
(2003) 06 BOM CK 0125
In the Bombay High Court
Case No : Writ Petition No. 959 of 2002

Mana Adim Jamat Mandal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-06-2003

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (2003) 4 ALLMR 270 : (2004) 2 BomCR 295 : (2003) 3 MhLj 513

Hon'ble Judges : R.K. Batta, J;A.P. Shah, J

Bench : Division Bench

Advocate : R.S. Parsodkar, V.S. Dhobe and P.A. Abhyankar, for the Appellant;
Deshpande, AGP, for the Respondent

Final Decision : Allowed

Judgement

A.P. Shah, J.—The principal question that arises in this writ petition is whether the members of the "Mana" community especially in Vidarbha region falls under Entry 18 of the Scheduled Castes and Scheduled Tribes Orders, (Amendment) Act, 1976 and are entitled to be treated as members of the Scheduled Tribe. The petition seeks to quash Government Resolution No. C.B.C. 1584/309/Ka. 11 dated 24-4-1985 and Government Resolution No. 1083/1600/52/Ka.10 dated 19-6-1985 directing not to treat the members of the Mana community as belonging to Scheduled Tribe unless they establish relationship and/or affinity with Gond tribe. The petition also seeks to quash Government Resolution No. C.B.C. 1094/Praka-068/MaVa-16 dated 15-6-1995 declaring amongst others Mana community as Special Backward Class. The petition prays for direction to the State Government to instruct Sub-Divisional Officers/Magistrates in all regions within the State and Caste Scrutiny Committees to issue caste Certificates/ Caste Validity Certificates to the people belonging to Mana Community who are eligible for such certificates.

2. The petitioner Mana Adim Jamat Mandal is a society registered under the Societies Registration Act and Bombay Public Trusts Act. The petitioner society is

established with the aim and object of serving for betterment of Mana community in the State of Maharashtra. The petitioner has averred that Manas are a community distinct and different from Gonds and that amongst Gonds there is no sub-tribe known as Mana. The petitioner asserts that there is ample evidence to indicate that there is a community called "Mana" in Chanda and adjoining districts who are not Gonds or have any connection with Gonds. According to the petitioner there is only one caste or community called "Mana" and there are no two communities like "Gond Mana" and "Kshatriya/Maratha Mana" as erroneously assumed by the State authorities. The petitioner has referred to Gazetteers and the Settlement Reports during the British Regime in support of its claim that Mana is a distinct and separate tribe. The Maharashtra State Gazetteers Chandrapur District (1st Edition) 1909 and 2nd Edition (Revised), 1973 says that Manas form the second great division of the aboriginal tribes, including Manas, Gowarees and Kaulees, all of whom have become Hindooise. The tradition asserts that previous to the Gond conquest the Manas reigned over the country having their strongholds at Surajgarah in Adhere and at Manikgarah in the Manikgarah hills now of Hyderabad and that after a troubled rule of two hundred years, they fell before the Gonds. Thakur Dev on the summit of Suriyagad is still their tutelary deity. They, seem, however, to have lost this tradition among themselves and only remember that once they were soldiers and the sword is one of the objects of worship. The true origin of the caste has not been discovered but they are supposed to be an off shoot of the Gonds who have greatly raised their status by becoming cultivators and adopting the whole of the Hindu pantheon. They are skilful farmers. They both burn and bury their dead, but corpse must be laid on the pyre or in the grave with its feet to the north.

3. Russell's "Castes and Tribes of Central Provinces", Vol. IV at pp. 172-176 wherein a detailed description of the Mana community is given. Under the heading "Mana" it is stated :

A Dravidian caste of cultivators and labourers belonging to the Chanda District, from which they have numbered nearly 50,000 persons, of whom 34,000 belonged to Chanda. The origin of the caste is obscure. In the Chanda Settlement Report of 1869 Major Lucie Smith wrote of them; "Tradition asserts that prior to the Gond conquest the Manas reigned over the country, having their strongholds at Surajgarah in Ahiri and at Manikgarah in the ` hills now of Hyderabad, and that after a troubled rule of two hundred years they fell before the Gonds. In appearance they are of the Gond type, and are strongly and stoutly made; while in character they are hardy, industries and truthful. Many warlike traditions still linger among them, and doubtless in days gone by they did their duty as good soldiers, but, they have long since hung up sword and shield and now rank among the best cultivators of rice in Chanda". Another local tradition states that a line of Mana princes rules at Kairagarah..... Some of the Manas say that they, as well as the Gowaris, are offshoots of the Gond tribe; and a local saying to the effect that "The Gond, the Gowari and the Mana cast boiled jury or beans on leaf-plates shows that they are associated together in the

popular mind... The Gonds have a sub-division called Mannewar, and as war is only a Telugu suffix for the plural, the proper name Manne closely resembles Mana... And the most plausible hypotheses "as to the past history of the Manas is that they were also the rulers of some tracts of Chanda, and were displaced like the Prajas by a Gond invasion from the south..... Owing to their general adoption of Maratha customs, the Manas are now commonly regarded as a caste and not a forest tribe, and this view may be accepted. They have two sub-castes the Badwaik, Manas or soldiers, and the Khad Manas, who live in the plains and are considered to be of impure descent.

A third group of Manas are now amalgamated with the Kunbis as a regular sub-division of that caste, though they are regarded as somewhat lower than the others. They have also a number of exogamous sects of the usual titular and totalistic types, and a few recognizable names being Marathi..... The social customs of the Manas are the same as those of the other lower Maratha castes, as described in the articles on Kunbi, Kohli and Mahar... The Manas have Bhats or gynecologists of their own caste, a separate one being appointed for each sect".

4. Reliance is placed upon the classification made in the Settlement Report of the Chanda District for the year 1869 Ch III dealing with aboriginal tribes. This includes Gonds as Class I, Manas as Class II and so on. Reliance is also made to the report of the Backward Class Commission (Kalelkar Commission) where the population of Mana community in 1950 was stated to be more than 19,000. Pursuant to the recommendation of Kalelkar Commission Mana tribe was recognised in 1956 in the then State of Madhya Pradesh as Scheduled Tribe. The petitioner has also referred to the Survey Report prepared under the Integrated Tribal Development Project in the year 1980. In this report it is categorically stated that Mana community is found in Chimur area and it is a Scheduled Tribe community. The petitioner contends that right from 1964 Manas have been making representations for giving them a separate serial number in the Scheduled Tribes List. In Entry 18 there are various tribes and castes mentioned and along with other communities Mana is also mentioned after Gond and due to this authorities have formed totally erroneous opinion that only Gond Mana is a Scheduled Tribe. In this connection reference is made to letter dated 5-2-1981 issued by the office of the Director of Census Operation to the Collector of Chandrapur District whereby it has been clarified that the view of the Collectorate that only Gond Mana shall be treated as Scheduled Tribe is not correct and Mana is independent Scheduled Tribe at Srl No. 18 in the list of Scheduled Tribes. The petitioner contends that in spite of this clear position the State of Maharashtra has been issuing contradictory Government Resolutions. As a result the members of the Mana community are not getting caste certificates and even if they obtain caste certificate, they are unable to obtain caste validity certificate from the Scrutiny committees.

5. In Government Resolution dated 24-4-1985 certain guidelines have been issued to the competent authorities for issuing caste certificates to persons

belonging to Scheduled Tribes. Annexure to the said Government Resolution mentions that Mana is a sub-tribe of Gond and persons belonging to Gond Mana community call themselves as Gond. Their language, culture, traits, surnames, deities are similar like Gond and language of Gond Mana is Gond. The annexure further mentions that there is independent community known as Mana. But this Mana community has no connection with Gond Mana which is a sub-tribe of Gond. By further Government Resolution of 19-6-1985 directions have been issued that members of Mana community which has affinity or relation to Gond tribe are alone entitled to and eligible for grant of caste certificate of Scheduled Tribe. By Government Resolution dated 15-6-1995 the State of Maharashtra has declared Mana community as Special Backward Class. The petitioner contends that when Manas are included in Entry 18 of Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 all the persons belonging to Mana community are liable to be treated as belonging to Scheduled Tribe.

6. The President issued the Constitution (Scheduled Tribes) Order, 1950, in exercise of the powers conferred by Clause (1) of Article 342 of the Constitution. By Clause 2 of that Order it was provided that the tribes or tribal communities, or parts of, or groups, within tribes or tribal communities, specified in Parts I to XII of the Schedule to the 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 resident in the localities specified in relation to them respectively in those Parts of that Schedule. The Order is followed by a Schedule constituting of twelve Parts. Part VII-A of the Schedule as amended by Act II of 1960 relating to Maharashtra by item 5 specified that in (1) Melghat tehsil of Amravati district (2) Gadchiroli and Sironcha tehsils of the Chanda district (3) Kalapur, Wani and Yeotmal tehsils of the Yeotmal district, 32 tribes or tribal communities shall be deemed Scheduled Tribes. Entry 12 as originally set out in the Order promulgated by the President of India read : "Gond [including Madia, ("Maria" and Mudia (Muria))". By the Scheduled Castes and Scheduled Tribes (Amendment) Act, 63 of 1956, Entry 12 was substituted by :

"12. Gond, including

Arakh or Arrakh, Agaria, Asur, Badi, Maria or Bade Maria, Bhatola, Bhimma, Bhuta, Koliabhuta or Koilabhuti, Bhar, Bisonborn Maria, Chota Maria, Dandami Maria, Dhuru or Dhurwa, Dhoba, Dhulia, Dorla Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Kirwar or Khirwara, Kucha Maria, Kuchaki Maria, Madia (Maria), Mana, Mannower, Mohya or Mogia or Monghya, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thantia or Thotya, Wade Maria or Vade Maria."

7. Thereafter Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 was passed by the Parliament. By the above Act entire Schedule to the Order as it stood prior to the amendment was substituted by a new Schedule consisting of XVI Parts. Part IX of the new Schedule relates to the State of Maharashtra. Entry 18 of Part IX of the Schedule to the Order after amendment

reads thus :

"18. Gond, Rajgond, Arakh or Arrakh, Agaria, Asur, Badi, Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koliabhuta, Koliabhuti, Bhar, bisonborn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhullia, Dorla Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghnya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia Thotya, Wade Maria or Vade Maria."

8. Articles 341 and 342 of the Constitution deal with Scheduled Castes and Scheduled Tribes respectively and contain almost identical provisions. We may extract Article 342 dealing with Scheduled Tribes.

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

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

9. Clause (1) provides that the President may with respect to any State, after consultation with the Governor thereof, by public notification, specify the tribes or parts of or groups within tribes or tribal communities which shall for the purposes of the Constitution be deemed to be Scheduled Tribes in relation to that State. The object of this provision obviously is to avoid all disputes as to whether a particular tribe is a Scheduled Tribe or not and only those tribes can be Scheduled Tribes which are notified in the Order made by the President under Article 342 after consultation with the Governor where it relates to such tribes in a State. Clause (2) then provides that 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 communities. The power was thus given to Parliament to modify the notification made by the President under Clause (1). Further Clause (2) goes on to provide that a notification issued under Clause (1) shall not be varied by any subsequent notification, thus making the modification final for all times except for notification by law as provided by Clause (2). Clearly therefore Article 342 provides for a notification and for its finality except when altered by Parliament by law. The argument on behalf of the petitioner is based on the provisions of Article 342 and it is urged that a notification once made is final and cannot even be revised by the President and can only be modified by inclusion or exclusion by

law by Parliament. Therefore, in view of this stringent provision of the Constitution with respect to notification issued under Clause (1) it is not open for any one to exclude any tribe mentioned in the notification on the basis of evidence - oral or documentary if the tribe in question finds specific mention in the notification. It is therefore, urged that the State Government was wrong in holding on the basis of so called evidence that only certain section of Mana community is intended to be included in Entry 18. According to the petitioner in view of the clear provisions contained in Article 342 all the members of Mana community are liable to be treated as belonging to Scheduled Tribe. The impugned Government Resolutions treating only Gond Manas as Scheduled Tribe under Entry 18 are therefore unconstitutional and Entry 18 should be read as it is and benefit should be given to the members of the Mana community.

10. Before adverting to the arguments of the petitioner it is necessary to refer to the decisions of the Supreme Court laying down the parameters of the enquiry to be conducted in this regard by the court. The Constitution Bench in the case of B. Basavalingappa Vs. D. Munichinnappa, examined the provisions of Article 341 which contained similar provisions for the scheduled castes with reference to an election dispute and held as follows :

"It may be accepted that it is not open to make any modification in the order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and therefore, must be deemed to be included in caste A. It may also be accepted that whenever one caste has another name it has been mentioned in brackets after it in the Order.... Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B.. is part of clause A notified in the Order."

11. The factual dispute raised in the case before the Constitution Bench was whether Voddar caste was included in Bhovi caste which was one of the notified castes. The Constitution Bench dealt with the evidence and ultimately held thus:

"In the circumstances therefore we agree with the High Court that respondent 1 though Voddar by caste belongs to the Scheduled Caste of Bhovi mentioned in the Order. We may again repeat that we have referred to the evidence in this case only because there was undoubtedly no caste known as Bhovi in the Mysore State as it was before 1956 and we had to find out therefore which caste was meant by the word "Bhovi" as used in the Order. But for this fact it would not have been open to any party to give evidence to the effect that. caste A mentioned in the Order includes or was the same as caste B where caste A does exist in the area to which the Order applies".

12. A similar dispute again came before a Constitution Bench of the Supreme Court in Bhaiyalal Vs. Harikishan Singh and Others, with reference to a scheduled tribe in an election dispute. Gajendragadkar C. J. speaking for the court said :

"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 tribes 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 a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice it would obviously be expedient not only to specify parts or groups of castes, races or tribes but to make the said specification by reference to different areas in the State".

13. What we have extracted above clearly supports the view in B Basavalingappa's case namely that the list is intended to be final.

14. The above decisions of the Constitution Bench were followed in Parsram and Another Vs. Shivchand and Others, and Kishorilal Hans Vs. Raja Ram Singh and Others, . In Parsram's case the Scheduled Castes Order was in issue in an election dispute and the question for consideration was whether Mochi was included in the notified castes of Chamar. The court referred to both the Constitution Bench judgments and observed as follows ;

"These judgments are binding on us and we do not therefore think that it would be of any use to look into the gazetteers and the glossaries on the Punjab castes and tribes to which reference was made at the bar to find out whether mochi and chamar in some parts of the State at least meant the same caste although there might be some difference in the professions followed by their members, the main difference being that chamars skin dead animals which mochis do not. However, that may be, the question not being open to agitation by evidence and being one the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person was in fact a mochi, he could still claim to belong to the scheduled caste of chamar and be allowed to contest an election on that basis".

In Kishorilal Hans the Court rejected the argument that Jatav caste which was not mentioned in Scheduled Castes of Datia district of Madhya Pradesh in the Order was included in Chamar caste.

15. In two cases namely Dina v. Narayan Singh, 38 ELR 212 and Bhaiya Ram Munda Vs. Anirudh Patar and Others, the Division Bench of the Supreme Court took contrary view that evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to be while stating that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. Of these two cases first case i.e. Dina v. Narayan Singh is of some importance as

it deals specifically with Mana community. In Dina's case, the appellant had contested election from the constituency reserved for Scheduled Tribe. The High Court set aside the election in an election petition on the ground that appellant Dina was not eligible to stand as a candidate from reserved constituency. The case of the election petitioner was that the appellant is Mana and not Gond (Mana) and that the Kshatriya Badwaik Mana community to which the appellant belonged is a sub caste of Maratha or Kunbis who are not Gonds and on that account the appellant was not qualified to stand for election from reserved constituency. The appellant denied that he was a Kshatriya Badwaik Mana and claimed that he belonged to the Mana community which was one of the aboriginal races in the Chanda district and was included in the list of Scheduled Tribes in the Constitution (Scheduled Tribes) Order. He asserted that there was only one caste or community called Mana in Chanda district and there were not two communities, Gond Mana and Kshatriya Mana as alleged by the election petitioner. It appears that the appellant claimed while filing his nomination paper that he was Gond (Mana) though at the trial he denied that he was Gond Mana and that he belonged to sub tribe called Mana of the Gond tribe and asserted that he belonged to the Mana community and that the Mana community was included in the list of Scheduled Tribes under the Constitution (Scheduled Tribes) Order. The court held that when the Parliament included the Mana community under Entry 12 it would be reasonable to infer that Mana community which is a sub tribe of the Gond or has some affinity with it, is intended to be referred. The form in which the entry is made prima facie indicates that in the view of the Legislature, Mana was a sub tribe of Gond and a Mana who was a member of the sub tribe of Gond alone was entitled to the privileges conferred by the Schedule to the Constitution (Scheduled Tribes) Order. In that view of the matter the court confirmed the finding of the High Court that the appellant merely because he belonged to the Mana community amongst the Marathas is not eligible to stand as a candidate for election to the Maharashtra Legislative Assembly from the reserved seat for Scheduled Tribe.

16. Entry 12 was thereafter substituted with Entry 18 which is reproduced above. The effect of omission of word "including" from Entry 12 came up for consideration before the Supreme Court in Dadaji alias Dina Vs. Sukhdeobabu and Others, . The appellant before the Supreme Court was Dina whose election was set aside in the earlier case i.e. Dina v. Narayan Singh. The only argument that was advanced before the Supreme Court was that by reason of amendment made in the year 1976 persons belonging to Mana community to which the appellant belonged and which was not Scheduled Tribe before such amendment can be considered as persons belonging to Scheduled Tribe after such amendment. On that basis it was urged that persons belonging to any Mana community should be treated as persons belonging to Scheduled Tribes even though it had no affinity to Gond tribe. Their Lordships while rejecting this argument held that Mana community included in Entry 18 can only be that which has affinity with Gonds and any other community which also bears the name

Mana but does not have any such affinity cannot be deemed to fall within the scope of Mana in Entry 18. In the first Dina case as well as second Dina case the Court allowed the evidence let in - oral and documentary - and concluded on the basis of such evidence that under Entry 18 Gond Mana alone are liable to be treated as members of the Scheduled Tribe.

17. In Bhaiya Ram Munda's case the tribe specified in the Scheduled Tribes Order was Munda. The respondent was a Patar but he maintained that it was included in the notified tribe Munda. The Bench was of the view that evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to mean though evidence could not be accepted for modifying the Order by including a new tribe. Since the respondent's case was that the Patars were Mundas, evidence could be given to show that the entry Munda included Patar.

18. Both Dina v. Narayan Singh and Bhaiya Ram Munda v. Anirudh Patar were overruled by the Supreme Court in a recent Constitution Bench decision in State of Maharashtra v. Milind and Ors., 2001(1) Mh.LJ. 1. Before we advert to the decision in Milind's case we may refer to a three Judge Bench judgment in Srish Kumar Choudhury Vs. State of Tripura and others, . Referring to the two Constitution Bench decisions referred to above and division bench decisions in Dina v. Narayan Singh and Bhaiya Ram Munda v. Anirudh Patar the court has held :

"The two Constitution Bench judgments indicate that enquiry is contemplated before the Presidential Order is made but any amendment to the Presidential Order can only be by legislation. We do not think we should assume jurisdiction and enter into an enquiry to determine whether the three terms indicated in the Presidential Order include Deshi Tripura which covers the Laskar community, but we consider it appropriate to comment to the authorities concerned that as and when the question is reviewed it should be examined whether the claim of the appellant representing the Laskar community to be included in the scheduled tribe is genuine and should, therefore be entertained."

19. In Nityanand Sharma and another Vs. State of Bihar and others, , a similar view was expressed by a two Judge Bench that it is for the Parliament to amend the law and the Schedule and include in and exclude from the Schedule, a tribe or tribal community or part of or group within any tribe or tribal community for the State, District or region and its declaration is conclusive. The Court has no power to declare synonyms as equivalent to the tribes specified in the Order or include in or substitute any caste/tribe etc.

20. In State of Maharashtra v. Milind (supra) the Constitution Bench reaffirmed the legal position that was enunciated in B Basavalingappa and Bhayalal and observed thus :

"The courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe

is included in any one of the Entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in Clause (2) of the said Article, it is expressly stated that said orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with the Parliament and that too by making a law in that regard. The President had the benefit of consulting States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said orders are to be amended, it is the Parliament that is in a better position to know having means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or tribunals to hold enquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage or reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not expressly included".

The Court further observed in para 26 as under:

"Being in respectful agreement, we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no enquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the concerned Entry in the Presidential Order when it is not so expressly or specifically included. Hence we answer the question No. 1 in negative".

21. In Milind's case the court held that circulars/resolutions/instructions issued by the State Government from time to time, some time contrary to the instructions issued by the Central Government, are of no consequence. They could be simply ignored as the State Government had neither authority nor competency to amend or alter the Scheduled Tribes Order. The court summarized the legal position in para 34 as under :

"In the light of what is stated above, the following propositions emerge :--

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Governments or Courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, and *Dina v. Narayan Singh*, 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (I) above no enquiry at all is permissible and no evidence can be let in, in the matter".

22. It is clear from the plain reading of the aforesaid propositions that the Supreme Court was of the view that *Dina's* case 38 ELR 212 was not decided correctly to the extent it held that enquiry was permissible and evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to be. In fact the court, has clearly observed that no enquiry at all is permissible and no evidence can be let in, in the matter. In our view the Supreme Court decision in second *Dina's* case i.e. *Dadaji @ Dina v. Sukhdeo baba and Ors.* which considered the effect of omission of the word "including", also cannot be taken to be good law after the decision of the Constitution Bench in *State of Maharashtra v. Milind*, though the said decision is not expressly overruled. The Constitution Bench overruled the first *Dina* case i.e. *Dina v. Narayan Singh* with reference to Entry 12 of the Scheduled Tribes Order though the court did not specifically refer to second *Dina's* case. It is needless to say that same stood impliedly overruled as the law declared by the Constitution Bench in *Milind's* case was contrary to what was stated in second *Dina's* case.

23. At this stage we should refer to a decision of the Supreme Court in *Palghat*

Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, . The issue in that case was almost similar to the issue involved in this case. In that case the question involved was relating to implementation of the Scheduled Castes Order issued under Article 341 of the Constitution. The question was whether any inquiry can be held or evidence can be led to determine whether or not a particular community falls within the particular scheduled caste or outside it. The court held that the Scheduled Caste Order has to be applied as it stands and no inquiry can be held or evidence let into determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Caste Order, except as contemplated by Article 341 was valid. The Court further observed that it was not for the State Government or even for the court to inquire into the correctness of what was stated in the report that had been made thereon or to utilize the report in effect to modify the Scheduled Caste Order. It was open to the State Government, if it so thought fit, to forward the report to the appropriate authority to consider whether the Scheduled Caste Order needed amendment by appropriate legislation. Until the Scheduled Caste Order was amended, it must be obeyed as it read and the State Government, therefore, must treat "Thandans" throughout Kerala as members of the Scheduled Castes and issue community certificates accordingly, The Supreme Court considered its earlier judgments in (1) B Basavalingappa v. D Munichinnappa, (2) Bhaiyalal v. Harikishan Singh, and (3) Srish Kumar Choudhury v. State of Tripura. Having considered these decisions the Court came to the conclusion that the entries in the Presidential Order have to be taken as final and the scope of inquiry and admissibility of evidence was confined with the limitations indicated. It was further held that it is not open to the court to make any addition or subtraction in the Presidential Order. In the result, the court directed the State Government to grant to all the members of the Thandan community, including those belonging to the Malabar District and the present Palghat District the benefits due to the Scheduled Castes included in the Schedule to the Constitution Scheduled Castes Order, as amended upto date and to issue to them community certificates accordingly. The decision in Palghat's case which was delivered by a three Judge Bench was cited with approval by the Constitution Bench in State of Maharashtra v. Milind.

24. In our opinion what has been stated by Scheduled Castes Order issued under Article 341 of the Constitution must apply to the Scheduled Tribes Order issued under Article 342 of the Constitution. Plain reading of Entry 18 would show that Mana community is included in Scheduled Tribes and it is not permissible for the State Government or the Courts to deny the benefits available to the Scheduled Tribe community to the members belonging to the Mana community. In the light of the clear dictum of the Supreme Court in Palghat Thandan's case the State Government has no jurisdiction to issue the impugned Government Resolutions of 1985 and Government Resolution of 1995 declaring Mana community as Special Backward Class. The modification of Scheduled Tribe Order can only be

made by the Parliament under the provisions of Article 342. In any event even if it is assumed that there was a separate community which is called as Mana in Vidharbha region which has no affinity with Gond tribe that community would also fall within the scope of Scheduled Tribes Order by virtue of the Amendment Act, 1976 and the State Government was not entitled to issue orders or circulars or resolutions contrary thereto. Since under Entry 18 Manas are specifically included in the list of Scheduled Tribes in relation to the State of Maharashtra, Manas throughout the State must be deemed to be Scheduled tribe by reason of provisions of the Scheduled Tribes Order. Once Manas throughout the State are entitled to be treated as a Scheduled Tribe by reason of the Scheduled Tribes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in various Government Resolutions. The Mana community in the instant case having been listed in the Scheduled Tribes Order as it now stands, it is not open to the State Government or, indeed to this court to embark upon an enquiry to determine whether a section of Manas was excluded from the benefit of the Scheduled Tribes Order.

25. We may also refer to the decision of the division bench of this court in Pandurang Rangnath Chavan Vs. The State of Maharashtra and others, . In that case by virtue of Act 108 of 1976 as enacted by Parliament a person who is either a Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar has been declared to belong to a Scheduled Tribe within the meaning of Article 342 of the Constitution. The State Government however, declared Thakar community as OBC vide Government Resolution dated 8-7-1982. This Government Resolution was struck down by the division bench. Following observations of the bench are pertinent:

"....In our view, therefore in the light of the clear dictum of the Apex Court in Palghat Jilla Thandan"s case the State Government has no jurisdiction to issue the impugned G. R. dated 8th July 1982 declaring that Thakar should be added as an OBC at entry 200 in GR dated 13-10-1967.

Similar view has been taken by the Apex Court in later decision to which our attention has been invited by Pankaj Kumar Saha Vs. Sub-Divisional Officer, Islampur and Others, , question arose whether the court has power to include in or exclude from or substitute or declare synonyms to be Scheduled Caste or Scheduled Tribe. In para 6 of the judgment at page 266 of the Report the Apex Court observed as under :

"6. It is now settled law that though evidence may be admissible to the limited extent of finding out whether a caste which claims the status as Scheduled Caste or Tribe was in fact included in the Presidential notification as amended under the 1976 Act, the court is devoid of power to include in or exclude from or substitute or declare synonyms to be a Scheduled Caste or Scheduled Tribe. The Court would only look into the notification issued by the President to see whether the name finds place in the notification? Saha caste is expressly excluded from Sunn, a Scheduled Castes notified in the notification issued by the President in relation

to the State of West Bengal which is conclusive. The certificate issued to the petitioner is, therefore, clearly unconstitutional and a fraud on the Constitution. The petitioner cannot be considered to be a Scheduled Case.

14. In view of the constitutional provisions and the parliamentary enactment, it is difficult to appreciate how the State Government can by an ordinary resolution dated 8th July 1982 declare Thakar to be an OBC. In effect what the parliamentary enactment - Act No. 108/76 declares to be a Scheduled Tribe for the purpose of Article 342 has been, by virtue of the GR dated 8th July 1982 issued by the State Government declared to be an OBC. In our view, having regard to the ratio of the above mentioned two decisions of the Apex Court we have no option but to declare the GR dated 8th July 1982 as clearly unconstitutional null and void."

26. At the cost of repetition we may mention that there is no tribe mentioned in Entry 18 as Gond Mana. The decision of the Government that Mana cannot stand alone to be qualified as Scheduled Tribe is clearly contrary to the plain language of Entry 18 of the Scheduled Tribes Order. What the State Government says is that the only Gond Manas can qualify as Scheduled Tribe under Entry 18. The entry has not been read as it is, evidence has been allowed to consider the entry which is not permissible in view of the decision of the Supreme Court in Millind's case which holds that no evidence can be led for the purpose of construing the entry.

27. In the result, in view of the foregoing discussion, petition is allowed. The State Government is directed to grant to all members of Mana community the benefits due to Scheduled Tribes included in the Schedule to the Scheduled Tribes Order as amended upto date and issue to them caste certificates accordingly. Government Resolutions dated 24-4-1985, 19-6-1985 and 15-6-1995 stand quashed and set aside so far as the Mana community is concerned. Rule is accordingly made absolute with no order as to costs.