

(1996) 01 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15786 of 1990

P. Raghu Ram and Others

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (1996) 1 ALT 258

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : M. Rama Rao, for the Appellant; Government Pleader for Social Welfare for Respondent No. 1 and V. Venkateswarlu, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—Strange but true, deceptive mind seldom rests, works out ways and means to grab un law fully which is not its, unmindful of the consequences there after.

2. Free India adopted Constitution in its entirety with effect from 26-1-1950 when the Indian Republic came into existence. The makers of the Constitution felt the need to provide reservations to certain sections of people who belong to Scheduled Caste and Scheduled Tribe considering their social, economical and other historical background. This protection provided to S.Cs. and S.Ts. is intended to bring them on par with the other citizens of this country. The reservations are extended not only to the employment sector but also admissions to the educational institutions and to the elected bodies such as State Assemblies and Parliament.

3. In that endeavour, Articles 341 and 342 of the Constitution of India empowers the President of India, after consultation with the Governor of the respective State by publishing notification specifying the castes, races or tribes or parts or groups within the castes, races or tribes which shall, for the purpose of the

Constitution to be Scheduled Castes or Scheduled Tribes. Articles 341 and 342 further empower the Parliament by law either to include or exclude some of the castes or tribes from the list specified in the notification. Article 366 (24) and 25 further defines as to who are the Scheduled Castes and Scheduled Tribes. In the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, insofar as it relates to the State of Andhra Pradesh, 33 communities are enlisted as Scheduled Tribes. At Sl. No. 29, Sugalis/Lambadis are also enlisted as Scheduled Tribes within the State of Andhra Pradesh.

4. Fathers of the Constitution did not visualise that the benefits extended to these sections would be robbed away by unscrupulous elements adopting dubious methods. Competition within S.Cs. and S.Ts, slowly grew. These sections realised that certain benefits conferred on them in the Constitution are taken away by the elite sections of the society through various methods. What followed is these sections demanded certain checks to be put at various levels of entry into employment and also admission into educational institutions. The device followed is a sort of verification method brought out by the respective Government by issuing executive instructions from time to time to various authorities who are concerned with the issuance of Social Status Certificates on which basis, claims of a particular person either for job or for admission in educational institutions is considered. Experience shows that in the absence of any specific Act or Rule, these executive instructions failed to check the menace of bogus caste certificates conforming (sic. conferring) social status on wrong persons though they do not belong to either S.Cs. or S.Ts.

5. Experience shows that many posts reserved for Scheduled Castes and in particular, Scheduled Tribes, have been knocked away by others on their false claims to be belonging to either Scheduled Castes or Scheduled Tribes on obtaining bogus caste certificates. In professional as well as non-professional courses, seats reserved for S.cs. and S.Ts, have been granted to others, there being no proper system available for verification. The height of manipulation has reached its zenith. Even persons are elected to Parliament and State Legislatures in the seats reserved for S. Cs. and S.Ts. as is evident from the various judicial pronouncements of several High Courts and the Supreme Court. Thus, the situation has reached an alarming proportion without there being any sincere effort by all concerned to nab the culprits. Lacunae in the guidelines, unconcerned attitude of the authorities who are responsible for issuance of Social Status Certificates have all contributed their mite to deprive the Constitutional benefits meant for Scheduled Castes and Scheduled Tribes. The whole picture now emerges, in the backdrop of the bogus claims is that a systematic fraud is being played on the Constitution. Clever are those who exploit every situation to their favour. Lacunae in the system has mostly contributed to deny the fruits granted in the Constitution to these sections of the Society. It is the experience, even if fraud is detected, such persons are exonerated or let of by arousing unfounded sympathies.

6. This case is one such example how the petitioners have exploited the situation on certain guidelines issued by the Government in G.O.Ms. No. 245 dated 30-6-1977 and the Annexure thereto. These are only executive instructions meant for guiding the officers concerning with the issuance of caste certificates. The executive instructions are neither capable of including or excluding any community from the list notified by the president of India under Articles 341 and 342 of the Constitution of India.

7. All these petitioners are members of one family. They claim that they belong to Wanjari community. As per the counter of the first respondent, it is recognised as one of the backward classes in the State of Andhra Pradesh. Yet, they befooled the concerned authorities posing themselves as Sugalis/ Lambadis on the ground that Wanjara community to which they belong to, is synonymous to Sugali/Lambadi community as indicated in the instructions issued by the Government of Andhra Pradesh through G.O.Ms. No. 245, dated 30-6-1977 and Annexure thereto. It is their claim that the Government of Andhra Pradesh, by the said G.O. Ms. No. 245, has recognised Wanjara Community as Scheduled Tribe which is synonymous to Sungali/Lambadi community and therefore, they are entitled to obtain Scheduled Tribe certificates.

8. As stated earlier, Sugali/Lambadi community is one of the communities listed in the Presidential notification issued in this behalf under Article 342 of the Constitution of India. The reason for the petitioners to claim that they belong to Wanjari community and as such they are entitled to be treated as Scheduled Tribe members is that in the Annexure to G.O.Ms. No. 245, issued by the Government of Andhra Pradesh, which is in the nature of guidelines, it is indicated that Wanjari community is a synonym to Sungali/Lambadi community. It is in this background, petitioners claim that they are entitled to be treated as Sungali/Lambadi community which is recognised as a Scheduled Tribe community in Andhra Pradesh State.

9. All these petitioners have obtained certificates from the M.R.O. Medchel Ranga Reddy District on their claim that they are Scheduled Tribes and have secured jobs in Public Sector Undertakings as well as in Banks and also secured admissions in educational institutions. The enmasse benefits obtained by these petitioners and some others on the basis of the guidelines issued by the Government of Andhra Pradesh in G.O.Ms. No. 245 has denied job opportunities and seats to many of the deserving Scheduled Tribe candidates.

10. The first respondent through proceedings dated 17-10-1989 cancelled the social status certificates issued to the first petitioner who is working as UDC in the second respondent-office and other members of his family on a complaint being received by him that these petitioners have obtained caste certificates by misrepresenting the then Tahsildar, Medchal Taluq, Ranga Reddy District that they belong to Sugali/Lambadi community, though they belong to Wanjari community, which according to them is a synonym of Sugali/Lambadi community. The first respondent while issuing the order dated 17-10-1989 has

issued summons to the first petitioner calling for his explanation as to why the Social Status certificate issued to him by the Tahasildar, Medchal shall not be cancelled. This step has been taken by the first respondent on the basis of a subsequent G.O.Ms. No. 44, dated 23-2-1979 issued by the Government of Andhra Pradesh. Through the said G.O.Ms. No. 44, the confusion caused on account of the guidelines issued by the Government through G.O.Ms. No. 245 is clarified by withdrawing the word "Wanjari" appearing in the Appendix to the G.O.Ms. No. 245. The said G.O.Ms. No. 44 is issued pursuant to the efforts made by the Director Tribal Welfare, through proceedings dated 19-12-1978 wherein the Director of Tribal Welfare has brought to the notice of the Government that the word "Wanjari" in the Annexure issued along with G.O.Ms. No. 245 whereby certain guidelines were issued to such of those officers concerned with the issuance of social status certificates has caused lot of confusion and has in effect assisted the non-tribals to obtain bogus certificates in their favour on the basis of their community name having appeared in the Annexure to the G.O.Ms. No. 245. The Director, Tribal Welfare has also brought to the notice of the Government after elaborate enquiry that Wanjari community is not a synonym to Sugali/Lambadi and as such Wanjari community can never be treated as Scheduled Tribe. He further indicated that Sugali/Lambadi community is a distinct community by itself and has distinct language, culture and tradition. The Sugali/Lambadi community is spread through the State of Andhra Pradesh except in the district of Srikakulam, Visakhapatnam Vizianagaram and East Godavari. The Director of Tribal Welfare has further brought to the notice of the Government that the people of this community who are residents of Andhra and Rayalaseema areas are popularly known as Sugalis, and their brethren who are residents of Telangana areas are known as Lambadis.

11. The Director of Tribal Welfare who has his office at State Headquarters, has a Special wing known as "Research Wing." The said research wing is entrusted with task of collecting dates about the distinct culture, food habits, traditional worship and other characteristics of the members who are notified as Scheduled Tribes by the Presidential notification. The research wing is entrusted with the task of examining the claims of an individual as to a particular group within the listed tribes. The research wing collects the bio-data and other particulars from the individual claimant and after necessary verification certify that he/she belongs to a particular group. The said wing is equipped with all the relevant information as is required for this purpose. This is being done so as to eliminate the bogus claims of others who claim that they belong to Schedule Tribe community, though in reality they are not.

12. The Director of Tribal Welfare realised the mischief being done to real tribes by the use of the word "Wanjari" in the Annexure issued along with G.O.Ms. No. 245 and submitted a detained report to the Government as to the repercussions arising on account of the usage of the word "Wanjari" in the Annexure to the said G.O. The Government, after careful consideration on the report of the Director of Tribal Welfare, deleted the mis-quoted word "Wanjari" from the

Annexure to G.O.Ms. No. 245, vide G.O.Ms. No. 44, dated 23-2-1979.

13. The Wanjari Sangram Parishad, a group claiming to protect the interests of the Wanjari people also questioned the said G.O.Ms. No. 44 dated 23-2-1979 before this Court in Writ Petition No. 3490 of 1979. While dismissing the said writ petition, B.P. Jeevan Reddy, J. (as he then was) held that the G.O.Ms. No. 245 dated 30-6-1977 is neither capable of granting the social status of S.T. to the Wanjari community nor the guidelines issued there to are capable assisting the members of Wanjara community to claim the benefits of S.T. Community. the learned Judge has held thus:

"I am of the opinion that the synonyms mentioned in column No. 5 of Annexure-II to G.O.Ms. No. 245 are not of such a nature that any person, by merely proving to be a member of a group /caste known by that name, can automatically obtain a Scheduled Tribe certificate. The name is only one of the several indication as on the basis of which the question whether a person belongs to scheduled tribe or not, is determined. It may happen that a particular group or caste which in no sense be identified as Scheduled Tribe bears a name/appellation similar or approximating to one or the other names mentioned in column No. 5 of Annexure-II. By that reason alone, a member of that group or caste cannot claim to be a member of Scheduled Tribe. Inasmuch as the word "Wanjari" was causing confusion, the impugned G.O. came to be issued. But still, the members of "Sugali" Tribe whether they are known as Wanjaries or by any other synonym - can always establish that they, in truth and in reality, belong to that Scheduled Tribe and obtain the certificate. In such a case, it could not be necessary to enquire further whether they are Wanjari or not. The main object is to determine, by applying the several tests, prescribed and contained in G.O.Ms. No. 245, whether a person belongs to a Scheduled Tribe or not. The synonyms are mentioned only with a view to aid the officers in the matter of verification. That are not by themselves conclusive. Each of them is a synonym for a particular scheduled tribe. It is not as if each of those is by itself is declared a scheduled tribe. Merely proving that one is a "Wanjari" is of no consequence. One must prove that he is a Wanjari which is in truth the Sugali Tribe. The certificate must also say that the holder thereof belongs to a particular scheduled tribe mentioned in the Presidential order, as amended. It would not be enough to say, for instance that the holder of certificate belongs to "Wanjari" group or caste or community. It is an of course say that the holder belongs to Wanjari Tribe, which is in fact the Sugali Tribe. Looked at from this angle, the petitioners can make no grievance simply because the name "Wanjari" mentioned as one of the synonyms for "Sugali" tribe, has now been deleted. G.O.Ms. No. 245 merely lays down the guidelines for the officers in the matter of enquiry. It did not or does not confer any rights on anyone. The impugned G.O. too does not take away any rights which inhered in the petitioners....."

14. I have heard Sri M. Rama Rao, counsel for the petitioners and the Government Pleader for Social Welfare appearing on behalf of the first

respondent in this behalf.

15. Sri. M. Rama Rao, counsel for the petitioners contended that once "Wanjari" tribe has appeared as one of the synonyms of Sugali/Lambadi tribe, which is recognised as Scheduled Tribe, in G.O.Ms. No. 245 dated 30-6-1977, the petitioners who are Wanjari's are entitled to be treated as members of Scheduled Tribe. He further contended that on the basis of the said G.O.Ms. No. 245, the petitioners approached the authorities and have obtained Scheduled Tribe certificates on the basis of their caste being Wanjari. It is also contended that the first respondent has not given any opportunity to the petitioners to explain their stand nor any enquiry has been made in this behalf and therefore, the impugned proceedings dated 17-10-1989 are in gross violation of the principles of natural justice and are liable to be set aside.

16. The endeavour of Sri Rama Rao, counsel for the petitioners is to convince this Court that the petitioners have not played any fraud in obtaining the Social Status certificates and that the principles of natural justice are violated as no opportunity is given to them. He also made efforts to convince this Court that it is only on account of G.O.Ms. No. 245 issued by the Government which has included the petitioners' community "Wanjari" as Scheduled Tribe and on account of such declaration by the Government of Andhra Pradesh that "Wanjari" tribe is a synonym to Sugali/Lambada tribe which is recognised as Scheduled Tribe, the petitioners have obtained S.T. certificates and have not played any fraud.

17. It is hard to accept the submissions made by the counsel for the petitioner that G.O.Ms. No. 245 has declared Wanjari community as Scheduled Tribe. A reading of G.O.Ms. No. 245 fails to convince this Court that the said G.O. has recognised "Wanjari" community as Scheduled Tribe. The said G.O. is only in the nature of executive instructions issued to the concerned authorities for guiding them while issuing caste certificates. This Court is unable to understand how an attempt could be made before this Court to convince that the said G.O. itself has granted Scheduled Tribe status to the petitioners. On the contrary, the said G.O. and the annexure issued thereto are only in the nature of administrative instructions that are to be followed by the officers concerned. Therefore, it can never be understood as to indicate that G.O.Ms. No. 245 has granted S.T. status to the members of Wanjari community to which petitioners belong.

18. Coming to the second limb of the argument of the counsel for the petitioners that the petitioners have not played any fraud on anyone while obtaining certificates as Scheduled Tribe on the basis of G.O. Ms. No. 245, I do not think that these petitioners are as innocent as they are being projected. Petitioners are very well aware that their community has not been declared by the Presidential order as Scheduled Tribe. As I have stated in the opening paragraphs of the judgment that clever are those who try to exploit every situation, these petitioners have tried to exploit the situation in the guise of G.O.Ms. No. 245 and the annexure thereto. In fact, there is no such situation created by said G.O. and

the annexure thereto to indicate that the petitioners are S.Ts. and yet these petitioners have tried to exploit the situation by befooling the officials concerned and have obtained the certificates as S.Ts and have secured Government jobs and also admissions in educational institutions which are meant for real S.Ts. The further submission that the first respondent has not afforded any opportunity to the petitioners to explain their stand and the principles of natural justice are violated as no enquiry is contemplated in this regard, I do not think that these submissions could be sustained. In the counter filed by the first respondent, it has been categorically stated that the first petitioner was issued summons through his employer to appear before the District Collector on 31-7-1989 along with documentary evidence in support of his status. However the first petitioner did not attend on that day. It was then adjourned to 14-8-1989. On that day also he did not attend. Again it was posted on 21-8-1989. On that day, the first petitioner attended the enquiry and his sworn statement was recorded. On his request, the case was posted to 11-9-89 for producing documentary evidence. He produced some documents and again the case was posted on 18-9-89 for producing further documentary evidence. A letter has also been addressed by the first respondent to the Commissioner, Tribal Welfare on 29-8-89 seeking clarification as to the factual position whether "Wanjari" tribe is listed as Scheduled Tribe and whether the status of Wanjari could be treated as Scheduled Tribe. The Commissioner has informed the District Collector that Wanjari community has never been included in the list of Scheduled Tribes in the State of Andhra Pradesh. However, the word "Wanjari" has been included in the list of synonyms to Sugali/Lambadi tribe in G.O.Ms. No. 245, dated 30-6-77 and subsequently the word "Wanjari" Was deleted from the list of synonyms as it created confusion in the minds of the certifying officers. Therefore, on the basis of the clarification issued by the Commissioner of Tribal Welfare, the first respondent issued proceedings dated 17-10-1989 cancelling the caste certificates issued to the first petitioner. Since the other petitioners are members of the same family and when once the social status of the first petitioner is known to the first respondent that he does not belong to S.T. community, no further enquiry is required to cancel the certificates of other petitioners. The analogy that petitioners are not given any opportunity looks as a mere my thin facts and circumstances of the case.

19. The very foundation on which basis the petitioners are claiming themselves to be as S.T. members is through G.O.Ms. No. 245 and annexure thereto wherein it was indicated that Wanjari community is synonymous to Sugali/Lambadi. However, the word "Wanjari" has been withdrawn by the Government through G.O.Ms. No. 44, dated 23-2-1979. When once the word "Wanjari" appearing in the annexure to G.O.Ms. No. 245 has been withdrawn, petitioners cannot still claim that they are to be treated as scheduled Tribe members. As discussed by me, the wihtdrawal of the word "Wanjari" by way of G.O.Ms. No. 44, has been questioned in this Court in W.P. No. 3490/79 by the Wanjari Sangram Parishad. However, this Court dismissed the said writ petition by holding that the G.O.Ms.

No. 245 and the annexure thereto are mere guidelines and therefore, no right has accrued to the persons of Wanjari community to agitate against the withdrawal of word Wanjari from the annexure to G.O.Ms. No. 245. When once the word "Wanjari" has been withdrawn, either the first respondent or for that matter any executive authority has no power to enquire and issue S.T. certificates to the members of Wanjari community. It is only through Presidential notification that any community could be recognised as Scheduled Tribe but not otherwise. The executive authorities have no power to over-ride the Presidential order and confer S.T. status to any community. If that is done, it is ultra-vires the powers of the executive. Therefore, the plea that no enquiry was contemplated by the first respondent before cancelling the social status certificates issued to the petitioners is of no consequence at all. In this backdrop, violation of the principles of natural justice cannot be alleged. No fundamental right of the petitioners is infringed. On the contrary, the petitioners are the illegal beneficiaries having taken advantage of some administrative instructions and having grabbed the benefits meant for real S. Ts., have no right to agitate that there is any violation of the principles of natural justice.

20. Sri Rama Rao, counsel for the petitioners contended that in W.A. No. 439 of 1994 dated 19-7-1995, a Division Bench of this Court while dealing with the similar contingency, directed enquiry to be conducted by the Director of Tribal Welfare for finding as to whether the appellant therein belong to "Wanjari" caste, as contended by the appellant. Placing reliance on the said decision, the counsel submits that similar direction could be issued directing the Commissioner, Tribal Welfare to make enquiry as to whether the petitioners belong to Wanjari community and as to whether they are entitled to be treated as S.Ts., and till such time, the petitioners shall not be disturbed. The said decision of the Division Bench, I say with respect, has not laid down any ratio which could form precedent in all the similar matters. The Division Bench has directed to hold enquiry as to whether the appellant therein belongs to Wanjari community or not. The petitioners claim that they are from Wanjari community. When Wanjari community itself is not listed as Scheduled Tribe as per the Presidential order, 1976, the question of directing the concerned to hold an enquiry as to whether the petitioners belong to Wanjari community or not, is a futile exercise. Therefore, I am not inclined to accept the submissions made in this regard having regard to the decision of the Supreme Court in *Bhaiyalal Vs. Harikishan Singh and Others*, which I will discuss later.

21. In W.P. No. 14875 of 1985, dated 19-2-1986 K. Ramaswamy, J. (as he then was) while dealing with G.O.Ms. No. 371, dated 13-4-1976 held that the executive has no power or authority to alter or change the Presidential notification and extend the benefits to a new class. Through the said G.O.Ms. No. 371, children born to inter-caste married couple, mother being a member of either S.C. or S.T. community, were granted benefits of social status of their mother, which would enable them to get a seat meant for S.Cs./S.Ts. or B.Cs. as the case may be. In that context, it was held that any order of the executive

which has the over-riding effect on the Presidential Order is held to be ultra-vires the power of the executive. Dealing with the similar set of facts, in *W.S.V. Satyanarayana Vs. Director of Tribal Welfare and Others*, , which I have disposed of today, I have held that the executive has no power to alter the Presidential notification. Therefore, applying the same principle, I have no hesitation to hold that the claims of the petitioners that they are entitled to be treated as members of S.T. community basing on G.O.Ms. No. 245 and annexure thereto is untenable.

22. In support of his contention that the petitioners are entitled to be treated as members of Scheduled Tribe community, Sri Rama Rao, counsel for the petitioners has taken me to the following decisions in *Abhoy Pada Saha Vs. Sudhir Kumar Mondal*, , *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, , *K. Adikanda Patra and Others Vs. Gandua and Others*, , *Government of Andhra Pradesh and Others Vs. Dasari Subbayamma and Another*, , and in *B. Basavalingappa Vs. D. Munichinnappa*, .

23. The decisions referred to above, in the light of the issues which have emerged in this writ petition, I do not think that these decisions are of any assistance to the petitioners. These decisions deal with a different context where elaborate oral and documentary evidence was placed before the Courts in the election matters. Therefore, I do not think that similar analogy could be drawn in the present set of facts.

24. The law governing on the question as to whether a particular person could be treated as Scheduled Caste or Scheduled Tribe even if the sub-community or sub-caste is a synonym to the major group listed in the Presidential notification and the effect of such plea of synonym of one community to a major community, has been considered by the Supreme Court way back in the year 1965 in *Bhaiyalal Vs. Harikishan Singh and Others*, , and is now fairly well settled by the subsequent judicial pronouncements. Speaking for the Bench, Gajendragadkar, C.J. has held thus:

"In order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. Any person who claims that he belongs to the same status by reason of the fact that he belongs to a particular caste which is a sub-caste of the caste declared by the President cannot be accepted unless it is expressly mentioned in the Public notification under Article, 341. An enquiry of this kind would not be permissible having regard to the provisions contained in Article 341 . Article 341(1) provides additional protection to the members of the Scheduled Castes having regard to their economic and educational backwardness from which the suffered....."

In the above case, the appellant claimed that he belongs to Dohar caste which is a sub-caste of Chamar, a Scheduled Caste. On that basis, he is entitled to contest election to a reserved constituency. It was held in that context, that it is not open to the Court to go into the question as to whether the Dohar caste is a

sub-caste of Chamar and held that the appellant cannot claim the status of Scheduled Caste. Therefore, this decision of the Supreme Court is enough to indicate that mere fact of the petitioners' community Wanjari appearing in the Annexure to G.O.Ms. No. 245. as a synonym to Sugali/Lambadi, cannot be treated as Sugali/Lambadi and treat the persons of Wanjari community as S.Ts., unless it is expressly mentioned in the Presidential notification issued under Article 341 and 342.

25. In *Dadaji alias Dina Vs. Sukhdeobabu and Others*, , the Supreme Court considering Article 366(25) of the Constitution, has observed thus:

"Apart from Article 366(25) of the Constitution, there is no other definition of the expression "Scheduled Tribes." Scheduled Tribes, are therefore, only those which are deemed under Article 342 of the Constitution to be Scheduled Tribes. Hence in order to find out whether a community is a Scheduled Tribe or not, we have only to see the order which is made under Article 342 of the Constitution."

In the above case, the appellant declared himself to be belonging to "Mana" community. It was alleged that the appellant belongs to "Kshetriya Bidwaik Mana" community and not Mana community, which is not a Scheduled Tribe. It was further alleged that Mana community was a sub-tribe of Gond tribe and it had no relationship with Kshetriya Bidwaik Mana community to which the appellant belong. The appellant denied the same and stated that there were two types of "Manas" viz., (a) Mana - a Sub-tribe of Gond referred to entry No. 18 of the part-IX of the Schedule to the order, and (b) Kshetriya Bidwaik Mana community. He further contended that "Mana" community to which he belonged to, has been included in the entry after the schedule to the Presidential order was amended in the year 1976. The Election Court allowed the election petition holding that the appellant does not belong to "Mana" community. The matter was carried before the Supreme Court and the Supreme Court held that at Sl.No. 18 of the Presidential notification issued under Article 342, Gond community was sub-divided into various sub-groups and "Mana" was one such sub-group appeared in the notification. It was held that since the claim of the appellant that he belongs to Kshetriya Bidwaik Mana, which is a Mana community the Presidential notification indicated only "Mana" one of the subgroups of Gond community, the plea of the appellant was rejected.

26. What has flown from the above decisions are when the claim of a subgroup is not found in the Presidential notification, such claim cannot be accepted nor any enquiry in this regard is permissible. Therefore, the plea of the petitioners that Wanjari community though not found in the Presidential order, be treated as Scheduled Tribe since Wanjari is a synonym of Sugali/Lambadi community as shown in G.O.Ms. No. 245 and annexure thereto, cannot be accepted.

27. In *Principal, Guntur Medical College, Guntur v. Y. Panduranga Rao* 1983 (2) ALT 121 : AIR 1983 A.P. 339, a Division Bench of this Court has observed thus:

"Where the claim of a person that he belongs to a particular Scheduled Tribe is

contested it is permissible in a court to take evidence that a particular person belongs to the community of Scheduled Castes and Scheduled Tribes to establish identity. But it is not the same thing to say that even though he belongs to a different community which is not enumerated in the list in the schedule to the Presidential Order, he must be permitted to adduce evidence to show that the community, to which he belongs, though unenumerated in the said list belongs to the community enumerated in the Presidential order. This is not permissible under law."

In the above case, the Division Bench was dealing with an appeal against the order of learned single Judge in W.P. No. 5312 of 1982 dated 14-9-82 wherein it was claimed by the respondent in the writ appeal that he belongs to Manyam Kapu community which is a synonym to Konda Kapu and sought admission in the Guntur Medical College in a seat reserved for S.T. candidate. The learned single Judge allowed the writ petition holding that Manyam Kapu is a synonym to Konda Kapu and the respondent in the writ appeal was entitled to get admission under S.T. quota, against which the writ appeal was filed. The Division Bench held categorically that as long as the Presidential order fails to indicate that Manyam Kapu community to be a synonym of Konda kapu, it is not open to the Courts to interpret the Presidential Order and grant relief which the Constitution has not granted.

28. Petitioners have sought a writ of certiorari quashing the proceedings dated 17-10-1989 issued by the first respondent cancelling S.T. certificates issued to them on the ground of not holding enquiry. Could these petitioners entitle for the relief having regard to the above discussion? This Court is quite concerned with the constitutional responsibility bestowed on it. This Court is also conscious of the fact that what is not granted by the Constitution, cannot be granted by the Courts. After all, Courts are also to function within the framework of the Constitution. In the Presidential notification issued under Article 342 of the Constitution, insofar as it relates to the State of Andhra Pradesh, 33 communities are enlisted as S.Ts. The Community "Wanjari" to which the petitioners claim to belong, is not enlisted in the said order. Therefore, mere obtaining S.T. certificates by the petitioners from certain authorities does not confer the right to be treated as S.Ts. It is not the case of the petitioners that they belong to Sugali/Lambadi Community. The reason is quite obvious. They claim that they belong to Wanjari community. They also claim that through G.O.Ms. No. 245 and annexure thereto, it has been indicated that Wanjari community is synonymous to Sugali/Lambadi community. Basing on these guidelines, the petitioners desire this Court to accept their social status as S.T. It is absurd to accept that the said G.O. has granted the petitioners the social status of S.Ts. on par with Sugali/Lambadis. By executive instructions or order, the Presidential notification cannot be altered or modified. In this case, no such effort is made by the Executive to grant the members of Wanjari community the status of S.T. nor the said G.O. says that Wanjari community shall be treated as Sugali /Lambadi. The confusion created on account of the "mis-quoted word" appearing in column V of Annexure II to

G.O.Ms. No. 245, indicating "Wanjari" as one of the synonyms to Sugali/Lambadi has been withdrawn by subsequent G.O.Ms. No. 44 dated 23-2-1979. Therefore, the submission of the petitioners that they are to be treated as S.Ts. and are entitled for the relief prayed for, is not acceptable to this Court.

29. Having regard to the above discussions and having regard to the judicial pronouncements in this regard, I hold that the members of the petitioners community - "Wanjari" are not entitled to be treated as Scheduled Tribe community and the petitioners are not entitled to get any benefits as members of Scheduled Tribe community. I further hold that the petitioners are not entitled to retain the benefits which they obtained posing themselves as S.Ts. The endeavour of law is not to assist a usurper. The usurper cannot be allowed to retain the illegal gain. Following this principle, I hold that the impugned order dated 17-10-1989 issued by the first respondent, in the circumstances is just and proper and calls for no interference from this Court.

30. Accordingly, the writ petition is dismissed. No costs.