
(2008) 09 GAU CK 0060
In the Gauhati High Court

Mahendra Kamprai and Another

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983 — Rule 6
Constitution of India, 1950 — Article 15(4), 16, 16(3), 16(4), 16(5)
Representation of the People Act, 1950 — Section 16, 19, 2, 3, 4

Citation : (2009) 4 GLR 397 : (2008) 4 GLT 863

Hon'ble Judges : Jasti Chelameswar, C.J.;I.A. Ansari, J

Bench : Division Bench

Judgement

Jasti Chelameswar, C.J.—These two matters are taken up together as they raise certain common questions of law. Writ Appeal No. 182/06 arises out of a judgment of this Court, dated 19.5.2006 in WP.(C) No. 1926/06.

2. The facts leading to filing of the aboveMentioned writ petition are as follows:

Three petitioners challenged the admission of the respondent Nos. 4 and 5, in the writ petition, to the Post Graduate Courses, in the medical colleges of the State of Assam, treating the said respondents as members of Scheduled Tribe (Hills).

The case of the petitioners is that the 4th respondent, in the writ petition, belongs to a community known as Koch Rajbongshi, which though, at one point of time, was treated as a Scheduled Tribe by a Notification, dated 7.4.1998, the said community was derecognized to be a Scheduled Tribe. Coming to the 5th respondent, the case of the writ petitioners is that the 5th respondent is a Garo belonging to the State of Meghalaya and, therefore, ineligible for being admitted to the Post Graduate Courses in view of the stipulation in Rule 6(h) of the Rules Regulating Admission to the Postgraduate Courses in the Medical Colleges, which requires a candidate to be a permanent resident of the State of Assam.

3. On the other hand, the respondents filed their affidavit in opposition disputing the factual allegations made by the petitioners. According to the 4th respondent, the 4th respondent does not belong to the Koch Rajbongshi community as averred by the petitioners, but he belongs to a community called Khasi, which is recognized as a Scheduled Tribe of the hills districts of Assam under the Constitution (Scheduled Tribes) Order, 1950 (for the sake of convenience, hereinafter shall be referred to as "the Presidential Order").

It is further the case of the 4th respondent that his family has been residing in the Lakhimpur district of Assam for the last two generations.

Insofar as the 5th respondent is concerned, her case is that she belongs to a tribe called Garo Tribe of Meghalaya and she secured admission in the MBBS course against the North Eastern Council quota and, later on, got married to a permanent resident of Sibsagar district of the State of Assam and thereby became a permanent resident of the State of Assam.

Both the respondents claim the benefit of a Notification issued by the Govt. of Assam, dated 24.12.1982., the details of which will be given later in this judgment.

4. The writ petitioners filed a rejoinder to the counter affidavits filed by the respondent Nos. 4 and 5. Apart from reasserting the original factual allegations made against the respondent Nos. 4 and 5, the writ petitioners raised a further question regarding the constitutional validity of the notification, dated 24.12.1982, referred to above on the ground that such a notification would be inconsistent with the mandate of Article 342 of the Constitution of India.

5. It is recorded in the judgment under appeal that at the stage of the arguments, the writ petitioners abandoned the original plea and confined their submissions only to the constitutional validity of the notification of the State of Assam referred to above.

6. The President of India in exercise of the authority conferred under Article 341(1) of the Constitution of India made an Order called the Constitution (Scheduled Tribe) Order, 1950. Para 2 of the Order reads as follows:

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

In substance, para 2 says that various tribal communities or parts or groups within the tribes or tribal communities, specified in the various parts of the aboveMentioned order, are deemed to be Scheduled Tribes in relation to those States as specified in the Order. In Schedule to the said Presidential Order, Part II deals with the State of Assam and Part XI deals with the State of Meghalaya, which are. relevant for the purpose of these cases. Insofar as the State of Assam

is concerned, the Presidential Order recognises 15 tribes, in the autonomous districts of the State of Assam to be Scheduled Tribes. Similarly, in the areas of the State of Assam other than the autonomous districts, the Presidential Order recognises 14 Scheduled Tribes.

7. While the tribe known as Khasi is recognised as Scheduled Tribe belonging to the autonomous districts of Assam, the tribe called Garo is recognised as Scheduled Tribe in the State of Assam excluding the autonomous districts of Assam. It may be mentioned here that even with reference to the State of Meghalaya, both Garo and Khasi Tribes are recognised to be Scheduled Tribes.

8. In view of the finding recorded by the learned Judge by the judgment under appeal, the factual dispute regarding the question whether the 4th respondent belongs to either Koch Rajbongshi, as asserted by the writ petitioners, or a Khasi, as asserted by the 4th respondent, need not be gone into for the reason that the writ petitioners did not pursue that question, whereas the 4th respondent produced a certificate issued by the authorities of the State of Assam, wherein he was recognised as a person belonging to the Khasi tribe, which is, admittedly, a Scheduled Tribe in the autonomous districts of the State of Assam.

9. We therefore, proceed on the factual basis that the 4th respondent belongs to the tribe known as Khasi, which is recognised Scheduled Tribe in the autonomous districts of Assam, but the 4th respondent, on his own admission, is a resident of Lakhimpur district of Assam, which is not one of the autonomous districts. With regard to the 5th respondent, we proceed on the basis that she belongs to a tribe called Garo of Meghalaya, but by the time of the admission to Post Graduate Courses, she was married to someone, who is a permanent resident of Sibsagar district of the State of Assam.

10. But in view of the fact that they ceased to reside in the place of their origin and came to reside in the other parts of the State of Assam other than the autonomous districts, should they still be recognised to be persons belonging to the Scheduled Tribes is the question, which, ultimately, falls for consideration of this Court.

11. It is pertinent to mention here that the State of Assam issued the notification, dated 24.12.1982, the relevant portion of which reads as follows:

I am directed to say that under the Constitution two separate and mutually exclusive lists of Scheduled Tribes in the State have been prescribed, viz., for the autonomous (i.e., hills) district and for the plains districts depending upon their permanent residence. These "Scheduled Tribes" are entitled to all the electoral, economic, educational and employment benefits reserved for them by the State or Central Governments.

2. However, difficulties arise when these tribes have their permanent residence in plains or hills districts respectively, as the case may be, where they cannot be

constitutionally regarded as the "Scheduled Tribes" though they mutually continue to be tribes. While such tribes would not be "Scheduled Tribes" and as such not eligible to get "Scheduled Tribes" certificates or electoral reservations meant for "Scheduled Tribes". It is reiterated that it has been the policy of the State Government to give them all economic, educational and employment benefits like schedule tribes.

3. As some confusion has arisen about this matter in course of time, it is clarified and reiterated that all the State Government Departments, and offices, educational and other institutions, public sector undertakings, local authorities etc., etc. under their administrative control shall give such tribes all the economic educational and employment benefits available to the corresponding "Scheduled Tribes" as follows:

(1) Tribes included, in the "Scheduled Tribes" list for the hill districts but residing permanently in plains districts (hereinafter called hill tribes in plains) and those included in the "Scheduled Tribes" list for the plain districts, but residing permanently in the hill districts (hereinafter called "Plains tribes in hills") would be eligible for all economic educational and employment benefits announced by the State Government from time to time for "Scheduled Tribes" but not for electoral reservations.

(2) For the purpose of giving these economic, educational and employment benefits, "hill tribes in plains" will be considered against quotas, if any, reserved for scheduled tribes (Hills) while the "plains tribes in hills" will be considered against, quotas, if any, reserved for Scheduled Tribes (Plains)

(3) Tribes which are constitutionally "Scheduled Tribes" will continue to enjoy not only the economic, educational and employment benefits reserved for them, but also the electoral reservations meant for them.

(4) Tribes which are "Scheduled Tribes" under the Constitution on the basis of their permanent residence would continue to be eligible to get "Scheduled Tribes" certificates from the competent authorities [signed or countersigned by Deputy Commissioner/Sub Divisional Officers (Civil) as before]. Those tribes, which are not "Scheduled Tribes" but are "Hills Tribes in Plains" or "Plains Tribes in Hills" mentioned above, would be eligible to get separate certificates in the following form, from the authorities normally competent to issue "Scheduled Tribes" certificates (Signed or countersigned by Deputy Commissioners/Sub Divisional Officers (Civil) so that they could get the economic, educational and employment benefits under the State Government without any difficulty.

In substance, the said notification declares that a shift in the residence of a person belonging to the Scheduled Tribe, either in the autonomous districts of the State of Assam or in the other parts of the State of Assam, does not make any difference in law and persons so shifting their residence would still continue to be treated as members of the Scheduled Tribe to which they belong and, therefore, would be consequently entitled for all the benefits either economic,

education or employment, but not electoral provided by the State. The constitutional validity of the said notification is the subject-matter of dispute in the PIL No. 557 04. We have already noticed that the dispute in WA No. 182/06 is also confined to the constitutional validity of the aboveMentioned notification.

12. Giving the benefit of the notification, the State of Assam treated the respondent Nos. 4 and 5 in WP(C) No. 1926/06 to be persons belonging to the Scheduled Tribes of Khasi and Garo respectively, notwithstanding the fact that they do not reside in the areas, where the said tribes are recognised as Scheduled Tribes.

13. We may mention at the outset that both the aboveMentioned respondent Nos. 4 and 5 in WP(C) No. 1926/06 have since completed their Post Graduate Courses in medicine. This fact assumes importance, while considering the relief that is to be given in the writ appeal coupled with the fact that there is no culpability on their part, as they only claimed the benefit given by the notification, dated 24.12.1982, which the State of Assam was too willing to give and still maintains that the said notification is a constitutionally permissible exercise of the authority of the State. By the judgment under appeal, the learned Judge declined to go into the legality of the aboveMentioned notification for various reasons in the background of the aboveMentioned facts.

14. However, having regard to the larger constitutional issue involved in the case, all the Learned Counsel appearing in these matters on either side, more particularly the learned Advocate General representing the State, submitted that the legality of the aboveMentioned notification be decided to give a quietus to the dispute such as the one raised in the present case inasmuch as such disputes are bound to crop up from time to time. We, therefore, proceed to examine the said issue.

15. The only submission made by the Learned Counsel for the appellants appearing in WA No. 182/06 and also the Learned Counsel for the petitioners appearing in PIL No. 55/04 is that the notification, dated 24.12.1982, is violative of Article 342 as the said notification has the effect of amending the Presidential Order issued under Article 342 called the Constitution (Scheduled Tribe) Order, 1950 which is plainly prohibited by Clause (2) of Article 342.

16. Articles 341 and 342 contemplate the specification of Scheduled Castes and Scheduled Tribes respectively "in relation to a State or Union Territory". The identification made by the President of any Scheduled Caste and Scheduled Tribe under Articles 341 and 342 respectively can be varied or interfered with only by the Parliament, but cannot be otherwise varied even by the President by a subsequent notification. Clauses 2 of both Articles 341(2) and 342(2) expressly stipulate so.

17. The expressions "Scheduled Tribe" and "Scheduled Caste" occur in various Articles of the Constitution. In Article 366, Clauses (24)³ and (25)⁴ of the Constitution of India define "Scheduled Castes" and "Scheduled Tribes"

respectively. Both the Articles authorize the President of India to specify, by a notification, castes, races, etc., which shall be deemed to be Scheduled Castes and the tribes or tribal communities or parts of or groups within the groups of tribal communities, which shall be deemed to be Scheduled Tribes. Such specification by the President of India, either in the case of Scheduled Castes or Scheduled Tribes, is for the purposes of the Constitution. In other words, in all the cases, where the Constitution either mandates or authorises to make some special provisions for the benefit of the Scheduled Castes and Scheduled Tribes, such benefit should be given only to those communities, which are specified by the President to be Scheduled Castes or Scheduled Tribes, as the case may be.

18. A constitution Bench of the Supreme Court, in *Bhaiyalal Vs. Harikishan Singh and Others*, examined the scope of the power of the President under Article 341 and the limitations in exercise of such power either by the President or other bodies including the judicial bodies.

19. The scope of the power of the President vis-a-vis Article 342, while specifying the Scheduled Tribes, in our view, is identical, having regard to the scheme of both the Articles 341 and 342 as the language of the said articles is almost identical.

20. Another constitution Bench of the Supreme Court in a case reported in (2001) 1 SCC 46 held as follows:

22. ..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 authorized 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 could 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. 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 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 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 any one 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 a part 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 the Parliament that is competent to amend the Orders issued under Articles 341 and 342. As

can be seen from the Entries in the Schedules pertaining to each State whenever one caste/tribe has another name it is soMentioned in the brackets after it in the Schedules. In this view it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste/tribe is a Schedule Caste/Scheduled Tribe for the purpose or Constitution, even, though it is not specificallyMentioned as such in the Presidential Orders. Orders once issued under Clause (1) of the said Articles, cannot be varied by subsequent order or notification even by the President except by law made by Parliament. Hence it is not possible to say that State Governments or any other authority or courts or tribunals are vested with any power to modify or vary said Orders. If that be so, no enquiry is permissible and no evidence can be let in for establishing that a particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included in the Orders. Since any exercise or attempt to amend the Presidential Order except as provided in Clause (2) of Articles 341 and 342 would be futile, holding any enquiry or letting in any evidence in that regard is neither permissible nor useful.

21. Article 330 mandates that seats shall be reserved in the House of People in favour of (a) Scheduled Castes, (b) Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam and (c) Scheduled Tribes in autonomous districts of Assam. Similarly, Article 332 mandates that seats shall be reserved for the Scheduled Castes and Scheduled Tribes in the Legislative Assembly of every State. Scheduled Tribes in the State of Assam are dealt with specifically under both the aboveMentioned Articles, the details of which shall be considered at the appropriate stage. Similarly, Articles 15(4) and 16(4) of the Constitution of India make provisions enabling the States to make special provisions, inter alia, for Scheduled Castes and Scheduled Tribes.

22. As a matter of constitutional history, we know that ever since the advent of the Constitution, apart from compulsorily providing for reservation of seats in favour of Scheduled Castes and Scheduled Tribes in the various representative bodies like the Parliament, the respective State Legislatures and also institutions of local self-governance, provisions are made for giving special treatment to Scheduled Castes and Scheduled Tribes in the matter of educational and employment opportunities apart from devising various economic and social welfare schemes to benefit the persons belonging to either Scheduled Castes or Scheduled Tribes. While the provisions for reservation of seats in the House of People, the respective Legislative Assemblies of the States and the local bodies, such as, Panchayats, under Part-IX of the Constitution or Municipalities under Part-IX(A) of the Constitution, are mandatory in character, the other benefits, such as, reservation in employment and educational opportunities, etc., are optional and dependant upon the policy of the State from time-to-time.

23. Articles 330 and 332 mandate that seats shall be reserved in the House of the People as well as the respective State Legislatures in favour of Scheduled Castes and Scheduled Tribes respectively. These two Articles lay down, in

substance, the principles to determine the number of seats to be reserved either in favour of Scheduled Castes or Scheduled Tribes with reference to each of the aboveMentioned bodies. The identification of the individual seats, which are required to be reserved in favour of either of the aboveMentioned two categories, is not done by the Constitution. By virtue of Entry 727 of List-I of the Seventh Schedule of the Constitution, Parliament is the competent law making body to make any law dealing with the election to the Parliament or the Legislatures of the States. Whereas by virtue of Entry 378 of List-II of the Seventh Schedule, the State Legislature is also competent to make law with respect to the elections to the Legislature of that State. However, the competence of the State Legislature to make such law is expressly made subject to the provisions of the law, which may be made by the Parliament.

24. The Parliament made the Representation of the People Act, 1950. Section 7 read with the Second Schedule declare the total number of seats with respect to the Legislative Assemblies of each State. Section 3 of the said Act read with the First Schedule specifies the number of seats in respect of each of the States to be reserved in favour of either Scheduled Castes or Scheduled Tribes in the House of People (Lok Sabha). As to which particular seat in a particular State is to be reserved either in favour of Scheduled Castes or Scheduled Tribes vis-a-vis the Legislative Assembly of the State or Lok Sabha is a matter to be determined by the Delimitation Commission under the appropriate Delimitation Act, the details of which may not be necessary for us. But such exercise is undertaken from time to time and seats are specified in each State, which are reserved in favour of either a Scheduled Caste or a Scheduled Tribe. The Constitution does not prescribe that a seat reserved either in favour of a Scheduled Caste or a Scheduled Tribe, either in the House of People (Lok Sabha) or the Legislative Assembly of a State, shall not be filled up by electing a Scheduled Caste or a Scheduled Tribe candidate, as the case may be, unless such a candidate belongs to Scheduled Caste or Scheduled Tribe, as the case may be, in relation to that State. On the other hand, the Representation of the People Act, 1951, deals with this aspect of the matter. u/s 49 of the said Act, with reference to filling up of a seat in the House of People, it is stipulated that a person shall not be qualified to be chosen to fill a seat in the House of People reserved for Scheduled Castes, in any State, unless such a person is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency". A similar provision is made with reference to Scheduled Tribes in Section 4(b). However, an exception is created with reference to the seats reserved in the autonomous districts of Assam. Sub-section (c) of Section 4 deals with filling up of the reserved seats in the autonomous districts of Assam. Thus, it can be seen, in the context of election to a reserved seat in the House of People, that residence/registration, as an elector in the constituency, which is reserved, is not essential. It is also not essential that a candidate should belong to Scheduled Caste or Scheduled Tribe recognised as such in the context of that particular State under the Presidential Order of

1950 nor is such a person required to be residing in the reserved constituency from which he seeks to contest the election.

25. Section 510 of the Representation of the People Act, 1951, provides for the filling up of the seats in the Legislative Assembly of a State. It is stipulated u/s 5 that for filling up of a seat in the Legislative Assembly reserved either for Scheduled Castes or Scheduled Tribes, the person must belong to either Scheduled Caste or Scheduled Tribe, as the case may be, recognised to be a Scheduled Caste or Scheduled Tribe, as the case may be, vis-a-vis that particular State, but such a person need not be an elector of that particular locality, which is specified in the Presidential order, while recognizing the Scheduled Castes and Scheduled Tribes of that particular State.

26. Coming to the question as to who is an elector within the meaning of the said expression occurring in Sections 4 and 5 of the Representation of the People Act, 1951, we notice that Section 2(e) of the Representation of the People Act, 1951, defines the said expression as follows:

"elector" in relation to a constituency means a person whose name is entered, in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950.

Under Section 1911 of the Representation of the People Act, 1951, a person is entitled to be registered as an elector in the electoral roll prepared for a constituency "if he is ordinarily resident in a constituency"

Therefore, it follows that the Representation of People Act permits persons to contest the election to fill up a seat reserved either in favour of a Scheduled Caste or a Scheduled Tribe without insisting upon the residence of such a person in the particular constituency, which he seeks to represent. More particularly, in the context of the Lok Sabha, a person, belonging to either a Scheduled Caste or Scheduled Tribe, is not denied the benefit of the status as a Scheduled Caste or Scheduled Tribe, as the case may be, by reason of his seeking to contest a reserved seat in a State other than the one with respect to which such a person is recognized as a person belonging to Scheduled Caste or Scheduled Tribe.

27. Apart from providing reservations in favour of Scheduled Castes and Scheduled Tribes in the Lok Sabha and the various Legislative Assemblies, the Constitution also authorises the making of any special provision in favour of the Scheduled Castes and Scheduled Tribes as a matter of either educational or employment opportunity. Such a special provision may be, and usually have been, in the form of providing reservation of a certain percentage of the available opportunities in favour of either Scheduled Castes or Scheduled Tribes, as the case may be. Apart from such reservation of the opportunities, provisions were also made from time to time stipulating less rigorous selection criteria in choosing the candidates, who seek to avail such opportunities.

28. Just as the Constitution is silent regarding the exact number of seats, which are required to be reserved both in the Lok Sabha and the various Legislative Assemblies and also the identification of the number of seats, which are to be reserved either in favour of Scheduled Castes or Scheduled Tribes, the Constitution is also silent about the percentage of opportunities in the field of education as well as employment. The Union ,of India and the various States from time-to-time may make laws in this regard.

29. The question whether such opportunities provided by a particular State can be availed of by a person, who does not belong to that State, when such a person belongs to a Scheduled Caste or Scheduled Tribe, as the case may be, with respect to some other State in the Union of India, fell for the consideration of the various High Courts and the Supreme Court from time to time.

30. A Constitution Bench of the Supreme Court, in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, considered the question, namely, "whether one who is recognized as a Scheduled Tribe of a State of his origin continues to avail the benefits and privilege of the State of migration or where he later goes". The factual background of the case is that the petitioner's father, originally, belonged to Andhra Pradesh, but, by virtue of his appointment in a Government of India undertaking, came to be stationed at Bombay. The petitioner's father was employed against a reserved vacancy meant for the Scheduled Tribes on the basis of his claim that he belonged to a Scheduled Tribe in the State of his origin, that is, Andhra Pradesh. The petitioner was educated in the State of Maharashtra from the age of 9 and, eventually, sought admission to the MBBS course in the State of Maharashtra and he claimed the benefit of being a Scheduled Tribe. Admittedly, there were 14 seats reserved for the Scheduled Tribes in the medical colleges to which the petitioner sought admission. But the petitioner was denied the admission on the ground that he could not claim the benefit of the fact that in the State of his origin, he belonged to a Scheduled Tribe.

While dealing with the question posed above, the Supreme Court commenced the judgment by taking note of a circular issued by the Government of India, dated 22.4.1985. The relevant portion of the judgment reads as follows:

3. There is a circular dated 22nd February, 1985 Issued by the Government of India, Minister of Home Affairs which, inter alia, states:

It is also clarified, that a Scheduled. Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of seeking education, employment etc. will be deemed to be a Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the. State to which he has migrated.

This understanding of the scheme of the Constitution appears to be plainly inconsistent with the understanding of the Parliament on the . issue, at least, insofar it pertains to the question in the context of electoral benefits that are

mandatory under Articles 330 and 332 of the Constitution of India as manifested by the provisions of the Representation of the People Act, which is already examined earlier in this judgment.

Though the decision of the Supreme Court does not indicate that the Supreme Court drew any support from the circular of the Government of India, referred to above, the Supreme Court also reached the same conclusion as was indicated by the circular of the Government of India.

In our view, the circular only indicates the understanding of the Executive of the Government of India regarding the Constitutional scheme, in question, before the Supreme Court. It is neither conclusive on the issue nor binding either on the Supreme Court or on us. Therefore, the Supreme Court framed the legal issue, at para 7, of the judgment, as follows:

7. ...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.

While examining the issue, the Supreme Court took note of the various judgments of the High Courts on the issue at para 12 of the judgment. While the High Courts of Orissa, Bombay, Punjab & Haryana came to the conclusion, which was similar to the understanding of the Govt. of India, the High Courts of Gujarat and Karnataka took the opposite view. The Supreme Court, eventually, answered the legal issue framed, thus:

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 scheme of reservation.

Further, the Supreme Court held :

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 342 read with Article 15(4) of the Constitution.

31. Another Constitution Bench of the Supreme Court, in {1994} 5 SCC 24413 dealt with somewhat similar question. There is slight factual difference between Marri Chandra Shekhar Rao's case and the present case. While in Marri Chandra Shekhar Rao's case, the community to which the petitioner claimed to belong, in the State of origin, is known as "Goudu" but in the State of Maharashtra, no Scheduled Tribe by the same nomenclature is recognized under the Presidential Order, 1950; whereas in the decision 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, it appears that both in the

State of origin as well as the State of migration of the petitioner, the tribe to which petitioner claimed to have belonged was recognized as Scheduled Tribe by the Presidential Order, 1950. Though the exact factual details are not available from the judgment, it is obvious, in view of the question framed by the Supreme Court, that the question, which was raised, was as under:

Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same homenculture is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B ? - is the neat question raised in this petition....

The Supreme Court answered the question in the negative, relying on Marri Chandra Shekhar Rao's case, but also added at para 16 thus:

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 maybe 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 latte State "for the purpose 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.

32. The Supreme Court in Chandigarh Administration and Another Vs. Surinder Kumar and Others, considered the same issue in the following factual background. The Union Territory of Chandigarh initiated the recruitment process for filling up of the posts of Assistant Sub Inspectors. Two posts were reserved in favour of Scheduled Caste candidates and four posts in favour of the Other Backward Classes (OBC). Some of the applicants belonged to one of the aboveMentioned two categories in the respective States of their origin, that is, Punjab, Haryana and Himachal Pradesh, but the Chandigarh administration declined to consider them as such and denied the benefit of reservation.

The administration of Chandigarh was relying on certain instructions issued by

the Government of India to the Chandigarh administration, the first of which is, dated 22.2.1985, that is, the same circular, which was noted in Morri Chondro Shekhar Rao's case, which took the view that a person belonging to Scheduled Caste or Scheduled Tribe, as the case may be, in his State of origin, cannot claim the benefit of such status in a State to which he has migrated. It appears from the judgment that the Home Secretary, Chandigarh administration by letter, dated 28.7.1986, sought clarification whether the instructions given by the Union of India in the circular, dated 22.2.1985, apply to the Union Territory of Chandigarh also. In response to this query, the Government of India, in the Ministry of Welfare, by a letter, dated 26.8.1986, informed the Home Secretary, Chandigarh administration, as follows:

...to say that in respect of employment under the Central Government there is no discrimination between the Scheduled Castes and the Scheduled Tribes of one State or another. In respect of employment under the Union Territories also, legally, the position would be the same. Thus, in the case under reference, a recognized Scheduled Caste/Scheduled Tribe of any other State/Union Territory would be entitled to the benefits and facilities provided for Scheduled Castes and Scheduled Tribes in the services under the Union Territory of Chandigarh.

Again, on 7.9.1999, the Home Secretary, Chandigarh administration, wrote a letter to the Inspector General of Police of Union Territory of Chandigarh instructing, in substance, the Inspector General to follow the instructions of the Government of India in its circular, dated 22.2.1985. The Home Secretary of the Chandigarh administration completely ignored the later instructions of the Union of India in letter dated 26.8.1986.

In the above background, the Supreme Court confirmed the decision of the Central Administration, which had held that the candidates, who held certificates as persons belonging to either Scheduled Castes or OBCs, as the case may be, in the respective States, were entitled for the benefit of reservation in view of the later instructions of the Government of India evidenced by its clarificatory letter, dated 26.8.1986, the relevant portion of which is already noticed earlier. The Supreme Court reached the said conclusion on the limited ground that the administration of Chandigarh cannot over look the instructions of the Government of India, more particularly, when such instructions were being followed all along. In para 14 of the judgment, the Supreme Court held as follows:

14. ...it is to be noted that the Home Secretary, Chandigarh Administration cannot overlook the instructions contained in the Government of India letter dated 26.8.1986 specially when those instructions were being, admittedly all along followed by the Chandigarh Administration. The stand of the appellant regarding discontinuing the benefit of reservation to persons belonging to reserved categories in other States in the Chandigarh Administration w.e.f. 7.9.1999 thus appears to be wholly untenable.

We must also mention here that the Supreme Court also referred to the two earlier Constitution Bench decisions, referred to in this judgment.

33. The question whether a person belonging to a Scheduled Caste or Scheduled Tribe, with reference to the State of his origin, can claim the benefit of such a status in a different State to which he migrates depends purely on the interpretation of the relevant provisions of the Constitution, but not on the instructions of the Government of India, which reflect only the Executive's understanding of the Constitutional scheme, which kept on changing from time-to-time.

34. In *S. Pushpa and Others Vs. Sivachanmugavelu and Others*, the same issue fell for the consideration of the Supreme Court. The facts of the case are as follows:

The Union Territory of Pondicherry appointed certain persons as teachers against the quota reserved for Scheduled Castes, who, admittedly, belonged to different States like Tamil Nadu, Andhra Pradesh and Kerala and were, admittedly, members of the Scheduled Castes recognized as such with reference to their State of origin by the Presidential Order, 1950. Such appointments were challenged before the Central Administrative Tribunal (Madras Bench). The Tribunal, relying upon the two Constitution Bench judgments of the Supreme Court, in *Marri Chandra Shekhar Rao and Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra*, held that the challenged appointments were not sustainable. The unsuccessful respondents before the Tribunal approached the Supreme Court. The appeals were allowed by the Supreme Court holding, in substance, that the migrant candidates belonging to a Scheduled Caste, in the respective States of their origin, are entitled to seek the benefit of reservation in favour of the Scheduled Castes in the Union Territory of Pondicherry. In coming to the conclusion, the Supreme Court took note of Articles 239, 239A and 239B of the Constitution and recorded a finding, at para 12 of the judgment, as follows:

These provisions again show that the position of a Union Territory is different from that of a State and the head of administration of a Union Territory is the President or India.

The Supreme Court also took note of certain provisions of the Pondicherry Administration Act, 1962, and recorded a finding, at para 14, as follows:

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

Interestingly, the Supreme Court also noticed a DO letter, dated 4.2.1974,

addressed by the Joint Secretary to the Government of India, Ministry of Home Affairs, addressed to the Lt. Governor of Pondicherry. The relevant portion of the said letter was extracted by the Supreme Court, which reads as follows:

So far as reservations for SC/ST candidates in posts/services under the Central Government are concerned, the concession is admissible to all SCs and STs which have been recognized as such under the orders issued from time-to-time irrespective of the State/Union Territory in relation to which particular castes or tribes have been recognized as SCs/Tribes. Thus for a reserved vacancy in a Central Government office located in a State, any SC candidate throughout the country would be eligible. Since Pondicherry is a Union Territory all orders regarding reservations for Scheduled Castes/Tribes issued by the Department of Personnel in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration. Also as such an SC/Tribe candidate from outside Pondicherry should also be eligible for a vacancy reserved for SCs/STs in the Union Territory Administration.

Another letter, in the Ministry of Welfare, Government of India dated 6.10.1995, was also taken note of by the Supreme Court, whereupon the Supreme Court recorded its conclusion as follows:

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 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 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 thereunder migrant SC/ST candidates are held to be eligible for reserved posts in the Pondicherry Administration.

The Supreme Court further held at para 17 that:

The principle enunciated in Marri Chandra Shekhar Rao cannot have application here as UT of Pondicherry is not a State.

It is, no doubt, true that in Marri Chandra Shekhar Rao (supra), the Supreme Court considered the case of migration from one State to another State, but whether that factor alone makes any difference in deciding the question in the context of a migration to a Union Territory in view of the fact that both Articles 341 and 342 deal with the identification of Scheduled Castes and Scheduled Tribes respectively not only with reference to the States but also with reference

to the Union Territories.

Apart from that dealing with the question the scope of the power under Article 16(4) of the Constitution which enables the States to make special provisions (reservation in the immediate context) the court held at para 21

Article 16(4) is not controlled, by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes which are Mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory. This article does not say that only such Scheduled. Castes and Scheduled Tribes which are Mentioned in the Presidential Order issued for a particular State alone would be recognized as backward classes of citizens and none else. If a State or Union Territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are 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 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.

35. Constitutionally, the State of Assam stands on slightly different footing in many aspects. The difference insofar it relates to the Scheduled Tribes of Assam is required to be noticed.

The expression "Scheduled Areas" is defined under Para 616 of the Fifth Schedule of the Constitution to mean such area as the President may by order declare. It also authorises the President of India to alter the boundaries of such Scheduled Areas and also to rescind any earlier order. While the Fifth Schedule deals with the Scheduled Areas in the States other than the States of Assam, Meghalaya, Tripura and Mizoram, Sixth Schedule of the Constitution makes provisions with regard to the administration of "tribal areas" in the States of Assam, Meghalaya, Tripura and Mizoram. Para 1(1)17 of the Sixth Schedule read with para 20 deals with the tribal areas of the State of Assam. Insofar as the State of Assam is concerned, the "North Cachar Hills District" and the Karbi Anglong District" are constitutionally specified to be tribal areas in the State of Assam and the above Mentioned two tribal areas are declared to be autonomous districts by Para 1 of the Sixth Schedule. Other paragraphs of the Sixth Schedule deal with various aspects of the administration of such autonomous districts. Para 1(2) recognizes the possibility of persons belonging to more than one

Scheduled Tribe inhabiting in an autonomous district and in such case, under para 1(2), the Governor is authorised to divide the areas inhabited by such separate tribes into separate autonomous regions. Para 1(3) also authorises the Governor to alter the boundaries of the autonomous districts either by increasing or diminishing areas of such districts and also to create new autonomous districts. Obviously, the Constitution makers knew, as a matter of a historical fact, that these areas, described as autonomous districts under the Sixth schedule, have always been inhabited, predominantly, by tribes, which, eventually, came to be recognized as Scheduled Tribes under the Constitution. Therefore, these areas were described by Para 1 as tribal areas. The Constitution makers were also aware of the fact that all the autonomous districts, declared by the Constitution under the Sixth Schedule, can and do have more than one Scheduled Tribes inhabiting in those areas and, therefore, made provision for creation of autonomous regions within the autonomous districts.

It may be mentioned here that while para 4 of the Fifth Schedule recognizes the possibility of States having Scheduled Tribes without there being a scheduled area declared by the President, the Sixth Schedule recognizes certain areas of the State of Assam as "Tribal Areas". The only inference that can be drawn from a comparison of the scheme of the Fifth and the Sixth Schedules is that the existence and domination of the tribes in certain parts of the State of Assam, at it existed on the date of the advent of the Constitution, is so prominent a fact that the Constitution makers chose to declare those areas as tribal areas. With reference to the rest of the country, the identification of scheduled areas were left to the President. Another distinguishing feature is that while the Sixth Schedule contains elaborate provisions regarding the administration of the tribal areas/autonomous districts of Assam with regard to the scheduled areas, the Constitution, in respect of the other parts of the country, leaves it to the Governors of the concerned States to make appropriate regulations for the "peace and good governance" of such scheduled areas. All the above, in our view, demonstrate that the tribes of the State of Assam required a greater attention in the view of the Constitution makers than the tribes in other parts of the country. The only logical inference that we are able to draw from the said facts is that the Constitution makers believed that the tribes of Assam are relatively more backward compared to the tribals in other parts of the country.

36. Apart from the tribes, which inhabit the tribal areas/autonomous districts of Assam, the Presidential Order, 1950, also recognizes the existence of other Scheduled Tribes in the State of Assam.

37. Articles 330 and 332¹⁸ mandate making of reservation both in the Lok Sabha and the respective Legislative Assemblies of the States. Both these Articles deal with the Scheduled Tribes in the autonomous districts of Assam and mandate that those tribes shall be given reservation both in the Lok Sabha and the Legislative Assembly of the State of Assam. Thus, Articles 330 and 332 make specific provisions for such representation. Obviously, the idea is to ensure

representation of the Scheduled Tribes in the autonomous districts of Assam. In the absence of such a special protection, such Scheduled Tribes in the autonomous districts of Assam, perhaps, in the belief of the Constitution makers, would not secure representation either in the Lok Sabha or in the Legislative Assembly of the State of Assam. These very special provisions lead us to a conclusion that the Scheduled Tribes, belonging to the autonomous districts of Assam, are the most backward even among the Scheduled Tribes of the country.

38. It is only in recognition of this reality that the Representation of the People Act, 1951, u/s 4(c), mandates that in the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, a person, seeking to fill up such a seat, must be a member of any of those Scheduled Tribes, while in the case of other seats, reserved for the Scheduled Tribes in other States, the stipulation is that a person, seeking to fill up such a seat, is a member of "any of the Scheduled Tribes". Similarly, a provision is made u/s 5(b) vis-a-vis a seat reserved in the autonomous districts in the State of Assam in the Legislative Assembly of the State of Assam. Both the above-mentioned provisions stipulate that a person seeking to fill up such a seat, either for the Parliament or the Assembly, as the case may be, shall also be an elector of that constituency. Such a stipulation necessarily implies that the person seeking to fill up such a seat should not only belong to one of the Scheduled Tribes inhabiting in the autonomous districts of Assam, but must also be a resident of that particular constituency, which he seeks to represent. In other words, a migrant Scheduled/Tribe person cannot be permitted to get elected either to the Lok Sabha or the State Assembly from the autonomous districts of Assam.

39. The State of Assam made an enactment known as The Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978. The scheme of the Act is that u/s 420 of the Act, in the matter of appointment to services and posts in any establishment, which is a defined expression u/s 2(b), ten per cent of the vacancies are reserved for the candidates belonging to Scheduled Tribes (Plains) and five per cent for Scheduled Tribes (Hills). Similarly, u/s 521 such a reservation is provided in the case of filling up of vacancies by promotion in any establishment.

40. We must make it clear that this enactment deals only with the employment opportunities in the State and deals with the reservation to be provided in such opportunities. Therefore, it is a special provision contemplated under Article 16(4). It does not deal with educational opportunities. We may also point out that the expression "Scheduled Tribes (Plains)" and "Scheduled Tribes (Hills)" are not defined under the said Act. While the Presidential Order issued under Article 342 of the Constitution, recognizes the Scheduled Tribes of Assam, as found in Entry II, under two distinct groups, namely, (1) "Scheduled Tribes in the autonomous districts of the State of Assam" and (2) "Scheduled Tribes in the State of Assam excluding the autonomous districts", the Presidential Order does not recognize Scheduled Tribes (Plains) and Scheduled Tribes (Hills). However,

this aspect of the matter need not deter us, though in an appropriate case, it is required to be decided as to what is the meaning to be given to the aboveMentioned two expressions occurring in the aboveMentioned enactment.

41. We had to refer to the aboveMentioned enactment of the State of Assam only because the Learned Counsel for the petitioners in the PIL and the Learned Counsel for the appellants in the Writ Appeal referred to those provisions in support of their submissions. In our view, their reliance on the provisions of the aboveMentioned enactment, in the context of the controversy before us, is wholly irrelevant as the Legislature of Assam, in the aboveMentioned enactment, dealt only with the employment opportunities in the State of Assam and not educational opportunities.

42. Reservation, in favour of Scheduled Tribes, in the State of Assam, in educational opportunities, is not governed by any statutory provision. At any rate, no provision is brought to our notice. The State is providing such opportunities, by Executive Orders from time to time. As we have already noticed in the context of both educational and employment opportunities the Constitution is absolutely silent with regard to the number as well as percentage of the opportunities to be provided by the State. It is left to the policy choice of each of the States and the Government of India, as the case may be. The creation of such reservation by Executive Instructions is held to be a legitimate exercise of the State's power in terms of Article 15(4) and 16(4) of the Constitution of India by a larger Bench of the Supreme Court in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, The notification, in question, is also one such exercise of the executive powers.

The notification does not purport to add or delete or vary the Presidential Order issued under Article 342, that is, the Constitution (Scheduled Tribe) Order, 1950. All that the notification says is that if a person belongs to a Scheduled Tribe, which is recognized as such in the autonomous districts of the State of Assam or in the other parts of the State of Assam excluding the autonomous districts, such a person will be entitled to claim the benefit of the reservation in the context of both employment and educational and other opportunities, notwithstanding the fact that such a person is not actually residing in the autonomous districts of the State of Assam or the other parts of the State of Assam, as the case may be, depending upon the Scheduled Tribes specified in the context of the State of Assam to which such a person belongs.

The Learned Counsel for the petitioners argued that the impugned notification has the effect of permitting the migrant members of the Scheduled Tribes, from the place in relation to which they were recognized as Scheduled Tribes, still claim the benefit of reservation and, therefore, contrary to the scheme of Article 342, which is identical with the scheme of Article 341 in the context of Scheduled Castes migrating from one State to another.

Two Constitutional Benches of the Supreme Court in *Marri Chandra Sekhar Rao v.*

Dean, Seth GS Medical College and Ors. and Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India and Anr., clearly held that the migrant members of the Scheduled Castes cannot claim the benefit of reservation in the State of their migration, though they belong to a Scheduled Caste in the State of their origin. The Learned Counsel, therefore, submitted that the impugned notification is, in the teeth of the principle laid down in the aboveMentioned two Constitutional Bench judgments, bad in law and, hence, not sustainable.

Mr. A.K. Phookan, learned Advocate General, Assam, appearing for the State, and Mr. D.K. Mishra, Learned Senior Counsel, appearing for the respondents, whose admissions are challenged by the writ petitioners, submitted that - in neither of the aboveMentioned cases, the issue was whether the State is debarred from extending the benefit of reservation in favour of a person, who migrates to a State from another, where such a person, admittedly, belongs to a Scheduled Caste in relation to that State (the State of origin) under the Presidential Order, 1950. The Learned Counsel further submitted that the only issue that fell for the consideration is that whether a person belonging to a Scheduled Caste, in the State of his origin but migrating to another State, can compel the State to which he migrates to extend the benefit of reservation provided by such a State.

We accept the above submission made by the learned Advocate General and Mr. D.K. Mishra, Learned Senior Counsel, in its entirety. The issue before the Constitution Benches of the Supreme Court, in both the above referred cases, is precisely the same as the one identified by the Learned Counsel. The ratio decidendi of the above two decisions, in our humble view, is that a candidate, belonging to Scheduled Caste in the State of his origin, cannot compel the State to which he migrates to extend the benefit of reservation, either under Article 15(4) or 16(4), if such a State does not wish to extend the benefit.

Mr. Mishra, the Learned Senior Counsel, on the other hand, submitted that the question whether the State is prohibited from extending such a benefit of reservation in favour of a candidate belonging to Scheduled Castes or Scheduled Tribes in relation to the State of such candidates" origin but not in relation to the State, where such benefit is sought, was expressly considered by the Supreme Court in S. Pushpa and Ors. v. Sivachanmugauelu and Ors. and held at para 21 of the judgment that the Union Territory of Pondicherry would be within the permissible limits of the Constitutional authority in extending such benefits.

Mr. Mishra further argued that though the Supreme Court held at para 21:

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 notMentioned in the Schedule to the Presidential Order issued for such Union Territory. The UT of Pondicherry

having adopted a policy of the Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are "reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.

logically the same principle would also apply not only to the Union Territories, but also the States in the Union of India.

Mr. Mishra further submitted that in view of the decision of the Supreme Court in *S. Pushpa and Ors. v. Sivachanmugavelu and Ors.*, if migration from a State to Union Territories makes no difference in the status of a Scheduled Caste or Scheduled Tribe if the State chooses to confer the benefit of reservation to candidates belonging to Scheduled Castes or Scheduled Tribes in the State of his origin, logically it should not make any difference in the case of an intra State migration by a candidate belonging to a Scheduled Caste or Scheduled Tribe.

Coming to the case of the 5th respondent, Mr. Mishra argued that she belongs to a tribe known as Garo and, admittedly, hails from the State of Meghalaya, but by virtue of her marriage, she migrated to the State of Assam and even with reference to the State of Assam under the Presidential Order, 1950, Garo is recognized as a Scheduled Tribe in the autonomous districts of the State of Assam. Mr. Mishra submitted that the present States of Meghalaya and Assam were parts of the original State of Assam as it existed on the date of the issue of the Presidential Order, 1950 and came to be constituted as two separate States by means of Assam Reorganisation (Meghalaya) Act, 1969, and consequentially, the Presidential Order, dealing with the Scheduled Tribes, also came to be amended by creating a separate list of Scheduled Tribes for the State of Meghalaya and, therefore, to deny the benefits on the basis that there is an inter State migration in her case, when the State of Assam is willing to confer the benefits, would defeat the very purpose of creating reservation in favour of Scheduled Tribes purely on the basis of a political accident, which brought about the existence of two new States in the context.

We accept the submissions of Mr. Mishra in toto.

43. The Writ Appeal and the PIL are, therefore, dismissed.

1 341. 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.

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

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

3 (24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purpose of this Constitution.

4 (25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.

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

6 State of Maharashtra v. Milind and Ors.

7 Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.

8 Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

9 4. Qualifications for membership of the" House of the People. A person shall not be qualified to be chosen to fill a seat in the House of the People 7* * *, unless:

(a) in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;

(b). in the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of that State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;

(c) in the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district;

(cc) in the case of the seat reserved for the Scheduled Tribes in the Union territory of Lakshadweep, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of that Union territory;

(ccc) in the case of the seat allotted to the State of Sikkim, he is an elector for the " Parliamentary constituency for Sikkim;

(d) in the case of any other seat, he is an elector for any Parliamentary constituency

10 5. Qualifications for membership of a Legislative Assembly. -A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless:

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

(b) in the case of a seat reserved for an autonomous district of Assam, 1* * * he is a member of a 2 [Scheduled Tribe of any autonomous district] and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and

(c) in the case of any other seat, he is an elector for any Assembly constituency in that State: 3 [Provided that for the period referred to in Clause (2) of Article

371A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that article.]

11 19. Conditions of registration. - Subject to the foregoing provisions of this Part, every person who:

(a) is not less than eighteen years of age on the qualifying date, and

(b) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency.

12 Mum Chandra Shekhar Rao v. Dean, Seth GS Medical College and Ors.

13 Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India and Anr.

14 Chandigarh Administration and Anr. v. Surinder Kumar and Ors.

15 S. Pushpa and Ors. v. Sivachanmugavelu and Ors.

16 5. Law applicable to Scheduled Areas. - (1)

(2) The Governor may make regulations for the peace of and good government of any area in a State which is for the time being a Scheduled Area.

17 1. Autonomous district and autonomous regions. - (1) Subject to the provisions of this paragraph, the tribal areas in each item of [Parts I, II and IIA and in Part III] of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

18 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People. -. (1) Seats shall be reserved in the House of the People for:

(a)

(b)

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2)

(3) Notwithstanding anything contained in Clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted" to that State a proportion not less than the . population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.

332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States. - (1)

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

19 5. Qualifications for membership of a Legislative Assembly - A person shall not be qualified to be chose to fill a seat in the Legislative Assembly of a State unless:

(b) in the case of a seat reserved for an autonomous district of Assam, he is a member of a Scheduled Tribe of any autonomous district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district.

20 Section 4. - At the commencement of this Act, all appointments to services and posts in the establishment which are to be filled up by direct recruitment shall be regulated in the following manner, namely:

(a) subject to the other provisions of this Act, seven percent of the vacancies shall be reserved for the candidates belonging to Scheduled Castes and ten percent for Scheduled Tribes (Plains) and five percent for Scheduled Tribes (Hills), in the manner, set out in the Schedule:

Provided that the State Government may from time-to-time review the implementation of the reservation policy and take adequate measures including increase of percentage,Mentioned in clause 4(a) of this Act.

Provided further that the candidates belonging to Scheduled Castes and Scheduled Tribes who qualify for selection on merit shall be included in the general list and not against reserved quota.

Provided also that in respect of the Assam Judicial Service, the percentage shall be seven for Scheduled Castes and ten for Scheduled Tribes (Plaints) and five for Scheduled Tribes (Hills) in Grade II and III of the service.

(b) Fees, if any, prescribed for any examination for selection to any service or post shall be reduced to half in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes.

(c) The members of the Scheduled Castes and the Scheduled Tribes shall be entitled to a concession of three years over the prescribed maximum age limit for appointment to any service or post.

21 Reservation for members of Scheduled Castes and Scheduled Tribes in vacancies to be filled up by promotion in any establishment shall be regulated in the following manner, namely:

(a) There shall be reservation at seven percent for members of the Scheduled Castes and ten per cent for the members of the Scheduled Tribes (Plains) and five per cent for the members of the Scheduled Tribes (Hills):

Provided that the State Government may from time-to-time review the implementation of the reservation policy and take adequate measures including increase of percentage,Mentioned in clause 5(a) of this Act.

(b) a separate twenty point roster in the form given in the Schedule shall be

maintained by every establishment.

22 Indra Sawhney, etc. v. Union of India and Ors. etc.

[Speaking for the majority, Justice BP Jeevan Reddy held in this regard as follows : "Even textually speaking, the contention cannot be accepted. The very use of the word "provision" in Article 16(4) is significant. Whereas Clauses (3) and (5) of Article 16 - and Clauses (2) to (6) of Article 19 - use the word "Law", Article 16(4) uses the word "provision". Regulation of service conditions by orders and Rules made by the Executive was a well known feature at the time of the framing of the Constitution. Probably for this reason, a deliberate departure has been made in the case of Clause (4) Accordingly, we hold, agreeing with Balaji, that the "provision" contemplated by Article 16(4) can also be made by the executive wing of the Union or of the State, as the case may be, as has been done in the present case.]