

**(2009) 09 KAR CK 0002**

**In the Karnataka High Court**

**Case No : Writ Petition No. 18534 of 2009**

Lolaksha represented as Guardian to Daughter, Preethi, Since  
Minor

**APPELLANT**

**Vs**

The Convener, Common Law Admission Test, (CLAT-2009)  
Nalsar University of Law and Others

**RESPONDENT**

**Date of Decision : 10-09-2009**

**Acts Referred:**

Constitution of India, 1950 — Article 15 (4), 29 (2), 341, 342

**Citation : (2009) ILR (Kar) 3934**

**Hon'ble Judges : B.S. Patil, J**

**Bench : Single Bench**

**Advocate :** Ravivarma Kumar, for the Appellant; Gururaj and Assts. for R1, Udaya Holla, Vivek Holla, for R2, Aditya Sondhi, for R-5, 6, 8, 9, 10, 12-16 and R-4 SD, for the Respondent

**Final Decision : Allowed**

## **Judgement**

B.S. Patil, J.—Petitioner is the father of the minor girl, Preethi. He has filed this writ petition seeking a direction to respondents-1 & 2 herein to give admission to his daughter to the Undergraduate Law Course for the academic year 2009-10 against the seat reserved for Scheduled Caste category in the 2nd respondent - National Law School of India University, Bangalore.

2. By way of an application filed for amendment, petitioner has sought for a direction declaring the selection, allotment and admission of respondents-5 to 17 in the 2nd respondent-University under the quota reserved for Scheduled Caste category as null and void. He has also sought for impleading all the students who are selected under the Scheduled Caste category and hailing from other States other than State of Karnataka as respondents 5 to 17. These applications are heard along with the main matter and both the applications are allowed.

3. Petitioner is a native of Dakshina Kannada District of Karnataka State and belongs to Mundala caste which is considered and recognised as Scheduled Caste

under the Presidential Notification issued during the year 1950 for the State of Karnataka. Daughter of the petitioner has taken the entrance test called Common Law Admission Test, CLAT-2009 organised by the 1st respondent for admission to eleven different National Law Universities in the country after completing her 10+2 exams.

4. It is the case of the petitioner that his daughter having evinced interest to pursue the law course in the 2nd respondent University, took CLAT - 2009 under reserved quota giving first preference to the 2nd respondent-University and second preference to the 1st respondent-University and third preference to the 3rd respondent-University. On 15.06.2009, the 1st respondent published the CLAT-2009 results in which the daughter of the petitioner secured 3288th rank in the merit list for General Category and 54th rank in the merit list for Scheduled Caste category. Based on her ranking in the Scheduled Caste merit list, the 1st respondent allotted a seat in the 3rd respondent National University of Advanced Legal Studies (NUALS), Kochi, Kerala, under the quota reserved for Scheduled Caste category. As the daughter of the petitioner did not belong to the communities classified by the Kerala Government as Scheduled Caste for the purpose of admission to professional courses she was not given admission under the Scheduled Caste quota in the 3rd respondent University. Petitioner addressed a letter to the 1st respondent Convener bringing the same to its notice and also made a request to allot his daughter a seat in the 2nd respondent-University under Scheduled Caste quota. However, on 29.06.2009, the 1st respondent published the 2nd provisional list of selected candidates for individual Universities, whereunder the daughter of the petitioner was allotted a seat in the 4th respondent-University instead of the 2nd respondent-University. Being aggrieved by this action of the respondent-University, petitioner has approached this Court.

5. Sri Ravivarma Kumar, learned Senior Counsel appearing for the petitioner mainly contends that Constitution (Scheduled Castes), Order, 1950 lists out different castes as on 10.08.1950 and declares them as belonging to Scheduled Caste in relation to State of Karnataka. Such persons and persons born to them can only be regarded as Scheduled Caste for the purpose of State of Karnataka. As MUNDALA caste, to which the petitioner belongs is mentioned as Scheduled Caste in the presidential order, daughter of the petitioner is eligible and entitled to claim reservation as against the seats reserved for Scheduled Caste candidates, to the exclusion of all other selected candidates who are not so recognised as Scheduled Caste in relation to the State of Karnataka. In this regard, he draws the attention of the Court to the definition of the term "Scheduled Caste" contained in Sub Clause (24) of Article 366 and the provision made for reservation in favour of Scheduled Caste in relation to a State under Article 341 of the Constitution. He contends that social disability suffered in a particular State by the particular sections of the Society has resulted in conferment of the status of reservation of Scheduled Caste on them and therefore persons migrating from other States or persons who intend to secure

admission to the State institutions in the State of Karnataka cannot claim the status of Scheduled Caste and secure admission as against the said category. If this is allowed, counsel submits, it will deprive the eligible persons belonging to the said category of the State who have been conferred with such status and right based on their social condition in the State. He points out that respondents-5 to 17 are admittedly outside candidates and are given seats under the Scheduled Caste category based on the quota made available on all India basis by the 2nd respondent-University. He has placed strong reliance on the judgments of the Apex Court 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*, He further contends that as the 2nd respondent-University is established by the State Legislature under a State Law, it cannot claim the status of a national level institution.

6. Drawing the attention of the Court to Items 62, 63, 64, 65 & 66 of List-I of the VII Scheduled to the Constitution, he submits that it is the Parliament, which has to declare the status of an Institution as one of national importance. He also contends that any attempt made to affect the rights of persons outside Karnataka will be hit by Article 245 of the Constitution as the State Legislature cannot make any law which has got extraterritorial jurisdiction. In this regard, he has relied on the judgments in *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, ; *R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd.*, ; *Shrikant Bhalchandra Karulkar and Others Vs. State of Gujarat and Another*,

7. Sri. Ravivarma Kumar, has also drawn the attention of the Court to the Emblems and Names (Prevention of Improper Use) Act, 1950 to contend that there is a prohibition for improper use of certain emblems and names and no person shall use or continue to use for the purpose of any trade, business, calling or profession, any name or emblem specified in the Schedule by the Central Government or of such other Offices of the Government as may be prescribed. He, therefore contends that State cannot name the 2nd respondent institution as national level institution.

8. Sri. Udaya Holla, learned Senior Counsel appearing for the 2nd respondent-National Law School contends that the 2nd respondent is a national level institution. He invites the attention of the Court to the preamble to the Statute which establishes the 2nd respondent-University namely the National Law School of India Act, 1986 (Karnataka Act No. 22/1986), to highlight the fact that it was the Bar Council of India Trust which was instrumental in establishing the 2nd respondent-University to carry out its objects of establishing, maintaining and running a model law college in India. With this object in mind, a society by name "National Law School of India Society" was registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act No. 17/1960) with an intention to develop teaching and research institute of higher learning in law. It was the

National Law School of India Society which requested the State Government to establish the National Law School of India University on the lines of the said rules to enable it to carry out its object and functions strictly. It is with this object, to encourage the establishment of such a national level institution in the State of Karnataka, the State Legislature established the University by enacting the law. He takes me through the Constitution of the General Council and as also the Executive Council of the 2nd respondent-University and emphasizes the fact that there is hardly any State Control over the 2nd respondent-University which has been conceived by the Bar Council of India Trust as a National Level Institution. It is his further contention that the Governing Council of the 2nd respondent - University has framed Regulations providing reservation of 15% and 7.5% to Scheduled Castes and Scheduled Tribes with an All India Entrance Test being conducted for the last 20 years to select the candidates from across the country extending reservation for Scheduled Castes and Scheduled Tribes at national level. He justifies the reservation extended to the candidates belonging to Scheduled Castes and Scheduled Tribes hailing from different States on the ground that the institution is of national importance. He gives the examples of several institutions such as Indian Institute of Technology, Military Academy at Dehradun and others in this connection.

9. It is his further contention that being fully aware of the nature of the reservation provided for Scheduled Caste and Scheduled Tribe candidates belonging to other States, the daughter of the petitioner has appeared for the entrance examination and therefore it is not open for the candidate now to challenge the reservation given to candidates belonging to other States. It is also further contended that having secured 54th rank in the merit list for Scheduled Caste category, the daughter of the petitioner was allotted a seat in the 3rd respondent - University. However, as there is a specific provision in the Kerala Act under Section 4(4) for extending reservation to SC/ST as provided for all other candidates In the professional courses in Kerala State, the 3rd respondent-University denied admission to the petitioner and in this background petitioner has been again allotted a seat in the 4th respondent-University which she has refused. Learned Counsel urges that to respect of admissions made in various Universities to Karnataka State including to the Vishweshwariah Technological University, reservation of seats, only to the Scheduled Castes and Scheduled Tribes candidates of Karnataka State is mandated by the provisions made under the Karnataka State Universities Act and other similar provisions applicable to Vishweshwariah Technological University and hence it is the duty of the Institutions to make reservations as per the state government orders, but, such a requirement is not necessary for the 2nd respondent-University as, no such provision is made in the statute. He also contends that Article 15(4) of the Constitution does not confer any right in favour of the candidate nor is there any legal obligation on the part of the University to the matter of granting reservation as it is only an enabling provision. He places reliance on the judgments in M.R. Balaji and Others Vs. State of Mysore, and Union of India (UOI) Vs. R.

Rajeshwaran and Another, in this connection. He also contends that the Government and the statutory authorities including the respondent-Universities has got the power to choose the source from which admissions have to be made as long as it is not arbitrary or unreasonable. In support of this contention, he has relied on the judgment in 1989 (2) SCC 143 Deepak Sibal v. Punjab University and Anr. and D.N. Chanchala Ors. Vs. The State of Mysore and Others,

10. With reference to the ratio laid down in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, he places reliance on the judgment of the Apex Court in S. Pushpa and Others Vs. Sivachanmugavelu and Others, and urges that the proposition of law is explained in this case which helps his contentions.

11. Referring to the conduct of the petitioner in challenging the process of selection and admission adopted by the respondent-University, Sri Udaya Holla draws support from the following judgments: i.e. Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, Suneeta Aggarwal v. State of Haryana and Ors. Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and contends that petitioner cannot be permitted to challenge the selection made of respondents-5 to 17 and the non-selection of his daughter for the course in the 2nd respondent-University having participated in the process of selection without raising any objection. Arguing on the judgment of the Apex Court in the case of Subhash Chandra and Anr. v. Delhi Subordinate Services Selection Board and Ors. SLP (Civil) No. 24327/2005 disposed of on 04.08.2009, Sri Udaya Holla contends that a Bench consisting of three Hon"ble Judges of the Supreme Court in Pushpa"s case, having laid down the law, the judgment rendered by a Bench consisting of two Hon"ble Judges of the Supreme Court could not have dissented from the ratio laid down by the Larger Bench. He further submits that in paragraph-46 of Subhash Chandra"s case it is held that Pushpa"s case can be an obiter and therefore even if the law laid down in Pushpa"s case is taken as an obiter then also it is binding on this Court. It is his further contention that in Subhash Chandra"s case reliance placed on the Constitution Bench judgment in E.V. Chinnaiah Vs. State of Andhra Pradesh and Others, is not apposite.

12. Sri. Aditya Sondhi, learned Counsel appearing for respondents-5 to 17 contends that all other institutions which have All India level examinations also follow the same practice. of recognising the status of Scheduled Caste/Scheduled Tribe across the country for the purpose of reservation to such institutions. He refers to the examinations conducted by the UPSC and the recruitment made thereof and the process of selection made to All India Institute of Medical Sciences to support his contention. He also contends that the 2nd respondent-University has no "State" character. Placing reliance on the judgment in State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, he contends that different and higher standards can be prescribed by the State for the purpose of attracting better talent.

13. He has filed a memo along with caste certificates of proposed respondents 6,

9, 13, 14 & 16 to show that their castes are recognized as Scheduled Caste in the Presidential Order insofar as Karnataka State is concerned though they are not of Karnataka origin. He has further expressed considerable anxiety over the fate of the students who have now sought to be impleaded and whose selection is sought to be challenged by way of amendment of the Writ Petition. He pleads equity for them and contends that for no fault on their part these students who are already admitted to the course and are pursuing their studies are put to such hardship. In support of the grounds of equity pleaded by him for the admitted students, he has brought to the notice of the Court the following aspects:

- (i) That the 2nd respondent - University has been following this policy of extending reservation to Scheduled Caste and Scheduled Tribe candidates all over the country for the last 22 years;
- (ii) There is no mis-representation by the students and that they are selected purely based on their merit;
- (iii) Their selection is being now challenged by way of amendment to the Writ Petition;
- (iv) From 7th July 2009, all these students have been prosecuting their studies in the 2nd respondent -University.
- (v) Even in Marri Chandrashekar Rao's case at paragraph 24, the Supreme Court has taken note of equity and Justice into consideration to protect the interest of the concerned student.

He also places reliance on the judgment of the Punjab and Haryana High Court in Deepak Makkar Vs. Kurukshetra University, Kurukshetra and Others, on the principles of equity.

14. Sri Raghavendra, another Counsel appearing for respondents 11 & 17 has adopted the arguments advanced by the Senior Counsel Sri. Udaya Holla and the learned Counsel Sri Aditya Sondhi.

15. Having heard the learned Counsel for the parties and on careful perusal of the entire materials on record, the points that fall for consideration in this case are:

- i) Whether respondents-1 & 2 were justified In extending the benefit of reservation for Scheduled Caste and Scheduled Tribe candidates of different States while making admission to the 5 year Law course for the academic year 2009-10 in the 2nd respondent-University? In other words whether the candidates who had the status of Scheduled Caste and Scheduled Tribe in States other than Karnataka can claim the benefit of being a Scheduled Caste or Scheduled Tribe In the State of Karnataka for admission to the 2nd respondent-University?
- ii) Whether the 2nd respondent - University was right and justified in refusing admission to the petitioner though she belonged to the Scheduled Caste as per

the Presidential Order of 1950 in relation to Karnataka State?

iii) Whether admissions of respondents-5 to 17 is liable to be cancelled?

16. The questions presented in this writ petition are of very serious nature having significant importance. So far as the question whether students having benefit of Scheduled Caste or Scheduled Tribe status in another State can claim the similar status in another State to which they migrated, there are two Constitution Bench judgments; (i) in *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others*, (ii) 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*, In the first of the judgments, the question that fell for consideration was:

Whether a candidate whose caste was recognised as Scheduled Tribe in the Constitution (Scheduled Tribes) Order 1950 in the State of Andhra Pradesh can claim the benefit of Scheduled Tribe in the State of Maharashtra for admission to the MBBS course in the Medical Colleges run by the State of Maharashtra or by the Bombay Municipal Corporation?

17. As the answer to the said question depended on the understanding and interpretation of the provisions contained under Article 341 of the Constitution of India, the Apex Court has elaborately dealt with the purport and effect of Articles 341, 15(4) and 29(2) of the Constitution of India. The fact that Scheduled Castes and Scheduled Tribes in some States have to suffer the social disadvantages and did not have the facilities for development and growth and it was therefore necessary, in order to make them equal, in those areas where they suffered such disadvantages, to have reservation and protection in their favour is emphasized by the Apex Court. As the social conditions of castes vary from State to State, the Court has found that it was not appropriate to generalise any Caste or Tribe as Scheduled Caste or Scheduled Tribe for the whole of the country. It is further observed that those who go to other State or area should ensure that they make way for the disadvantaged and disabled of that part of the community who suffered from disabilities in those areas. The Apex Court determined the controversy presented in the case of *Marri Chandra Shekhar Rao* and has held at para-13 as under:

... that the expression "for the purposes of this Constitution" in Article 341 as well as in Article 342 do imply that the Scheduled Caste and 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..." "... 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 of 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.

18. Further, after referring to the Constituent Assembly Debates and the views of Dr. B.R. Ambedkar on this aspect in para-21, the Apex Court has ruled in para-22 with reference to the facts in the said case holding that the petitioner in the said case was not entitled to be admitted to the Medical College on the basis of Scheduled Tribe Certificate in the State of Maharashtra.

19. Another Constitution Bench of the Apex Court in *Action Committee's* case had another occasion to look into the matter as petitioners therein were aggrieved because the State of Maharashtra had denied the benefits and privileges available to Scheduled Castes and Scheduled Tribes specified in relation to that State to members of Scheduled Castes and Scheduled Tribes belonging to other States who had migrated from other States to the State of Maharashtra. Such benefits and privileges were denied on the basis of certain Circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and Scheduled Tribes specified in relation to any other State shall not be entitled to the benefits and privileges accorded by the State of Maharashtra unless the person concerned is shown to be a permanent resident of the State of Maharashtra as on 10.08.1950 in the case of Scheduled Castes and 06.09.1950 in the case of Scheduled Tribes which were the dates on which the President first promulgated the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. The petitioners therein, therefore, contended that denial of benefits and the privileges by the State of Maharashtra was violative of the Fundamental Rights conferred on citizens by Articles 14, 15(1), 16(2) and 19 of the Constitution, besides being contrary to the letter and spirit of Articles 341 and 342 of the

Constitution. Referring to the earlier Constitution Bench judgment in Marri Chandra Shekhar Rao's case, the Apex Court has observed in the middle of paragraph-15 as under:

... 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 to each State or Union Territory for the purposes of the Constitution. It must also be realised that before specifying the castes or tribes under either of the two articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Governor of State A, It is difficult to understand how that specification made "in relation to that State" can be treated as specification in relation to any other State whose Governor the President has not consulted. True it is that this specification is not only in relation to a given State whose Governor has been consulted but is "for the purposes of this Constitution" meaning thereby the various provisions of the Constitution which deal with Scheduled Castes/Scheduled Tribes. The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community.

20. Further, the Apex Court in para-16 added to what was stated in Marri Chandra Shekhar Rao's case by observing as follows:

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled 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....

21. It is thus clear from the aforementioned ruling of the Apex Court that even if a caste mentioned in the Presidential Order in respect of the State of Karnataka as Scheduled Caste is also mentioned as such in the Presidential Order in respect of another State, the candidate belonging to that caste cannot claim benefit of reservation in the State of Karnataka.

22. Answer to the points raised in this writ petition could not have been difficult in the light of the two judgments of the Constitution Bench of the Apex Court, but for the fact that considerable arguments are advanced by the learned Senior counsel for the respondent-University Sri Udaya Holla placing reliance on another judgment of the Apex Court in Pushpa's case and referring to the nature of the 2nd respondent-University which is established with an object to make it a national level institute of legal training, studies and research. The 2nd respondent-University is a brainchild of the Bar Council of India Trust. As can be seen from the preamble to the National Law School of India Act, 1986 (Karnataka Act No. 22/1986) earlier a Society by name National Law School of India Society registered under the provisions of the Karnataka Societies Registration Act, 1960 with an object among others to establish, maintain and develop a teaching and research institute of higher learning in law conceived the idea and it is the said Society which requested the State Government to establish the National Law School to enable it to carry out its objects and functions and therefore the Karnataka State Legislature considered it necessary to encourage the establishment of such a national level institute and hence Act No. 22/1986 was enacted to establish the Law School.

23. Section 4 of the National Law School of India Act, 1986, deals with the objects of the Law School which reads as under:

4. The Objects of the School etc.- (1) The Objects of the School shall be to advance and disseminate learning and knowledge of law and legal processes and their role in national development, to develop in the student and research scholar a sense of responsibility to serve society in the field of law by developing skills in regard to advocacy, legal services, legislation, law reforms and the like, to organise lectures, seminars, symposia and conferences to promote legal knowledge and to make law and legal processes efficient instruments of social development, to hold examination and confer degree and other academic distinctions and to do all such things as are incidental, necessary or conducive to the attainment of all or any of the objects of the School.

(2) The School shall be open to all persons of either sex irrespective of race,

creed, caste or class of all religions and it shall not be lawful for the school to impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto as a teacher or a student or to hold any office therein or to graduate thereat or to enjoy or to exercise any privilege thereof.

24. Section 7 of the Act provides that a Judge nominated by the Society shall be the Chancellor of the School provided that if he gives his consent the Chief Justice of India shall be nominated as the Chancellor. Section 8 deals with the authorities of the School. The General Council, the Executive Council and the Academic Council are the important bodies and the General Council is the Chief Advisory Body of the School, whereas the Executive Council is the Chief Executive Body of the School and the Academic Council is the Academic Body of the School having power of control and general regulation for maintaining the standards of instruction, education and examination of the School, subject to other rules and regulations. As can be seen from the composition of the current Members of the General Council, Hon'ble Chief Justice of India is the Chancellor, the Chairman of the Bar Council of India and several other eminent personalities including some Judges of the Supreme Court and the Chief Justice of the High Court of Karnataka are the Members of the General Council. Sri. Udaya Holla points out that only the Law Minister of the Government of Karnataka, the Advocate General and the Education Minister of Government of Karnataka apart from Secretary to Government of Karnataka, Department of Higher Education are the only persons who represent the Karnataka Government and all others are drawn from different walks of life from all over the country, particularly from the legal field and therefore the State control over the National Law School is minimal. He, therefore, justifies the reservation for Scheduled Caste and Scheduled Tribe candidates across the country.

25. It is true, the nature and composition of the 2nd respondent - University amply demonstrates that it is a national level institute. The question is whether that by itself will absolve it from following the Presidential Order, 1950 in the matter of extending reservation to various Scheduled Castes and Scheduled Tribes. In other words, can it extend reservation to all eligible candidates belonging to Scheduled Castes and Scheduled Tribes throughout the country. It cannot be denied that the 2nd respondent - University is a creature of the State Law. The Karnataka Legislature has established this University as a national level institute. It is also not in dispute that there is no provision in the Act which requires the respondent-Universities to extend the benefit of reservation for the purpose of admission to the law course. However, it is admitted before this Court that the Governing Body of the University has accepted the reservation policy for Scheduled Castes and Scheduled Tribes and has extended it to all candidates throughout the country. This has been the practice right from the beginning. Only because the State law has established the 2nd respondent-University as a national level institute, it cannot be said that in the matter of extending benefit of reservation, the Presidential Order, 1950 and the provisions of Article 341 of

the Constitution can be ignored.

26. If an institution is declared as an institution of national importance by the Act of Parliament or if an institution falls within the four corners of the Items mentioned in Item Nos. 62, 63, 64 & 65 of List-I of Schedule-VII, then it will be the Parliament which has the right to make legislation in respect of the same and if the Parliament makes the legislation and provides for such a reservation applicable to all the Scheduled Castes/Scheduled Tribes throughout the country, then such an argument could be acceptable by drawing analogies applicable to the Central Institutions such as All India Institute of Medical Science, Military Academy at Dehradun and such other Central Bodies. In the instant case, the 2nd respondent-University is established by State law and it is not an Institution established by the Central law or founded by the Central Government. In that view of the matter, there can be no escape from the mandatory requirement as felt out in Articles 341 and 342 of the Constitution of India as held by the Apex Court in the two Constitution Bench judgments of Marri Chandra Shekhar Rao and Action Committee. Even if it is to be held that the State has in fact established the 2nd respondent-University as a national level institute, the reservation for Scheduled Caste and Scheduled Tribe candidates have to be as per the Presidential Order, 1950 as declared in relation to Karnataka State.

27. Learned Senior Counsel Sri. Udaya Holla has placed strong reliance on the judgment in Pushpa's case to contend that in the absence of any provision in the law requiring the 2nd respondent-University to confine status of Scheduled Castes and Scheduled Tribes only to the castes specified in the Presidential Order, 1950 that is to say to the candidates belonging to the State, there is no prohibition either under Article 15(4) or 16(4) to extend such reservations to the Scheduled Castes and Scheduled Tribes of different States.

28. In Pushpa's case, the question that arose for consideration was whether the selection and appointment made of migrant Scheduled Caste candidates of other States against the quota reserved for Scheduled Caste candidates in the post of Selection Grade Teachers in the Union Territory of Pondicherry was legal and valid? The Central Administrative Tribunal (Madras Bench) had held that such selection and appointment were illegal and invalid. As can be seen from paragraph 6 of the judgment in Pushpa's case, the main contentions urged by the counsel appearing for the appellants before the Apex Court were:

(1) That the decisions rendered in Marri Chandra Shekhar Rao's case relied upon by the Tribunal related to a case where the migrant was from one State to another State (from Andhra Pradesh to Maharashtra) and it can have no application to a case where the migration of a Scheduled Caste person is from a State to an adjoining or contiguous Union Territory.

(2) That the Government of India has, from time to time, issued Circulars and Government Orders clearly providing that migrant Scheduled Caste persons were eligible for appointment on posts reserved for Scheduled Caste persons in the

Union Territory of Pondicherry and in the absence of any statutory enactment or rules made in exercise of powers conferred under the proviso to Article 309 of the Constitution, these circulars or government orders are binding upon the Government of Pondicherry.

(3) That right from inception, the Union Territory of Pondicherry had been following a practice whereunder migrant Scheduled Caste persons were held eligible for appointment on reserved posts which was the consistent and uniform policy of the State and therefore it cannot be held to be illegal or contrary to any constitutional provisions.

In the background of these contentions, the Apex Court after referring to Articles 239 - 241 of the Constitution of India dealing with Union Territories, has held in paragraphs 14, 15, 16 & 17 of the judgment as under:

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

15. The Central Government has issued several orders and circulars extending the benefit of SC candidates of other States In the matter of employment in the UT of Pondicherry which need to be noticed. A DO letter was sent by the Joint Secretary, Government of India, Ministry of Home Affairs, to the Lt Governor of Pondicherry on 4-2-1974 and the same is being reproduced below:....

16. These documents show that the 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 recognised 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 recognised 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 UT of Pondicherry would also be eligible for posts reserved for SC/ST candidates in the Pondicherry Administration. Therefore, right from the Inception, this policy is being consistently followed by the Pondicherry Administration whereunder migrant SC/ST candidates are held to be eligible for reserved posts in the Pondicherry Administration.

17. We do not find anything inherently wrong or any Infraction of any constitutional provision in such a policy. The principle enunciated in Marri Chandra Shekhar Rao cannot have application here as UT of Pondicherry is not a State. As shown above, a Union Territory is administered by the President

through an Administrator appointed by him. In the context of Article 246, Union Territories are excluded from the ambit of the expression "State" occurring therein. This was clearly explained by a Constitution Bench in *T.M. Kanniyan v. ITO*. In *New Delhi Municipal Council v. State of Punjab* the majority has approved the ratio of *T.M. Kanniyan* 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.

29. In paragraph-21 of the judgment, the Apex Court referring to Articles 341(1) & 342(1) of the Constitution has observed that 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. However, without elaborating this aspect further with reference to the ratio laid down in the Constitution Bench judgments of *Marri Chandra Shekhar Rao* and *Action Committee*, the Apex Court confined its observation in the latter portion of paragraph-21 by holding as under:

if a State or Union Territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognised as such in relation to that State or Union Territory then such a provision would be perfectly valid. However, there would be no Infraction of Clause (4) of Article 16 if a Union Territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the Scheduled to the Presidential Order issued for such Union Territory. The UT of Pondicherry having adopted a policy of the Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.

30. It is thus clear that in *Pushpa's* case, the Bench consisting of three Hon"ble Judges of the Supreme Court while categorically holding that Article 341(1) and Article 342(1) of the Constitution cannot come in the way of Union Territories by virtue of its peculiar position being governed by the President as laid down in Article 239 from extending the benefit of reservation to migrant Scheduled Castes or Scheduled Tribes has not extended the said analogy to the States. There was no occasion for the Apex Court in the said judgment to examine the said position as the question arose was only with reference to the Union Territory of Pondicherry and not with reference to the State or States. Therefore, the contention of *Sri Udaya Holla*, learned Senior Counsel that in spite of law laid down in the cases of *Marri Chandra Shekar* and *Action Committee*, the Apex

Court in Pushpa's case has clarified the position by holding that if the State enacts a law extending reservation to all Scheduled Castes and Scheduled Tribes across the country, it is not affected by the provisions contained under Article 341(1) or Article 342(1), cannot be accepted. Such an argument was not canvassed in the said case as is clear from paragraph 6 of the judgment in Pushpa's case. Moreover, in the light of the two Constitution Bench judgments which are directly on the point, such a contention by construing and interpreting the judgment of the Apex Court in Pushpa's case cannot be accepted. Entire focus of discussion in Pushpa's case is with reference to Union Territory of Pondicherry and its right to extend the reservation to persons belonging to Scheduled Castes situated in other States contiguous to Pondicherry. The entire process of reasoning, as can be seen from the judgment is also based on the special factors and situations which are germane to a Union Territory governed by the President as distinguished from a State. Therefore, this decision cannot support the proposition canvassed by Sri Udaya Holla.

31. Sri Ravivarma Kumar, learned Senior Counsel has however made another strong effort to repel this argument of Sri Udaya Holla by placing reliance on the judgment in Subhash Chandra and Anr. v. Delhi Subordinate Services Selection Board and Ors. rendered in SLP (CIVIL) No. 24327/2005 disposed of on 04.08.2009. The Bench consisting of two learned Judges of the Apex Court in the said decision has considered the following questions as can be seen from paragraph-18:

(1) Having regard to the decisions of this Court in Marri Chandra Shekar Rao (supra) and Action Committee (supra), the specification of a particular Caste or Tribe to be a Scheduled Caste and Scheduled tribe being in relation to that State or Union Territory, whether a person on his migration to another State would carry the same status with him?

(2) Whether in view of the decisions of this Court in Action Committee (supra) even where the similar Caste bearing the same name having been declared to be the Scheduled Caste both in the State to which he originally belonged and the State and/or Union Territory to which he has migrated would make any difference in view of the provisions contained in Article 341 of the Constitution of India?

(3) Whether in view of the decisions of the Constitution Bench of this Court in Har Narain Daga Vs. Heeralal and Others, and E.V. Chinnaiah Vs. State of Andhra Pradesh and Others, extension of notification even to a migrant would amount to modification and/or alteration of the notification which is impermissible in law In view of Clause (2) of Article 341 and Clause (2) of Article 342 of the Constitution of India?

(4) Whether having regard to the provisions contained in Articles 239 and 239AA of the Constitution in relation to Union Territory It is permissible for the Central Government to direct recruitment to the Union Territory Services treating it to be akin to Central Civil Services in view of the decisions of this Court in Chandigarh

Administration (supra) and S. Pushpa (supra)?

(5) Whether the ratio laid down by this Court in Chandigarh Administration (supra) and S. Pushpa (supra) having not taken into consideration the binding precedents in Constitution Bench in M.C.D. Vs. Veena and Others, would constitute binding precedents?

32. In paragraph-36 of the judgment the Apex Court refers to the decision in Pushpa's case and also the decision in Chandigarh Administration and Another Vs. Surinder Kumar and Others, and raises a question as under:

Can it be said that Marri Chandra Shekar Rao does not apply to Union Territory?" and answers it saying The answer thereto, in our opinion, is a big emphatic "no".

33. In paragraph-38, the Apex Court further points out as under:

38. If the principle applied in S. Pushpa (supra) is to be given a logical extension, it will lead to an absurdity, that the Scheduled Castes Order in a State brought under the control of the President under Article 356 could be altered by virtue of a notification issued in pursuance of Article 16(4) of the Constitution. Clause (4) of Article 16 of the Constitution, as noticed hereinbefore, cannot be made applicable for the purpose of grant of benefit of reservation for Scheduled Castes or Scheduled Tribes in a State or Union Territory, who have migrated to another State or Union Territory and they are not the members of the Scheduled Castes and Scheduled Tribes.

By virtue of Article 341, the presidential orders made under Clause (1) thereof acquire an overriding status. But for Articles 341 and 342 of the Constitution, it would have been possible for both the Union and the States, to legislate upon, or frame policies, concerning the subject of reservation, vis-a-vis inclusion of Castes/Tribes. The presence of Articles 338, 338A, 341, 342 in the Constitution clearly preclude that.

34. The Apex Court has gone on to observe in paragraph-40 as under:

Both the Central Government and the State Government Indisputably may lay down a policy decision in regard to reservation having regard to Articles 15 and 16 of the Constitution of India but such a policy cannot violate other constitutional provisions. A policy cannot have primacy over the constitutional scheme.

If for the purposes of Articles 341 and 342 of the Constitution of India, State and the Union Territory are at par on the ground of administrative exigibility or in exercise of the administrative power, the constitutional interdict contained in Clause (2) of Article 341 or Clause (2) of Article 342 of the Constitution of India cannot be got rid of.

35. It further goes on to observe in paragraph-41 that "any direction or policy decision, thus, must satisfy the constitutional requirements laid down under Articles 341 and 342 of the Constitution of India. If any other construction is

made, a policy decision having regard to the decisions of this Court will have to be treated as a proviso appended to Clause (2) of Article 341 of the Constitution of India and would amount to deriding of the Constitution which is impermissible in law."

36. The Apex Court has further held in paragraph-44 that in Pushpa's case the decisions of the Constitution Benches of the Apex Court in Milind's case had not been taken into consideration. The Apex Court also referred to the decision in Chinnaiah's case which was decided later to Pushpa's case which the Court felt was binding on them. Reiterating the ratio laid down in Marri Chandra Shekhar Rao's case and Milind's case, the Apex Court has clearly held in the latest judgment that decision in Pushpa's case can be treated only as an obiter. In this regard, it is observed in paragraph-46 as under:

46. Should we consider Pushpa to be an obiter following the said decision is the question which arises herein.

We think we should. The decisions referred to hereinbefore clearly suggest that we are bound by a Constitution Bench decision. We have referred to two Constitution Bench decisions, namely Marri Chandra Shekhar Rao and E.V. Chinnaiah. Marri Chandra Shekhar Rao had been followed by this Court in a large number of decisions including Three Judge Bench decisions. Pushpa, therefore, could not have ignored either Marri Chandra Shekhar Rao or other decisions following the same only on the basis of an administrative circular issued or otherwise and more so when the Constitutional scheme as contained in Clause (1) of Articles 341 and 342 of the Constitution of India putting the State and Union Territory in the same bracket.

Following Dayanand (supra), therefore, we are of the opinion that the dicta in Pushpa is an obiter and does not lay down any binding ratio.

37. Sri Udaya Holla, learned Senior Counsel however placing certain authorities before this Court has contended that even if the observations made in Pushpa's case are to be considered as obiter as declared by the Apex Court, the obiter is also binding on this Court. As already stated above, the question that fell for consideration in Pushpa's case is the binding nature of the Central Government direction followed by the Union Territory of Pondicherry in extending the status of Scheduled Caste and Scheduled Tribe to candidates belonging to the States outside Pondicherry located contiguous to Pondicherry having regard to the peculiar status of the Union Territory. There was no occasion to lay down a similar proposition of law with regard to other States other than Union Territories in Pushpa's case. Therefore, even in the absence of the judgment in Subhash Chandra's case as contended by Sri Ravivarma Kumar, there is nothing in Pushpa's case which is contrary to the Two Constitution Bench judgments of the Apex Court in Marri Chandra Shekhar Rao and Action Committee insofar as the matter pertains to a State and not to a Union Territory.

38. It is well established that a judgment is a law for what it lays down and not

for what can be logically deduced from it. Therefore, without entering into the controversy as to what is the effect of the judgments in Subhash Chandra's case rendered by the Bench consisting of two Hon'ble Judges on the judgment rendered by the Bench consisting of three Hon'ble Judges in Pushpa's case and without there being any need to further go deep into this aspect, it has to be held that in the light of the judgments in Marri Chandra Shekhar Rao and Action Committee cases which apply in all force to the facts and circumstances of the present case, the 2nd respondent-University could not have extended reservation to the Scheduled Castes and Scheduled Tribes of other States ignoring the Presidential Order, 1950 declaring certain castes as Scheduled Castes and Scheduled Tribes in relation to State of Karnataka.

39. This will now take us to the last question as to what will be the effect of this order on the admissions already made. Respondents-5 to 17 have been admitted though they belonged to Scheduled Castes in other States and only after their admission, the present writ petition is filed. After filing the present writ petition, an application is filed seeking amendment of the writ petition challenging their selection and admission as well. Nearly two months have lapsed since the admission is made. As rightly contended by Sri Aditya Sondhi learned Counsel appearing for some of the students, the fact that admissions of these respondents were made pursuant to policies followed since long and that there was absolutely no misrepresentation on their part in this regard and further that they have been so selected based on their merit, cannot be ignored. Since 07.07.2009 these respondents have been prosecuting their studies. Even in Marri Chandra Shekhar Rao's case at paragraph-24 consideration of equity and justice have been taken note of and the admission of the students in the Medical College in Maharashtra was not disturbed. In these circumstances, I am not inclined to upset the admissions of these respondents. However, as the petitioner succeeds and as the daughter of the petitioner was entitled for being considered as against the seat reserved for the Scheduled Caste taking note of the Presidential Order, 1950 in relation to the State of Karnataka and as it is not the case of the 2nd respondent-University that even if Presidential Order, 1950 had been kept in mind the daughter of the petitioner would not have been admitted based on her merit, I am inclined to issue a direction to the 2nd respondent-University to admit the daughter of the petitioner for the current academic year on being satisfied about her eligibility even if this admission be excess by one candidate. If the 2nd respondent-University intends to adjust the admission by re-allotting the last of the admitted candidate belonging to Scheduled Caste to another University in any vacancy, it is open for it to do so. But, if the 2nd respondent-University choose to retain the said candidate also in the University, it is open for it to take recourse to the same. At this stage, it is necessary to observe that the petitioner has approached this Court before the admission was completed. In fact, the petitioner had sought for an interim order and this Court did not grant an interim order only because the 2nd respondent-University submitted before this Court at the time of preliminary hearing that admission process which was

otherwise open even on the said date was reportedly advanced and completed.

40. In the result, both the applications filed for amendment and impleading are allowed. Petitioner to file amended copy of Memorandum of Writ Petition forthwith. This Writ Petition is allowed in part.

(a) It is ordered that the 2nd respondent-National Law School of India University cannot extend the status of Scheduled Caste and Schedule Tribe to candidates hailing from other States or areas ignoring the Constitution (Presidential) Order, 1950 issued in relation to the State of Karnataka;

(b) Respondents 1 and 2 are directed to admit the daughter of the petitioner to the five year Law Course In the 2nd respondent-University on being satisfied of her eligibility in other respects;

(c) The admission of respondents-5 to 17 is not disturbed. However, the 2nd respondent-University is at liberty to adjust one excess seat by re-allotting the last of the candidates in the merit list of Schedule Caste candidates to any other Law University, if it is possible, by following a Just and fair procedure or to continue with one excess seat, due to the extraordinary situation:

(d) Parties shall bear their respective costs.