

**(1998) 06 BOM CK 0009**

**In the Bombay High Court**

**Case No : Writ Petition No. 1961 of 1991**

Pandurang Rangnath Chavan

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

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**Date of Decision : 10-06-1998**

**Acts Referred:**

Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 — Section 4  
Constitution of India, 1950 — Article 14, 15, 16, 226, 341

**Citation :** (1998) 3 ALLMR 528 : (1998) 4 BomCR 462 : (1998) 2 MhLj 806

**Hon'ble Judges :** S. Radhakrishnan, J; A.V. Savant, J

**Bench :** Division Bench

**Advocate :** R.G. Ketkar, for the Appellant; C.R. Sonavane, A.G.P., for the Respondent

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## **Judgement**

A.V. Savant, J.—Heard both the learned Counsel; Shri Ketkar for the petitioner and Shri Sonavane, Asstt. Government Pleader for the respondents.

2. By this petition under Article 226 of the Constitution, the petitioner prays for quashing (i) the Judgment and Order dated 11th October 1989 passed by the Caste Certificates Scrutiny Committee, Maharashtra State, Pune, and (ii) the appellate order dated 20th March 1991 passed by the Additional Commissioner, Nasik Division, Nasik, dismissing the petitioner's appeal. The petitioner claimed to be a Thakar" belonging to the Scheduled Tribe of Thakars as specified by the President of India after consultation with the Governor of the State in accordance with the provisions of Article 342 of the Constitution. Under the impugned Judgments and Orders he has been held to be belonging to the Thakar caste, which under the impugned Government Resolution dated 8th July 1982 has been declared to be one of the "Other Backward Classes", mentioned at Entry 200. Thus, rejecting the petitioner's contention that he belongs to the Scheduled Tribe of Thakars, a finding has been recorded that the petitioner belongs to the "Other Backward Class" of Thakar.

3. The petitioner belongs to village Hingni, Taluka Shrigonda, District

Ahmednagar. On the 25th February 1986 the petitioner obtained the Caste Certificate from the Executive Magistrate and Tahsildar, Shrigonda, to the effect that he belonged to the Hindu - Thakar (Sr. No. 44) Tribe which was recognised as a Scheduled Tribe under the Constitution (Scheduled Tribe) Order, 1950, as amended by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, the Bombay Reorganisation Act, 1960 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. On the basis of the said certificate, the petitioner obtained employment as a Sales Tax Inspector in the month of November, 1961 in the Sales Tax Department of the State of Maharashtra and has been working on the said post.

4. A reference was made by the Commissioner of Sales Tax, Bombay, respondent No. 4, to the Scrutiny Committee, which was functioning under the Director of Social Welfare, Maharashtra State, Pune, on 16th July 1984 for scrutiny of the claim of the petitioner that he belonged to the Scheduled Tribe of Thakar. The petitioner laid voluminous evidence in support of his claim that he belonged to the Scheduled Tribe of Thakar. The evidence consisted of the Caste Certificate issued by the Executive Magistrate on 25th February 1986, the petitioner's birth certificate dated 17th December 1986 and the school leaving certificate dated 21st September 1984 which mentioned that he was a Hindu Thakar. The petitioner also produced the certificate from the Sarpanch, Grampanchayat, Hingni, and a Member of the Grampanchayat, Hingni, to the effect that he was a Hindu Thakar, which was a Scheduled Tribe. Evidence was also led in respect of the petitioner's close relatives, who were certified to be Hindu Thakars. The Scrutiny Committee by its Judgment and Order dated 11-10-1989 came to the conclusion that the petitioner had failed to prove his affinity or relationship with Thakar Scheduled Tribe and that he had definite affinity with Thakar caste. On an erroneous interpretation of the provisions of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956 - Act No. 63 of 1956, as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 - Act No. 108 of 1976, the Committee came to the conclusion that the certificate issued to the petitioner that he belongs to the Thakar Scheduled Tribe was liable to be cancelled. Accordingly, the said certificate was cancelled and confiscated. It was declared that the petitioner belonged to the Thakar caste which was one of the "Other Backward Classes".

5. The above order passed by the Scrutiny Committee was challenged by the petitioner in Caste Certificate Appeal No. 14 of 1989. The Additional Commissioner took an extremely technical view of the matter and without trying to verify the authenticity or the genuineness of the documents produced before him, confirmed the findings recorded by the Scrutiny Committee to the effect that the petitioner belonged to the Thakar Caste which was an O.B.C. as per the Government Resolution dated 8th July, 1982. In the result, the petitioner's appeal was dismissed on 20th March 1991. The correctness of these two Judgments and Orders, as also the constitutionality and legality of the Government Resolution dated 8th July 1982 has been challenged before us.

Under the G.R. dated 8th July, 1982, the caste "Thakar" has been added at Sr. No. 200 in the list of "Other Backward Classes".

6. Before coming to the legality of the impugned orders and the G.R. and the wholly erroneous approach of the two authorities, we would prefer to deal with the legal position in the light of the constitutional provision and the decisions of the Apex Court and of this Court on the subject. Article 341 of the Constitution deals with the power of the President to specify certain castes, or races to be Scheduled Castes in relation to a particular State or a Union Territory. Article 342 deals with the President's power to specify certain tribes or tribal communities or parts or groups within tribes or tribal communities which shall for the purpose of the Constitution, be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be. This power has to be exercised after consultation with the Governor of the State. It may be useful to reproduce Article 342, which reads as under :-

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

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

7. The President initially made the Constitution (Scheduled Tribes) Order, 1950, on 6th September 1950 in exercise of the powers conferred by Clause (1) of Article 342 of the Constitution of India. As far as the then State of Bombay was concerned, the relevant portion is to be found in Part III of the Schedule to the said 1950 Order. Entry 21 deals with "Thakur". Clause 2 of the said Order says that the tribes or tribal communities, or parts of, or groups within tribes or tribal communities specified in Parts I to XIV of the Schedule to the Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule. Thus, so far as the erstwhile Bombay State was concerned, "Thakurs" were declared to be Scheduled Tribes.

8. On the 25th September 1956 the Parliament enacted the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956 (for short "Act No. 63 of 1956") amending the Constitution (Scheduled Tribes) Order, 1950 referred to above. Schedule III of the 1950 Order dealing with Bombay State was amended by Act No. 63 of 1956. Schedule III to Act No. 63 of 1956 deals with

amendments to the Constitution (Scheduled Tribes) Order, 1950, Part III, Bombay. Item 6 dealing with Ahmednagar District, to which the petitioner belonged, reads as under :-

"6(a) In Ahmednagar district Thakur or

Akola, Rahuri and Thakar

Sangamner Talukas including

Ka Thakur

Ka Thakar

Ma Thakur

Ma Thakar

Thus, it is true that in Act No. 63 of 1956 the area restriction was adhered to and only Thakur or Thakar, including Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar belonging to Akola, Rahuri and Sangamner Talukas in Ahmednagar District were declared to be Scheduled Tribe. The petitioner admittedly belonged to the Shrigonda Taluka of Ahmednagar District and, therefore, was not covered by the 1956 Amendment.

9. The Department of Social Security, Government of India, appointed an Advisory Committee to examine the question of revision of lists of Scheduled Casts and Scheduled Tribes and make a report thereon. The Committee made its report. The Committee took note of the fact that in the lists for many States, including Maharashtra, Scheduled Castes and Scheduled Tribes have been specified with reference to certain localities (usually Districts or Tehsils) within the State. The result was that no person could legally be regarded as a member of a Scheduled Caste or Scheduled Tribe for the purpose of the Constitution unless he belonged to the listed caste or tribe and also resided in the specified localities within the aforesaid States. This had led to anomalous results. Members of the same caste or tribe from ethnological or social point of view were deprived of the special privilege and benefits merely because they resided in different States or different parts of the same State. It was observed that this anomaly had its origin in the lists prepared under the Government of India Act, 1935. The territorial restrictions were, then, probably introduced either because the social disabilities attached to certain castes and tribes were appreciably more distinctive in particular localities or because certain castes and tribes were found to be concentrated in appreciable numbers only in the specified localities. Such area restriction had been criticised both within and outside the Parliament. It operated as a clog on social mobility as the communities concerned would confine themselves to the specified areas, lest, they lose the special privileges and benefits by moving out of the specified area. It was rightly pointed out that consistent with the policy of social integration, the tribes, in particular, should be encouraged to abandon their isolation and freely intermix with the rest of the

population. Another argument which weighed with the Committee was that as a result of the spread of education, many boys and girls of the Scheduled Castes and Scheduled Tribes, who had attained secondary or university level education, had, in the absence of adequate educational facilities near their homes, migrated to regional cities or State headquarters or even outside the State to prosecute higher studies in higher institutions of their choice. The Committee, therefore, recorded its happiness that every State and Union territory in India had, in appreciation of these considerations, agreed to remove the area restrictions generally. On the basis of this report, the Parliament enacted Act No. 108 of 1976 on 18th September 1976 viz. the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. Section 4 of the said Act of 1976 deals with the amendment to the Scheduled Tribes Orders. The Scheduled Tribes Orders were amended in the manner and to the extent specified in the Second Schedule to Act No. 108 of 1976. In the Second Schedule, Part IX deals with Maharashtra State. Entry 44 in the said Part IX reads as under :-

"44. Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar". There is, thus, no doubt whatsoever that by virtue of the said Parliamentary enactment a person who is either a Thakur, Thakar, Ka Thakur and Ka Thakar, Ma Thakur and Ma Thakar has been declared to belong to a Scheduled Tribe within the meaning of Article 342 of the Constitution.

10. The sum & substance of the above constitutional provisions is that :-

(i) Initially, by the Constitution (Scheduled Tribes) Order, 1950 only Thakurs were declared to belong to Scheduled Tribes as per Entry 21 in the First Schedule Part III dealing with erstwhile Bombay State.

(ii) By the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956, (Act No. 63 of 1956) the 1950 Order was amended and as against only Thakurs being Scheduled Tribes, Thakur or Thakar, including Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar from certain talukas in certain districts were declared to belong to Scheduled Tribes. In the present case, we are concerned with Ahmednagar District and the petitioner belongs to Shrigonda taluka, which taluka was not one of the three talukas mentioned in the 1956 Amendment Act; the three talukas being Akola, Rahuri and Sangamner of Ahmednagar District.

(iii) However, pursuant to the report of the Advisory Committee on the Revision of Lists of Scheduled Castes and Scheduled Tribes, the Parliament thought fit necessary to remove the area restriction which was working as a clog on social mobility and which was inconsistent with the concept of social integration of the different tribes and communities in India. Consequently, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 - Act No. 108 of 1976 was enacted by Parliament and Entry 44 in Part IX of the Second Schedule to the said Act specifically includes, Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar as Scheduled Tribes in Maharashtra for the purpose of the Constitution.

11. At this, juncture, we would like to refer to a decision of the Apex Court on the scope of the constitutional provisions and the power, if any, of the State Government to amend such a provision or even the power of the Court to enquire into the correctness or otherwise of the said list. In *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another*, , the Apex Court was considering the question of implementation of the Scheduled Castes Order issued under Article 341 of the Constitution. The question that came up for consideration was whether any inquiry can be held or evidence can be led to determine whether or not a particular community falls within the particular scheduled caste or outside it. The Apex Court held that the Scheduled Caste Order has to be applied as it stands and no inquiry can be held or evidence led in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Caste Order, except as contemplated by Article 341 was valid. The Apex Court further observed that it was not for the State Government or even for the Court to enquire into the correctness of what was stated in the report that had been made thereon or to utilise the report in effect to modify the Scheduled Caste Order. It was open to the State Government, if it so thought fit, to forward the report to the appropriate authority to consider whether the Scheduled Castes Order needed amendment by appropriate legislation. Until the Scheduled Castes Order was amended, it must be obeyed as it read and the State Government, therefore, must treat "Thandans" throughout Kerala as members of the Scheduled Castes and issue community certificates accordingly. The Apex Court considered its earlier judgments in (i) *Srish Kumar Choudhury Vs. State of Tripura and others*, (ii) *B. Basavalingappa Vs. D. Munichinnappa*, and (iii) *Bhaiyalal Vs. Harikishan Singh and Others*, . The Court also considered its decision in *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, and *Dina v. Narayan Singh*, 38 ELR 212. Having considered these decisions, the Apex Court came to the conclusion that the entries in the presidential order have to be taken as final and the scope of inquiry and admissibility of evidence was confined with the limitations indicated. It was further held that it was not open to the Court to make any addition or subtraction in the Presidential Order. In the result, the Apex Court directed the State Government to grant to all the members of the Thandan community, including those belonging to the Malabar District and the present Palghat District the benefits due to the Scheduled Caste included in the Schedule to the Constitution Scheduled Castes Order, as amended up to the date and to issue to them community certificates accordingly. In our view, what has been said of the scope of the Scheduled Castes Order issued under Article 341 of the Constitution must apply a fortiori to a Scheduled Tribes Order issued under Article 342 of the Constitution. We are referring to this aspect of the matter, because an attempt has been made on behalf of the respondent State to place reliance on some of the Government Resolutions seeking to declare "Thakar" as belonging to the "Other Backward Classes" which is clearly inconsistent with the Parliamentary enactment viz. Act No. 108 of 1976 viz. the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 after the area restriction was removed.

12. In this behalf, Shri Sonavane invited our attention to the fact that initially, on the 13th October 1967, the State Government had passed a Resolution declaring "Thakar" as an O.B.C. The relevant entry is to be found at Sr. No. 156 of the list annexed to the G.R. dated 13-10-1967. Consequent upon removal of the area restriction, the State Government issued another G.R. on 9th December 1977 deleting Entry 156 relating to Thakar from the list of O.B.Cs. attached to the G.R. dated 13-10-1967. The result was that if, according to the State Government, a Thakar like the petitioner belonged to the O.B.C. between 13-10-1967 and 9-12-1977, after 9th December 1977 he ceased to be an O.B.C. and would, therefore, revert back to the S.T. category as per the parliamentary enactment viz., the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. Unfortunately, however, the matter does not rest there. On the 8th July 1982 the State Government thought it fit to issue another G.R. which is impugned before us. Under the 8th July 1982 G.R., the State Government declared that in the G.R. of 13-10-1967 Thakar was added at Entry 200 as an O.B.C. Thus, despite the parliamentary enactment viz., the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the State Government thought it fit to again declare "Thakar" as an O.B.C. at Entry 200 in the G.R. dated 13-10-1967. Relying upon the decision of the Apex Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another (supra), Shri Ketkar for the petitioner has challenged the validity of the G.R. dated 8th July 1982. He has contended that in view of the decision of the Apex Court the State Government has no jurisdiction to amend the Scheduled Tribes Order issued by the President under Article 342 of the Constitution, as amended from time to time. We have already referred to the Constitution (Scheduled Tribes) Order, 1950, which was amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956 - Act No. 63 of 1956 and again, further, amended by Act No. 108 of 1976. Applying the ratio of the decision of the Apex Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another (supra), we have no hesitation in coming to the conclusion that it is for the Parliament to specify the tribes or tribal communities or parts or groups within tribes or tribal communities which shall, for the purpose of Constitution, be deemed to be Scheduled Tribe in relation to that State. Clause (2) of Article 342 makes it very clear that Parliament may by law include in or exclude from the list of Scheduled Tribes specified in the Notification issued under Clause (1), but save as aforesaid, the Notification issued under the said clause shall not be varied by any subsequent notification. In our view, therefore, in the light of the clear dictum of the Apex Court in Palghat Jilla Thandan's case, the State Government has no jurisdiction to issue the impugned G.R. dated 8th July 1982 declaring that "Thakar" should be added as an O.B.C. at Entry 200 in G.R. dated 13-10-1967.

13. Similar view has been taken by the Apex Court in a later decision, to which our attention has been invited by Shri Ketkar. In Pankaj Kumar Saha Vs. Sub-Divisional Officer, Islampur and Others, , question arose whether the Court has power to include in or exclude from or substitute or declare synonyms to be

Scheduled Caste or Scheduled Tribe. In para 6 of the Judgment at page 266 of the Report the Apex Court observed as under :--

"6. It is now settled law that though evidence may be admissible to the limited extent of finding out whether a caste which claims the status as Scheduled Caste or Tribe was in fact included in the Presidential notification as amended under the 1976 Act, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be a Scheduled Caste or Scheduled Tribe. The courts would only look into the notification issued by the President to see whether the name finds place in the notification? Saha caste is expressly excluded from Sunri, a Scheduled Caste notified in the notification issued by the President in relation to the State of West Bengal which is conclusive. The certificate issued to the petitioner is, therefore, clearly unconstitutional and a fraud on the Constitution. The petitioner cannot be considered to be a Scheduled Caste".

14. In view of the constitutional provisions and the parliamentary enactment, it is difficult to appreciate how the State Government can by an ordinary resolution dated 8th July 1982 declare "Thakar" to be an O.B.C. In effect, what the parliamentary enactment Act No. 108/1976 declares to be a Scheduled tribe for the purpose of Article 342 has been, by virtue of the G.R. dated 8th July 1982 issued by the State Government, declared to be an O.B.C. In our view, having regard to the ratio of the above mentioned two decisions of the Apex Court, we have no option but to declare the G.R. dated 8th July 1982 as clearly unconstitutional, null and void.

15. Coming to the merits of the petitioner's case, the order of the Scrutiny Committee proceeds on several erroneous assumptions and depicts an improper approach to the problem. In the first place, the Scrutiny Committee has not properly appreciated the ratio of the decision of this Court in Maharashtra Adivasi Thakur Jamat Seva Mandal and Others Vs. State of Maharashtra and Others, , While considering the claim of Thakurs as belonging to Scheduled Tribe, this Court observed in para 9 of its judgment at page 1028 as under :--

"9. From the material placed on record it appears that there is also a Caste known by name, Thakur" which is amalgamation of certain sub-caste. The details of this sub-caste are given in the accompaniment to the Government Resolution dated 24th April 1985, though the list is not exhaustive and is merely illustrative. From Entry No. 44 in the II Schedule to the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, the Tribes known as Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar are notified as Scheduled Tribes. In the list notified by the Maharashtra Government for other Backward Castes at Entry No. 200, a caste "Thakar" is notified as Other Backward Class. Therefore, from the material placed on record it appears that there is a distinct caste carrying same nomenclature. Hence, it is necessary to find out in each case as to whether the claimant belongs to Scheduled Tribes or the Caste carrying the same name. By indirect method of obliquely a Caste which is not included in the Scheduled relating to Scheduled Tribe, cannot be equated with or conferred the

status of Scheduled Tribes. It is experienced that benefits are snatched away by most vocal classes, and thus keeping the weaker among the weak always weak. This not only robs them of their share in benefits but creates further inequalities amongst the unequals. Therefore an enquiry in each case is a must and this is precisely what is contemplated by the various Government Resolutions. It is true, that only because in the various certificates produced by the claimants he is described as "Hindu- Thakur" it does not mean that he necessarily belongs to Thakur Caste and not to the Thakur Scheduled Tribe. His or her place of residence is also not a decisive factor. Though it was the case of the State Government in Kumari Sunita's case that the tribals cannot be Hindus the said stand is rightly given up before us. To say the least the stand of the Government in Government Resolution dated 29th October 1980 is that a person belonging to Scheduled Tribe, may have any religion. A Tribal can be a Hindu also. Therefore only because the claimant belongs to Hindu Religion it will not necessarily follow that he is a non-tribal. Similarly only because he speaks Marathi and is not able to give certain answers to the queries made, necessarily an inference cannot be drawn that he is not a tribal. Such a straight jacket approach the problem is wholly impermissible. The Scrutiny Committee is expected to scrutinize each and every case on the basis of the material and evidence produced before it and is not expected to prejudge the issue and decide it on the basis of its own notions".

Despite the above, merely on the basis of place of residence in Shrigonda tehsil, dialect spoken whether Marathi or Thakari, and saint worshipped, the Committee came to the conclusion that the petitioner had no affinity or relationship with Thakur Scheduled Tribe, but that he had definite affinity with Thakar Caste. The Committee then referred to the fact that Thakar was an O.B.C. as per the G.R. dt. 8th July 1982. While dealing with the documents produced by the petitioner, the Committee has commented upon the fact that the certificates described the petitioner as "Hindu Thakar". Emphasising the words "Hindu Thakar", the Committee observed that it was not classified as Thakar Scheduled Tribe, implying that a "Hindu Thakar" cannot be a Scheduled Tribe. In our view, if a Thakar was declared by the parliamentary enactment to be a Scheduled Tribe and if the documentary evidence before the Committee showed that the petitioner was a "Hindu Thakar" such evidence was not inconsistent with the petitioner's claim that he belonged to the Thakar Scheduled Tribe.

16. We further find that the Scrutiny Committee took note of the parliamentary enactment Act-No. 108 of 1976 which declared at Entry 44 the following persons as belonging to the Scheduled Tribes viz. Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar. However, the Committee placed erroneous reliance upon the observations of the Apex Court in Dadaji alias Dina Vs. Sukhdeobabu and Others, . That was a case where a person had contested the election from the constituency reserved for Scheduled Tribe. The tribe concerned was "Gond" , its synonym being "Koitur". There were number of sub-tribes mentioned under the tribe "Gond" at Sr. No. 18 after the amendment by Act No. 108 of 1976 in its application to Maharashtra. "Mana" was one of the several sub-tribes.. The Apex

Court held that "Mana" community included in Entry No. 18 can only be that which has affinity with "Gonds" and any other community which also bears the name "Mana" but does not have any such affinity cannot be deemed to fall within the scope of "Mana" in Entry No. 18. These observations are to be found in para 16 of the Judgment at page 156. This is followed by the finding that the appellant therein had categorically admitted in the course of his evidence that there was no connection between his community and the Gonds. His evidence was that he had no concern with the Gond community. The customs and traditions with regard to marriage of his community were different from those of the Gonds. He had stated in his depositions that he had no concern whatsoever with the Gonds. It was in these peculiar facts that the Apex Court held that the appellant was not eligible to stand as a candidate for election to the Maharashtra Legislative Assembly from the reserved seat. It was held that the High Court was right in rejecting the case of the appellant that he belonged to the Scheduled Tribe. In our view, the ratio of the Apex Court decisions has no application whatsoever to the facts of the present case. We are not dealing with a case of a sub-tribe of Thakur or Thakar tribe. In Dina's case, the Apex Court was dealing with the Gond tribe and its sub-tribes, one of them being Mana. In the case before us, Entry 44 in the 1976 amendment reads as Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar. There is no question of a principal entry, its synonym, much less of one of its sub-tribes, as was the case with Gond and its sub-tribe "Mana". We may incidentally refer to a decision of this Court in Writ Petition No. 4681 of 1987 with Writ Petition No. 703 of 1988, decided on 15-02-1988. A Division Bench of this Court took a similar view which we have taken above and observed that the ratio of the decision in the case of Dina would be inapplicable while considering the case of a Thakur or Thakar falling under Entry 44 of the 1976 enactment. The relevant observations are to be found in para 7 of the Judgment of this Court delivered on 15-2-1988. In our view, therefore, the Scrutiny Committee proceeded on a wholly erroneous and legally impermissible approach while rejecting the claim of the petitioner.

17. Coming to the decision of the Appellate Authority, it is unfortunate that the Appellate & gt; Authority has taken an extremely technical view of the matter and refused to consider some of the documents on the sole ground that xerox copies of certain certificates were produced and not the true copies thereof. At the same time, when it was convenient to rely on an entry mentioning the caste as a Hindu Thakar, the Appellate Authority has preferred to rely upon the xerox copy of the School Leaving Certificate and emphasised the fact that it contained an entry that the caste was shown as Hindu-Thakar, meaning thereby that the petitioner did not belong to the Scheduled Tribe of Thakar. The appellate forum is the final fact finding authority. The Apex Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , has indicated the limitations on the powers of this Court in interfering in a writ petition on a question of fact. It was not difficult for the Appellate Authority to call upon the petitioner to produce the original documents or their copies which were certified

to be true. Indeed, the Appellate Authority could have itself called for the original records from the Gram Panchayat. The matter related to the status of a person who was in employment of the State Government. A number of documents both relating to the petitioner and his relatives in support of the contention that he belonged to the Scheduled Tribes of Thakar were produced. Without appreciating such evidence, the Appellate Authority has cursorily brushed aside the same on some flimsy ground which, in our view, was wholly impermissible in law.

18. It is of some importance to note that pending the appeal before the Appellate Authority, the petitioner addressed a letter on the 2nd February 1991 inviting attention to some further documentary evidence. These documents were of 1916, 1937, 1946 and 1948. At that time, before the Constitution came into force, there was no question of some one claiming benefit on the ground that he belonged to the Thakar Scheduled Tribe. The documents produced by the petitioner alongwith the letter dated 2nd February 1991 include the birth certificate of his uncle Tukaram Bhavani Thakur showing him to be a Thakar. This document is of September 1961. The second document is of Tukaram Thakur's son, which is of November 1937 and the third is of the petitioner's cousin viz. the daughter of Gulab Bhavani Thakar, which is of 23rd January 1946 showing the caste Thakar, The fourth document is of the son of the Gulab Bhavani Thakar viz, the petitioner's cousin, born on 17th August 1948 showing the caste Thakar. Those documents have been brushed aside by the Appellate Authority cursorily.

19. In view of the voluminous evidence that is produced before us, and in the light of the decision of the Apex Court in (i) Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, and (ii) Pankaj Kumar Saha Vs. Sub-Divisional Officer, Islampur and Others, , we are of the view that the petitioner is entitled to be declared to be belonging to the Scheduled Tribe of Thakar. The matter is pending in this Court since 1991. No useful purpose would be served by sending the matter back, in view of the decisions of the Apex Court which make it clear that once the tribe has been declared by a parliamentary enactment to be a Scheduled Tribe, there is very little scope for the State or even for this Court to inquire into the matter or to include in or exclude from or to substitute or to declare synonym to be a Scheduled Caste or a Scheduled Tribe. No inquiry can be held or evidence led to determine whether or not a particular community (alls within it or outside it. The S.T, Order has to be applied as it stands. Since the Thakars have been entered under Entry 44 of the 1976 enactment to be a Scheduled Tribe and the documentary evidence on record clearly shows that the petitioner belongs to the Scheduled Tribe of Thakar, the petitioner will be entitled to succeed.

20. Shri Sonavane, the learned Assistant Government Pleader, drew our attention to the decision of the Apex Court in Ganesh Suroshe Vs. State of Maharashtra and others, , to contend that this Court cannot examine the petitioner's claim that he is a Thakar belonging to the Scheduled Tribe. Para 3 of the said decision states that the appellant was a Thakur by caste, which was a forward caste and

though this was the admitted position, the appellant claimed to be a member of the Scheduled Tribe. His claim was negated by the Scrutiny Committee and his petition was dismissed by the High Court. He then approached the Apex Court. It was contended before the Apex Court that the conclusion reached on the basis of the finding of the Committee was not warranted and the High Court should have gone into the question and verified the basis on which the Scrutiny Committee had scrutinized the claim of the appellant as Ma Thakur or Ka Thakur. Negating this contention, the Apex Court held in para 5 of the Judgment that there was a catena of decisions of the Apex Court holding that the Court cannot examine to find out the caste of the party on the basis of the certificate issued. The limited area the Court can survey is as to whether the caste mentioned in the Presidential Notification would be applicable to the claimant or not. It was observed that the Notification issued by the President under Article 342 of the Constitution, subject to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 was conclusive and final. Indeed, in our view, these observations support the petitioner's contention rather than the respondents. In view of the Presidential Notification and particularly, in the light of the Scheduled Castes and Scheduled Tribes Orders (Amendment ) Act, 1976, we have come to the conclusion that the petitioner would be entitled to claim that being a Thakar, by virtue of Entry 44 in Part IX of the Second Schedule to the said Act No. 108 of 1976, he is entitled to be declared as a person belonging to the Schedule Tribe. In this view of the matter, we do not think that the ratio of the decision in Ganesh Suroshe's case can support the respondent's contention.

21. There is one more aspect of the matter, to which a reference needs to be made. When this petition was admitted on 22nd April 1991, this Court passed an order that the matter should be heard alongwith Writ Petition No 2122 of 1989. That was a petition filed by one Arun Sopan Pawar. Petitioner's wife and Arun Pawar's wife are first cousins, their fathers being real brothers. However, Arun Pawar's case was disposed of on 30th October, 1996 by a Division Bench of this Court. Apparently, the registry did not place the present matter on Board at that time. Relying upon the evidence placed before it, this Court came to the conclusion that the petitioner belonged to Hindu Thakar Scheduled Tribe, However, the question as to whether Hindu Thakar could be included in Entry 44 relating to Thakar was kept open by the Division Bench in Arun Pawar's case. It is also true that the challenge to the 8th July 1982 resolution was kept open in Arun Pawar's case. However, in the light of the decisions of the Apex Court in the two cases referred to above, viz . (i) Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, , and (ii) Pankaj Kumar Saha Vs. Sub-Divisional Officer, Islampur and Others, , we are of the view that the resolution dated 8th July 1982 is wholly without jurisdiction and deserves to be set aside.

22. In the light of the above discussion, we hold as under:-

i) The Order dt. 11-10-1989 passed by the Caste Scrutiny Committee,

Maharashtra State, Pune, as also the Order dated 20th March 1991 passed by the Additional Commissioner, Nasik Division, Nasik, is hereby quashed and set aside;

ii) It is held that the petitioner being a Thakar belongs to the Scheduled Tribe in view of Entry 44 appearing in Part IX of the Second Schedule to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976;

iii) The Notification No. CBC. 1082/48567/ (1063)/ Ka 5 dt. 8th July 1982, issued by the State Government (Exh. "H"/pg. 54) is hereby quashed and set aside, the same being unconstitutional.

23. It is brought to our notice by Shri Kelkar that the petitioner has been awaiting his further promotions and it was merely because of the pendency of this writ petition that his claim for promotions to the higher posts has not been considered. What is complained of is that even assuming that the petitioner did not belong to the Scheduled Tribe of Thakar and was a candidate in the General Open Merit Category, he was still eligible to be considered for promotions in the General Open Merit Category. Even such a consideration has been denied to him, merely because of the pendency of this petition. Though this is unfortunate, this is not an issue which is specifically pleaded in this petition. However, in the light of what we have held above, we think it necessary to give the petitioner liberty to approach respondents No. 1 and 4 with such representation as he is advised. Shri Sonavane for the respondents fairly states that in the event of the petitioner making such a representation for consideration of his claim for promotions, the same will be considered in accordance with law as expeditiously as possible. Statement made by the Assistant Government Pleader is accepted.

24. Rule is accordingly made absolute in the above terms.

25. The first respondent State will pay to the petitioner costs of Rs. 1,500/-.

26. Certified Copy expedited.

27. Petition allowed.