

(2019) 07 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 4918 Of 2012

Rajendra

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Maharashtra Scheduled Caste, De-Notified Tribes(Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation Of Issuance And Verification Of Caste Certificate Act, 2000 — Section 2(b), 3, 4, 4(2), 5, 5(2), 6, 11, 13, 14(1)

Code Of Civil Procedure, 1908 — Section 21, 21A, 22(1)

Maharashtra Civil Courts Act, 1869 — Section 5, 12, 14, 22

Maharashtra Control Of Organised Crime Act, 1999 — Section 5(1)

Electricity Act, 2003 — Section 135, 136, 137, 138, 139, 140, 150

Maharashtra Scheduled Tribes (Regulation Of Issuance And Verification Of) Certificate Rules, 2003 — Rule 5, 5(2), 7, 19, 21

Maharashtra Scheduled Caste, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation Of Issuance And verification Of Caste Certificate Rules, 2012 — Rule 6

Constitution Of India, 1950 — Article 47

Citation : (2019) 07 BOM CK 0023

Hon'ble Judges : Prasanna B. Varale, J;A.M. Dhavale, J;R.G. Avachat, J

Bench : Full Bench

Advocate : Arun H. Koralkar, P.S. Patil, Sanjeev B. Deshpande, A.N. Sabnis, Anandsing Bayas

Final Decision : Disposed Off

Judgement

A. M. Dhavale, J

1. In the case of Rajendra Thakur Vs. State and others, Writ Petition No. 4918/2012, (for short, hereinafter referred to as Rajendra Thakur's Case)

the Division Bench comprising Mr. Justice Naresh H. Patil (as he then was) and Mr. Justice A.B. Chaudhari did not agree with the view taken in

Niraj Kamlakar More Vs. Scheduled Tribe Certificate Scrutiny Committee,

Aurangabad and others, writ Petition No.2016/2010 (for short, hereinafter referred to as Niraj More's case) and other connected matters, decided on 11.05.2012, wherein the Division Bench of this Court comprising Mr.

Justice A.S. Oka (as he then was) and Mr. Justice S.P.Deshmukh took a view that even if caste certificate is issued by Competent Authority having

no territorial jurisdiction, the Caste Scrutiny Committee is duty bound to make adjudication in respect of caste claim of the petitioner and it cannot be

dismissed for want of territorial jurisdiction of the Competent Authority issuing caste certificate.

2. Following issue for the purpose of consideration was framed and referred to the Larger Bench.

â?? Whether the candidate desirous of seeking caste certificate shall have to apply the Competent Authority having jurisdiction over the area or place

to which he/she or his/her father, grandfather originally belongs or was/is an ordinary resident or native of that place ?

The Honorable the Chief Justice has constituted the Full Bench to decide the issue.

3. In Rajendra Thakur's case the petitioner and his forefathers were originally residents of District Dhule on the date of Presidential Order dated

06.09.1950. He or his forefather migrated to Nashik. The petitioner obtained scheduled tribe certificate as belonging to 'Thakur' from the Executive

Magistrate, Nashik on 11.09.1995. On 16.01.2008, he was appointed as Postal Assistant at Karjat in Taluka Ahmednagar on the basis of his tribe

claim. His claim for validity of the tribe claim was made before the Schedule Tribe Certificate Scrutiny Committee, Nashik in 2007 (NSK/

SER/481/2007). The scrutiny Committee, without going into the merits of the tribe claim, noted that the Executive Magistrate, Nashik who had issued

the tribe certificate was not the Competent Authority to issue the tribe certificate as the applicant/his father/ forefathers were resident of Dhule

district and the certificate should have been obtained from the Competent Authority at Dhule. Reliance was placed on the Judgment of this Court

(Nagpur Bench), in Pragati Thakur's case (Writ Petition No.5307/2010) and the decision in Writ Petition No. 1747/2012 dated 24.02.2012. The claim

for validity of caste/tribe certificate was rejected on the ground that caste certificate was invalid and an opportunity was granted to the petitioner to

approach the Competent Authority to obtain caste certificate and submit the same to the Scrutiny Committee for verification. The Tribe certificate

issued by the Executive Magistrate, Nashik was confiscated without affecting merits of the claim.

4. In Niraj More's case, the petitioner had obtained tribe certificate as ""Thakur"" tribe on 29th September, 2006 from the Deputy Collector & District

Supply Officer, Parbhani and the Caste Scrutiny Committee has held that he was not a competent authority and he had no territorial jurisdiction to

issue caste certificate. The Caste/tribe certificate was held to be invalid, but the petitioner was granted liberty to obtain fresh certificate from the

appropriate authority. The Division bench referred to various provisions including definition of Competent authority under section 4(2) of the Act, 2000

and held that if competent authority was otherwise competent to issue a caste certificate, lack of territorial jurisdiction will not make caste certificate

issued by such competent authority as nullity. The Division Bench made distinction between lack of inherent jurisdiction and lack of pecuniary or

territorial jurisdiction. Relying on *Mantoo Sarkar vs. Oriental Insurance Co. Ltd. & Ors.* [2008 (16) SCALE 197,] and referring to section 21 and

22(1) of the Civil Procedure Code, it was held that if there is no prejudice or failure of justice, the lack of territorial jurisdiction would not be coram non

juris. Following observations in *Mantoo Sarkar's* case was relied:

5. ""A distinction, however, must be made between a jurisdiction with regard to subject matter of the suit and that of territorial and pecuniary

jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be...

6. In Niraj More's case, the Division Bench also relied on the decision of this Court in Writ Petition No. 1945 of 2003 and other connected writ

petitions (*Musa s/o Ibrahim vs. The State of Maharashtra and others*) dated 15th September, 2003, wherein, reliance was placed on the judgment of

the Apex Court in the case of *Vasant Pandurang Narwade Vs. Subhash Dashrathe*.

The Division Bench held that the Government Resolution dated 10.03.2005 relied upon by the petitioner was not applicable to a person of scheduled

tribe claiming grant of tribe certificate.

7. In *Rajendra Thakur's* case, the Division Bench of this Court, while showing disagreement with the view in *Niraj More's* case, placed reliance on the

decisions of this Court in Writ Petition No.2016 of 2012, Writ Petition No.5307 of 2010 decided on 23.06.2011, Writ Petition No.2424/2012 decided on

21.03.2012 and Writ Petition No.1747/2012 decided on 24.02.2012, wherein it was held that caste certificate issued by the authority to the person who

is not residing in his area is not valid. The Division Bench Placed reliance on the definition of Competent Authority as per Section 2 (b) of the Act,

2000 and held that the Government is required to authorize the authority by notification for a particular area. In other words, the competent authority

must have jurisdiction over the area or place to which the applicant originally belonged. The Division Bench observed that exception was carved out

by granting powers to competent authority to issue caste/tribe certificate under Rule 5(2) of the Rules of 2003 for migrated persons from his area

subject to condition that they produce caste /tribe certificate issued in favour of their father or grandfather by the competent authority of the place of

origin. In such case, only competent authority at migrated place has jurisdiction to issue caste/tribe certificate. The Division bench relied on various

forms prescribed under the Rules for different types of applicants. It observed that the competent authority was doing purely an administrative act.

There was specific object for insisting for obtaining certificate from the Competent Authority of a particular area that it would be able to find out

various types of entries in public records of the place to which the candidate or his father, grandfather or forefathers belonging to backward class.

8. Mr. Koralkar, learned Advocate for the petitioner opposed the finding of the Scrutiny Committee on the basis of judgment of this Court in Niraj

More's case to submit that the Competent Authority issuing caste certificate did not lack inherent jurisdiction to issue caste certificate. Mere lack of

territorial jurisdiction will not make the caste certificate invalid. He submitted that on technical grounds, the benefits of beneficial legislation in favour

of the backward class people should not be taken away. The Scrutiny Committee ought to have considered the tribe claim of the petitioner on merits.

The matter therefore, deserves to be remanded. Mr.Koralkar submitted that the view taken in Rajendra Thakur's case for referring the matter to

larger bench is not correct decision. He submitted that the view in Niraj More's case, is based on the Apex Court Judgment in the case of Vasant

Pandurang Narwade Vs. Subhash Dashrathe [2001 (10) JT 125].

9. Mr Bayas, the learned Advocate appearing suo moto supported the arguments of learned Advocate Mr. Koralkar. He relied on the provisions of the Maharashtra Scheduled Caste, De-notified Tribes(Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and verification of Caste Certificate Act, 2000 (hereinafter referred to as the SC/ST Certificate Act, 2000) and Rules framed thereunder in 2003 and 2012 i.e. The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (hereinafter referred to as the Rules of 2003)and the Maharashtra Scheduled Caste, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and verification of Caste Certificate Rules, 2012 (hereinafter referred to as the Rules of 2012)). He particularly relied on Rule 5 of the Rules of 2003 regarding grant of Scheduled Tribe Certificate to migrated persons from other States to Maharashtra State as well as from one district to another District. Reliance was also placed on the Government Resolution dated 10.03.2005 which permits the petitioner to apply to the competent authority at the place of his new residence for obtaining tribe certificate. The learned counsel submitted that the area restriction is no more applicable.

10. Mr.S.B.Deshpande, learned A.S.G. has also relied on the Act, 2000, the Rules of 2003 and the Rules of 2013, the language used therein restricting competency of the Authority for issuance of Certificate to the candidates residing in his area at the time of Presidential order. He submitted that as per para 18 of the reference order in the case of Rajendra Thakur's Case, Division Bench of this Court has considered the provisions of the Act and Rules elaborately and in para 20 it was observed that if the competent authority has no territorial jurisdiction qua the original place of residence, the Caste certificate, as per section 4(2), shall be invalid. He argued that provisions of the Act and Rules should be harmoniously construed to give purposive interpretation and reference should be answered in the affirmative.

11. Mr. Patil, learned AGP has also taken us through the Act, 2000, and Rules and he submitted that before directions of the Apex Court in the case of Kumari Madhuri Patil Vs. Additional Commissioner, reported in (1994) 6 SCC 241 which led to the enactment of the Act, 2000 and Rules thereunder. There were similar provisions in the Government Resolutions issued

by the State. there is no material change in the policy of the government with regard to the competency of the authority restricted to the area specified in the notification and such authority can issue certificates only to the applicants who or whose forefathers resided there at the time of presidential orders. He submitted that the caste certificate not issued by the competent authority is void. He relied on the Communication of Government of India dated 22.03.1977, Government Resolutions dated 29.10.1980, 13.03.1985, 23.04.1987 and judgment of the Apex Court in Action Committee Vs. Union of India 1994(5) SCC 244.

12. Mr. Sabnis, learned Advocate appearing suo moto has submitted that there is no difference between issuance of caste certificate and tribe certificate. The definition is inclusive of both. He supported the view in Niraj More's case.

13. We have carefully considered the submissions made on behalf of all the Advocates, learned ASG and learned AGP and the judgments cited before us. Those will be discussed in due course.

14. As per Art. 341 and 342 by the Presidential orders of 06.09.1950, certain castes and tribes were declared as Scheduled Castes and Scheduled Tribes for upliftment of socially backward persons of those castes and tribes. Special benefits were given to them in education with respect to admission and exemption for payment of fees, reservations in employments and providing reserved seats in elections.

15. There was no comprehensive legislation prescribing procedure for determining the persons of Scheduled Castes and Scheduled Tribes till the directions were issued by the Apex Court in case of Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development (1994) 6 SCC 241 and those were implemented. Till then, the issuance of caste certificate was governed in the State of Maharashtra by Government Resolutions and instructions.

16. The Government Communication dated 22nd March, 1977 issued by Ministry of Home Affairs, Government of India after highlighting the importance of permanent residence at the time of presidential order with regard to determination of Scheduled castes or Scheduled tribes, observed.

As it is only the Revenue Authorities who, besides having access to relevant revenue records are in a position to make reliable enquiries, Government

of India insists upon the production of certificates from such authorities only. In order to be competent to issue such certificates, therefore, the

authority mentioned in the Government of India (Department of Personnel and Administrative Reforms) letter No. 13/2/74-Est (SCT), dated the 5th

August, 1975, (copy enclosed) should be the one concerned with the locality in which the person applying for the certificate and his place of

permanent abode at the time of the notification of the relevant Presidential Order.

Thus, the Revenue Authority of one District would not be competent to issue such a certificate in respect of persons belonging to another district. Nor

can such an authority of one State/UT issue such certificates in respect of persons whose place of permanent residence at the time of the notification

of a particular Presidential Order, has been in a different State/Union Territory. In the case of persons born after the date of notification of the

relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribes status, is the place of permanent

abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a Caste/Tribe.

(C) All the State Governments/Union Territory Administrations are, therefore, requested to streamline their respective procedures for issuing such

certificates so as to conform to the above instructions as well as to those issued from time to time.

17. In the resolution of the State of Maharashtra dated 29th October, 1980, the Government issued the directions in Appendix A which inter alia

provided as follows :-

12. Caste Certificates should be issued only to those who have their ordinary place of residence within the jurisdiction of the competent authority.

Ordinary residence means residence which is not for the purpose of service, employment education, confinement in jail etc. In short, it means

permanent residence and not a temporary residence.

13. The caste certificates should not be issued to a person unless his tribe is included in the list of Scheduled Tribes for the State of Maharashtra and

the person is an ordinary resident of the place. The instructions contained in the Government of India, Ministry of Home Affairs Letter No. BC-

12025/2/76-SCT-1, dated 22nd March, 1977, should be strictly followed (Copy enclosed) page 8.

18. As per the Government Resolution dated 13th March, 1985, the Government noted the difficulty of persons migrated from one State to another in obtaining the caste or tribe certificate and authorized competent authorities to issue caste certificate to persons, who have their ordinary place of residence in their jurisdiction. It was, however, directed that the instructions contained in Government Resolution dated 22.03.1977 should be strictly followed. Instruction No. 17 clarified that a person migrating from one State to another can make claim as belonging to scheduled tribes only in relation to the State from which he has migrated. Thus person belonging to Scheduled Castes or Scheduled tribes from another State is entitled to claim the benefits only in these States and not from the State of Maharashtra. The crucial date is the ordinary place of residence of the applicant or his forefathers on the date of notification of the presidential orders. Even in case of persons born subsequently, the residence of his parents at the relevant time and at the time of notification will be considered.

19. The Government Resolution dated 23rd April, 1987 of the State of Maharashtra authorized the competent authority to issue Scheduled Castes/Scheduled Tribes certificates to the persons migrating from one district to another district. But it was on condition that such applicant must produce the scheduled castes certificate or scheduled tribes certificate issued by the competent authority of the particular area of permanent residence of his father. The said certificate should bear the specific remark that it was issued on the basis of scheduled castes or scheduled tribes certificate of his father.

20. In Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development (1994) 6 SCC 241, instruction No. 5 issued in para No. 13 in Madhuri Patil's case provides for constitution of vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides. It further observed that in case of migration to the town or city, the place from which he originally hailed from should be visited. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent. The vigilance has to consider the peculiar anthropological and ethnological traits,

deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. and has to consider the genuineness of the documents produced and the affinity test.

21. This provision does not make it clear whether such vigilance inquiry should be conducted by the Police Officers in the same district or in a different district. As well the procedure was prescribed for fair, just and enquiry preventing undue delay and avoidable expenditure for the State on the education of candidates admitted appointed. At the same time, the object was to find out the spurious claims and restrict the social benefits to the persons of genuine cases of particular Scheduled Castes and Scheduled Tribes. The Apex Court issued directions for providing legislation on the subject and till then, procedure was prescribed to fill in the vacuum.

22. Thereafter, The Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 was enacted and received assent of the President on 23rd May, 2001. On close scrutiny of the provisions of the Act and the Rules framed thereunder in 2003 those indicate that the provisions with regard to the jurisdiction of competent authority is in consonance with the earlier notifications referred above.

23. The following phrases used make it clear that the Government in no uncertain terms expressed that the applicant must apply for caste certificate to the competent area where he, his parents or grand parents were residing at the time of presidential order in 1950.

2 (b) "Competent Authority" means an officer or authority authorized by the Government, by notification in the Official Gazette, to issue a Caste Certificate, for such area or for such purposes as may be specified in the said notification and shall include all the Competent Authorities already designated by the Government before the coming into force of this Act, having jurisdiction over the area or place to which the applicant originally belongs, unless specified otherwise;

S. 4 (1) and (2) of the Act, 2000 read as under :-

(1) The Competent Authority may, on an application made to it under section 3, after satisfying itself about the genuineness of the claim and the following the procedure as prescribed, issue a Caste Certificate within such time

limit and in such form as may be prescribed or reject the application for reasons to be recorded in writing.

(2) A Caste Certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee.

Section 6 provides for constitution of Scrutiny Committees by notification in the official gazette. The said notification shall disclose the area of jurisdiction of each of such Scrutiny Committee or Committees.

The petitioners have placed reliance on Rule No. 5 which provides for issuance of tribe certificates to persons migrated. It reads as under :-

5. Grant of Scheduled Tribe Certificate to migrated persons.

(1) N.A,

(2) Migration from one district to another district or from jurisdiction of one Competent Authority to another within the State,-

(a) The competent Authority if satisfied may issue Scheduled Tribe Certificate in Form C to an applicant who has migrated from one district to

another district or from the jurisdiction of one Competent Authority to another, within the State, on production of the Scheduled Tribe Certificate

issued to his father or grandfather, by the concerned Competent Authority of that district.

(b) The Competent Authority shall issue Scheduled Tribe Certificate in Form C to an applicant of other district from which he had migrated to the

present place, on the production of the Scheduled Tribe Certificate issued to his father or grandfather by the then Competent Authority of the district

of his father or grandfather's origin at the time of passing of the first Presidential Order dated the 6th September 1950 or thereafter, for Scheduled

Tribes.

Explanation - "For the purpose of this sub-rule - Migrant within the State means -

(i) the persons who have migrated from one district to another district or from the jurisdiction of one Competent Authority to another within the State

on or after the first Presidential Order dated the 6th September 1950 for Scheduled Tribes and whose parents had been the ordinary residents of

Maharashtra State.

(ii) in the case of persons born after the first Presidential Order dated 6th September, 1950, the place of ordinary residence for the purpose of

acquiring Scheduled Tribes status, shall be the place of permanent abode of their father, grandfather at the time of the notification of the Presidential

Order for Scheduled Tribes.

Section 5(2) deals with migration from one district to another district. In such case also, the applicants are entitled for Scheduled Tribes certificate in

Form C-1. provided he produces the caste certificate issued by the competent authority of his original district where he or his family, his father or

grand fathers were residing at the time of presidential notification of his tribe. If the candidate is not able to produce such certificate, he has to

approach competent authority of his place of origin. This provision will not be applicable if the person is not having certificate in the name of his father

issued by the competent authority of his permanent residence as on the date of presidential notification. In other words, section 5 only deals with

verification of the relations between the person holding valid caste certificate issued by the competent authority of the area where he, his father or

grandfather were residing at the time of notification and the applicant himself. It can be equated with renewal of licence when the licence has been

already issued by the competent authority.

24. Intention of legislature is clearly in favour of the view that the view taken in Rajendra Thakur's case by the Division Bench comprising Justice

Naresh Patil and A.B. Chaudhari that the person should produce the caste certificate issued by the competent authority of the area where he, his

father or grandfather were residing at the time of presidential order of his tribes. Such certificate must be produced before the Caste Scrutiny Validity

Committee.

25. Section 4 of the Scheduled Castes and Scheduled Tribes Act, 2000 makes clear that the caste certificate is to be issued by competent authority

and the Scrutiny Committee has only to verify it and either validate or invalidate it. On issuance of validity certificate only, such caste certificate can

be used for claiming various benefits of social reservations.

26. It must be stated that the above referred various provisions indicate the intention of the legislature that caste certificate must be issued by the

competent authority and the competent authority is appointed by notification in the official gazette with specific reference to the area or place in

respect of the applicants, making caste claim in which the competent authority can exercise the jurisdiction. The vires of these provisions has not been

challenged by the petitioners. These provisions are in consonance with the earlier Government Resolutions.

27. In Action Committee on issue of caste certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra Vs. Union of India

(1994) 5 SCC 244, the communication of Government of India dated 22.03.1977 and Government Resolution dated 22.02.1985 were under challenge

on the ground that persons belonging to Scheduled Castes and Scheduled Tribes in the original State to origin as well as State of migration were denied

benefits of reservations in the migrated State by the circulars referred. Though, in this context of migration from one State to another, the Apex Court

considered various provisions of these circulars including instructions in para Nos. 13 and 19 giving the importance to the permanent residence and not

the temporary residence of the applicants and relying on Mari Chandra Shekher Rao Vs. Dean, Seth G.S. Medical College, (1990) 3 SCC 13, the

Policy of the Government for not giving benefits to the persons of Scheduled Castes in the migrated State was upheld and the Government Resolution

of the State of Maharashtra dated 22.02.1985 was also upheld.

28. The provisions of section 2 (b) define competent authority which is appointed with specific reference to the area and the competent authority can

issue certificates only to persons having permanent residence in his area at the time of presidential order. Section 4 (2) declares that the caste

certificate issued by any person, officer or authority other than the competent authority shall be invalid.

29. These provisions are governing the field of subject for number of years. The vires of these provisions has not been challenged. There were similar

provisions in the Government Resolutions issued earlier to the enactment of The Act, 2000 and the Rules of 2003 and of 2012. Even in Niraj More's

case, the validity of these provisions has not been questioned or doubted.

30. In Niraj More's Case, it was observed that if the certificate is not issued by the authority notified as competent authority for that particular area

where the petitioner originally belonged to, it will be not lack of inherent

jurisdiction but lack of territorial jurisdiction, and it is settled that in case of lack of territorial jurisdiction, the caste certificate would not be void.

31. It seems that the Division Bench had proceeded on analogous provisions in respect of civil suits.

32. We feel it necessary to consider whether this is a pure question of lack of territorial jurisdiction, or is a question of lack of inherent jurisdiction.

33. In case of civil Judges, the appointments of District Judges and Civil Judges are made under sections 5, 12, 14 and 22 of the Maharashtra Civil

Courts Act which read as follows :-

5. There shall be in each district a District Court presided over by a Judge to be called the District Judge.

12. The State Government may appoint in any District a joint District Judge who shall be invested with co-extensive powers and a concurrent

jurisdiction with the District Judge, except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from

the District Judge, or as may have been referred to the Joint District Judge by order of the High Court.

14. The State Government may appoint one or more Additional District Judges to the District Judge.

22. The Judges of such Subordinate Courts shall be appointed by the State Government, and shall be called Civil Judges.

34. On carefully considering these provisions, the appointment of Civil Judges and District Judges are for the entire State without area restrictions.

However, their functioning is fixed with respect to local limits by their separate orders by notification in the official gazette as follows :-

22-A. The State Government may, by notification in the Official Gazette, fix, and, by a like notification, from time to time, alter the local limits of the

ordinary jurisdiction of the Civil Judges.

35. The Judges of Criminal Courts are appointed as per the provisions of Cr. P.C. as follows :-

S. 9 (1) "The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant

Sessions Judges to exercise jurisdiction in a Court of Session.

11(1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the

second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

[Provided that the State Government may, after consultation with the High Court, establish,, for any local area, one or more Special Courts of Judicial

Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is

established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special

Court of Judicial Magistrate has been established.]

(2) The presiding officers of such Courts shall be appointed by the High Court.

12 (1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial

Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have

all or any of the powers of a Chief judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

36. By separate provision under Section 14, the local jurisdiction is conferred on the Judicial Magistrates which reads as follows :-

S. 14 (1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which

the Magistrate appointed under s.11 or under s.13 may exercise all or any of the powers with which they may respectively be invested under this

Code:

[Provided that the Court of a Special Magistrate may hold its sitting at any place within the local area for which it is established.]

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

37. It may happen that the Civil Courts may decide a suit without having territorial jurisdiction. The decree passed by such Judge, would not be without

jurisdiction and nullity as per Section 21-A of the Code of Civil Procedure, 1908 which reads as under :-

21-A. Bar on suit to set aside decree on objection as to place of suing :- No suit shall lie challenging the validity of a decree passed in a former suit

between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

It specifically lays down that the decree would not be nullity on the ground of any objection to the place of suing i.e. for want of territorial jurisdiction.

38. On the other hand, the special Judges are appointed under various special enactments for particular areas as follows :-

Section 3 of The Prevention of Corruption Act, 1988

3. Power to appoint Special Judges.- (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as

many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the

following offences, namely:-

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abatement of any of the offences specified in clause (a).

(2) N.A.

The Maharashtra Control of Organised Crime Act, 1999.

5.(1) The State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government whose decision shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the State Government, with the concurrence of the Chief Justice of the

Bombay High Court. The State Government may also appoint, with the concurrence of the Chief Justice of the Bombay High Court, additional judges

to exercise jurisdiction in a Special Court.

4. N.A.

5. N.A.

6. Notwithstanding anything contained in the Code, every offence punishable under this Act shall be triable only by the Special Court within whose

local jurisdiction it was committed, or as the case may be, by the Special Court constituted for trying such offence under sub-section (1) of section 5.

The Narcotic Drugs and Psychotropic Substances Act, 1985.

S.36. Constitution of Special Courts.- (1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification

in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High

Court.

The Electricity Act, 2003.

153. Constitution of Special Courts.- (1) The State Government may, for the purposes of providing speedy trial of offences referred to in (section 135

to 140 and section 150), by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may

be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) Not Applicable

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he

is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of -

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) Where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary

place of sitting of Special Court, as notified under sub-section (1).

39. On carefully reading these provisions, it will be seen that the power to appoint the Civil Judges or Judicial Magistrate does not require it to be

circumscribed by any territorial limits. The Government or the High Court are empowered to appoint such Judges, and thereafter, by separate

notification in the official gazette, their territorial jurisdiction is determined. In such cases, it can be stated that the Civil Judges and Judicial Magistrates

appointed by the State/High Court have inherent jurisdiction throughout the

State, but they will have territorial jurisdiction only where they are posted.

Lack of territorial jurisdiction will not make their orders nullities, if no objections are raised to the territorial jurisdiction and no prejudice is caused, the orders should be valid. S.21-A specifically lays down so in respect of civil Judges.

40. However, in case of Special Courts, appointment of Special Judges , the Government is empowered to make such appointments only for particular

area. These appointments are made by notification in the official gazette specifying the area for which such appointments are made. In such cases,

the Special Judges appointed for one particular locality can conduct the cases under the Special Act only from that area subject to the power of the

High Court to transfer the cases of other area to them. Once, the Judge is transferred from such locality to any other area, he cannot exercise such

special powers for the new area unless there is notification in official gazette empowering him either by name or by designation to conduct such type

of cases in that area as well.

41. In the former case in case of Civil Judge or Judicial Magistrate, their competency is not dependent or circumscribed by local area by their

appointment orders nor the Government or the High Court is expected to make their appointments for particular local areas.

42. In the latter case, the special Judges are appointed for particular area by specific notification in the official gazette. They can exercise their

powers only for that particular area and not elsewhere. The specification of their power for particular area is integral part of their appointment order.

The requirement of such specification of particular area by the authority competent to appoint him makes it clear that such special Judges have to act

only within the area disclosed in their appointment orders and nowhere else. Their competency to exercise their powers under the Act is

circumscribed or limited to the local area shown against their name in the appointment order by notification in the official gazette. The specified area is

integral part of their competency and inherent jurisdiction. It is not the issue of territorial jurisdiction in case of such officers.

43. In the present case, the definition of competent authority the provisions of section 4(2) and several other provisions of the Act of 2000 and Rules

of 2003 and 2012 make it clear that the Act empowers the Government to appointment competent authority only for particular area. The same is

required to be done by notification in the official gazette. By making such appointments the competent authority is empowered to issue certificates

only to those persons, whose original place of residence at the time of presidential order is within the local area shown in their order. If the person not

belonging to a particular local area which is shown in the appointment order of the competent authority applies to such authority, the authority is not

competent authority as per section 2(b). As per section 4(2) , the certificate issued by such authority will be invalid.

44. The case of competent authority under SC/ST Caste Certificate Act, 2000 is analogous to the appointment of the Special Judges, whose local

jurisdiction is specifically shown in their appointment order itself.

45. Hence, we hold that the competent authority while considering the applications of persons who are not original residents of area specified lack the

inherent jurisdiction and it is not a mere issue of lack of territorial jurisdiction.

46. Though the vires of the provisions is not challenged, we find that there are several provisions indicating the purpose why the authority of the

competent authority is restricted for the local area.

47. (A) In Government Communication dated 22th March, 1977, it is observed - Since the people belonging to the same caste but living in different

State/Union Territories may not necessarily suffer from the same disabilities, it is possible that two persons belonging to the same caste but residing in

different States /U.Ts may not both be treated to belong to Scheduled Caste/ Tribe or vice-versa. Thus the residence of a particular person in a

particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other

hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to

that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order

applicable in his case, say, for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as

the case may be, if his caste/tribe has been specified in that Order in relation to his State/UT. But he cannot be treated as such in relation to the place

of his temporary residence notwithstanding the fact that the name of his caste/ tribe has been scheduled in respect of that area in any Presidential

Order.

(B) It is to ensure the veracity of this permanent residence of a person and that of the caste/tribe to which he claims to belong that the Government of

India has made a special provision in the proforma prescribed for the issue of such certificate. In order that the certificates are issued to the deserving

persons it is necessary that proper verification based primarily on revenue records and if need be, through reliable enquiries, is made before such

certificates are issued.

C) In the Resolution dated 29.08.1980, the Government again expressed its anxiety that unscrupulous persons were claiming the benefits of Scheduled

Tribes people by making false claim of castes of the tribes. In Government Resolution dated 29th October, 1980, the Government noticed very high

percentage (60 %) of doubtful claims in students seeking admissions to medical and engineering colleges and after obtaining report from the

Committee constituted.

D) The Appendix A is in respect of instructions for issuance of caste certificate to Scheduled Tribes. The instruction No. 10 empowered the

Divisional Commissioner to cause such enquiry at the village claimed by the applicant as his place of permanent residence, particularly, the local

persons known to the authority as belonging to the tribe claimed by the applicant for verification of the claim. Rule No. 19 provides for entertaining

complaints or allegations that a person not belonging to tribe has been issued a caste certificate. Such complaint shall be enquired by the Divisional

Commissioner in respect of the certificate issued by the competent authority in his jurisdiction.

E) Rule 21 provides that competent authority shall display on the official Notice Board a list in Proforma of all castes certificates issued by him during

the month before..... for succeeding months. Government Resolution dated 5th May, 1976 and instructions to the Chief Secretary by the

Government of India annexed to it, disclosed that in case of person born after the date of notification of the relevant presidential order, the place of

residency for the purpose of acquiring Scheduled Castes and Scheduled Tribes status is the place of permanent address of their parents at the time of

notification of the presidential order under which they claim to belong to such a caste or tribe. The proforma for submitting application indicates that

the applicant must disclose his main place of residence and the present residence and his primary school, medium school, etc.

F) In Kumari Madhuri Patil's case, the Apex Court noted the importance of the and Sociology, anthropology and ethnology of the Scheduled Tribes its

importance in determination of the castes or tribes (the genetic traits pass on from generation to generation). It noted that the scheduled tribes persons

were residing in hilly area and their occupation was agriculture, agricultural labour and gathering of minor forest produce.

G) The Apex Court noted the constitutional guarantee to secure to every citizens social, economic justice, equality of status and assuring the dignity of

the individual. The provisions of Article 47 to promote with the special care the educational or economic interest of the Scheduled Castes and

Scheduled Tribes and to protect them from â??Social injusticeâ? and all forms of exploitation. It was noted that the Scheduled Tribes were habitat

generally in hilly regions and forests seizures in their staying away from the mainstream of the national life.

H) The Apex Court in Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and

Another Vs. Union of India, (1994) 5 SCC 244 held as under :-

It is common knowledge that endeavour of State to fulfil constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by providing

for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous

persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to

such status. The case in hand is a clear instance of such pseudo-status.

H) The menace of false claims in denying the benefits of social legislation to genuine candidates and ineligible or spurious persons falsely gaining entry

resorting to dilatory tactics and create hurdles in completion of enquiries was also noted. The Apex Court observed necessity to streamline the

procedure for issuance of social status certificates.

48. The Maharashtra Scheduled Tribes Regulation of Issuance and Verification of Certified Rules, 2003 (hereinafter 'S.T. Rules, 2003') prescribe

that application for tribe claim shall be made in Form-A. Form-A Point No. 4 relates to the original village and district of the persons where the

applicant's family was residing on 6th September, 1950 or on the date of notification of that particular tribe the ordinary place of residence.

There are also provision for making inquiry regarding grant or refusal of caste validity tribe certificate to the relatives of the applicant.

Rule 7 also provides for inviting complaints or allegations in respect of the persons who secure false Scheduled Tribes Certificate.

49. The object of the Act and the Rules is to verify the genuineness of the claim made before the authority and for similar purpose, the Scrutiny

Committee has to verify such claims. It is observed in several judgments that there is a growing tendency of the unscrupulous persons not belonging to

Scheduled Castes or Scheduled Tribes category to apply for declaration that they belong to Scheduled Caste/Scheduled Tribes to get the benefits of

reservations for the Scheduled Castes and Scheduled Tribes. In order curb such tendency, several provisions are made. The competent authority for

issuing caste certificate has to verify the revenue record and other public record and the school records which they can verify from their area

conveniently. It will not be possible for the competent authorities to verify such records of persons originally belonging to some other area. After

issuance of caste certificates, the list is to be published. The persons from that area are entitled to make complaints of issuance of caste certificates to

bogus persons. This is possible only when the issuance of caste certificate is restricted to the competent authority of particular area. If a person

originally belonging to district A obtains caste certificate from competent authority of district B which is situated far away from district A, nobody

would be in a position to make any complaint and display of the caste certificate issued by competent authority at the district B would be meaningless.

Similarly, competent authority has to maintain a register of caste certificates issued by him and copies thereof are to be furnished to various

authorities. The said register shall be open for inspection by general public. Similarly, in case of verification of the caste claims, the scrutiny Committee

is also required to consider relevant record maintained by the Government and the petitioner and his relatives might have studied. There is also enquiry

through vigilance cell. The local Police Officers are appointed as vigilance officers for the enquiry and their reports are very much relevant to

determine genuineness of the claim. It will be practically impossible for the members of the competent authority or the Scrutiny Committee or the

vigilance officer to verify the records, to make inquiries in other districts which may be situated far away from the district where they are working.

The competent authority as well as the Scrutiny Committee has to verify whether the applicant or his close relatives have previously applied for

castes/tribes certificate, and if yes, whether the applications were allowed or rejected. If the applications are rejected, then the applicants may change

the place of their residence and may file fresh applications for such castes/tribes certificate. There will be no check by the competent authority or the

Scrutiny Committee of such successive applications filed to obtain the caste certificate after rejection of the earlier application. On the other hand, if

the jurisdiction of the competent authority and the Scrutiny Committee is restricted to the area for issuance of certificate or scrutiny validation of

certificate to particular area, the applicants will not be in a position to adopt such mal-practices. All above referred provisions will be effective to curb

mal-practices by unscrupulous persons from making false claims. We find that the restrictions on the local area for issuing caste certificate by the

competent authority is deliberate and for definite object and purpose. There are reasonable and not arbitrary or discriminatory.

50. It is no doubt true that as long as the castes certificate is not validated by the Scrutiny Committee by verification, it is not a permanent document to

enjoy the benefits of reservations of Scheduled Castes or Scheduled Tribes. Nonetheless, it is a fact well known that many persons claim reservation

benefits temporarily on the basis of the castes certificates and can prolong the inquiry for years together. Meanwhile, they may complete their

education or even sometimes, complete their service. If they are elected for any reserved posts, they can continue to occupy the same post for five

years. The time limits prescribes for obtaining validity certificates are practically not followed. In such circumstances, issuance of caste certificates

assumes great importance and the persons getting the caste certificate without belonging to the particular castes or tribes can misuse such certificates.

The restrictions imposed in the Act that the person must obtain castes certificate or tribes certificates from the competent authority of the area where

the applicant or his forefathers were residing at the time of presidential order appears to be reasonable restriction and not discriminatory. It thus put

the persons of genuine persons belonging to particular castes or tribes to some inconvenience. They are required to go from the district place where

they have migrated to the original place of their family to obtain the caste certificate and validity certificate, but this is a small price, they have to pay to prevent the unscrupulous persons making false claims for their castes and depriving the genuine persons from getting the benefits of castes tribes reservations.

51. In case of the Scheduled Tribes as per Rule 6 of Rules 2012, the competent authority has been authorized to issue castes certificates to the persons migrated from the other States, but such certificates are based on the certificates produced by such petitioners issued to their father by the competent authority of the place of their origin. In such case, the competent authority is expected to only verify the relationship between the persons holding valid castes certificate and the petitioner. Similarly, Rule 5 of Scheduled Tribes Regulation of Issuance of Certified Rules, 2003 make provision for issuance of tribe certificates by the competent authority from migrated place to the persons migrating from other States to the State of Maharashtra another district. In both the cases, condition precedent is that the applicants in such case should produce the tribe certificate issued by the competent authority of the place of their origin in favour of their father or the grandfather whosoever may be residing in that area on the date of presidential order. Rule 5(2) of the SC/ST Certified Rules of 2003 make similar provisions permitting competent authority to issue Tribe Certificate to persons migrated to area specified in their notification but it is subject to condition that he should produce Tribe Certificate issued in favour of his father by the competent authority of his place of origin. This is the only exception when the competent authority can issue certificate to the persons not belonging to the particular area specified in their appointment orders on the date of presidential order.

52. It is just like a renewal of licence already validly granted. It requires only verification of relationships and nothing else. On harmonious construction of these provisions and applying the principle of purposive interpretation, in other cases, the competent authority can issue certificates only for the persons, who were original residents of the areas specified in the order of their appointment as on the date of presidential order.

53. In the Judgment of the Apex Court in case of Vasant Pandurang Narwade Vs. Subhash Dashrathe, the appellant was elected as Corporator from

Ward reserved for OBC category. He produced caste certificate issued by Tahsildar, who was the competent authority to issue such certificate that

he belongs to Kunbi caste. After his election as Corporator and Deputy Mayor, his caste certificate was forwarded for verification to the Scrutiny

Committee. One candidate, who himself had not contested any election nor was even voter, had challenged his caste claim. The Scrutiny Committee

held that the competent officer had not issued the caste certificate in favour of the candidate, and therefore, the question of verification of his claim

does not arise. The affidavit of the Tahsildar, who had issued the caste certificate was filed in the Apex Court to the effect that he had issued the

caste certificate.

54. In the light of these facts, it was observed, “we are however, of the opinion that the Scrutiny Committee did not act thoroughly and failed to

comply with even the basic rules of natural justice. The appellant was called upon to establish his caste, but the material produced by him was not

considered by the Scrutiny Committee. It is only the validity of the certificate that was considered. The real issue was overlooked by the Committee.

The Scrutiny committee ought to have written a finding as to whether or not the appellant belongs to Kunbi caste as claimed by him on the basis of

certificate and other documents produced by him and should not have stopped short of that determination merely by considering whether the earlier

certificate was in fact issued by Tahsildar or not.

55. The ratio of the Apex Court has to be gathered from the entire Judgment. In that case, the caste certificate was issued by competent authority of

the particular area. The Scrutiny Committee wrongly held that the certificate was not issued by Tahsildar but in fact it was issued by him. There was

no issue before the Apex Court whether the caste certificate issued by competent authority from the area where the applicant was not residing at the

time of presidential order would be valid or not, the facts discussed herein above, indicate that it does not lay down that caste certificate issued by

competent authority to a person whose permanent residence at the time of presidential order was not in the area specified will be valid.

56. In *Municipal Corporation of Delhi Vs. Gurnam Kaur* AIR 1989 SC 38 it is observed on the law of precedent as under :-

He went on to say that the point had to be decided by the earlier Court before it

could make the order which it did; nevertheless, since it was decided
without argument, without reference to the crucial words of the rule, and
without any citation of authority, it was not binding and would not be
followed. Precedents sub silentio and without argument are of no moment. This
rule has ever since been followed. One of the chief reasons for the
doctrine of precedent is that a matter that has once been fully argued and
decided should not be allowed to be reopened. The weight accorded to dicta
varies with the type of dictum. Mere casual expressions carry no weight at all.
Not every passing expression of a Judge, however eminent, can be treated as an
ex cathedra statement, having the weight of authority.

57. In the light of above referred provisions, if the Government wants to change
the policy and authorize the competent authority to issue certificates
to the persons migrated from one district to another district in the place where
they are migrated, the Government will have to amend the provisions of
law. In absence of such amendment, unless the person migrated from another
district produce a caste certificate issued in favour of his father or
grandfather, the competent authority will not have jurisdiction to issue caste
certificate.

58. The Government Resolution dated 10th March, 2005 is not applicable to the
Scheduled Tribes persons. Both the Judgments Niraj More and
Rajendra Thakur were dealing with issuance of tribe certificate and not
Scheduled Castes certificate. Apart from it, we find that the Government
cannot issue Government Resolutions contrary to the express provisions of the
Act and the Rules framed.

59. Considering the fact that once the caste certificate is issued and while its
validity proceeding is pending before the Scrutiny Committee, the holder
of the certificate is protected and enjoys the benefits of the castes some times
for too long periods. It is deemed necessary to issue directions to all the
Scrutiny Committees that whenever any caste/tribe certificate is received by
them for validation, the Scrutiny Committee should immediately consider
what is the place of residence of the petitioner or his forefathers at the time of
presidential order in respect of his castes/tribes and whether the
certificate issued is by the competent authority of that particular area or not. If it
is not so, the Scrutiny Committee shall immediately direct the
applicants to approach appropriate competent authority and should not keep the

proposals for validation pending for years together and then record

finding that certificate is not issued by the competent authority. The State Government shall ensure that these instructions are communicated in writing

to all the members of the Scrutiny Committees in the State and duly implemented.

60. In the result, we answer the referred issue as follows:-

Issue

Whether the caste certificate in respect of the applicant is issued by the proper competent authority and/or in proper format as per the instructions

given by the Government from time to time prior to implementation of Maharashtra Act No. XXIII/2001 ?

Answer - The candidate desirous of seeking a caste certificate shall have to apply to the competent authority having jurisdiction over the area or place

to which he/she or his/her father or grandfather originally belongs or was/is an ordinary residents or native of that place.

Except in cases where such applicants can produce tribe certificate issued in favour of their father or grandfather issued by competent authority of

their original place of residence as on the date of presidential order, of their tribe.

61. With respect, we hold that the view expressed in Niraj More's case does not state the law correctly as it is not the case of lack of territorial

jurisdiction, but lack of inherent jurisdiction. The view expressed in Rajendra Thakur's case is the correct view. We approve the view expressed in

Rajendra Thakur's case and the similar views expressed in other Writ Petitions referred therein. The reference is answered accordingly.

62. The matter be placed before the Regular Bench for hearing and disposal.