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**(2006) 08 AP CK 0075**

**In the Andhra Pradesh High Court**

**Case No :** W.P.M.P. No. 14038 of 2006 in Writ Petition No. 11286 of 2006

Nimmaka Jayaraju

APPELLANT

Vs

Chief Minister of A.P. and Others

RESPONDENT

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**Date of Decision :** 02-08-2006

**Acts Referred:**

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)  
Regulation of Issue of Community Certificates Act, 1993 — Section 10, 11, 12, 3  
Andhra Pradesh Scheduled Castes, Scheduled Tribes and Backward Classes — Issue of  
Community, Nativity and Date of Birth Certificate Rules, 1997 — Rule 15  
Constitution of India, 1950 — Article 14, 141, 162, 163, 164  
Representation of the People Act, 1951 — Section 5

**Citation :** (2006) 5 ALT 661

**Hon'ble Judges :** P.S. Narayana, J

**Bench :** Single Bench

**Advocate :** Tarakam and V. Raja Manohar, for the Appellant; G.P., for General  
Administration and A.G., for Respondent Nos. 1 to 3 and 5, Ravi Shankar  
Jandyala, for Respondent No. 4, G.P., for Home for Respondent No. 6 and Taddi  
Nageswara Rao, for the Respondent

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## **Judgement**

P.S. Narayana, J.—The relief prayed for by the writ petitioner, Nimmaka Jayaraju, is for a writ or direction, more particularly one in the nature of writ of mandamus directing the District Collector -Respondent No. 5 to initiate prosecution against respondent No. 7, and direct respondent No. 2 to recover pay and allowances paid to respondent No. 7 while he represented as Member of Lok Sabha and also direct respondent No. 4 to recover pay and allowances paid to respondent No. 7 during the periods he represented as member, legislative Assembly and pass such other suitable orders.

2. The interim relief prayed for is for a direction to respondent No1 to dismiss respondent No. 7 as Cabinet Minister of the Government of Andhra Pradesh during the pendency of the writ petition and pass such other suitable orders.

3. This Court ordered notice before admission on 9-6-2006 and the learned

Government Pleader for General Administration Department had taken notice and requested time to file counter affidavit. On 23-6-2006 Sri T. Nageswar Rao appearing on behalf of R-7 requested time to file counter. The matter was adjourned by three weeks. Inasmuch as no counter affidavits were filed, on 31-7-2006 this Court issued rule nisi and called for records and directed the W.P.M.P. to appear in the list on the next day and subsequent thereto the matter was heard.

#### CONTENTIONS OF SRI TARAKAM:

4. Sri Tarakam, the learned senior counsel representing the writ petitioner had taken this Court through the facts averred in the affidavit filed in support of the writ petition, the main prayer prayed for in the writ petition and also the interim prayer and would maintain that on the advice of R-1, R-7 was sworn as Cabinet Minister and R-1 or the other respondents may not be able to take any further action at all relating to the relief which had been prayed for, i.e., prosecution and the other appropriate reliefs of R7, till R-7 continues to be Cabinet Minister. The learned senior counsel also would contend that in away, the first respondent also may be having bias towards his Cabinet colleague and may be, the same may be the reason that despite representations made to R-1 and also to the Governor apart from others bringing all the factual details, no action is being initiated and hence, the writ petitioner is left with no other option except to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The learned Counsel also pointed out to the findings which had been recorded by the learned Judge of this Court and which were confirmed by the Apex Court and would maintain that due regard to be given to the said judgments. The learned Senior Counsel also would contend that whatever may be the other reasons, in the light of the decision made by this Court and Apex Court which had been referred to in detail in the representation and also placed before this Court, it is clear that the 7<sup>th</sup> respondent played fraud on the Constitution inasmuch as it is clear that the respondent utilized a false and bogus caste certificate and got him elected from a constituency reserved to Scheduled Tribe and derived several benefits. The learned Senior Counsel also pointed out to Sections 10, 11 and 12 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (hereinafter, for short, referred to as "1993 Act" for the purpose of convenience) and would maintain that the District Collector being competent authority to initiate action, if the 7<sup>th</sup> respondent continues as cabinet minister, the concerned District Collector may not venture to initiate any action at all. The learned Counsel also would contend that in relation to the recovery of emoluments or the benefits derived during the period of holding the elected office on the ground R-7 belongs to Scheduled Tribe, to facilitate the concerned to make further enquiry and also to make recovery it would be very difficult and a practical impossibility if the 7<sup>th</sup> respondent is continued as Cabinet Minister. The learned Senior Counsel also explained that the 7<sup>th</sup> respondent may have to face the consequences which may flow from the said action of the 7<sup>th</sup>

respondent. This is not a case where the matter can be left to the wisdom of either the Chief Minister or the Governor as the case may be. Here is a case where the first respondent - Chief Minister had chosen him and on the advice of the first respondent, the 7th respondent was sworn in as Cabinet Minister.

5. Law to be respected by all however high one may be and all are equal before Courts of Law. The learned Senior Counsel also had explained in detail the ethics and the moral grounds and would maintain that Article 164 of the Constitution of India and the collective responsibility of the Council of Ministers would not be attracted in the present case. Even otherwise, the learned Senior Counsel would contend that these are all acts done prior to R-7 being sworn as Cabinet Minister. The learned senior counsel also while elaborating further submissions would maintain that R-1, on whose advice R-7 was sworn in as Cabinet Minister, alone is responsible and he is duty bound to initiate appropriate action. The learned Counsel would submit that it is needless to say that on the advice of the first respondent alone again the Governor may take appropriate action in this regard. The learned Senior Counsel also had pointed out to the relevant portions of the judgment of this Court and also the judgment of the Apex Court and explained in detail the scope and ambit of Articles 191, 192 and 193 of the Constitution of India. The Counsel also had explained the scope and ambit of the different provisions of the Representation of the People Act. The learned Senior Counsel while further elaborating his submissions would maintain that no relief had been prayed for in the writ petition in relation to the caste certificate. It is immaterial whether the caste certificate was duly cancelled by the competent authority or not. The findings recorded by the Constitutional Court, be that in an election petition, would be definitely binding and the mere fact that the same was not cancelled by the competent authority would not alter the situation in any way. The learned Senior Counsel also pointed out to the relevant findings in the judgment of this Court and also in the judgment of the Apex Court. The learned Senior Counsel laid stress on the aspect of playing fraud on the strength inasmuch as the certificate was utilized for the purpose getting himself elected. The counsel also would maintain that it is for the competent authority to pick up the law and which law is attracted. The petitioner approached the Court placing reliance on the decision of this Court and also the Apex Court. It is for the concerned, inclusive of the respondents 1 to 6 to initiate appropriate action depending upon the facts and circumstances. The learned Senior Counsel also would point out that this is a case of playing fraud and misrepresentation and making use of such fraudulent process in enjoying an elected office. In such a case where clear findings had been recorded, it does not need any further cancellation by any authority whatsoever especially in the light of the findings which had been recorded. The learned Senior Counsel pointed out to the relevant portions of the judgment in this regard. The learned Senior Counsel also pointed to paras-6 and 7 of the affidavit filed in support of the writ petition and would maintain that though on 19-12-2005 representations narrating all the details had been made, the first respondent had not initiated any action at all and the first

respondent is sitting pretty on such representation and this inaction on the part of the first respondent itself is an arbitrary action and in the light of the same positive directions are being prayed for. The learned Senior Counsel also had explained the scope and ambit of each provision of Representation of the People Act and also would contend that even if Section 12 of 1993 Act is to be held to be not applicable the ingredients of Section 11 of the Act are clearly attracted. The learned Senior Counsel also would maintain that this is a case of falsification of records and here is a case where on the strength of the said certificate only R-7 had contested the elections from such constituency reserved for the Scheduled Tribes. The learned Senior Counsel also would maintain that the writ petitioner is entitled for the interim relief prayed for on the following grounds:

1. Ethical and moral standards expected of a Cabinet Minister.
2. Playing fraud on the Constitution by obtaining false caste certificate and by claiming to be belonging to Scheduled Tribe.
3. Judgment of the Apex Court though not in rem being binding under Article 141 of the Constitution of India, due weight to be given.
4. Judgment of this Court as Court of Record and the findings recorded therein to be given due weight.
5. R-1 is unable to take action due to the bias and embarrassment inasmuch as R-7 is a Cabinet colleague of R-1 and hence, on this ground also unless appropriate action is initiated as against R-7 by removing from the Cabinet, it would not be possible to initiate further action at all.
6. This is clear case where nothing more need be proved in the light of the Judgment of the Apex Court.
7. Even in the light of the Articles 163 and 164 of the Constitution of India even if the collective responsibility of the Council of Ministers and also the role of Governor to be taken into consideration, this is a fit case where the interim relief as prayed for to be granted, since there are no disputed questions at all involved in the light of the judgments referred to supra.
8. Further, Sections 10, 11, and 12 of 1993 Act, the provisions being clear the relief prayed for to be granted.

The learned senior counsel also placed reliance on certain decisions to substantiate his submissions.

#### CONTENTIONS OF ADVOCATE GENERAL:

6. The learned Advocate General while praying for further time to file counter affidavits would maintain that this is a case where interim relief of mandamus is being prayed for and in the light of the main relief which had been prayed for as interim relief, no interim relief can be granted at this stage till the main writ petition itself is heard. The learned Advocate General also would contend that in

the light of Sections 3, 10, 11 and 12 of 1993 Act aforesaid none of the provisions can be attracted to the facts of the present case since the 7th respondent is a Legislator and a Cabinet Minister. The learned Counsel also would contend that even if the findings of both the Courts if carefully scrutinized there is no finding relating to the certificate in question and the certificate was not set aside by the competent authority. Hence, the mere fact that in an election petition certain findings had been recorded may not be of any consequence and even now it is doubtful relating to the status of the 7th respondent in relation to the caste whether he belongs to Konda Dora community or not. The learned Advocate General carefully analysed Section 12 of 1993 Act aforesaid and would submit that even in the light of the decision of the Apex Court in *Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others*, . it cannot be said that this provision can be made applicable in relation to a legislator of a State Legislature. The learned Advocate General while further elaborating his submissions would maintain that in a writ of mandamus the legal right of the writ petitioner is to be established and the corresponding duty imposed either by the Constitution or by the statute to be pointed out. The learned Advocate General would maintain that inasmuch as the learned senior counsel representing the writ petitioner is unable to point out such constitutional obligation of statutory provision which would make the first respondent, the Chief Minister duty bound to consider the representation at least such direction cannot be given. The learned Advocate General also had drawn the attention of this Court to Articles 163, 164, 191, 192, 193 and 329 of the Constitution of India and also the relevant provisions of the Representation of the People Act, 1951. The learned Advocate General would maintain that the decision as to the disqualification basically may have to be gone into in the light of the constitutional provisions in relation to a Legislator and incidentally who is at present the Cabinet Minister and hence, at any stretch of imagination it cannot be said that the provisions of 1993 Act, Sections 3,10,11 and 12 are in any way attracted. Hence, the question of District Collector initiating action or the other concerned with the Secretariat of Lok Sabha and also the Legislature initiating action would not arise at all. Hence, in the light of the facts and circumstances there is no question of granting any interim relief whatsoever, and however, further time may be given to file counter affidavits so that main matter itself can be disposed of at the appropriate stage.

#### CONTENTIONS OF SRI T. NAGESWAR RAO:

7. Sri T. Nageswar Rao, the learned Counsel representing R-7 would maintain that here is a typical case where the writ petitioner just to wreak private vengeance and out of private jealousy without any legal right whatsoever and without any locus standi had filed the present Writ petition. The learned Counsel also would maintain that as far as the ambit of judicial review is concerned the same to be exercised by this Court under Article 226 of the Constitution of India and in the light of the parameters, which had been well settled and. established, this is not a case to be interfered with. The learned Counsel would maintain that

the judgment in an election case or in election petition is not a judgment in rem. It is not even a judicial precedent. In fact the Apex Court also had observed in relation thereto that this cannot be a judgment in rem and also this cannot operate as judicial precedent, when that being so especially in the light of the fact that the competent authority till now had not cancelled the caste certificate no interim relief can be granted at this stage and it would be appropriate to give further opportunity to the 7th respondents file counter affidavit in detail. The learned Counsel also would contend that as on to-day the 7th respondent, contested only from the general assembly constituency and he does not incur any disqualification whatsoever. The counsel also traced the historical background of the family and how the ancestors also were being treated of the same community basing on the certificate issued by the competent authority. The learned Counsel also had drawn the attention of this Court to Articles 191 - 193 of the Constitution of India and inasmuch as specific procedure is specified by the provisions of the Constitution for disqualification, unless there is any constitutional imperative so as to disqualify R-7 at this stage it may not be appropriate to grant any interim relief as prayed for in the W.P.M.P.

8. Heard the counsel on record.

9. The factual matrix though not in serious controversy, the effect of the judgments of this Court and the Apex Court in the context of 7th respondent to be continued as Cabinet Minister or not in the facts and circumstances of the case appear to be the controversial question between these parties. No doubt several contentions had been advanced with all seriousness by the counsel on record. The facts in nutshell, which maybe relevant for the present purpose, are as hereunder:

10. The relief prayed for in the main writ petition and also the W.P.M.P. already had been referred to supra. It is stated that during the general elections to the Andhra Pradesh Legislative Assembly held in the year 1999, the petitioner and Respondent No. 7 and others contested the election for 8th Nagur Assembly constituency in Vizianagaram district which was reserved for Scheduled Tribe. It is stated that in the said election, the 7th respondent was declared to be elected as member, Legislative Assembly and the petitioner filed Election Petition No. 13 of 1999 before the High Court of Andhra Pradesh challenging the election of respondent No. 7 on the ground that he does not belong to Scheduled Tribe and that he was disqualified to contest the election to a seat which was reserved for Scheduled Tribe. It is also further stated that the petitioner does not belong to Scheduled Tribe and that he belongs to Kshatriya caste, which disentitled him to contest for a seat which was reserved for Scheduled Tribe and this Court after a thorough enquiry declared that the respondent No. 7 does not belong to Scheduled Tribe and he belongs to Kshatriya caste and he was disqualified to contest the election for the Nagur Constituency which was reserved for Scheduled Tribe, by its judgment dated 30-1-2004, which was reported in *Nimmaka Jaya Raju Vs. Satrucharla Vijaya Rama Raju and Others*, . Respondent

No. 7 carried the matter to the Hon''ble Supreme Court of India in Civil Appeal No. 1102 of 2004 and the Hon''ble Supreme Court of India in its judgment dated 27-10-2005 dismissed the said appeal confirming the judgment of the High Court. Thus the findings of the High Court of Andhra Pradesh that the respondent No. 7 does not belong to Scheduled Tribe had attained finality. Along with the appeal in the Hon''ble Supreme Court of India, the respondent No. 7 filed an application for stay of the operation of the judgment of the High Court, to enable him to contest the election which was scheduled in the year 2004, but the Hon''ble Supreme Court refused to grant any stay. Incidentally the respondent No. 7 contested the election from a different constituency at Parvathipuram constituency No. 9 in Vizianagaram district which is a general constituency and got elected and he was appointed as a Minister in the Government and at present he is holding the portfolio of Forest and Minor Irrigation. Prior to the election held in the year 1999, respondent No. 7 got elected to the legislative assembly from the said Nagur constituency in the elections held in the year 1978, 1983, falsely claiming that he belongs to Scheduled Tribe. On the same basis, he also got elected as Member, Lok Sabha from 2nd Parvathipuram Parliamentary constituency which was reserved for Scheduled Tribes in the elections held in the year 1989, 1991 and 1998 and thus he got elected to the Legislative Assembly on four occasions and to the Lok Sabha on three occasions exclusively claiming that he belonged to Scheduled Tribe. It is further stated that both the Legislative Assembly constituencies at Nagur and Parliamentary constituency at Parvathipuram are reserved for Scheduled Tribes and respondent No. 7 knowing fully well that he does not belong to any of the Scheduled Tribes listed in the Andhra Pradesh, got himself elected on a claim which is prohibited under law, statute and also under the Constitution of India. It is also further stated that in the election to the legislative assembly held in the year 1983, when again respondent No. 7 got elected as member to the legislative assembly, an election petition was filed against him challenging the election on the ground that he does not belong to Scheduled Tribe in E.P.No. 13 of 1983 and the High Court in its judgment held that since the evidence produced by the election petitioner was insufficient, dismissed the election petition and respondent No. 7 continued to be a member of the Legislative Assembly during the full term. Thus it is stated that in the year 1983 itself respondent No. 7 faced the challenge in the constituency that he does not belong to Scheduled Tribe and the Hon''ble High Court dismissed the election petition since the evidence was not sufficient, and he continued to claim that he belongs to Scheduled Tribe and started obtaining false caste certificate on the basis of the judgment of the High Court. It is further stated that in the elections in the year 1978 he contested from the said constituency and it appears that the caste certificate was issued to him without conducting any enquiry and he laid the evidence for his false claim in the year 1978 itself by getting caste certificate issued without due and proper enquiry and continued to lay his claim later on the basis of the judgment of the High Court, thus from 1978 onwards he was getting elected either to the assembly or to the Lok Sabha on the false caste certificate from the constituencies to which he was

in fact disqualified to contest. It is further stated that the Supreme Court held that obtaining a false caste certificate amounts to playing fraud on the Constitution and securing either benefits or occupying positions on the basis of false caste certificate amounts to cheating and depriving genuine candidate belonging to Scheduled Tribe. Thus it is clear that the claim of respondent No. 7 that he belongs to Scheduled Tribe from 1978 onwards and getting elected to Legislative Assembly and Lok Sabha amounts to continued fraud on the Constitution. The very purpose of reserving seats to Scheduled Tribes is to see that genuine candidates are properly represented in the houses. The respondent No. 7 knowing fully well that he does not belong to Scheduled Tribe deprived genuine candidates from getting elected to the assembly as well as Parliament on different occasions, thus his acts are punishable under law. It is also further stated that under Sections 10,11 and 12 of 1993 Act and the Rules framed thereunder, respondent No. 7 is liable for punishment with rigorous imprisonment for a term which shall not be less than 6 months but which may extend upto two years and with a fine which shall not be less than Rs. 1,000/- but which may extend up to Rs. 5,000/-. Under Rule 15 of 1993 Act, the District Collector under whose jurisdiction the person obtained the false certificate shall initiate action for obtaining false community certificate. It is stated that the Supreme Court of India in its judgment reported in 1999 (4) SCC 526 held that a person who is disqualified to contest the election in a particular constituency, committed fraud on the Constitution and for the said fraudulent act, the said person is liable to penalty of Rs. 500/- in respect of each day of which he sits or votes and the penalty is recovered as debt due to the State. The Hon"ble Supreme Court of India further held that such person is liable for penalty nevertheless, as he knows he is not qualified to contest for the legislative assembly and yet he acts contrary to law. In view of this decision, respondent No. 7 is liable to pay a penalty @ Rs. 500/- a day for the entire period which he represented both in the Legislative Assembly as well as Lok Sabha. It is also further stated that the petitioner made a representation on 19-12-2005 to His Excellency the Governor of Andhra Pradesh and also to the Hon"ble Chief Minister of Andhra Pradesh, respondent No. 1 in the present writ petition, for initiating necessary action against respondent No. 7, and a copy of the same was given to respondent No. 2 and to the D.G.P. It is also further stated that a separate representation was given to the District Collector, Vijayanagaram, respondent No. 5, on 23-2-2006 for initiating action against respondent No. 7 for claiming benefit under false caste certificate and another representation was given to the Superintendent of Police, the respondent No. 6 for initiating action against respondent No. 7, but so far none of the respondents initiated action against the 7th respondent and not initiating any action is not only arbitrary but also violation of laws. It is also stated that it is well established that producing false community certificate and enjoying benefits would amount to playing fraud on the Constitution and such acts are punishable under law. Thus, facts were brought to the notice of respondent Nos. 1, 3, 5, and 6 but no action was initiated against respondent No. 7. It is also stated that respondents 1 to 6 are not initiating any action

against respondent No. 7 because he is presently holding the post of a Cabinet Minister. It is also further stated that in view of the judgment of the Hon"ble High Court as well as the Supreme Court against respondent No. 7, that he does not belong to Scheduled Tribe, there is nothing further for the authorities to enquire into but only thing remains is to initiate prosecution against respondent No. 7 and not initiating prosecution against respondent No. 7 would amount to violation of Article 14 of the Constitution of India, Section 5 of the Representation of the People Act, 1993 Act and the Rules made thereunder.

11. Along with the material papers, the representations in detail which had been made, had been enclosed and also the judgment in E.P.No. 13 of 1999 reported in Nimmaka Jayaraju's case (2 supra) and also the judgment in Civil Appeal No. 1102 of 2004 dated 27-10-2005 in Satrucharla Vijaya Ramaraju and ors. v. Nimmaka Jayaraju 2005 (8) SCJ 238 : AIR 2005 SCW 6197. had been enclosed.

12. Judiciary, Executive, Legislative wings are bound to act in accordance with the Constitutional provisions. Supremacy of the written Constitution need not be over emphasized. The relevant Articles of the Constitution of India, which may have some relevance in the present context are Articles 74, 141, 163, 164, 191, 192, 193, 329, 342, 366(25) of the Constitution of India. The text of these Constitutional provisions may have to be carefully analysed and the same need not be elaborated. The relevant statutory provisions on which reliance was placed are Sections 3, 10, 11 and 12 of 1993 Act. The said provisions are also self-explanatory and for the purpose of better appreciation, the said statutory provisions also may have to be carefully analysed.

13. Judgments of High Courts as Courts of record and of the Supreme Court in view of the Article 141 of the Constitution to be given due regard not only by the judicial wing but also by other wings since, the other wings are bound to follow the said judgments unless there is any other Constitutional protection or safeguards. This is the broad working of the system.

14. The views expressed by this Court relating to the Constitutional Courts in W.P. No. 13680 of 2006 and batch while disposing of W.P.M.Ps., also may be useful to be referred in this context. In P.S. Manohar Naidu v. State Election Commission 2006 (4) ALT 607. this Court at para-8 observed as hereunder:

The Constitutional Courts are bound to discharge their obligations may be to the displeasure of a couple of persons. Persons count little, working of the institution and working of the system would be more important. Men may come and men may go, but the institutions survive. Let not the institutions be degraded. All political parties are equal. The people's popular democracy to be protected at any cost. The views already expressed by this Court need not be repeated. Let the democratic institutions function in this Country with all vigor and vitality. Let the Indian judiciary discharge its Constitutional duties to the expectations of the common man. Let not the Constitutional functionaries water down the basic fundamental democratic values.

15. Submissions at length were made relating to the applicability or otherwise of Sections 3, 10, 11, 12 of 1993 Act referred to supra and also the findings recorded by this Court and also the Apex Court and incidentally certain submissions were made on the aspect of the decisions being not judgments in rem. Cleanliness and purity in public life, these are highly essential for a healthy democracy. Whether at the advice of the Chief Minister or the collective responsibility of the Council of Ministers in advising the Governor or otherwise, the Governor may exercise the discretion in particular mode de hors the advice of the council of Ministers especially in the concept of the construction of healthy democracy. It is stated that on 19-12-2005 narrating all the facts the writ petitioner made a representation to R-1 and also made a representation to the Governor of State of Andhra Pradesh on the said date. It is stated that the first respondent is sitting over the same and inasmuch as upon the advice of R-1, the Chief Minister, R-7 was appointed as Cabinet Minister, now the appropriate directions are being prayed for.

16. In Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh and Others, . the 5 Judge Bench of the Apex Court while dealing with whether His Excellency the Governor of the State can exercise his discretion in granting sanction for prosecution of Ministers for offences under Prevention of Corruption Act and the Indian Penal Code, It was held that the concept of Governor acting in his discretion or exercising independent judgment is not alien to the Constitution of India.

17. In R. Sai Bharathi Vs. J. Jayalalitha and Others, . the Apex Court while dealing with the Code of Conduct for Ministers framed in exercise of powers under Article 162, observed that the persons holding high public offices should scrupulously follow the Code as their moral obligation and when ever their acts are questioned, they should not take shelter under criminal law like ordinary criminals, and when there is a conflict between the office they hold and the acts to be done by them, they should desist themselves from such acts.

18. The aspects of satisfaction of Governor and the nature and scope of the executive powers and the same partaking the legislative or certain judicial acts also and the separation of powers and the limits thereof had been elaborated by the 5 Judge Bench of the Apex Court in Pu Myllai Hlychho and Others Vs. State of Mizoram and Others, .

19. In B.R. Kapur v. State of Tamil Nadu and Anr. : AIR2001SC3435 . Justice S.P. Barucha, speaking for himself, Justice Y.K. Sabharwal and Justice Ruma Pal, at para-53 observed:

It was submitted that we should not enter a political thicket by answering the question before us. The question before us relates to the interpretation of the Constitution. It is the duty of this Court to interpret the Constitution. It must perform that duty regardless of the fact that the answer to the question would have a political effect. In State of Rajasthan and Others Vs. Union of India and

Others, , it was said by Bhagwati, J:

But merely because a question has a political complexion, that by itself is not ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of Constitutional determination. Every Constitutional question concerns the allocation and exercise of governmental power and no Constitutional question can, therefore, fail to be political.... So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its Constitutional obligation to do so. It is necessary to assert that clearest possible terms, particularly in the context of recent history, that the Constitution is *suprema lex*, the paramount law of the land, and there is no department or branch of Government above or beyond it.

20. In *State of Karnataka Vs. Union of India (UOI)* and *Another*, . the Apex Court at Paras-45, 46, 113 and 114 observed as hereunder:

The object of collective responsibility is to make the whole body of persons holding Ministerial office collectively, or, if one may so put it, "vicariously" responsible for such acts of the others as are referable to their collective volition so that, even if an individual may not be personally responsible for it, yet, he will be deemed to share the responsibility with those who may have actually committed some wrong. On the other hand, in the case before us, the enquiry under s 3 of the Act by the Grover Commission has been ordered by the Central Government so as to determine who is actually responsible for certain actions and what could be the motive behind them. The sphere of this enquiry is very different from that in which "collective responsibility" functions. Explaining "collective responsibility", as understood in England, two writers on Constitutional matters (see: "Some Problems of the Constitution" by Geoffrey Marshall and Graeme C. Moodie) say: (at p. 71):

If responsibility is taken in the formal constitutional sense, there would seem, granted collective governmental responsibility, to be no clear distinction to be drawn between Ministers inside and those outside the Cabinet. To be responsible in this sense simply is to share the consequences of responsibility -namely to be subject to the rule that no member of the Government may properly remain a member and dissociate himself from its policies (except on occasions when the Government permits a free vote in the house).

They add:

The substance of the Government's collective responsibility could be defined as its duty to submit its policy to and defend its policy before the House of Commons, and to resign if defeated on an issue of confidence.

Each Minister can be made separately responsible for his own decisions and acts and omissions also. But inasmuch as the Council of Ministers is able to stay in office only so long as it commands the support and confidence of a majority of

members of the Legislature of the State, the whole Council of Ministers must be held to be politically responsible for the decisions and policies of each of the Ministers and of his department which could be presumed to have the support of the whole Ministry. Hence, the whole Ministry will, at least on issues involving matters of policy, have to be treated as one entity so far as its answerability to the Legislative Assembly representing the electors is concerned. This is the meaning of the principle underlying Article 164(2) of the Constitution. The purpose of this provision is not to find out facts or to establish the actual responsibility of a Chief Minister or any other Minister or Ministers for particular decisions or Governmental acts. That can be more suitably done, when wrongful acts or decisions are complained of, by means of inquiries under the Act. As already indicated above, the procedure of Parliamentary Committees to inquire into every legally or ethically wrong acts was found to be unsatisfactory and unsound. The principle of individual as well as collective ministerial responsibility can work most efficiently only when cases requiring proper sifting and evaluation of evidence and discussion of questions involved have taken place, where this is required, in proceedings before a Commission appointed u/s 3 of the Act.

Sikri C.J. recorded his finding on the basic structure in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, .

The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:

- (1) Supremacy of the Constitution;
- (2) Republican and Democratic form of Government;
- (3) Secular character of the Constitution;
- (4) Separation of powers between the Legislature, the executive and the judiciary;
- (5) Federal character of the Constitution.

The above structure is built on the basic foundation, i.e., the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.

The above foundation and the above basic features are easily discernible not only from the preamble but the whole scheme of the Constitution, which I have already discussed.

Similarly, Shelat and Grover JJ. after surveying principles of interpretation and construction of the Constitution, accepted the theory of implied limitations on the power of Parliament as well as the doctrine of a basic structure. They recorded their conclusion as follows at pp. 280-281; of Supp SCR : at p. 1603 of AIR.

The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are unfounded. If the historical background, the Preamble, the entire scheme of the Constitution, the relevant provisions there of including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the Constitutional structure. (These cannot be catalogued but can only be illustrated).

1. The Supremacy of the Constitution.
2. Republican and Democratic form of Government and sovereignty of the country.
3. Secular and federal character of the Constitution.
4. Demarcation of power between the legislature, the executive and the judiciary.
5. The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
6. The unity and the integrity of the nation.

21. The views expressed by the Full Bench of this Court in *N.T. Rama Rao Vs. His Excellency the Governor of Andhra Pradesh and Others*, and also by the Special Bench in *Dronamraju Satyanarayana v. N.T. Rama Rao and Ors.* 1988 (1) ALT 178. also may be usefully referred to for better appreciation of the facts.

22. Strong reliance was placed on the decision of the 5 Judge Bench State of Maharashtra v. Milind and Ors. AIR 2001 SC 393. to convince this Court on the concept of playing fraud on the Constitution especially in relation to the using of bogus or false community certificate.

23. No doubt, relating to the applicability and the ingredients of Sections 11 and 12 of 1993 Act, several submissions were made. The learned Advocate General placed strong reliance on the decision of the Apex Court of three Judge bench in *Shobha Hymavathi Devi's* case (1 supra) wherein at para-11, the Apex Court observed as hereunder:

What remains is the argument based on the certificates allegedly issued under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993. The High Court has not accepted the certificates as binding for the reason that the evidence showed that the certificates were issued based on the influence exercised by the appellant as a member of the Legislative Assembly, one after another, immediately on an application being made and without any due or proper inquiry. We are impressed by the reason given by the High Court for not acting on these certificates. That apart, a reference to Section 3 of the Act would indicate that a certificate there under, insofar as it relates to elections, is confined in its validity to elections to local authorities and cooperative institutions. It does not embrace an election to

the Legislative Assembly or to Parliament. Therefore, in any view of the matter, it cannot be said that the High Court, exercising jurisdiction under the Representation of the People Act in an election petition is precluded from going into the question of status of a candidate or proceeding to make an independent inquiry into that question in spite of the production of a certificate under the Act. At least, such a certificate could be used in evidence and its evidentiary value will have to be assessed in the light of the other evidence let in, in an election petition. Therefore, nothing turns on the factum of certificate being issued by the authority concerned under the Act of 1993. We are also satisfied as the High Court was satisfied, that no proper inquiry preceded the issuance of such a certificate and such a certificate was issued merely on the say-so of the appellant. We have, therefore, no hesitation in overruling this argument raised on behalf of the appellant.

24. On the strength of the said decision lengthy submissions were made relating to the applicability of Section 12 of 1993 Act in relation to the legislators. No doubt, the learned Senior counsel Sri Tarakam however would contend that Section 11 is totally satisfied, though not in principle, it can be said that Section 12 of the Act is not prima facie attracted. This Court is not inclined to express any detailed opinion relating to these aspects inasmuch as the counter affidavits are to be filed by the opposite parties explaining their respective stands in this regard. However, the judgment of this Court and the judgment of the Apex Court referred to supra, also are placed before this Court. It may be appropriate to have a look at the relevant portions of these judgments.

25. In Nimmaka Jayaraju's case (2 supra) the learned Judge of this Court at paras-56 to 61, 86 to 91 and also at conclusions at para-100 observed as hereunder.

If we ignore Ex.24 Caste Certificate, there is nothing on record to show that the first respondent belongs to Konda Dora Tribe. The gazetteers also describe the Zamindar of Merangi as Konda Raju. It is the established principle laid down by the Supreme Court that nothing could be substituted for the caste mentioned in the Presidential Notification, therefore, Konda Raju cannot be equated with Konda Dora. If the first respondent is so interested to get the benefit of reservation, the only remedy available to him is to make an application to the Government to include Konda Raju also as one of the tribes under the Presidential notification.

The names of the members of the family of the first respondent and the names of other Konda Dora people are distinct, as indicated below:

- (2) Satrucharla Pratapa Rudra Raju
- (3) Satrucharla Vijayarama Raju
- (4) Satrucharla Jagannadha Raju
- (5) Satrucharla Somasekhara Raju, etc.

Whereas the names of other Konda Doras are Jaligapu Ganga Rao, Gunaganji Chandraiah, Baddena Ganga Rao etc. The above names are also an indication of differentiation between the family of the first respondent and people belonging to Konda Dora Tribe.

The evidence adduced by the petitioner indicates that there is nothing on record to show that the first respondent belongs to Konda Dora Tribe. On the other hand, there is school record and registered documents to indicate that the first respondent was a Kshatriya. Ex.A-23 enquiry report of the Commissioner, Tribal Welfare indicates that the cousin of the first respondent does not belong to Konda Dora Tribe. The above material placed by the petitioner indicates that the first respondent does not belong to Konda Dora Tribe.

The first respondent in the written statement mentioned as follows:

My ancestors used to describe themselves as "Kshatriyas" as they belong to Hill Zamindari family of Merangi. I never claimed as "Konda Raju"

The first respondent did not dispute the entries in the school record and the registered documents described his caste as Kshatriya, therefore, there is no need to discuss about the contents of Exs. A-2 to A-11 and A-23 to A-25. Since the petitioner discharged his initial burden through oral and documentary evidence that the first respondent does not belong to Konda Dora Tribe, the onus is on the first respondent to establish that he belongs to Konda Dora Tribe. It is for him to explain under what circumstances his family members are describing themselves as "Kshatriyas" and mentioning their caste as Kshatriya in School records and other documents. It is also the burden of the first respondent to place the material, if any, to establish that he belongs to Konda Dora Tribe.

The caste "Konda Raju" cannot be equated to the Tribe "Konda Dora". The legal position on this aspect is very clear.

In *Srish Kumar Choudhury Vs. State of Tripura and others*, the Supreme Court held that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined to showing what an entry in the Presidential Order is intended to mean. It is not open to the Court to make any addition or subtraction from the Presidential Order.

In *Pankaj Kumar Saha Vs. Sub-Divisional Officer, Islampur and Others*, the Supreme Court held that the Court is devoid of power to include in or exclude from or substitute or declare synonymous to be a Scheduled Caste or Scheduled Tribe. The Courts would only look into the notification issued by the President to see whether the name finds place in the notification? In the absence of any caste in the Presidential notification the certificate issued to such person is clearly unconstitutional and a fraud on the Constitution and such person cannot be considered to belong to Scheduled Caste.

In *Andhra Pradesh Scheduled Tribes Employees Association Vs. Aditya Pratap Bhanj Dev and Others*, a Full Bench of this High Court held as follows:

The tribes or tribal communities who are specified in the notification issued by the President of India under Article 342(1) alone are deemed to be STs for claiming benefits under the Constitution of India. The President of India in exercise of powers under Article 342(1) notified Constitution (Scheduled Tribes) Order, 1950, which as amended by Parliament under Article 342(2) by SCs & STs Order (Amendment) Act, 1976. As per the Constitution (ST) Order in relation to the State of Andhra Pradesh, Konda Dora community is ST, vide item No. 13 of the said Order. No person who does not belong to Konda Dora can claim to belong to Konda Dora either by a process of comparison, or can, by a process of equalization, and/or by reason of residence in hill/tribal area, claim to belong Konda Doras. This is because Article 342 creates legal fiction, which has to be given its fullest effect. By reason thereof, any caste or tribe or tribal community, which does not come within the purview of Constitution (STs) Order, cannot be treated or claimed to be as belonging to ST as per Article 366(25). Further, where a person migrates from a State in respect of which his community is Scheduled Tribe to another State in respect of which his community is not Scheduled Tribe, he will continue to be a member of the Scheduled Tribe only in relation to the State in respect of which his community is Scheduled Tribe.

The learned Counsel for the 1st respondent cited the following decisions in support of his contention.

In *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, the Supreme Court while considering the question whether a particular person is member of Scheduled Tribe so declared by the President under Article 342 of the Constitution is essentially a question of law, held that though an admission made by him expressly or by implication that he is not a member of a Scheduled Tribe is evidence against him in an election petition, the evidence is not conclusive. The Supreme Court referred to Clause (2) of an Order called the Constitution (Scheduled Tribes) Order, 1950 issued by the President of India in exercise of the powers conferred under Article 342 provided as under:

The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities specified in Parts 1 to XII 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 residing in the localities specified in relation to them respectively in those parts of that Schedule. In the light of the above findings, I wish to sum up the factors that led this Court to come to a conclusion that the first respondent does not belong to Konda Dora Tribe.

- (1) The genealogical tree of the family of R-1 not furnished describing the castes of his ancestors on paternal and maternal side.
- (2) The place of birth of the ancestors of R-1 not mentioned.
- (3) The birth certificates of any of the family members not produced.

- (4) No material placed to prove that the family of R-1 suffered any indignation or humiliation in the hands of the society or upper castes.
- (5) No documentary evidence placed by R-1 to prove that he belongs to Konda Dora Tribe.
- (6) No mention in the gazetteers that R-1 "s family belongs to Konda Dora Tribe.
- (7) The Book of Edgar Thurstan and K. Rangachari on Castes and Tribes of South India, which was prepared on the basis of the Madras Census Report, 1891, does not disclose that Merangi Zamindar is a Konda Dora. On the other hand, Merangi Zamindar was described as Konda Raju.
- (8) School records of R-1 or any of his family members not produced to prove that R-1"s family belongs to Konda Dora Tribe.
- (9) Ex.A-23 - School Register entry of the paternal uncle"s son of the first respondent shows their caste as Kshatriya.
- (10) Registered documents covered by Exs.A-2 to A-11 including those of pre-constitutional period show the caste of R-1" family as Kshatriya.
- (11) Ex.A-22 true copy of the enquiry report of he Commissioner of Tribal Welfare discloses that R-1 "s brother"s son is not a Konda Dora and he is a Kshatriya.
- (12) No marriage alliances of R-1"s family with any other Konda Doras of the neighboring areas.
- (13) Marriage alliance only with people from Madhya Pradesh and Orissa States.
- (14) No record produced to show that the in-laws of the family members of R-1 are Konda Doras.
- (15) Important customs of R-1"s family are distinct from the customs of other Konda Doras.
- (16) Marriage alliances of R-1"s family with other communities like Muka Dora, Marine Dora, Brahmins etc.
- (17) Declaration of the caste of Sri L.N. Sanyasiraju, a Zamindar of Salu r, who is a relation of R-1 "s family, as not a Konda Dora, but a Kshatriya.
- (18) No ordinary Konda Dora was examined by R-1 except the Mokhasadars and Zamindars. R.Ws.2 to 4 are Mokhasadars, R. Ws. 5,6 and 8 are hill Zamindars, R.W.9 is a Kshatriya.
- (19) All hill Zamindars are not Konda Doras and many of them are Konda Raju.
- (20) No other Konda Dora has a surname "Satrucharla".
- (21) The record relating to issue of caste Certificate in 1999 covered by Exs. C-1 to C-10 is a concocted and manipulated one.

(22) Caste Certificate of R-1 is not valid as no enquiry was conducted as per rules and the procedure suggested by the Supreme court.

(23) The files relating to issuing of Caste Certificates of R-1 for earliere lections not summoned.

(24) Konda Raju cannot be equated with Konda Dora Tribe.

(25) The file produced by the Revenue Divisional Officer, Parvathipuram at page No. 153 discloses that they were issuing the Caste Certificate on the basis of the Judgment of the High Court in E.P.No. 13 of 1983 without conducting any independent enquiry before issuance of the same.

26. Likewise the Apex Court in *Satrucharla Vijaya Rama Raju*"s case (3 supra) at paras 19 and 20 observed as hereunder:

The evidence of the appellant examined as R.W-1 clearly shows that the family of the appellant had always considered itself to belong to a superior strata of society and as a ruling or satrap family. The title of "satrucharla". Conqueror of enemies, had been conferred on an ancestor of the appellant and the members of the family were using that title. The evidence of P.Ws 1 to 8 and R.Ws 1 to 9 shows that most of the practices followed by the family differed from that of "Konda Doras". In fact, learned Counsel for the appellant could only emphasise that there was no evidence to show that "Homa" and "Saptapadi, the essentials of a "Kshatriya" marriage were being performed in the marriages in the family. But learned Counsel could not contradict that the male members were having thread ceremony. No doubt, mere assertion or a claim by a tribal that he is a "Kshatriya" cannot make him a "Kshatriya". But what is involved here is series of assertions which are admissions in terms of the Evidence Act and other evidence that tribal customs differed from the practices of the family of the appellant. The position in *Shri V.V. Giri Vs. Dippala Suri Dora and Others*, differs, in that, in that case, Dora was admitted to be originally a tribal and what was asserted was that subsequently, he had become a "Kshatriya", having adopted their customs and practices. That is not the case here and there is no admission in this case that the family of the appellant originally was tribal. Evidence in the case on hand also indicates that the family of the appellant had marital relationship mostly with the Zamindar families outside the present State of Andhra Pradesh and their way of life was also not that of the tribals. No positive acceptable evidence could also be adduced to show that the family entered into marital relationship with "Konda Dora" tribals. The evidence also shows that the family of the appellant did not have any close relationship with the Konda Doras of the locality. The admissions of R.W.1 show that quite a few of the customs the family was following had no relation to the customs generally followed by the Konda Dora Tribe and some of the practices clearly differed from that of the tribe and was more consistent with the practices followed by Kshatriya and higher castes. The trial Judge has carefully analysed these aspects and we do not see any justification in differing from his appreciation of the oral as well as documentary

evidence in the case.

In a sense, the appellant wants the best of two worlds. Though he would like to contest from a constituency reserved for the Scheduled Tribes, he would want to lead the life of a forward caste and have the trappings of that caste. The purpose of reservation of constituencies is to ensure representation in the legislatures to such tribes and castes who are deemed to require special efforts for their upliftment. The person seeking election from such constituencies must be the true representative of that tribe. The evidence shows that the appellant could not be considered to be a true representative of a tribe included in the Presidential Order deserving special protection.

27. In view of Article 215 and Article 141 of the Constitution of India, the Judgment of this Court and the Judgment of Apex Court may have to be given due weight. It is true that certain observations were made by the Apex Court on the aspect of such judgments not being judgments in remand also on the aspect of judicial precedent. The relevant portions of judgment of this Court and also the judgment of the Apex Court already had been referred to supra. Elaborate submissions were made in relation to the constitutional disqualifications in the context of the legislators and also the disqualifications specified under Representation of the People Act, 1951 and also the applicability or otherwise of Article 164 of the Constitution of India. This Court is not inclined to express any further opinion relating to these broad aspects, which had been elaborately argued by the counsel on record, and all these matters in detail may have to be examined at the appropriate stage.

28. It is not as though the first respondent was kept in darkness in view of the judgment of this Court and also the judgment made by the Apex Court. It may be the prerogative of the first respondent - the Chief Minister, to choose his cabinet colleague or the Council of Ministers and to advise His Excellency the Governor of State of Andhra Pradesh in relation to the choice of the Ministers. It may be within the wisdom of the first respondent either to accept the request made in the representation or to decline to accept such request made in the representation depending upon the facts and circumstances and also in the light of the factual background and the decisions governing the field. But, however, be that, these judgments may be in relation to the Election Petitions, when these are brought to the notice of the first respondent by making detailed representation dated 19-12-2005, sitting pretty on the representation, in the considered opinion of this Court, is not just and proper. This Court is not inclined to express any further opinion in this context.

29. Hence, in the light of the views expressed by this Court, let the first respondent-the Chief Minister consider the representation of the petitioner dated 19-12-2005 in accordance with law at an early date within a reasonable time, keeping in view the grievance of the petitioner complaining the inaction on the part of the first respondent in this regard. This Court hopes and trusts that an early decision may be taken in this regard by the first respondent in accordance

with law.

30. It is also made clear that in the light of the views expressed by the 5 Judge Bench of the Apex Court in M.P. State Police Establishment's case (5 supra) and also in view of the fact that it is brought to the notice of this Court that representation in detail was made to His Excellency the Governor of State of Andhra Pradesh, the Governor also in the light of the peculiar facts, may consider the same in the light of the views expressed by the Apex Court, referred to supra.

31. Accordingly, the W.P.M.P. is disposed of. Let the writ petition appear in the list after six weeks. In the meanwhile, the counter affidavits, if any, to be filed by the respective parties.