
(2008) 11 DEL CK 0135

In the Delhi High Court

Case No : Writ Petition (C) 11056 of 2004

Kavita Khorwal

APPELLANT

Vs

The Delhi University and Others

RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 14(4), 141, 15, 15(4)
Goa, Daman and Diu Reorganisation Act, 1987 — Section 2

Citation : (2008) 154 DLT 755

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Rakesh Dhingra, for the Appellant; Amitesh Kumar, for UGC, A. Mariarputham and Anurag Mathur, Som Dutt Kaushik, for R-2 and Mukul Gupta and Mithlesh for AIIMS P.P. Malhotra, ASG, Gaurav Sharma and Chetan Chawla, for the Respondent

Judgement

S. Ravindra Bhat, J.—Courts in India have often traversed questions relating to the principle of equality and affirmative action. This constant engagement with affirmative action policies has not only raised questions relating to their validity and reach, but also crucial questions about the beneficiaries of such policies. This petition raises one such short, yet significant question.

2. The petitioner avers that she is an originally listed Delhi Scheduled Caste (hereafter "SC") candidate and appeared for the LLB entrance examination conducted by the first respondent ("the University") on 20.06.2004. She was at No. 118 in the SC category ranking and it is stated that she could not obtain admission in the course due to inclusion of ineligible SC candidates belonging to States/ Union territories (UTs) other than Delhi. It is alleged that by virtue of Articles 341 and 342 of the Constitution of India and notifications issued under those provisions, only Delhi listed scheduled caste candidates could be considered for admission in the SC category rank list in the entrance examination of the LL.B. examination of the University. She submits that by treating SC candidates from other States at par with SC candidates from Delhi, the

University is conferring privileges that violate her rights under the Constitution, as it equates dissimilar people as entitled under law for affirmative action policies in a specific State with others who are given similar status, though in different States or Union Territory. Therefore, she seeks an order directing the University to implement order no. Nos. 35/1/72/RU (SCT-V) dated 02.05.1975 and BC.12025/2/76-SCT-I dated 22.03.1977 passed by the Ministry of Home Affairs, Government of India, which mandates that the SC category quota be filled from Delhi listed Scheduled castes only.

3. The Petitioner submits that the Constituent Assembly while debating provisions relating to reservations and equality, had agreed that those communities, which have been historically discriminated against should be given a "look in" and special treatment should be given to them. This intention is manifested from a reading of Article 15, Article 16, Article 341 and Article 342 of the Constitution. Under Articles 15 and 16 special treatment is to be given to those categories of people who are identified and notified as such, by notification of the President under Articles 341 and 342. It is submitted that in furtherance of this power, the President, in 1950, notified the list of Castes and Tribes, who shall be the beneficiaries of policies implemented under Article 16 and Article 15 in respect of different States and Union Territories. It is submitted that a plain reading of Article 341 would reveal that the benefit of reservation is to be provided only to those who belong to Scheduled Castes and Scheduled Tribes, "in relation to" particular State or Union territory. It is in furtherance of this objective that in the year 1975, the Union Ministry of Home Affairs (MHA) issued a notification declaring the terms and conditions which were applicable for reservation of seats in case of migration of Scheduled Castes and Scheduled Tribes from one state to another. Para 2(ii) of the said order is reproduced as under:

Where a person migrates from one state to another, he can claim to belong to SC or ST only in relation to the state to which he originally belongs and not in respect of the state to which he has migrated

In the year 1977, the MHA brought another notification clarifying the earlier order of 1975, i with regard to residence, wherein it was stated as under:

As required under Article 341 and 342 of the Constitution the President has with respect to every State and Union Territory and where it is State after consultation with governor of the concerned state issued orders notifying various castes and tribes as SC and ST in relation to that State or UT from time to time. The inter State area restriction have been deliberately imposed so that the people belonging to the specific community residing in specific area, which has been assessed to qualify for SC or ST status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different States/UTs may not necessarily suffer from the same disabilities, it is possible that wo persons belonging to same caste but residing in different states/UTs may not be treated to belong to SC/ST or vice versa. Thus the residence of a

particular person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of notification of the Presidential

Order scheduled his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the presidential Order applicable in his case, say for example, to earn a living or seek education etc., can also be regarded as scheduled caste or scheduled tribe, as the case may be, if his caste/tribe has been specified in that order in relation to his state/UT. But he cannot be treated as such in relation to place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order.

It is to ensure the veracity of this permanent residence of a person and that of the caste/tribe to which he claims to belong that the Government of India has made a special provision in the proforma prescribed for the issue of such certificate. In order that the certificates are issued to be deserving person it is necessary that proper verification based primarily on revenue record and if need be, through reliable inquiries, is made before such certificates are issued. As it is only Revenue Authorities who, decide having access to relevant revenue records are in a position to make reliable inquiries. Government of India insists upon the production of certificates, from such authorities only. In order to be competent to issue such certificate therefore authority mentioned in Appendix 15 of this Brochure should be the one concerned with the locality in which person applying for the certificate had his place of permanent abode at the time of the notification of the relevant order. Thus the Revenue Authority of one District would not be competent to issue such a certificate in respect to persons belonging to another District. No can such an authority of one state/UT issue such certificate in respect of persons whose place of permanent resident at the time of the notification of a particular Presidential Order, has been in a different state/Union Territory. In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Casts or Scheduled Tribes status, is the place of permanent abode of their parents at the time of the notification of Presidential Order under which they claim to belong to such caste/tribe.

4. It is against this backdrop, the petitioner submits, that policy of the Delhi University in providing reservations to candidates of castes not included in Delhi state SC list, is unconstitutional. The petitioner avers that such policy is violative of her fundamental right to equality embodied in Article 14 and 15 of the Constitution and also to a dilution of the reservation policy.

5. Mr Dhingra learned counsel appearing on behalf of the petitioner, contended that a constitutionally mandated policy, endorsed by the Parliament and followed by the Government of India cannot be modified to suit fancies of the University. He did not dispute that the admission for the LLB course was conducted on All

India basis, but asserted that the Government of NCT funds most of the colleges under the first respondent. Even though it is a Central University, scholarships, library funding, book grants, hostel facilities are all provided by the Government of NCT. He pointed out that the policy adopted by the first respondent resulted in two anomalies. Firstly, it created multiple opportunities for the SC candidates of other States, to avail benefits under the reservation policy; they could chose to avail it in their state of origin or in Delhi. Two, it created a disability for Delhi SC candidates since they could avail of reservation elsewhere and they have limited opportunity elsewhere due to the domicile requirement prescribed in those states. He further submitted that as far as Govt. of NCT institutions are concerned, there is no justification at all for equating those enjoying SC status in other States of India, or Union Territories, because Delhi has its own list of SCs exhaustively defined in the Presidential Notification of 1951.

6. Placing reliance on the decisions in *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others*, and *Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another*, , learned counsel contended that it is not possible for a person belonging to a SC category in one State or Union Territory to avail of reservation in another State if that caste is not categorized as SC in that State or Union Territory. Nor is it possible for her to avail of benefits, even if the caste of the same nomenclature is mentioned as a Scheduled Caste in state to which she has migrated. Further reliance was placed on *State of Maharashtra Vs. Milind and Others*, to assert that the order of the President under Article 341, enlisting castes as beneficiaries of reservations policies is specific to geographical regions, that is specific States and Union Territories or even regions within the States. It is only Parliament that is competent to amend the order of the President and the Executive cannot extend benefits to other than those whom it was intended to be conferred. This is further borne out from the recent decision of the Supreme Court in *Shree Surat Valsad Jilla K.M.G. Parishad Vs. Union of India (UOI) and Others*, , where the Court held that inclusion of a caste as scheduled one in respect of a particular area within a state is an exercise for the President and the Parliament to conduct and cannot be gone into by the Courts.

7. The first respondent on the other hand submitted that the petitioner's plea that in so far as seats reserved for SC/ST in the LL.B. Course, should be confined to SC/ST belonging to Delhi alone, has no basis in law. Issues concerning whether all seats should be filled up by open merit on all India basis or some seats should reserved for students belonging to any particular region such as Delhi students etc. are matters of policy and in so far as the LL.B. course is concerned admissions are made on all India basis with no specific reservation in favour of students from Delhi. In as much as the petitioner or any other person cannot seek a direction from this Court that the Delhi University shall reserve any specified percentage of seats for students form Delhi, similarly no direction can be sought that in a course where seats are filled up on all India basis, the

seats reserved for scheduled Castes/Scheduled Tribes shall be filled up by Scheduled Castes/Scheduled Tribes candidates belonging to Delhi only. In substance it amounts to seeking a direction for reservation in a particular manner in favour of a particular group, which is not permissible in law. It is averred that the plea of the petitioner that in Delhi only those people who have been notified as Scheduled Castes/Scheduled Tribes in the Presidential Notification applicable to Delhi are entitled to the benefits of reservation for SC/ST, has no relevance or signification in so far as the present case is concerned, where admission is made on all India basis. It would have relevance and significance if admissions are confined to students from Delhi or any particular percentage of admissions are confined to students from Delhi and in the said seats some seats are earmarked to be filled up by SC/ST candidate. Only in such a situation those candidates belonging to SC/ST as notified for Delhi would be entitled to the benefit of the same to the exclusion of SC/ST from other parts of the country. This is not the situation in the present case. In as much as in the present case the admission is on All India basis, against the seats reserved for SC/ST all candidates who belong to SC/ST irrespective of the State of place they belong to, are/would be entitled to admission as SC/ST candidates.

8. It is contended that the first respondent is a Central University covered by Entry 63 of List I of the Seventh Schedule, wholly administered by the Government of India and therefore, the Academic Council of the University by resolution dated 14.6.1983, in consonance with the Central Government policy that all SC and ST candidates are eligible for reservation in educational institutions controlled by the Central Government, irrespective of the region they come from, adopted such a policy. It is submitted that relevant criterion is the character of the University and not its location. Besides, Delhi being a Union Territory the benefit of reservation ought to be extended to SC/ST candidates not only belonging to Delhi but also to similar candidates from other States. In this regard counsel placed reliance on *S. Pushpa and Others Vs. Sivachanmugavelu and Others*, The Court in this case distinguished the earlier rule in *Marri (supra)*, as being applicable only to cases in which SC/ST candidates migrate from one state to another, not from a State to an Union Territory or from Union Territory to another. Delhi being a Union territory the proposition enunciated in *Pushpa (supra)* is squarely applicable. The Government of Delhi in consultation with the Government of India, it was submitted, has on 30/6/2005 issued a circular to the effect that SC/ST candidates irrespective of their origin are entitled to avail the benefits of reservation in Delhi. Moreover, it is submitted that the Court in *Marri (supra)* itself had created exceptions in relation to All India Services and educational institutions controlled by the Central Government. The said circular reads as follows:

Sub: Reservation for SCs/STs in the jobs under the Government of NCT of Delhi

Ref: Letter NO. 14011/2005-Delhi-I dated 01.06.2005 of the Ministry of Home Affairs, Government of India

Sir/Madam,

I am to inform you that the matter regarding grant of reservation to SCs/STs in jobs under the Government of NCT of Delhi has been examined by the Ministry of Home Affairs in consultation with the Ministry of Law and Justice (Department of Legal Affairs), Government of India in light of the judgment of the Hon''ble Supreme Court dated 11.02.2005 in CA NO. 6-7 of 1998 in the matter of S Pushpa v. Sivachanmugavelu and Ors.

It has been stated by the Ministry of Home Affairs, Government of India vide their letter cited above that the Ministry of Law and Justice (Department of Legal Affairs) has opined that the law declared by the Hon''ble Supreme Court of India in its judgment dated 11.02.2005 applies to the National Capital Territory of Delhi and also shall be binding on all courts within the territory of India under Article 141 of the Constitution of India.

In light of the above, all the Scheduled Caste/Scheduled Tribe candidates irrespective of their nativity are eligible for reservation to the civil posts under Government of NCT of Delhi, which are reserved for SC/ST candidates and appropriate action for recruitment may be taken accordingly.

9. It is averred and urged that though the petitioner has claimed in the writ petition that she is at serial No. 118; as per the rank wise result of SC candidates she is at 773 and she has secured only 150 marks out of 700 marks. At rank No. 773 also there are 11 candidates. The total numbers of seats reserved for SC candidates in the LL.B. course in all the three centres are only 225. The last candidate admitted has secured No. 292 and 238 marks. In view of the above, the petitioner would not be entitled to secure admission in the LL.B. Course.

10. Notice was issued to the All India Institute of Medical Sciences (AIIMS) and it filed an affidavit in response to the petition. It was averred that the AIIMS is an autonomous body, managed out of funds provided by the Government of India. Since admission was made on an All India basis, it has been consistently following the policy of giving SC/ST students from all States the same treatment in relation to reservation. The AIIMS, it is urged, is bound by the mandate of the 1956 enactment. Being an All India institution of national character, established as a centre of excellence, it is bound to treat all SCs/STs notified through out India as eligible to that States.

11. It is thus evident that the petitioner's grievance is that in the absence of amendments to the Presidential notifications issued under Article 341 and in the absence of any notification under Article 342, of the Constitution of India, for the Union Territory of Delhi, castes not specifically notified as Scheduled Castes, for Delhi, and Tribes (in the absence of any scheduled tribe in Delhi) reservations cannot be effected in the Union Territory of Delhi for admission to educational institutions under located in Delhi, either established by the Central Government, or the Government of NCT Delhi or funded by any of them.

12. The scheme envisioned by the Constitution, by virtue of Article 341 reveals that under a Presidential Notification, Indian citizens in various states and Union Territories can be categorized as belonging to the Scheduled Castes; by another Presidential Notification, issued under Article 342, categories of Indian citizens belonging to Scheduled Tribes, in various states and union territories can be enlisted. These provisions, i.e Article 341 and Article 342 of the Constitution of India 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 a 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 of 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.

13. A textual reading of Articles 341 and 342 of the Constitution of India shows that Presidential Notifications, whether in respect of Scheduled Castes or in respect of Scheduled Tribes are "for the purposes of this Constitution" and "in relation to that State (or Union Territory, as the case may be)." Also, if there is a Presidential Notification under Article 341(1) or Article 342(2), Parliament may be law include or exclude caste, race, tribe or group in the list of Scheduled Caste and Schedules Tribes notified under the Presidential Notification.

14. Part VIII of the Constitution of India deals with the Union Territories. It inter alia, consists of Articles 239 to 241. Article 239 provides for the administration of every Union Territory by the President acting through an Administrator. It reads as follows:

239. Administration of Union Territories

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

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

15. As far as the Union Territory of Delhi is concerned, Article 239AA was introduced in the Constitution of India by the Constitutional (69th Amendment) Act, 1991 with effect from 1.1.1992 provides for a Legislative Assembly, seats whereof are required to be filled by members chosen by direct election from Territorial Constituencies in the National Capital Territory. By Article 239AA(3)(a) the Legislative Assembly has powers to make laws for the Union Territory of Delhi in respect to the matters specified under said Clause (3)(a) of Article 239AA of the Constitution of India.

16. The Constitution (Scheduled Castes) (Union Territories) Order, 1951, is a Presidential Notification, issued under Article 341 of the Constitution of India specifying Scheduled Castes in relation to the Union Territory of Delhi. However, no such notification exists under Article 342 of the Constitution of India, listing scheduled tribes for the Union Territory of Delhi. The question therefore is, whether in the absence of a Presidential Notification, listing any group of persons as a Scheduled Tribe in Delhi, can by policy, the Delhi University (a central university) direct that benefit of reservation be accorded to the Scheduled Tribe in the Union Territory of Delhi for admission. Likewise, the other question is whether in the absence of enlistment of specific tribes and castes as scheduled castes or tribes, in relation to the NCT of Delhi, can such castes/ tribes yet be eligible for the benefit, for purposes of admission to NCT managed educational institutions, and Central Government institutions, for the purpose of Article 15(4) of the Constitution.

17. The expressions "in relation to that State or Union Territory" and "for the purposes of this Constitution" used in Articles 341 and 342 of the Constitution of India are relevant and would be determinative of the issues in this case at hand. According to the respondents since, under the Constitutional scheme, the Union Territory NCT of Delhi has to be administered by the President acting through an Administrator, the Union of India is within its rights in issuing instructions, either under specific statutes, or generally of executive nature, requiring reservations to be made for admissions to institutions in the Union Territory of Delhi. The Petitioner on the other hand urges that Article 239 should be read harmoniously with Articles 341 and 342 of the Constitution of India. It is argued that Article 15(4) spelt out a "purpose" of the Constitution and, therefore, there being no Presidential Notification under Article 342 of the Constitution of India, for the purposes of reservation for Scheduled Tribes, under Article 15(4), the sine qua non being missing, no reservation can be effected for members belonging to

Scheduled Tribes. Furthermore, the nature of SC orders made under the Constitution and amended from time to time by Parliament, indicate a clear intent to limit benefits to only those enlisted in the Constitution Schedule Caste (Union Territories) Order, 1951, in relation to Delhi, and subject to residential qualifications spelt out in it.

18. Shri. P.P. Malhotra learned Additional Solicitor General appearing for some of the respondents urged that the issue stands conclusively decided by the judgment of S. Pushpa (*supra*). The petitioner, on the other hand, contends that the issue in Pushpa related to reservations in public employment, under Article 16(4); whereas the previous Constitution Bench judgment in Marri affirmed later, by two Constitution Benches in Action Committee and Milind (*supra*) expressly dealt with situations relating to reservations for admission to educational institutions, under Article 15(4) and no distinction can be made between those living in states and Union Territories, since the benefit of schedule caste status is determined on the basis of disability or extent of backwardness a community is subjected to with reference to the place, and not the administrative unit (i.e. State or Union Territory). 19. Dealing with the issue whether a person belonging to a Scheduled Tribe in a particular state would be entitled to the benefit of reservation in a different state, (whether he "carried" the tag of disability to be entitled to reservation, upon migration) the Supreme Court in its decision in Marri Chandra Shekhar Rao held that:

7. In this connection, the provisions of Articles 341 and 342 of the Constitution have been noticed. These Articles enjoin that the President after consultation with the Governor where the States are concerned, by public notification, may specify the tribes or tribal communities or parts of or groups of tribes or tribal communities, which shall be deemed to be Scheduled Tribes in relation to that State under Articles 341 or 342 Scheduled Tribes in relation to that State or Union Territory. The main question, therefore, is the specification by the President of the Scheduled Castes or Scheduled Tribes, as the case may be, for the State or Union Territory or part of the State. But this specification is "for the purposes of this Constitution". It is, therefore, necessary, as has been canvassed, to determine what the expression "in relation to that state" in conjunction with "for the purposes of this Constitution" seeks to convey.

xxxxxxxxxxxxxxxxxxxxxxxx 12. It is, however, necessary to give proper meaning to the expressions "for the purpose of this Constitution" and "in relation to that State" appearing in Articles 341 and 342 of the Constitution. The High Court of Gujarat has taken the view in two decisions, namely, Manju Singh Vs. The Dean, B.J. Medical College and Others, and Ghanshyam Kisan Borikar Vs. L.D. Engineering College and Others, to which our attention was drawn, that the phrase "for the purposes of this Constitution" cannot be and should not be made subservient to the phrase "in relation to that State" and, therefore, it was held in those two decisions that in consequence, the classification made by one State placing a particular caste or tribe in the category of Scheduled Castes or

Scheduled Tribes would entitle a member of that caste or tribe to all the benefits, privileges and protections under the Constitution of India. A similar view has been taken by the Karnataka High Court in the case of *M. Muni Reddy v. Karnataka Public Service Commission and Ors.* 1981 Lab I.C.1345. On the other hand, the Orissa High Court in the case of *K. Appa Rao Vs. Director of Posts and Telegraphs and Others*, and the full Bench of the Bombay High Court in *M.S. Malathi Vs. The Commissioner, Nagpur Division and Others and Manjusha Govind Waghmare Intervenor*, have taken the view that in view of the expression "in relation to that State" occurring in Articles 341 and 342, the benefit of the status of Scheduled Castes or Scheduled Tribes would be available only in the State in respect of which the Caste or Tribe is so specified. A similar view has been taken by the Punjab and Haryana High Court in the case of *V.B. Singh v. State of Punjab* ILR 1976 P&H 769.

13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, where Venkatarama Aiyar, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression "for the purposes of this Constitution" in Articles 341 as well as in Article 342 do imply that the Scheduled Castes and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right e.g. it has been argued that right to migration or right to move from one part to another is a right given to all to scheduled castes or tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated state it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Articles 14, 16, 19 nor Article 21 are denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which they are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of

India. 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 a right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in its 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 comparatively 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 allover the country would be in negation, to the very purpose and scheme and language of Article 341 read with Article 14(4) of the Constitution.

20. Marri was affirmed and applied by the Constitution Bench of the Supreme Court in the decision reported as Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra (Action Committee for short). It was held:

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

21. A later Constitution Bench of the Supreme Court, in its decision reported as

State of Maharashtra Vs. Milind and Others, , held that:

Plain language and clear terms of these Articles show (1) the President under Clause (1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may; (2) under Clause (2) of the said Articles, a notification issued under Clause (1) cannot be varied by any subsequent notification except by law made by Parliament. In other words, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under Clause (1) of the said Articles. In including castes and tribes in Presidential Orders, the President is authorised to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. The States had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to the entire State or parts of State. It appears that the object of Clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of of the Constitution. Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be within the meaning of the entries contained in the Presidential Orders issued under Clause (1) of Articles 341 and 342, is to be determined looking to them as they are. Clause (2) of the said articles does not permit anyone to seek modification of the said orders by leading evidence that the caste/Tribe (A) alone is mentioned in the Order but caste/Tribe (B) is also apart of caste/Tribe (A) and as such caste/Tribe (B) should be deemed to be a Scheduled Caste/Scheduled Tribe as the case may be. It is only Parliament that is competent to amend the Orders issued under Articles 341 and 342."

22. Dealing with the question whether there can be two lists for the purpose of Article 341(1), sub-dividing the scheduled castes, the Supreme Court, recently again underlined the conclusiveness of the determination by the President ,and exclusive jurisdiction of Parliament to amend it, in the Constitution Bench judgment, reported as E.V. Chinnaiah Vs. State of Andhra Pradesh and Others, : where it was held that:

13. We will first consider the effect of Article 341 of the Constitution and examine whether the State could, in the guise of providing reservation for the weaker of the weakest, tinker with the Presidential List by subdividing the castes mentioned in the Presidential List into different groups. Article 341 which is found in Part XVI

of the Constitution refers to special provisions relating to certain classes which includes the Scheduled Castes. This article provides that the President may with respect to any State or Union Territory 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. This indicates that there can be only one list of Scheduled Castes in regard to a State and that list should include all specified castes, races or tribes or part or groups notified in that Presidential List. Any inclusion or exclusion from the said list can only be done by Parliament under Article 341(2) of the Constitution. In the entire Constitution wherever reference has been made to "Scheduled Castes" it refers only to the list prepared by the President under Article 341."

23. The earlier decision in *Sakuru Vs. Tanaji*, explored the pernicious nature of caste system, which unfortunately continues to poison our social fabric and subject significant numbers of our citizens to varying degrees of severe disadvantages. The court underlined the need to confine the benefits granted under the Presidential Notifications, and not extend them to communities, (which might have been listed, but stood excluded later due to conversion), in the following manner:

The division of the Hindu social order by reference at one time to professional or vocational occupation was moulded into a structural hierarchy which over the centuries crystallised into a stratification where the place of the individual was determined by birth. Those who occupied the lowest rung of the social ladder were treated as existing beyond the periphery of civilised society, and were indeed not even "touchable". This social attitude committed those castes to severe social and economic disabilities and cultural and educational backwardness. And though most of Indian history the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity, human self-respect and even some of the attributes of the human personality. Both history and latter day practice in Hindu society are heavy with evidence of this oppressive tyranny, and despite the efforts of several noted social reformers, specially during the last two centuries, there has been a crying need for the emancipation of the depressed classes from the degrading condition of their social and economic servitude. Dr. J. H. Hutton, a Census Commissioner of India, framed a list of the depressed classes systematically, and that list was made the basis of an order promulgated by the British Government in India called the Government of India (Scheduled Castes) Order, 1936. The Constitution (Scheduled Castes) Order, 1950 is substantially modelled on the Order of 1936. The Order of 1936 enumerated several castes, races or tribes in an attached Schedule and they were, by paragraph 2 of the Order, deemed to be Scheduled Castes. Paragraph 3 of the same Order declared that the Indian Christians would not be deemed to be members of the Scheduled Castes. Paragraph 3 of the same Order declared that the Indian Christians would not be deemed to be members of

the Scheduled Castes. During the framing of the Constitution, the Constituent Assembly recognised ``that the Scheduled Castes were a backward of the Hindu community who were handicapped by the practice of untouchability'', and that ``this evil practice of untouchability was not recognised by any other religion and the question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise''. The Sikhs however, demanded that some of their backward s, the Mazhabis, Ramdasis, Kabirpanthis and Sikligars, should be included in the list of Scheduled Castes. The demand was accepted on the basis that these sects were originally Scheduled Castes Hindus who had only recently been converted to the Sikh faith and had the same disabilities as the Hindu Scheduled Castes". The depressed "classes within the fold of Hindu society and the four classes of the Sikh community were therefore made the subject of the original Constitution (Scheduled Castes) Order, 1950. Subsequently in 1956 the Constitution (Scheduled Castes) Order, 1950 was amended and it was broadened to include all Sikh untouchables.

8. It is quite evident that the president had before him all this material indicating that the depressed classes of the Hindu and the Sikh communities suffered from economic and social disabilities and cultural and educational backwardness so gross in character and degree that the members of those castes in the two communities called for the protection of the constitutional provisions relating to the Scheduled Castes. It was evident that in order to provide for their amelioration and advancement it was necessary to conceive of intervention by the State through its legislative and executive powers. It must be remembered that the declaration incorporated in paragraph 3 deeming them to be members of the Scheduled Castes was a declaration made for the purposes of the Constitution. It was a declaration enjoined by Clause (1) of Article 341 of the Constitution. To establish that paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against Christian members of the enumerated castes it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the State under the provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin - Hinduism - continue in their oppressive severity in the new environment of a different religious community.

Before Milind, in another decision, the conclusive nature of the exercise under Article 341 and the exclusive jurisdiction of Parliament was reiterated by the Supreme Court, yet again, in Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, as under:

18. These judgments leave no doubt that 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.

19. The Than dan community in the instant case having been listed in the Scheduled Castes Order as it now stands, it is not open to the State Government or, indeed, to this Court to embark upon an enquiry to determine whether a of Ezhavas/Thiyyas which was called Than dan in the Malabar area of the State was excluded from the benefits of the Scheduled Castes Order.

24. In one of the earliest decisions on the principles to be adopted by courts, while interpreting Presidential Notifications, a Constitution Bench of the Supreme Court, in *Bhaiyalal Vs. Harikishan Singh and Others*, noticed that while framing notifications under Articles 341 and 342, the President has the necessary materials and that the executive Government cannot amend it; only Parliament is empowered to amend the Notification, under Articles 341(2) and 342(2) of the Constitution- evident from the expression "but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification." occurring in each of the said provisions. It was held by the court, that:

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

25. It is a settled canon of interpretation of the Constitution that a liberal approach ought to be adopted, while construing provisions meant to endure the test of time; at the same time ensuring that meaning is given to every term and expression in the concerned provision. Thus, in *India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others*, a Seven Judge Constitution Bench of the

Supreme Court held that:

16. Courts of law are enjoined to gather the meaning of the Constitution from the language used and although one should interpret the words of the Constitution on the same principles of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. It has to be remembered that it is a Constitution that requires interpretation. Constitution is the mechanism under which the laws are to be made and not merely an Act which declares what the law is to be, See the observations of Justice Higgins in the Attorney General for the State of New South Wales v. Brewery Employees' Union of New South Wales.

17. In *Re C.P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938*, C.J. of the Federal Court of India relied on the observations of Lord Wright in *James Commonwealth of Australia* and observed that a Constitution must not be construed in any narrow or pedantic sense, and that construction most beneficial to the widest possible amplitude of its powers, must be adopted. The learned Chief Justice emphasised that a broad and liberal spirit should inspire those whose duty it is to interpret the Constitution, but they are not free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory, or even for the purposes of supplying omissions or correcting supposed errors. A Federal Court will not strengthen, but only derogate from its position, if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution of a country is a living and organic thing, which of all instruments has the greatest claim to be construed ut res magis valeat quam pereat--it is better that it should live than that it should perish.

This approach is also seen in other decisions such as *State of Karnataka Vs. Union of India (UOI)* and *Another*, . This approach of giving effect to each term was adopted in the *Marri* case in the extract quoted in the preceding part of the judgment. In the decision reports as *Action Committee's* case too, this approach of giving full effect to provisions of the Constitution was adverted to as follows :

The interpretation that the Court must put on the relevant constitutional provisions in regard to Scheduled Castes/Scheduled Tribes and other backward classes must be aimed at achieving the objective of equality promised to all citizens by the Preamble of our Constitution. At the same time it must also be realised that the language of Clause (1) of both the Articles 341 and 342 is quite plain and unambiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation each State or Union Territory for the purposes of the Constitution.

26. By virtue of Article 341, the Presidential orders made under Sub-Article (1) acquire an overriding status. But for Articles 341(1) and (2), (or Article 342(1) and (2)) it would have been possible for both the Union and States, to legislate

upon, or frame policies, concerning the subject of reservation, vis-a-vis inclusion of Castes/Tribes. The presence of Articles 338, 341 and 342 indicates that:

- a) Only the President could, as a one- time measure, notify castes/tribes as Scheduled Castes/Tribes and also indicate conditions attaching to such declaration.
- b) There is only one constitutionally sanctioned authority, viz. National Commission enjoined to submit reports in that regard, to the President, after due deliberation;
- c) Even the authority that originally notified the SC/ST order (The President) loses the right to vary such notification Article 341(2);
- d) Future inclusions, modifications, variations deletions and amendments to the SC/ST orders can be made only by Parliament.

27. It therefore becomes clear, that the principle for migrant citizens moving from one State to another and not being entitled to claim benefit of reservation in spite of their belonging to Scheduled Caste in their own State and a caste of that nomenclature being notified in the State when they migrate-is not premised on existence of greater legislative, administrative/executive control over Union Territories by the Union, as opposed to States. Apparently that is not a relevant factor for deciding who can enjoy the benefit of reservation. This is because the authority in the case of both Union Territories and the State to make an order, including communities in the lists for concerned states/Union Territories is the same, i.e. the President, initially, and later, the Parliament. Also, the President has no greater power in respect of modification/alteration of the order, in the case of Union Territories. He ceases to have any power to vary, amend or modify the Order. Only Parliament has exclusive power by legislation to amend an SC/ST Order, in the case of States as well as Union Territories.

28. The Scheme and position of the Constitution (Scheduled Castes) Orders is that--

- 1) Originally a common Presidential Order was made in respect of States in 1950.
- 2) Another common Presidential Order was made in respect of Union Territories in 1951. The Union Territories Order continues to be in force. It comprehends 3 Union Territories including Delhi and Chandigarh.
- 3) Separate orders have been made in respect of the Union Territories of Pondicherry and Dadra and Nagar Haveli. There is no order in respect of Andaman Nicobar islands.
- 4) Amendments were made to the Scheduled Caste/Tribe Orders of the States and Union Territories Order of 1951, by an Acts of Parliament in 1956 and later, in 1976. Besides the above, in the event of States reorganization, Parliament has exercised its powers under Article 341(2) to enact specific Castes/Tribes that had to be Scheduled Castes and Scheduled Tribes in relation to the reorganized

States/Union Territories. The Scheme of the Constitution Scheduled Caste Orders, more particularly, the Constitution Scheduled Castes (Union Territories) Order, thus makes it amply clear that Parliamentary intention was to extend benefits of reservation in relation to the Union Territories as per the conditions mentioned in the Orders themselves. Therefore, the expansive construction through which Scheduled Castes included in one State are sought to be given benefits in Union Territories, would be contrary to the express intendment of the Orders in relation to the Union Territories, and indeed the Constitution. If Parliamentary intention was that all Scheduled Castes in all States could be considered as Scheduled Castes in all Union Territories, such intention would have been explicit. By the same analogy if Presidential or Parliamentary intention was to extend the benefit of reservation in Union Territories also to migrants from States from the same Caste nomenclature as notified in a Union Territory such as Delhi, that intention too would have been explicit. Existence of few Caste groupings only "in relation to Delhi" There fore rules out, the claim of migrants from other States/Union Territories.

29. The Constitutional Scheme in the history of reservation and the origin of Scheduled Castes Order indicates that it is not mere backwardness that drove the framers of the Constitution to enjoin framing of special provisions that lead to privileges aimed at overcoming centuries long deprivation/disability. The Constitution makers principally had in mind the practice of un-touchability while indicating the need to make provisions of Castes to be known as Scheduled Caste. This is clear from a reading of Articles 17, 46, 330, 332, 338, 341 and 342 of the Constitution as noted by this Hon'ble Court in the decision reported as *Sakuru Vs. Tanaji*, . The underlying principle for including or excluding a Caste from the list of Scheduled Castes in relation to State of a Union Territory and will remain the same, namely; whether that Caste/Group suffers from such disability in that area as to warrant its inclusion in the relevant Scheduled Caste Order for the concerned State/Union Territory. This awareness is evident from the decision of the Constitution Bench in the *Action Committee Case*. Logically the rule of denial of reservation benefits to persons migrating from one State to another, equally apply in the case of migrants to Union Territories. Another aspect which the court cannot ignore lightly is that a limited construction of the Rule in *Marri's* case so as to make a departure in the case of Union Territories would destroy the integrity of a principle which has to apply through-out the country. The confirmation of a benefit to a migrant or denial thereof on the basis of his being a member of Scheduled Caste in the place of his origin cannot, be made to depend upon the existence or otherwise of an administrative unit as a Union Territory or a State. Parliament has the exclusive power to make new States and Union Territories, alter the boundaries of the States/Union Territories, re-organise States/Union Territories, create/destroy States/Union Territories. In the exercise of such power, Parliament does not even have to seek recourse to Article 368 of the Constitution. The law which creates a State of Union Territory or re-organize boundaries can be passed with a simple majority. Such a law can amend the First

Schedule of the Constitution of India. Similarly, in exercise of such power, the Union of India has been re-organized as many as 16 times. Through its exercise many former Union Territories namely, Goa, Andhra Pradesh, Mizoram and Himachal Pradesh which had been Union Territories at some point or the other were conferred State-hood. The existence of State or Union Territory boundaries, therefore does not alter the reality about their impermanence. Though a Union, India comprises of destructible states. The latest re-organization in 2000 saw realignment of boundaries and creation of three new states. Thus, the principle that persons of origin in relation to the State/Union Territory concerned, only, being entitled to the benefit of reservation with respect to that Union Territory/State (emphasized in Marri and Action Committee) has to be applied to States as well as Union Territories.

30. The decisions, right from Bhaiyalal, to Milind, all rendered by Constitution Benches have affirmed that:

(i) The Presidential Notifications and Acts are conclusive and

binding. They cannot be investigated by the Courts, Ref. B. Basavingappa v. D. Munichinnappa 1965 (1) SCR 315, State of Maharashtra Vs. Milind and Others,

(ii) The SC Orders are to be read as they are, and cannot be varied or modified by interpretation;

(iii) The Presidential notifications are to be construed strictly as regards matters mentioned there (Palghat Jilla Thandan and Milind);

(iv) It is permissible to notify scheduled castes/tribes in parts of a State or parts of any area. Such restrictions are not discriminatory, having regard to the purpose of extending benefits to castes that are backward in relation to a specified area Bhaiyalal Vs. Harikishan Singh and Others,

(v) No authority, save Parliament is empowered to modify or amend the Orders under Articles 341 and 342 (Bhaiyalal, Marri, Milind and the latest judgment, in 2007, in Shree Surat Valsad Jilla)

31. Now the decision of the Supreme Court in S. Pushpa (supra). The issue there was whether the consistent practice of the Govt of Pondicherry, extending SC/ST status benefits to all classes of SC/ST candidates, whether from that Union Territory or not, for the purpose of public employment in the administration of the Union Territory, was legal. The court affirmed that practice, holding:

These documents show that Government of Pondicherry has throughout been proceeding on the basis that being a Union territory, all orders regarding reservation for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry administration as well. Since all SC/ST candidates which have been recognized as such under the orders issued by the President from time to time irrespective of the State/Union territory, in relation to which particular castes or tribes have been recognized as

SCs/STs are eligible for reserved posts/services under the Central Government, they are also eligible for reserved posts/services under the Pondicherry administration. Consequently, all SC/ST candidates from outside the U.T. of Pondicherry would also be eligible for posts reserved for SC/ST candidates in Pondicherry administration. Therefore, right from the inception, this policy is being consistently followed by the Pondicherry administration hereunder migrant SC/ST candidates are held to be eligible for reserved posts in Pondicherry administration.

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

The above observations were based on the following opinion of the Court:

Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to (5), however, lay down several exceptions to the above rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of backward classes of citizens" which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the schedule appended to the Presidential Order for that particular State or Union territory. This Article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognized as backward classes of citizens and none else. If a State or Union territory makes a provision where under the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognized as such, in relation to that State or Union territory then such a provision would be perfectly valid. However, there would be no infraction of Clause (4) of Article 16 if a Union territory by virtue of

its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the schedule to the Presidential Order issued for such Union territory. The U.T. of Pondicherry having adopted a policy of Central Government where under all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.

In view of the limited nature of the controversy, pertaining to public employment, which called for construction of the interplay between Article 16(4), the court did not see the imperative nature of Article 341(2) and 341(2) and the exclusive jurisdiction of Parliament. Also, the earlier larger Bench rulings in *Milind* and *Bhaiyalal* about conclusiveness of the Presidential Order, and the nuanced nature of the exercise to determine the extent of backwardness deserving protection evident from the ruling in *Bhaiyalal* that educational and social backwardness is regard to the castes, races or tribes may not be uniform or of the same intensity everywhere and that "it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas" was not brought to the notice of the Court, in *Pushpa*, nor were the nuances of the text of the Union Territories Scheduled Caste Order of 1951 brought to its notice. More crucially, the court was not concerned with acclaim under Article 15(4), which was the contextual setting for *Marri* (a five judge bench decision) as in this case. Therefore, the ruling in *Pushpa*, cannot be considered an authority of universal application, at least in cases relating to admission to educational institutions. *Marri* and *Action Committee*, decisions of Constitution Benches, expressly were concerned with Article 15(4) reservations, like in this case.

32. It would also be, at this stage, relevant to refer to Constitution Assembly Debates, where this issue had cropped up. Dr. B. R. Ambedkar, speaking of the problems that could arise, stated in the Constituent Assembly Debates in reply to the question by Mr. Jai Pal Singh (Safeguard for Scheduled Castes and Tribes - Founding Father's view by H.S. Saksena said that:

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 his 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 of 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.

33. The Union Territories Scheduled Castes Order of 1951, amended by an Act, in 1956 and later in 1976, and still later, in 1987, reads as follows:

APPENDIX " XI The Constitution (SCHEDULED CASTES) Union Territories) Order, 1951, C.Order 32, dated the 20th September, 1951 . " In exercise of the powers conferred by Clause (1) of Article 341 of the Constitution of India, as amended by the Constitution (First Amendment) Act, 1951, the President is pleased to make the following order namely:

1. This order may be called the constitution (Scheduled Castes) (Union Territories) Order, 1951.

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 III of the Scheduled to this Order shall, in relation to the (Union Territories) to which those parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that schedule.

3. Notwithstanding any thing contained in paragraph 2, no person who professes a religion different from the Hindu (or the Sikh or the Buddhist) Religion shall be deemed to be a member of a Scheduled caste.

4. Any reference in this order to a Union Territory in part 1 of the Scheduled shall be construed as a reference to the territory constituted as a Union territory as from the first day of November, 1956, any reference to a Union territory in part II of the Schedule shall be construed as a reference to the territory constituted as a Union territory as from the first day of November, 1966 and any reference to a Union territory in part III of the Schedule shall be construed as a reference to the territory constituted as a Union territory as from the day appointed under Clause (b) of Section 2 of the Goa, Daman and Diu Reorganisation Act, 1987.

THE SCHEDULE PART I

DELHI

I. Throughout the Union Territory:

1. Ad dharmi

2. Aheria

3. Aheria 4. Balal

5. Banjara 6. Bawaria

7. Bazigar 8. Bhangi
 9. Bhil 10, Chamar, I Chanwar Chamanr,
 Jatya or Jatav Chamar, Mochi
 Ramadasia, Ravidasi, Reghgrh or
 Raigharh
 11. Chohra (Sweeper) 12. Chuhar (Balmiki)
 13. Dhanak or Dhanuk 14. Dhobi
 15. Dom 16. Gharrami
 17. Julaha (Weaver) 18. Karbirpanthi
 19. Kachhandha 20. Kanjar or Giarah
 21. Khatik 22. Koli
 23. Lalbegi 24. Madri
 25. Mallah 26. Mazhabi
 27. Meghwal 28. Naribut
 29. Nat (Rana), Badi 30. Pasi
 31. Perna 32. Sansi or Bhedkut
 33. Sapera 34. Sikligar
 35. Singiwala or Kalbelia 36. Sirkiband

Part II

CHANDIGARH

throughout the Union Territory

1. Ad Dharmi 2. Bangali
 3. Barar, Burar or Berar 4. Batwal, Barwala]
 5. Baruia or Bawaria 6. Bazigar
 7. Balmiki, Chura or Bhangi 8. Bhanjra
 9. Chamar, Jatia, Chamar, 10. Chanal
 Rehgar, Raigar, Ramadas
 Or Ravidas
 11. Dagi 12. Darin
 13. Dhanak 14. Dhogri, Dhangri or Sigg

15. Dumna, Mahasha or Doom 16. Ganga
17. Gandhila or Gandil Gondola 18, Kabirpanthi or Julaha
19. Khatik 20. Kori or Koli
21. Marija or Marecha 22. Mazhabi
23. Megh 24. Nat
25. Od 26. Pasi
27. Perna 28. Pherera
29. Sanhai 30. Sanhal
31. Sansoi 32. Sandi, Bhedkut or Manesh
33. Sapela 34. Sarera
35. Sikligar 36. Sirkibandi

PART III

DAMAN AND DIU

III. Throughout the Union Territory :

1. Bhangi (Hadi) 3. Mahar
2. Chambhar, Mochi 4. Mahyavanshi (Vankar)
5. Mangi

It may be seen that there are only 31 castes listed as scheduled castes in the order, in relation to Delhi; they have to be "residents of" the concerned territory, i.e of Delhi, to avail the benefit. Therefore, as regards entitlement of benefit of reservation to educational institutions within the NCT of Delhi, in educational institutions managed or owned by the Government of NCT, for the purpose of the Constitution, only such members of the SCs who fulfil the requisites spelt out in the Presidential Notification for Delhi can legitimately claim it.

34. As regards Central Government institutions, such as All India Institute of Medical Sciences and Central Universities, set up under Parliamentary enactments, however, the situation necessarily has to be different. The analogy here can be with All India service, which, conceptually and definitionally is through- out the territories of India. Thus, a person claiming to be Scheduled Caste has to specify that he belongs to a caste notified as Scheduled Caste in one State or one Union Territory and that he is a resident of that State/Union Territory. Fulfillment of that criteria is sufficient for the purpose of Union Government service, since all Scheduled Castes in all States/Union Territories are part of Union of India (however, the converse is not true of State Service or service under Union Territory, where territoriality has to be given effect to). This

parity with All India Service, under the Union, is necessary because the Supreme Court, in *Marri*, did not invalidate the policy, though made aware of it. Further, educational institutions owned or funded by the Central Government for which admission is on All India basis, can be located anywhere- either in Union Territories or States. Their mere location cannot confer greater benefits to residents of those States or Union Territories.

35. It would also be at this stage appropriate to remember what Dr. Ambedkar stated about the pervasiveness of untouchability, which has disfigured our social fabric and undermines, indeed mocks at the principle of equality and social justice, enshrined in our Constitution:

Untouchability is not a short or temporary feature; it is an permanent one. To put it straight, it can be said that the struggle between the Hindus and the Untouchables is a permanent phenomenon. It is eternal, because the high-caste people believe that the religion which has placed you at the lowest level of the society is itself eternal. No change according to time and circumstances is possible. You are at the lowest rung of the ladder today. You shall remain lowest forever.

Destroying such pernicious practices, so deeply embedded is a goal to be pursued with tireless commitment and purpose. Provisions like Articles 341 and 342 are designed to aid the empowerment of Dalits, who were considered untouchables, shed such tags and translate the promise of equality into reality. The paramount consideration to designate a caste grouping in a state or a region is the degree and extent of backwardness it is subjected to. The Scheduled Caste Orders, in relation to each State and each Union Territory, have carefully spelt out the communities which are entitled to such benefits. The conditions include the requisite of the caste members being residents of the unit concerned (State or Union territory). If this nuanced determination, done after extensive study and materials gathered, is disturbed, by broadening the scope of benefits to those who are beneficiaries in other states or union territories, the balance would be upset; there would be a real likelihood of the intended beneficiaries being deprived precisely the opportunities designed for them. There would be inevitable but entirely avoidable discontent resulting from this deprivation.

36. It is therefore, held that in relation to the Union Territory of Delhi, for admissions to institutions managed and completely controlled by the Government of the National Capital Territory of Delhi, reservation, under Article 15(4) can be enjoyed by only those caste groupings enlisted in the Scheduled Caste (Union Territories) Order, 1951, as regards Delhi, and subject to the conditions spelt out there. Members of castes and tribes who do not fulfill that description, and/or are not described in that Order, would not be entitled to such benefits. In the case of Central Government institutions like the Delhi University, All India Institute of Medical Sciences, etc, however, since the entire funding and control is through such Government, members of scheduled castes or scheduled tribes, fitting the description, from any part of the country, i.e any State or Union

Territory, would be entitled to such reservation benefits, provided they fulfil the criteria prescribed in relation to the concerned state.

37. In the present case, at the stage of admission, an interim order was made, enabling the petitioner to be considered as eligible for admission, as long as she fulfilled the criteria spelt out in the Order, in relation to Delhi. It would not be equitable at this stage to modify that order, in the light of the findings recorded in this judgment. The said order is therefore made absolute. As far as reservation in admissions to educational institutions to be made hereafter are concerned, the present judgment should not be considered as disturbing the admissions finalized so far. The writ petition and pending applications are disposed of in these terms. There shall be no order as to costs.