Court held that for deciding whether the petitioner was a migrant what was relevant was the date of notification of Presidential Order. Order of Committee dated 8.1.1997 was set aside and the Committee was directed to decide the claim on merits.

11. By its order dated 21.5.2005 the Committee again held petitioner to be migrant and hence disentitled to status as scheduled tribe. The petitioner again approached this Court and judgment in this petition is Bankimchandra Makanbhai Patel Vs. State of Maharashtra and Another, . In paragraph 5 of the judgment in Bankimchandra-II at page 667 the Court raised the following question:

The question, therefore, which arises is, whether a person born in geographical area forming part of erstwhile State of Bombay at the time of the Presidential Notification on 10.8.1950 and now not included in the geographical area of the

State of Maharashtra is entitled to the benefits of reservation in the State of Maharashtra or local bodies Corporation or companies where the scheduled tribe is notified as S.T. in the old Bombay State and also in the State of Maharashtra, if he was not resident in the State of Maharashtra on 1.5.1960.

The Bench then considered the position emerging from various decisions on the point. As regards the decision of Supreme Court in Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, , the Bench observed as under on page 668.

The matter had again came up before the Apex Court in the case of Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, . The issue as now raised was in issue therein. The Constitution Bench of the apex Court held that even if the caste or tribe is notified in both the States, and if such person migrates from one state to another, it does not mean that such person is entitled to the benefits and privileges admissible to the member of similar caste or tribe which is notified in the migrant State.

The Bench considered the provisions of Sections 26 and 27 of Bombay Reorganization Act, which may be usefully reproduced as under:

26. As from the appointed day, the Constitution (Scheduled Castes) Order, 1950 shall stand amended as directed in the Seventh Schedule.

27. As from the appointed day, the Constitution (Scheduled Tribes) Order, 1950, shall stand amended as directed in the Eighth Schedule.

In paragraph 9 the Bench then observed as under:

We may now consider Sections 26 and 27 and also the VIIth and VIIIth Schedules to the Bombay Reorganization Act, 1960-. By virtue of the VIIth Schedule, the Tribes for the State of Gujarat and Maharashtra were notified in Parts VI and Part VII-A respectively. In other words, the amendment to the Presidential Order in 1956, gave way to the amendment brought to the Constitution (Scheduled Tribes) Order, 1950 by the Bombay Reorganization Act, for which the deemed date is 1.5.1960. Therefore, as on 1.5.1960 only those tribes included in the 8th schedule amending the Constitution (Scheduled Tribes) Order, 1950, would be the notified scheduled tribes in the State of Maharashtra and would exclude those tribes which earlier were in the erstwhile State of Bombay but excluded by the Amendment of 1st May, 1960. Para 3 of the Constitution (Scheduled Tribe) Order, 1950 has an important bearing as it makes reference in the order to the State, district or other territory, divisions as on 1.5.1960 which read with Article 342 would mean those notified S.T. in the State of Maharashtra as on 1.1.1960. The other important part is paragraph 2 of the order which uses the expression:

...so far as regards members thereof resident in the localities specified in relation

to them respectively in those parts of that Schedule.

In other words, though the Presidential Notification was issued in the year 1950 because of the State Reorganization Act, 1956 and Bombay State Reorganization Act, the benefits would be available to only those persons amongst the notified scheduled tribes who are residents in the localities. In other words, if no 1.1.1960, when the State of Maharashtra came into being, if there was a person belonging to any of the notified Scheduled Tribes in the State of Maharashtra and if he was resident in the localities in the State of Maharashtra only then shall such person will be entitled to the benefits as a member of the Scheduled Tribe in relation to that State provided he was also resident in the erstwhile State of Bombay on the date of the Presidential Notification dated 10.8.1950 and on 1.11.1956 when the new State of Bombay came into being. This would mean that only those members of the Scheduled Tribes who are included as a notified Scheduled Tribes in the State of Maharashtra and who were and are permanent residents in the State of Maharashtra and in the localities in which they are notified as on 1.1.1960, would be entitled to be treated as S.T. in relation to the State of Maharashtra. This aspect has not been considered by both the division Benches as their attention was not drawn to the same. The same reasoning will also apply insofar as Scheduled Castes are concerned.

If such construction is not accepted and the date of the Presidential notification i.e. 10th August, 1950 is considered, then all S.T.s and S.C.s in the erstwhile geographical area of the Bombay Province on the coming into force of the Constitution on the date of the Presidential Order would be S.T. or S.C. for the new State of Bombay which came into being on 1.5.1960 though they were not ordinary resident of the State on 1.5.1960. This would mean that S.C.s or S.T.s in the earlier geographical region of Bombay State as on 10.8.1950 if included, as S.C.s or S.T.s in a State, not forming a part of the new State of Maharashtra, if also notified as S.C.s and S. T.s in the State of Maharashtra, though not resident in the State of Maharashtra as on 1.1.1960, would be entitled to the benefits. This would increase the population of S.C.s and S.T.s for the State of Maharashtra, and would deny to the members of the S.C.s or S.T.s resident in the State of Maharashtra as on 1.1.1960 the benefits of reservation as they would have to share the same with S.C.s and S.T.s having similar nomenclature from other States which formed the erstwhile State of Bombay as on 1.8.1950.

12. About the view taken by the Apex Court in *Sudhakar Vitthal* and by Benches of this Court, the Bench observed as under in paragraph 10 at pages 673 and 674 of the report:

...The issue was not answered. The attention of the Apex Court was not invited to the provisions of the State Reorganization Act as also to the Bombay State Reorganization Act....

The Bench then proceeded to observe as under:

The effect would be that when the Presidential Notification of 1950 was issued on

10.8.1950, the notified Scheduled Castes and Scheduled Tribes in those States before the State Reorganization Act, 1956 and the Bombay State Reorganization Act, 1960, though they may not be resident in the localities within the State of Maharashtra on 1.11.1956 or 1.5.1960, shall be entitled to claim benefits in the State of Maharashtra even though on the cut off dates, they were residents in the localities in some other States, like in the instant case in the State of Gujarat. Not only that they will be entitled to benefits both in the State of Maharashtra as also in the State of solemn affirmation Gujarat. As in the instant case, the father was born in the area of the Bombay State now in the State of Gujarat. This will totally defeat both the intention of Articles 341 and 342 which set out "in relation to that State" as also the Presidential Order of 1950 as amended in 1956 and then in 1960. This view will clearly run contrary to the State Reorganization Act, 1956 and the Bombay State Reorganization Act, 1960. It is clear therefore, the view taken by both the Division Benches and possibly other benches which has followed the judgments, was a view taken without taking into consideration the State Reorganization Act, 1956 and Bombay State Reorganization Act, 1960 and as such are per incuriam being judgments passed without considering the provisions of the two Central Acts.

In our opinion, therefore, it is not necessary that the matter be referred to a larger Bench, more so considering the consistent view of the Apex Court that migrants are not entitled to the benefits of reservation in the State of migration but are entitled to the benefits in the State of the ordinary residence on the date of the Presidential Notification as amended from time to time.

13. After referring to the judgments in *Marti Chandra v. Dean, S.G.S. Medical College* reported at 1990 DGLS 275 : (1990) S.C.C. 130 , which has been followed by the Apex Court, in *Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another*, the Bench deciding *Bankimchandra-II* held, in paragraph 10, as under:

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 or the latter State for the purposes of this Constitution.

In other words, migrant will not be entitled to the benefits even if such migrant has the same nomenclature as notified in the State of migration for the benefits in the State of Migration. They would be entitled to benefits only in the State where they were resident at the time of the State Reorganization Act and Bombay State Reorganization Act or a like Act.

11. Having so held, we are clearly of the opinion that a member of the S. T. notified for the State of Maharashtra who are resident in the State of Gujarat or other State and who might have been S.T.s notified in the erstwhile State of

Bombay as and from 1.1.1960, bearing in mind Article 342 of the Constitution of India and Paragraph 2 of the Constitution (Scheduled Tribes) Order, 1950, after 1.1.1960 if they are not resident on that date in the state of Maharashtra, would not be entitled to the benefits for the notified S.T.s in the State of Maharashtra. The same reasoning would also apply to S.C.s.

Review of legal provisions:

14. We have carefully considered the reasons given by the Bench deciding *Bankimchandra II* or not following the judgment of the Apex Court in *Sudhakar Vitthal Two* unreported judgments relied on by learned A.G.P. Chetana Tank and Mrs. Savitri take almost a similar view and hence are not analysed separately. In our attempt to comprehend the causation in *Bankimchandra II*, we undertook a journey from Articles 341 and 342 of the Constitution, through the Presidential Orders, amendments thereto and the legislation pertaining to States Reorganization, up to the various judicial pronouncements on the subject. We feel compelled to journalise this journey in the narrative to follow in order to ensure inking as to how the issues appeared to us. Articles 341 and 342 of the Constitution read as under:

341. Scheduled castes.

(1) The President (may with respect to any State (or Union territory), and where it is a State, after consultation with the Governor thereof), by public notification, specify the 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 Castes in relation to that State (or Union territory, as the case may be).

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

342. Scheduled Tribes.

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

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

(emphasis supplied).

15. Accordingly the President issued the Constitution (Scheduled Castes) Order 1950 on 10.8.1950 and the Constitution (Scheduled Tribe) Order on 6.9.1950. Clause (2) of the Constitution (Scheduled Castes) Order, 1950, notified on 10th August, 1950 reads as under:

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 XVI 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 in those Parts of that Schedule.

(emphasis supplied).

Schedule appended to this Order shows that not all castes in any part of the scheduled are treated as Scheduled Castes for an entire State. Some castes are common throughout the State, while some others are prescribed to be Scheduled Castes in a particular District, or are expressly excluded in a particular area, e.g. caste "Mochi" was treated as Scheduled caste in the erstwhile State of Bombay, except its Gujarat Division.

16. Clause 2 of the Constitution (Scheduled Tribe) Order, 1950 notified on 6.9.1950 is worded similarly to Clause 2 of the Constitution (Scheduled Castes) Order, quoted above. The schedules to this order also enumerated tribes which were treated as tribes in a whole State or in specified areas of a State.

17. It may be noticed that Clause 2 of the two Orders specifically recite that castes or tribes enumerated are "in relation to the State", and the members of the tribes or castes concerned, residents in the localities specified in relation to them, would be treated as Scheduled Castes or Scheduled Tribes in relation to those localities. Clause 2 thus makes "residence" relevant. The question however is of the date on which residence is to be ascertained.

18. Since schedules to the two orders indicated that persons belonging to a particular tribe or caste, residing in localities specified in the various parts listed in the schedules were to belong to Scheduled Caste or Tribe in relation to the states as mentioned in Clause 2 of the Orders, the Schedules had to be obviously amended upon linguistic reorganization of the states undertaken in 1956 by the States Reorganization Act. When geographical composition of states changed so drastically schedules could not have referred to localities which ceased to be parts of such states. In this reorganization a bilingual State of Bombay was formed by adding to the erstwhile territory of the State of Bombay Marathi speaking areas from the States of Madhya Pradesh and Hyderabad, and Gujarati speaking areas of States of Saurashtra and Kuchh. Kannada speaking areas of the erstwhile Bombay State were removed from the area of new State of Bombay. This State was latter bifurcated w.e.f. 1st May of 1960 into States of Maharashtra and Gujarat by the Bombay Reorganization Act of 1960. Sections 26

and 27 thereto referred to in the judgment of Bankimchandra Makanbhai Patel Vs. State of Maharashtra and Another, , quoted elsewhere in this judgment effected amendments to the relevant parts of the Presidential Orders. These Presidential Orders were later on specifically amended by acts of Parliament to remove the area restrictions.

Landmark Judgments : Marti Chandra & Action Committee.

19. In the context of enactments referred to above, and the Scheduled Castes and Scheduled Tribes Orders notified by the President, the law evolved by the judgments may now be considered. Bankimchandra-II mainly relies on the judgment in the Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, .

20. Since judgment in Action Committee's case is based entirely on the earlier judgment of the Constitution Bench in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, , it may be useful to recount the facts of the case and the law laid down therein. The petitioner, therein, hailed from Tenali in Andhra Pradesh and belonged to "Gouda" community, which is also known as "Goudi", recognized as Scheduled Tribe in Andhra Pradesh. Petitioner's father had secured employment with Government of India undertaking in Mumbai as belonging to Scheduled Tribe and had shifted to Mumbai when the petitioner was 9 years old. The petitioner claimed benefit of his Scheduled Tribe status for getting admission in Medical College in Maharashtra though tribe Gouda was not recognised as Scheduled Tribe in the State of Maharashtra. The Apex Court, therefore, considered question whether the petitioner could claim benefit of his Scheduled Tribe status on the basis of such a certificate from Andhra Pradesh, in the State of Maharashtra. In this context, after examining provisions of Articles 341 and 342 of the Constitution, the Court observed that full effect had to be given to the expressions "in relation to that State" and "for the purpose of this Constitution, appearing in the two articles" In paragraph 8, the Court observed that equality under the Constitution is a dynamic concept which must cover every process of equalization. The Court then considered rationale of prescribing specific caste or tribe for beneficial treatment in specific states or localities. In paragraph 9 the Court observed that in order to make those who have suffered due to under development equal to more advantageous or developed sections of the community, reservations had to be provided. A sentence in paragraph 9 reproduced below, is however, significant:

This, however, is a different problem whether a member of 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 well-being of the Scheduled Castes and Scheduled Tribes in the country as a whole.

(emphasis supplied.)

The Court then went on to observe in paragraph 10 as under:

It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e. how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem.

21. After considering the necessity of harmoniously and broadly interpreting Articles 341 and 342 of the Constitution so as to ensure that rights granted under Articles 14, 16, 19 and 21 are also protected, the Court observed in paragraph 13 as under:

It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment

of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e. who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution.

(emphasis supplied.)

Since specific problem before the Court was of a boy belonging to tribe which was recognised as Scheduled Tribe in Andhra Pradesh but not in Maharashtra, the Court observed in paragraph 14 as under:

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 (sc. 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.

22. In paragraph 20 the Court held, that reservations should and must be adopted to advance the prospects of weaker sections of society, but while doing so care should be taken not to exclude the legitimate expectations of the other segments of the society. The Court then concluded in paragraph 22 that the petitioner was not entitled to be admitted to Medical College in Maharashtra on the basis of his belonging to Scheduled Tribe in Andhra Pradesh. Though the Court did not put an end to the educational prospects of the petitioner who already been prosecuting studies in the Medical College, presumably under the interim orders of the Court.

23. It is this decision which has been reiterated by the Apex Court in Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, . Unlike the statute law, which can be extended by analogy or by inductive or deductive logic, observations in the judgment have to be always read in the context of the facts of the case which led to the controversy as observed by this Court in Shri Mohammed Bilal Hanif Shaikh " Bilal Bachkana Vs. Shri A.N. Roy, Commissioner of Police, The State of Maharashtra and The Superintendent, . As we record our understanding of restatement in Action Committee of the law laid down in Marri Chandrashekhar Rao, we would endeavour to adhere to the context so that impermissible logical extensions, or digressions, do not result in dilution of the law laid down by the Constitution

Bench of the Apex Court in Marri Chandrashekhar Rao.

In Action Committee the Court had formulated the following question for consideration :

Where a person belonging to a caste or tribe specified for the purpose of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Caste and/or Scheduled Tribes in State B?

24. The Court observed that what was important to notice was that castes or tribes have to be specified in relation to a given State or Union territory. The Court took a note of communications issued by the Government of India about the manner of examining caste claims and issuing certificates. A letter dated 12th August, 1981 clarified that in order to become eligible to be treated as member of caste "in the schedule, in relation to the State of Maharashtra, the person should be permanent resident of the State before 10.8.1950 or 6.9.1950 and observed that since the State of Maharashtra did not exist in 1950, it would be reasonable to understand the State of Maharashtra to mean geographical area now forming the State of Maharashtra. A note appended at the foot of proforma of caste certificate to be issued was quoted in paragraph 7 of the judgment of the Supreme Court and it explains that the expression ordinarily residing would have the same meaning as in Section 20 of the Representations of People Act.

25. Petitioners in Action Committee's case were migrants who were aggrieved by denial of benefits and privileges by the State of Maharashtra because they were not shown to be the residents of Maharashtra area on 10.8.1950/6.9.1950. The Court noticed that the petitioners claimed benefits of their caste/tribe status even after migration. The Court quoted extensively the conclusion drawn up in Marri Chandrashekhar Rao's case and enumerated considerations for specifying a caste or tribe as Scheduled Caste or Scheduled Tribe in paragraph 16 as under:

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 Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution, That is why in answer to a question by Mr. Jaipal Singh, Dr. Ambedkar answered as under:

He asked me another question and it was this, Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area ? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

The Court also quoted the answer given by Dr. Ambedkar to Shri Jaipalsingh in debates in the Constituent Assembly on this question. The Court concluded in paragraph 18 by recording respectful agreement with the views expressed in the earlier decision of Marri Chandrashekhar.

26. From a report of this judgment published at Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, , it appears that by the same judgment the Court had allowed appeal by the State of Maharashtra against the judgment delivered by the Division Bench of this Court in State of Maharashtra v. Kannaiya Devjibhai Borisa and Ors. reported at AIR 1993 Bom 394. In that case Division Bench of this Court had held that there was no intelligible basis for fixing a date for the purpose of ordinary residence of the State of Maharashtra and had upheld the challenge to instructions to the contrary in the Government Resolutions. The Division Bench of this Court had held that upon fulfilling the tests of belonging to a class and ordinary residence in the territory, the petitioner was entitled to the status within the State of Maharashtra, without reference to any date, signifying that "date" was not a

relevant consideration. In our humble opinion, "date" (10.8.50/6.9.50) is relevant not for finding out when the person migrated, but to ascertain where the person or his ancestors resided on or before such dates, to comply with requirements of Clause 2 of Constitution (Scheduled Castes/Scheduled Tribes) Orders. In this view, this reversal does not make date of migration relevant.

Our analysis:

27. We may recall that in Marri Chandra's case caste of the petitioner was not recognized as Scheduled Tribe in the State of Maharashtra, and the question of state reorganization was not relevant. There can be no doubt that if a person belongs to a caste which is included in the scheduled castes or tribes in his home state, but not in the state of migration, he would not be entitled to the benefit of his status in the State where he migrates, because, as held by the Supreme Court in paragraph 10 of Marri Chandra's case, upon migration such a person may not suffer same inhibitions and handicaps in the State to which he migrates, where he would not be treated as a member of Scheduled Castes or Tribes. We humbly feel that it would be impermissible to stretch this ratio too far to conclude that even if the petitioner is shown to belong to a caste which is recognised as Scheduled Caste or Scheduled Tribe in the State of migration, which would expose him to the same handicaps and inhibition as in the home State, he could still be denied benefit of reservation. If a person is left to suffer equally even in the State of migration he would be entitled to be treated on par with persons belonging to his caste in the State of migration as well. If a contrary impression is created by any judgment, we feel that in order to follow the concept of equality such impression has to be erased. The observation of the Apex Court in paragraph 8 in judgment in Marri Chandra's case, may be recalled. "Equality under the Constitution is a dynamic concept which must cover every process of equalisation."

28. Division Bench of this Court in Bankimchandra-II observed as under at page 668 about judgment in Action Commiitee's case.

Having said so, the law was summarised in the judgment of the Court as under:

(1) A person belonging to a caste or tribe which is notified for that state is entitled to the benefits wholly in that State and not the State where he/she migrates.

(2) If a caste or tribe is notified as a caste or tribe in both the States, it does not necessarily mean that the migrant is entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste or tribe of the migrant State.

29. As far as first proposition is concerned, it is directly deduced from Marri Chandra's case. As far as second proposition is concerned, though we could not locate such summation in Action Committee's judgment, from the use of expression "it does not necessarily mean", we understand the second proposition to mean that the Court wanted to conclude that when a caste or tribe is notified

as Scheduled Caste or Scheduled Tribe in both, the home State as well as State of migration, entitlement to such rights, privileges or benefits would depend on establishment of the claim therefore but would not automatically follow. Had the Court desired to rule out such a status to a migrant the second proposition could have been phrased as under:

(2) It means that the migrant is not entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste or tribe of the migrant State if a caste or tribe is notified as a caste or tribe in both the States,

30. We feel fortified in drawing such conclusion from observation of Apex Court in paragraph 16 of judgment in Action Committee quoted in paragraph 25 of this judgment.

31. It appears to us that the Court wanted to exclude benefit of same nomenclature being taken for seeking reservation in the State of migration. If, however, a person belonged to the same caste or tribe as contrasted with a caste or tribe bearing same nomenclature, then fortunes of such a person would not be ruined. Such a person may be entitled to establish that he belongs to a caste or tribe for which the rights, privileges and benefits are admissible in the State of migration.

32. Incidentally even the Bench deciding Bankimchandra II had used the expression "having the same nomenclature" in paragraph 9 of its judgment.

33. In Bankimchandra II, the Court refused to follow Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others, observing in paragraph 10 that "the issue was not answered. The attention of the Apex Court was not invited to the provisions of the State Reorganization Act as also to the Bombay State Reorganization Act". The Court had referred to the provisions of Sections 26 and 27 of the Bombay State Reorganization Act which have been referred to in the earlier paragraphs of the judgment. We do not see as to how the provisions of Sections 26 and 27 of the Bombay State Reorganization Act or the provisions of State Reorganization Act 1956 would alter the conclusion drawn by the Apex Court in Sudhakar v. State. We find that in Sudhakar's case the Apex Court was alive to the fact that there was a States Reorganization Act which had altered the areas of the concerned state as the Act was referred to in paragraph 5 of the judgment. Sections 26 and 27 of the Bombay States Reorganization Act were obviously necessary in order to amend schedules to Constitution (Scheduled Castes/Scheduled Tribes) Orders, because as pointed out earlier the schedules enumerated specific castes and tribes with reference to specific localities. Since the localities had undergone a change, the schedules had to be amended. After reading judgment in Bankimchandra II's case, it was not clear to us as to how these changes in the schedules, on account of change of area comprising the State, would make observations of the Apex Court in Sudhakar v. State inapplicable.

34. A small digression in the manner in which political units are formed may be

useful. In the historical past, political units were formed by conquests or annexation. These units did not necessarily represent people belonging to one caste/tribe/community. Reorganization of the states taken up after India attained independence was aimed at creating linguistic units and not caste basis units. It is impermissible to believe that a caste would be spread over only one political unit and would not spill over areas adjoining a political unit. Therefore, formation of states is not a material consideration in deciding the rights of the parties with reference to their castes/tribes. There can be no doubt that since the caste is an inherited baggage, a person would carry his caste wherever he goes. There can also be no doubt that the founding fathers of this Republic aimed at bringing about upliftment of castes and tribes which they found to be at a disadvantage at the time of formation of this republic. Therefore, these castes and tribes had been identified and notified in the Presidential Orders. Hence, to enable a person to claim benefits of his belonging to a particular caste or tribe, he would have to show that he or his ancestors (a) belonged to a particular Caste (b) identified in relation to a states, and (c) hailed from locality included in the Constitution (Scheduled Caste/Scheduled Tribe) Orders. The expression "in relation to the State" should not become a handicap or restriction on the freedom of the person or his ancestors to migrate in search of livelihood. Shackling a person to his home state for eternity just in order to give benefits of reservation would amount to putting fetters on his freedom which were not intended by the expression used either in Article 341 or 342 of the Constitution Clause 2 of the Constitution (Scheduled Caste/Scheduled Tribe) Orders, 1950.

35. It may be seen that Clause 2 of the Constitution Scheduled Caste Scheduled Tribe Orders refers to residence. As we have indicated in the elsewhere in the judgment, one of the instructions issued by the Government of India required a person to be ordinarily resident of the locality in which the caste or tribe was recognised as scheduled caste or scheduled tribe. The instructions also prescribed that the expression ordinarily resident. Would have same meaning as in Section 20 of the Representation of People Act. We do not see these provisions as prohibiting all types of migration, or requiring a person to be shackled to his place of origin in order to get benefits of reservation. We feel that such a requirement would scuttle the aim of the founding fathers to usher an egalitarian era and remove inequalities in the nation.

36. Migration is a part of life. Ordinarily people would migrate to greener pastures, where there are better chances of survival and prosperity. People from poorer neighbourhoods with limited prospects therefore flock to states, like Maharashtra and within the state to more prosperous areas. Recognizing this reality area restrictions in the Constitution (Scheduled Caste/Scheduled Tribe) Order were later removed. These persons from backward areas are obviously at a disadvantage as compared to their counter parts in advanced and prospering localities. Therefore, upon migration they do not occupy the top of the social pyramid but push at the bottom, and so would be entitled to parity with their compatriots. Migration too is a tool of removing inequality. Just as water finds its

level, so do people. Any stratagem to discourage migration would run counter to the object of the Republic to bring about equality and on the other hand would perpetrate regional imbalance. If the object of giving full effect to the expression in relation to that state "and" for the purposes of this Constitution" in Articles 341 and 342 is fulfilled without depriving a migrant of parity with persons of his own caste (not caste with same nature) in the State of migration, fixing cut off dates for migration may amount to exceeding the constitutional restrictions by reading what the articles do not contain.

37. We may recall once again the dictum of paragraph 8 of the judgment in Marri Chandra's case, namely that equality under the Constitution is a dynamic concept which must cover every process of equalisation and therefore, feel that denying a right, privilege or benefit conferred by the Constitution upon an under privileged person on the basis of artificial divide created by reorganization of states would run counter to the process of equalisation. It is impermissible for us to contribute Judicial bricks for building "Berlin Walls" dividing states.

38. In Bankimchandra II, a question of encroachment by migrants on the benefits available to locals has been raised, as a reason for concluding that migrants would not be entitled to parity with locals in the matter of reservations. However, even while doing so, in paragraph 9 of the judgment, reference is made to caste of same nomenclature. The apprehension of the Court thus seems to be about migrants, having a caste having same name, eating away the pie meant for locals. If however migrant were to belong to the same caste, who become aliens in their own homeland which gets divided, who marry and mingle with locals and share the same ethos and levels of disadvantages, locals are unlikely to have any grudge. It may be impermissible to raise a bogey of such imaginary grievance by locals to deny to their own Kinsmen a share in the benefits.

39. In the year 2000 the State of Maharashtra enacted Maharashtra Scheduled Caste Certificates Act, 2000. This act provides for the procedure to be followed in seeking caste certificates and verification of such caste certificates by Scrutiny Committees. Section 18 of the Act empowers the Government to make Rules to carryout purposes of the Act. Section 19 enables the Government to remove difficulties. In exercise of powers u/s 18 of the Government, had framed the Maharashtra Scheduled Tribes (Regulation of issuance and Verification of) Certificate Rules, 2003. These rules obviously apply only to the scrutiny of caste claims of scheduled tribes but may be a useful indicator of what the State feels. Rule 5 thereof provides for grant of scheduled tribe certificates to migrated persons.

Rule 5(1) may be reproduced as under:

5(1) Migration from other States to Maharashtra State:

(a) The Competent Authority, if satisfied, may issue Scheduled Tribe Certificate, in FORM C 1 to an applicant who has migrated to Maharashtra State from any other State or Union Territory, on production of the Scheduled Tribe Certificate

issued to his father or grandfather by the concerned Competent Authority of that State.

(b) If the Competent Authority feels that before issuing such a Scheduled Tribe Certificate a detailed enquiry is necessary, he may do so through the applicant's State of origin.

(c) A Scheduled Tribe Certificate holder who has migrated to Maharashtra from the State of his origin for the purpose of seeking education, employment etc., will be deemed to be a Scheduled Tribe of the State of his origin and will be entitled to derive benefits from the State of his origin and not from the State of Maharashtra.

Explanation : For the purpose of Sub-rule (1),. Migrant from other State means-

(i) a person who has migrated to Maharashtra State from any other State/Union Territory on or after the First Presidential Order i.e. 6th September, 1950;

(ii) a person whose tribe is scheduled as a Scheduled Tribe in his original State, but not in Maharashtra State and the person whose tribe is scheduled as Scheduled Tribe in Maharashtra State as well as in his original State having his ordinary residence on the date of the notification of Presidential Order scheduling his tribe has been in the State/Union Territory other than Maharashtra would both be treated as migrants.

40. Bench deciding Bankimchandra-II has ruled that a person who has migrated to the State after formation of the State of Maharashtra i.e. after 1st May, 1960 would not be entitled to such a certificate. We have been unable to locate such prescription since such a date is nowhere referred to in any of the rules. On the other hand explanation (i) to Rule 5(1) defines a migrant as a person who has shifted after 06.09.1950 and does not prescribe outer limit of 01.05.1960. As already recounted u/s 26 and 27 of the Bombay Reorganization Act, cannot be interpreted to import any such notion. At the cost of repetition we may point out that those sections, of necessity, had to modify the schedules to the Constitution (Scheduled Castes/Scheduled Tribes) Orders, 1950 because the areas had undergone a change. Even without importing any such date it is possible rather necessary, to deal with entitlement of persons claiming benefit of reservation.

Conclusions:

41. To sum up:

(i) It is necessary to give full effect to both the expressions "for the purpose of this constitution" as well as "in relation to the State", appearing in Articles 341 and 342 of the Constitution and Clause 2 of the Constitution Scheduled Tribe and Scheduled Castes Orders, 1950, in order to identify the beneficiary correctly i.e. by ensuring that he belongs to caste identified with reference to a state as scheduled caste or tribe.

(ii) The object of including a caste or a tribe in the schedules to the orders was to

do away with their disadvantaged position in the areas where they resided vis a vis other population. The crucial test would therefore be whether the person concerned suffers the same degree of disadvantage vis-a-vis other segments, as other local people of his caste suffer or whether as a migrant, he is placed on a higher pedestal.

(iii) Extending benefits to a migrant does no offence to the expression "in relation to the State" in Articles 341/342 of the Constitution or Clauses 2 of Scheduled Caste/Scheduled Tribes Orders, 1950, since entitlement of such a person would have to be still decided with reference to the origin of such migrant and identification of migrant's caste as backward in relation to such State.

(iv) Date too is equally relevant in order to identify the person as belonging to caste included in the schedule on the date of such inclusion with reference to locality identified in the schedule. Therefore, a person claiming benefit would have to show that his ancestors hailed on the date of inclusion of caste in schedule from a place identified in the schedule. In other words, the relevant date is not date of migration but date of inclusion of caste or tribe in the schedule.

(v) Reorganization of States did not proceed on the basis of castes or tribes but on linguistic basis and therefore, localities of persons entitled to the benefit of reservation got divided in different states.

(vi) If upon removal of area restrictions, in the entire area of the State as originally existed on the date of notification of Constitution (Scheduled Castes/ Scheduled Tribes) Orders, the persons concerned could avail of the benefits of reservation, there is no reason why they should be denied such benefits upon reorganization of the states, in which a part of their locality was included.

(vii) The ratio of the decision in Marri Chandra is only that a migrant would be disentitled for reservation in the state of migration if his caste is not notified as scheduled caste or scheduled tribe in the state of migration. (Since in Marri Chandra's case the caste "Gouda" was notified in the State of Andhra Pradesh but not in Maharashtra). It would be impermissible to conclude that even though his caste is so notified in the State of migration, he would be disentitled to benefits, since such conclusion would frustrate the very object of providing benefits enumerated at (ii) above.

(viii) In Action Committee while explaining and following the ratio in Marri Chandra's case, the Apex Court must be held to have merely sought to deny benefits to migrants belonging to a caste of same nomenclature, by consciously choosing the expression "same nomenclature" and avoiding the use of words "same caste". This implies that if persons belong to the "same caste" they were not to be denied the benefits.

(ix) Sections 26 and 27 of the Bombay State Reorganization Act merely amend the schedules as a corollary to creation of State of Maharashtra and have no

bearing on the question of entitlement of the migrants to reservation with reference to date on which the state was created.

(x) As held by the Apex Court in *Sudhakar v. State*, if a migrant belonged to a community which was recognised as scheduled caste or scheduled tribe in any locality which has been divided upon reorganization of states and his caste is recognised as Scheduled Caste/Scheduled Tribe even in such newly formed states, the migrant would be entitled to benefit of reservation even in the State, in which part of the locality other than his place of origin has gone.

42. In view of this, we are in respectful agreement with the view taken by the Division Benches of this Court in judgments referred to in paragraph 10 in *Bankimchandra-II*, and in *Santosh Padoti 2006 (Supp.) Bom. C.R. 797 : 2006 (2) All. M.R. 60*, relying on the judgment of the Apex Court in *Sudhakar v. State of Maharashtra*. We respectfully disagree with the conclusion in *Bankimchandra-II* that those judgments were rendered per incuriam. Since we feel that *Bankimchandra II* is a departure from a string of decisions, consistently taking view about the rights of persons belonging to a community which got divided in the state reorganization, and from the judgment of Apex Court in *Sudhakar v. State* our disagreement with the view in *Bankimchandra-II* does not entail any reference to a larger Bench.

43. Though the foregoing discussion is in respect of the scheduled caste and scheduled tribes, it would be equally valid and applicable in respect of Other Backward Classes or other like communities entitled to benefit of affirmative action. The Government Resolutions dated 24.8.1995, on which the Committee placed reliance for refusing to examine petitioner's caste claim is based on mis-reading the judgments of Apex Court in *Action Committee's* case. Government Resolutions dated 24.8.1995 and 21.8.1996 referred to by the Committee clarify resolution dated 01.11.1985 which refers to 13.10.1967 as the date with reference to which a migrant claim to O.B.C. status is to be evaluated. This date is as artificial as 1.5.1960.

44. In view of this, the petitioner would be entitled to have his caste claim as belonging to Kalar (OBC) examined by the Caste Scrutiny Committee.

45. Respondent No. 6 Caste Scrutiny Committee is, therefore, directed to decide petitioner's caste claim within three months from appearance of the petitioner before the Committee. The petitioner shall appear before the Committee on 9th April, 2007. The petitioner shall tender evidence before the Committee to show that he belongs to the same caste (and not a caste with same nomenclature) which has been notified as OBC both in his state of origin and state of Maharashtra. The Committee will be entitled to examine all relevant aspects of the matter while considering petitioner's prayer for grant of caste validity certificate.

46. Respondents No. 2 to 5 shall provisionally permit the petitioner to continue his education subject to result of caste claim of the petitioner and shall declare

results of examinations which may take place in the intervening period.

47. Rule is made absolute in the above terms.