

(2003) 07 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 2745 of 1988

Raviprakash Babulalsing Parmar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (2004) 2 BomCR 821 : (2004) 1 MhLj 177

Hon'ble Judges : S.T. Kharche, J;R.J. Kochar, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; Sonare, Asst. Government Pleader and S.W. Deshpande, for the Respondent

Judgement

S.T. Kharche, J.—Heard Mr. Madkholkar, learned counsel, for the petitioner, Mr. Sonare, learned A.G.P., for respondent No. 1 and Mrs. Deshpande, learned counsel, for respondent No. 3.

2. Invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner has sought the relief for quashing the order dated 15-10-1985 passed by respondent No. 3/ Caste Scrutiny Committee and the order dated 5-10-1988 passed by respondent No.2/Commissioner, Nagpur Division, Nagpur, dismissing the petitioner's appeal. The petitioner claims to be a "Thakur" belonging to the Scheduled Tribe as specified by the President after consultation with the Governor of the State in accordance with the provisions of Article 342 of the Constitution of India. By virtue of the impugned orders, petitioners' caste claim has been invalidated and it has been held that he belongs to "Kshatriya Thakur" caste which is outside the purview of entry No. 44 in part IX of Schedule II to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, Act No. 108 of 1976, enacted by the Parliament.

3. The petitioner is resident of Umrer, district Nagpur. The petitioner had obtained the Caste Certificate bearing No. R. C. 644/MRC-81/80-81, dated 24-7-1981, from the Executive Magistrate, Umrer. He had applied for the post of

Assistant Sales Tax Inspector against a vacancy reserved for Scheduled Tribe. He was appointed in the reserved category as inspector of Sales Tax in class III cadre by an appointment order dated 12-9-1984 issued by the Additional Sales Tax Commissioner, Bombay. The appointment order was subject to training for two years.

4. On 19-3-1985 the petitioner received a communication asking him to attend the office of the Caste Scrutiny Committee on 25-3-1985 for verification of his caste claim. The petitioner appeared before the Caste Scrutiny Committee and led evidence including the caste certificate issued by the Executive Magistrate, extract of birth register from the Municipal Council, Umrer, dated 23-12-1959 and the School Leaving Certificate dated 21-6-1983 issued by the Head Master, Ashok Vidyalaya, Umrer. Along with these documents, the petitioner had also replied the questionnaire which was supplied to him. The Caste Scrutiny Committee on considering the evidence had come to the conclusion that the petitioner belongs to "Kshatriya Thakur" which is mentioned in the Higher Secondary School Leaving Certificate. The Caste Scrutiny Committee observed that the petitioner does not know the dialect, he has no relatives in Thane and Kolaba districts and that he admitted that he belongs to the caste "Kshatriya Thakur", The Caste Scrutiny Committee also observed that the petitioner has utterly failed to establish his affinity such as socio cultural and ethnic linkages with Thakur tribe and consequently invalidated his caste claim and recorded a finding that the petitioner belongs to "Kshatriya Thakur".

5. Being aggrieved by the order passed by the Caste Scrutiny Committee, the petitioner preferred an Appeal before the Commissioner, Nagpur Division, Nagpur. The Commissioner took an extremely technical view of the matter and without trying to verify the authenticity or genuineness of the documents produced before him, confirmed the finding recorded by the Caste Scrutiny Committee to the effect that the petitioner belongs to "Kshatriya Thakur" caste which is a high caste. The appellate authority observed that although it is shown that the petitioner's father is Thakur", it is not specifically mentioned that he belongs to Scheduled Tribe.

6. The learned counsel for the petitioner vehemently argued that the Caste Scrutiny Committee has no jurisdiction to enquire as to whether the petitioner belongs to Scheduled Tribe. He contended that no enquiry at all is permissible and no evidence can be let in to find out and decide that if any tribe or tribal Community or a part of or group within any tribe or tribal community is included within the scope and meaning of the entry No. 44 of Schedule Part IX of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. He contended that the approach of the Caste Scrutiny Committee in observing that the petitioner's caste is "Kshatriya Thakur" by birth and hence his claim towards Thakur" - Scheduled Tribe Community is not tenable, is totally erroneous and without jurisdiction. The learned counsel, therefore, contended that the impugned orders cannot be sustained in law and deserves to be quashed and set

aside. He contended that the petitioner belongs to caste Thakur" - Scheduled Tribe and is entitled to all the benefits available to the Scheduled Tribes. In support of his submissions, the learned counsel for the petitioner relied on a Division Bench decision of this Court in the case of Chandrakant Bajirao Shinde v. State of Maharashtra and ors. reported in 2003(2) M.L.J. 471 = 2003(2) AMR 457 and also on a Constitution Bench decision of Supreme Court in A.C. Lakshmipathy and another Vs. A.M. Chakrapani Reddiar and five others, .

7. The learned counsel of the respondents contended that the Caste Scrutiny Committee had the jurisdiction in the matter to deal with the question as to whether the petitioner belongs to Scheduled Tribe. Mrs. Deshpande, learned counsel, for Caste Scrutiny Committee contended that in the Higher Secondary School Leaving Certificate furnished by the petitioner, his caste is mentioned as "Kshatriya and though the extract of birth register shows his caste as "Thakur", it nowhere categorizes him as belonging to Thakur tribal community". He was called upon to produce the documents or pre-independence period but he did not produce the same. The learned counsel further contended that the Caste Scrutiny Committee had taken into consideration the ethnic linkage characteristics such as socio culture, affinity etc. with Thakur Tribes and found that the petitioner does not know the name of the dialect and he had concealed some information which, he feels, might be unfavourable to him by saying that his original native place is from Thane and Kolaba districts. She further contended that the petitioner was unable to furnish the names of his five relatives who are amongst the genuine Thakar/Thakur tribal community. She contended that the Caste Scrutiny Committee, after considering all the documents furnished in support of the caste claim, had come to the conclusion that the petitioner does not belong to Thakur" Scheduled Tribe and, as such, his claim towards the same is held invalid and that he belongs to "Kshatriya Thakur" caste. Therefore, the caste certificate of his belonging to Thakur Scheduled Tribe" granted by the Executive Magistrate, Umrer on 24-7-1981 has been rightly cancelled. She further contended that the Commissioner also dismissed his appeal and confirmed the finding of the Caste Scrutiny Committee and both the orders are sustainable in law.

8. We have carefully considered the contentions canvassed by the learned counsel for both the parties. Before coming to the legality of the impugned orders, it may be useful to reproduce Article 342 of the Constitution of India.

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

(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."

9. The Constitution (Scheduled Tribes) Order, 1950 was issued on 6-9-1950 in exercise of the powers conferred upon the President of India by clause (1) of Article 342 of the Constitution of India. In the Schedule Part III appended to the said Order, admittedly Thakur" was notified as Scheduled Tribe vide Clause (2) Entry No. 21 within the then State of Bombay and the Order says that the tribes or tribal communities or parts of or groups within tribes or tribal communities specified in Parts 1 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. On 25- 9-1956 Parliament enacted the Scheduled Castes and Scheduled Tribes Order (Amendment) Act 1956 by Act No. 63 of 1956 amending the Constitution (Scheduled Tribes) Order 1950 referred to above. By virtue of Act No. 63 of 1956 the area restriction adhering only to "Thakur" or Thakar" including "Ka Thakur", "Ka Thakar", (Ma Thakur", "Ma Thakar" belonging to Akola, Rahuri and Sangamner Talukas in Ahmednagar District were declared to be Scheduled Tribe. Thereafter with effect from 18-9-1976 the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 came into force, amongst others, amending the Presidential Order. Entry No, 44 of the Schedule Part IX Maharashtra thereof notifies Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakur" without any area restriction being Scheduled Tribes within the entire State of Maharashtra.

10. The above constitutional provisions would indicate 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 Caste and Scheduled Tribes Order (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, Ma Thakar from certain talukas in certain districts were declared to belong to Scheduled Tribe. In the present case, we are concerned with the Nagpur district only as the petitioner belongs to Umrer taluka and it 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 it 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. Now, it may be useful to refer the decision of the Apex Court in *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another*, wherein the scope of constitutional provision and 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 was considered. 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 let into determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Caste order, except as contemplated by Article 341 was valid. The 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 utilize the report in effect to modify the Scheduled Caste Order. It was open to the State Government, if it so thought fit, to forward the report to the appropriate authority to consider whether the Scheduled Caste Order needed amendment by appropriate legislation. Until the Scheduled Caste Order was amended, it must be obeyed as it read and the State Government, therefore, must treat "Thandans" throughout Kerala as members of the Scheduled Caste 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 Bhaiyalal Vs. Harikishan Singh and Others*, . The Apex Court also considered its decision in *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, and *Dina v. Narayan Singh* 38 ELR 212 (SC). 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 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 upto date and to issue to them community certificates accordingly.

12. We may usefully refer to the decision of Division Bench of this Court in *Pandurang Rangnath Chavan v. State of Maharashtra and Ors.* 1998(2) M.L.J. 806. In that case it has been observed as under :

"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 v. The State of Mah.* 1986 M. L.J. 1021, 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 Tribe or the Caste carrying the same name. By indirect method or obliquely a Caste which is not included in the Schedule 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 *Ku. 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 to 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 Us own notions".

13. In the aforesaid case, the Division Bench of this Court also relied on two decisions of Supreme Court (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, , and was of the view that no enquiry can be held or evidence led to determine whether or not a particular community falls within Entry 44 of 1976 enactment. It has been observed as under:

"In view of the voluminous evidence that is produced before us, and in the light of the decisions of the Apex Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Pankaj Kumar Saha, cited supra, 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 Schedule Tribe. No enquiry can be held or evidence led to determine whether or not a particular community falls 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."

14. The question whether at all it is permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950 is no more res Integra and there is a clear dictum of the Constitution Bench of Supreme Court in the case of A.C. Lakshmipathy and another Vs. A.M. Chakrapani Reddiar and five others, . It has been observed, "that being in respectful agreement, we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no enquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the concerned Entry in the Presidential Order when it is not so expressly or specifically included. Hence, we answer the question No. 1 in negative."

15. The Apex Court drew the following conclusions and observed that "in the light of what is stated above, the following positions emerge (1) it is not at all permissible to hold any enquiry" or let in any evidence to decide or declare that any tribe or tribal community part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950. (2) The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if

they are not so specifically mentioned in it. (3) A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority. (4) It is not open to State Governments or Courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342. (5) Decisions of the Division Benches of this Court in *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, and *Dina v. Narayan Singh* 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter.

16. Eventually, we may also refer the Division Bench decision of this Court in the case of *Chandrakant Bajirao Shinde v. State of Maharashtra and Ors.* 2003(2) M.L.J. 471 = 2003(2) A MR 457 wherein it has been held as under:

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

36(1) It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950."

17. The Division Bench in the aforesaid case relied on the decision of the Apex Court in the case of *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and the Constitution Bench decision in State of Maharashtra v. Milind*, cited *supra*, and held that the Scrutiny Committee was not justified and as a matter of law had no competence to go into the question by holding enquiry that the petitioner belongs to caste Thakar of Bhat category and also held that the Presidential Order has to be read as it is and applied accordingly without any tinkering whatsoever. The tribe "Thakar" throughout the State of Maharashtra has to be treated as Scheduled any tinkering whatsoever.

18. In view of catena of decisions of the Apex Court and this Court, the limited area the Courts can survey is as to whether the caste mentioned in the Presidential notification would be applicable to the petitioner or not. The notification issued by the President under Article 342 of the Constitution of India

subject to the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 was conclusive and final. The petitioner has not only relied on the caste certificate issued by the Executive Magistrate, Umrer, on 24-7-1981 but he had also produced the extract of his birth register from the Municipal Council, Umrer, which indicate that his date of birth was 23-12-1959 and his caste mentioned in Col. No. 5 is "Thakur". He had also produced the extract of the entries recorded in the service-book of his father Babulalsing Parmar which indicate that the date of birth of his father was 18-5-1934 and his caste has been shown as "Thakur". Simply because the petitioner's caste has been shown as "Thakur" (Kshatriya) in the Higher Secondary School Leaving Certificate (Duplicate No. 74) issued by the Head Master Jeevan Vikas Vidyalaya, Umrer, on 16-8-1977, the Scrutiny Committee ought not to have jumped at the conclusion that the petitioner belongs to "Kshatriya Thakur" and that it is a high caste and, therefore, does not belong to Scheduled Tribe, as mentioned in Entry 44 of Part IX Schedule II to the Act No. 108 of 1976. The Commissioner also had a technical approach to the matter and we are of the considered view that the impugned orders passed by the Caste Scrutiny Committee as well as the Commissioner cannot be sustained in law. We, therefore, hold that the Caste Scrutiny Committee as well as the Commissioner were not justified and, as a matter of law, had no competence to go into the question by holding an enquiry that the petitioner belongs to caste Thakur" of Kshatriya category. The Presidential Order has to be read as it is and applied accordingly without any tinkering whatsoever. The Tribe Thakur" throughout the State of Maharashtra has to be treated as Scheduled Tribe.

Per Kochar, J.

19. I have carefully gone through the judgment of my learned brother Kharche, J. He has dealt with the issue before us thoroughly and I am in respectful agreement with my learned brother. I would, however, like to add my opinion as under:

The learned counsel for the respondent No. 3/Caste Scrutiny Committee has pressed in service a judgment of the Apex Court in Ganesh Suroshe Vs. State of Maharashtra and others, to contend that- "Thakur" is a forward caste in contradistinction to Ka-Thakur and/or Ma-Thakur. A perusal of the said judgment reveals that the submissions made on behalf of the appellant before the Apex Court were based on incorrect factual matrix, inasmuch as what was sought to be canvassed was that "Thakur" is not a Scheduled Tribe in State of Maharashtra whereas Ka-Thakur and Ma-Thakur are included in the list of Scheduled Tribes contained in the Presidential order. As a matter of fact, it would be revealed from the Scheduled Caste and Scheduled Tribes Order (Amendment) Act, 1976, at Entry No. 44, Part IX which relates to State of Maharashtra and it notifies Thakur, Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur, Ma-Thakar (without any area restriction) as Scheduled Tribe. If this be the correct factual position, then it is obvious that the very argument made by the appellant in the above referred Supreme Court judgment is totally erroneous. The Apex Court has proceeded on

an admitted position that the appellant is Thakur by caste which is a forward caste. The Apex Court recorded the admission as below :--

"Admittedly, the appellant is Thakur by caste, a forward caste. His grandfather was shown as Thakur but not as Ka or Ma Thakur. In Maharashtra, Ma-Thakur or Ka-Thakur are described as Scheduled Tribes, Appellant, therefore, claimed the status of a Scheduled Tribe."

In view of the incorrect factual contention urged by the counsel for the appellant, the Apex Court proceeded to hold against the appellant and rejected the appeal. At any rate, the ratio of the judgment, though on incorrect factual submissions, is to the effect:

"The notification of the President under Article 342 of the Constitution, subject to the Scheduled Castes and Scheduled Tribes Act, 1976, is conclusive and final."

The decision of the Apex Court is very much in tune with the law laid down in Milind Katware's case. For the reasons set out hereinabove, we are of the considered view that the judgment of the Supreme Court reported in Ganesh Suroshe Vs. State of Maharashtra and others, does not advance the case of the Scrutiny Committee any further.

20. Enquiry into the question whether a tribe or caste fails or not within specific entry of the Schedule of the Presidential Order is wholly different from the enquiry into the question whether a person falls in the caste/tribe which he claims to belong to. This enquiry would be the scope of the Committee or the Court on the basis of the material produced by such person. All such material and the person can be subjected to scrutiny and the whole burden would be on such person to establish his claim, substantially and broadly like any other civil claim on the basis of evidence to prove his right to get the benefit of reservation. He has to prove his right like any other civil litigant as he wants to get a very valuable right to be employed preferentially and not ordinarily. He cannot be and he is not made exception to the principles of the ordinary Law of Evidence to prove the documents on which he is placing heavy reliance in support of his claim to get the valuable property of public employment or preferential right to get any public seat or public post anywhere on the basis of his claim for reservation and exceptional treatment. He cannot be allowed to snatch such valuable right without proper evidence that he is entitled to get. Otherwise, genuine caste claims of bona fide candidates would get defeated by bogus persons. We, therefore, cannot accept the submission of Shri Madkholkar that the claim of the petitioner should be granted per se without any enquiry in his caste claim. No judgment including the Milind Katware's case has barred such enquiry into the claim of an individual to belong to a particular caste/tribe.

21. However, what are the parameters of such an enquiry is a crucial question before us. It cannot partake or cannot be a civil trial of a Civil Suit in a Civil Court of law. It has, however, to comply with the principles of Law of Evidence and the natural justice in the matter of hearing and decision. The enquiry must

accord greater emphasis and credence to the documentary evidence rather than oral evidence. If there is preponderance of documentary evidence, such as Caste Certificate, School Leaving Certificate of the pre-Presidential Orders, they must be accepted without any further probe or scrutiny. The document of the post-Presidential Orders, however, cannot be discarded only on the ground that it is of the post-Presidential period. That would be absurd and ridiculous. The Committee cannot proceed on the presumption that all such documents are fabricated and created for the purpose of getting reservation benefits. In such matters, there cannot be any other evidence to establish the caste claim. There is no blood group or DNA test to show any one's caste which is claimed. We cannot presume that all the parents and all the wards speak lie for all the times to earn the benefits out of their caste. No doubt, some might create a false record to snatch such benefits but that cannot lead us to infer universally for all the times that every document is a fabricated and bogus document. Ordinarily and predominantly no high caste person would claim to belong to a caste of reserved category. There is no instance heard of that a Brahmin or a Jain or Kshatriya has recorded falsely that he belonged to an S.C./S.T. class to get the benefits of those categories. Such litigation, however, is amongst those whose caste/tribes have close similarity inter se, e.g. Halba and Halba Koshti, Thakur-Ka - Ma-Thakur etc. Koli and Mahadev Koli, Mana - Gond Mana etc. etc. In any case, all these castes/tribes belong to a class of Haves - Not and they try to get some benefit for their livelihood. When there is scarcity of employment or jobs and when there are millions unemployed hands, there is bound to be scramble for those scarce jobs. Unfortunately, when we do not create more jobs and we do not enlarge the size of the bread but we go on expanding the illusory area for the reserved class claimants, there is bound to be cut throat race to snatch a piece of the scarce bread by any means whatsoever. A Koli would not mind to be called as Mahadev Koli if he gets a job and a Halba Koshti will not hesitate to self stamp himself to be Halba if he gets a medical seat. If we have more jobs and more seats, such scramble would automatically recede and reduce. Till then we have to tolerate such small dishonesties of the small and haves not classes. We must face this stark realities in the system until we find a fool-proof satisfactory solution. What presently we are doing is to try to replace one have-not by another equal have-not. It is a race amongst the haves-not and poor and unemployed millions. Our system has failed to remove or reduce poverty of these reserved classes that have been violently clamouring for jobs which are few in numbers comparatively and proportionately. It is the greatest tragedy of our economic planning that for 22 posts of "Shikshan Sevaks" of D.Ed, qualification, 22000 graduates/postgraduates stand in queue!!

22. We, therefore, feel that till we evolve a better system, we must accept the documentary evidence to decide one's caste. The Scrutiny Committee must get itself satisfied with the documents of the nature of School Leaving Certificates, Birth - Death Register extracts and similar such documents which would be produced and proved on oath by the claimant. About oral evidence in such

matter, we have our own doubt. If any one swears on oath that he belongs to the reserved class category, his statement on oath should be accepted without anything more. How many of us or even the most elite or highly educated, aged and highly placed persons would be able to give proper or correct replies to indicate even broadly, not minutely, their own anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc.? It is agonizing to note that the secularly governed citizen is per force made to remember, never forget and bury his caste, creed and religion. Our young boys and girls and their middle aged educated or semi educated parents are supposed to memories all the above factors accurately or at least approximately to get the benefit reservations. They must never forget their sub-castes or even sub-sub-castes or tribes and their origin. Is it not just ridiculous to expect the young or old migrants to the metropolis to trace their origins and to be able to tell all about their fore-fore-fathers? On the one hand we want to build a secular nation and casteless and class society while on the other hand we give great emphasis on the tender minds of our kindred children and young generation to crystallise their caste/tribe whereby the whole fabric of the society get distinctly woven into the coloured threads or yarns of deep sub-castes or minutely divided classes or tribes. We have been spinning the cotton of the society towards the fabric of anti secularism contrary to the national theme and the constitutional tune. We, therefore, summarise our conclusions as under:

(i) No enquiry is permissible as to the entries in respect of the castes/tribes in the Schedules of the Presidential Orders. We have to take them as they are, as mandated in the Milind Katware's case, without adding or subtracting anything from the entries.

(ii) The claimant has to prove his claim to belong to a particular caste/tribe to be able to get the benefits of the reservation policy,

(iii) The claimant must establish his right by producing proper documentary evidence.

(iv) The claimant must physically enter in witness box and swear on oath that he belongs to the caste/tribe claimed by him. As far as possible he must be given oath in the name of "God" to swear his caste/tribe. He must examine as witnesses one of his living parents in support of his claim, if available, or the nearest blood relatives,

(v) The Caste/Tribe Committee should accept the documentary evidence and decide the claim unless they are ex facie fabricated or bogus and if there is basic contradiction in the claim and the documents.

(vi) No much importance be attached to the failure of the claimant or his witnesses to be able to depose for the purpose of affinity tests or traits etc. Such failure to establish anthropological and ethnological traits, deity, rituals, old customs, mode of marriage, death ceremonies etc. should not be made sole basis to discard his evidence and condemn his/her claim to be false or bogus,

(vii) The Committee should not entertain any complaints against any employee/student/elected representative from any so-called public spirited citizen or a stranger in respect of the caste/tribe of the former. It should only decide, verify and answer the caste/tribe claims officially referred to.

(viii) The Committee should decide the claims referred to as expeditiously as possible preferably within a period of six months,

(ix) The Committee should not adopt a technical and pedantic approach in deciding the caste/tribe claims, A liberal and broad approach would be in the interest of justice keeping in mind that the decision would have immediate adverse effect on the bread, butter and future of the candidate.

(x) If the decision of the Committee is adverse to the candidate, no adverse action should be taken by the employers/colleges to remove the candidate from employment or colleges at least for a period of eight weeks from the date of the decision, (xi) No claim can ever be rejected on the ground that the fore fathers of the claimant had not committed any criminal acts and had no police record.

23. The Government of Maharashtra has enacted 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". This long title of the enactment is enough to know the subject of the Act. It provides and prescribes the procedure for the purpose of verification of Caste/Tribe certificates issued by the Competent Authority. Apart from the other provisions, section 10 is very harsh and draconian provision which mandates stripping the candidate off his degree/diploma or any other educational qualification and even employment or elected post, if it is found by the Committee that the Caste/Tribe certificate was false one. As a consequence thereof, the concerned candidate would stand destroyed and ruined with retrospective effect. We, therefore, deem it proper to make the following suggestions for the consideration of the State Government while constituting the Committees which must be manned by Judicial officers.

(a) Considering the importance of the subject matter involving most valuable right of either employment or education which is wholly dependent upon the Caste/Tribe Certificates, this job of Caste/Tribe Scrutiny should be assigned to trained Judicial Officers and not to bureaucrats who are not at all legally trained to decide and appreciate the evidence in correct perspective. Such Committee should comprise of the Judicial officers of the District Judges cadre and not less. We have a large number of retired Judicial Officers who can be assigned this duty.

(b) All the Scrutiny Committee should be brought under the control and supervision and within the purview of Art. 235 of the Constitution of India. Their recruitments and appointments should be under the High Court like any other judicial post. We have recommended the aforesaid last two suggestions considering the poor functioning and mal-functioning of the Caste/Tribe Scrutiny Committees which definitely leave much to be desired, to say the least. There

are several complaints in the matters before us about the manner in which the bureaucrats in the Committees decide the cases arbitrarily and unjustly thereby increasing the filing and pendency of the petitions under Art. 226. They have been treating these matters which have very serious consequences, as aforesaid, lightly and with least application of judicious mind. In fact, the role, duty and function of these committees is akin to judicial work. The present incumbents of the Committees are not suitable for the duty to be discharged. We therefore, suggest to the State Government to consider to reconstitute the Caste/Tribe Scrutiny Committees and appoint Judicial Officers in these Committees to be presided over by a retired District Judge. The State shall take appropriate decision within 12 weeks from the date of receipt of this judgment. The Additional Registrar is hereby directed to send a true copy of this judgment focusing this portion of the judgment to the Chief Secretary and the Chief Law Secretary for appropriate action in the matter.

24. As far as the present case is concerned, we are satisfied that there is preponderance of material in favour of the petitioner that he belongs to the "Thakur" caste. He has been in service from 1984. It will not be in the interest of justice to ruin him from the settled station of his life by discarding his caste claim solely on the basis of one document, where it is mentioned by the Head of the School in the column "Caste - Tribe" that he was "Kshatriya Thakur". It is possible that the Head Master had common information that all the Thakurs belong to "Kshatriya" clan. In these circumstances, it is not necessary to remit the matter back to the Committee and to send the petitioner once again in the realm of uncertainty and avoidable further litigation.

25. We accordingly quash the orders passed by the Caste Scrutiny Committee as well as by the Commissioner, Nagpur Division, Nagpur, and accept the petitioner's caste claim in the light of the aforesaid legal position and observations made by us. In the circumstances, there shall be no order as to costs. C. C. expedited.