

(2013) 11 GUJ CK 0023

In the Gujarat High Court

Case No : Letters Patent Appeal No. 993 of 2011 in Special Civil Application No. 2944 of 2011

Solanki Maniben Maganlal and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 30-11-2013

Acts Referred:

Citation : (2013) 11 GUJ CK 0023

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : B.J. Trivedi, Mr. J.T. Trivedi and Ms. Jignasa B. Trivedi, s No. 1 - 2, for the Appellant; P.K. Jani, Government Pleader and Ms. Shruti Pathak, AGP for the Respondent(s) No. 1 - 2, 4, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—This appeal under Clause 15 of the Letters Patent is at the instance of unsuccessful writ applicants of a Special Civil Application, and is directed against the order passed by a learned Single Judge of this Court dated 8th March, 2011, by which His Lordship disposed of the writ-application, directing the respondent authorities to consider the petition as a representation on behalf of the appellants and decide the same in accordance with law. Case of the Appellants:

1.1 According to the appellants, they belong to a Mochi Community which falls within the list of Scheduled Castes specified in the Public Notification issued by the President under Article- 341(1) of the Constitution of India. It is also the case of the appellants that after verifying the necessary records, the Social Welfare officer had issued a Caste Certificate dated 25th June, 1979, certifying that the appellants belong to the Mochi Community, which falls within the list of Scheduled Castes.

1.2 It is the grievance of the appellants that despite the same, the authorities

took a decision that the appellants no longer fall within the category of Scheduled Castes and they would be considered as Socially and Educationally Backward Class category persons. Accordingly, a certificate was issued on 5th July, 2007, by the Mamlatdar, certifying the appellants as Socially and Educationally Backward Class category persons and not as members of the Scheduled Caste.

1.3 It is also the case of the appellants that the certificates which were issued in favour of the appellants in the year 2007 were issued without giving any opportunity of hearing to the appellants.

1.4 It is the case of the appellants that the necessary details published by the State of Gujarat in respect of the various Communities which have been treated as Scheduled Castes includes the Mochi community. It is also the case of the appellants that they had preferred representations with the concerned authorities and had requested them to rectify the error and issue a fresh certificate in their favour certifying them to be members of the scheduled caste, as they belong to the Mochi community. However, according to the appellants, the authorities did not pay any heed to such representation and therefore, in such circumstances they were left with no other option but to file a Special Civil Application under Article- 226 of the Constitution and prayed for the following reliefs :-

A) admit this petition;

B) issue appropriate writ, order or direction and be pleased to quash and set aside the action of the concerned Mamlatdar, Gandevi of treating the petitioners as Socially and Educationally Backward Class category persons, despite the petitioners were issued certificates treating the petitioners as Scheduled Castes Category persons and therefore, the said action of the concerned authorities be quashed and set aside;

C) issue appropriate writ, order or direction and be pleased to hold that in view of the details of various communities published/notified by the respondent No. 1 authority treating Mochi Community as Scheduled Caste Community, the Hon'ble Court may kindly hold that the petitioners being Mochi Community persons, deserve to be included in the list of Scheduled Caste community persons and appropriate directions be issued upon the respondent authorities to issue appropriate certificates in this regard and for publication of necessary details in this regard treating the petitioners as Scheduled Caste category persons;

D) issue appropriate writ, order or directions and be pleased to direct the respondent authorities to consider and decide the representations of the petitioners annexed as Annexure-D after hearing the petitioners;

E) grant interim relief and be pleased to direct the respondent authorities to consider and decide the representation, Annexure-D, and appropriate decision may be ordered to be rendered to the petitioners, pending the hearing and final disposal of this petition;

F) pass such orders as thought fit in the interest of justice.

1.5 It appears that the learned Single Judge took into consideration the fact that although the certificate was issued way back in the year 2007, the petition came to be preferred almost after a period of 4 years in 2011. In such circumstances the learned Single Judge refused to look into the petition on merits and instead, directed the Mamlatdar to consider the representation of the appellants which was filed in September, 2010. The learned Single Judge also observed in his order that it would also be open for the appellants to forward the copy of the petition in support of and in furtherance of their representation dated 17th September, 2010. The learned Single Judge further observed that the respondent authorities shall, after hearing the appellants and considering the materials which may be produced by the appellants, pass an appropriate order. The learned Single Judge also observed that it would be open for the appellants, in the alternative, even to approach the Review Committee.

1.6 Accordingly the petition was disposed of vide order dated 8th March, 2011.

1.7 Being dissatisfied with the order passed by the learned Single Judge, the appellants have come up with the present appeal under Clause 15 of the Letters Patent.

2. Mr. J.T. Trivedi, the learned advocate appearing for the appellants vehemently submitted that once a particular caste is included in the list of the Scheduled Caste, the said Legislature or its Executive has no power of disturbing the list, and that the castes once included in the Presidential List cannot be disturbed at all.

2.1 Mr. Trivedi submitted that it is not in dispute that the appellants belong to the Mochi community and the Mochi community has been included as one of the communities belonging to the Scheduled Castes. Mr. Trivedi also submitted that way back in the year 1979, the authority concerned had issued the certificates certifying the appellants as members of the scheduled caste and once such a certificate is issued, the authority has no power thereafter to issue a fresh certificate certifying the appellants as Socially and Educationally Backward persons.

2.2 In short, the sum and substance of the submission of Mr. Trivedi is that once a person of a particular community is declared to be a member of the scheduled caste, then for all times to come he remains a member of the scheduled caste and would be entitled to all the rights and privileges which such a member is entitled to enjoy.

2.3 Mr. Trivedi, in support of his submission placed strong reliance on a Supreme Court decision in the case E.V. Chinnaiah Vs. State of Andhra Pradesh and Others, .

2.4 On the other hand, the State-respondents have opposed this appeal submitting that the learned Single Judge committed no error, not to speak of any

error of law, in not entertaining the petition, warranting any interference at the hands of this court in this appeal.

3. Mr. P.K. Jani, the learned Government Pleader submitted that according to the Schedule of Constitution (Scheduled Caste) Order, 1950 various communities were prescribed as Scheduled Castes. The Mochi Community was also included within the categories of Scheduled Castes. Mr. Jani invited our attention to the fact that before 1976, the Mochi community was considered falling within the ambit of Scheduled Caste only within the territories of Dang District and Umergaon Taluka of the Valsad District. Thereafter, the Central Government vide Amendment dated 18th September, 1976, withdrew the restrictions treating the Mochi community as Scheduled Caste only for Dang District and Umergaon Taluka. On such withdrawal of the restrictions, the entire Mochi Community was declared as scheduled caste for the entire State of Gujarat. It is in such circumstances, that at the relevant point of time a Caste Certificate was issued in favour of both the appellants dated 25th June, 1979, certifying them to be the members of the Scheduled Caste.

3.1 Mr. Jani invited our attention to the fact that the Parliament by the Amendment Act of 2002, amended the Constitution (Scheduled Caste) Order, 1950 by amending the Entry No. 4 of Schedule-I and reimposed Area Restriction for the Mochi community by specifying only Mochis of Dang District and Umergaon Taluka of the Valsad District as scheduled caste and thus, despecifying or derecognizing Mochis of other areas of Gujarat from the list of Scheduled Castes.

3.2 Mr. Jani also brought to our notice that consequent upon the change effected by the impugned Amendment Act, 2002, the Resolution dated 18th February, 2003 was passed by the Government of Gujarat providing that all certificates of Scheduled Caste issued to the Mochis of such other areas were to be treated as cancelled.

3.3 According to Mr. Jani, it is in such circumstances that the appellants now cannot be treated as members of the Scheduled Caste but they would be treated as Socially and Educationally Backward. Accordingly, in the year 2007 a fresh certificate was issued.

3.4 Mr. Jani also submitted that the cause of action strictly speaking for filing a writ application arose way back in the year 2007, but the petitioners thought fit to challenge issuance of such certificate only for the first time in 2011 and, therefore, considering the gross delay of 4 years, the learned Single Judge rightly refused to enter into the merit of the petition and rather thought fit to direct the authorities to consider the representation of the appellants and decide the same in accordance with law.

4. Having heard the learned Counsel appearing for the parties and having gone through the materials on record, the only question that fall for our consideration in this appeal is whether the learned Single Judge committed any error in not

entertaining the writ application on merit.

5. Before we proceed to answer the afore noted question, it is necessary for us to look into the Government Resolution dated 18th February, 2003 issued consequent upon the change effected by the Amendment Act, 2002.

For better adjudication of the controversy, we deem it necessary to quote the entire Resolution dated 18/2/2003.

Amendment/additions made in the list of Scheduled Caste in respect of Gujarat under Constitution of India (Scheduled Caste) Order (2nd amendment) Act, 2002.

Government of Gujarat, Social Justice and Empowerment Department, (Scheduled Caste Section) Resolution No. CAR/1090/CO/16/H, Sachivalaya, Gandhinagar Dated the 18th February, 2003.

Read:- (1) Govt. of India, S.C.S.T. (Amendment) Act, 1976, dtd. 18-9-1976.

(2) Then Labour, Social Welfare & Tribal Development Department Circular No. STW/1079/6287/J, dtd. 10-5-1979.

3) Govt. of India, (S.C.) Orders (2nd amendment) Act, 2002, dtd. 17-12-2002.

(4) Letter No. CAR/1090/CO/16/H, Dtd. 27-1-2003 written by this office to all District Collectors/DDOs and all competent officers.

(5) Letter written by Director, S.C. Welfare

To the Secretary No. AJAK/M/2003/926/27, dtd. 5-2-2003 & letter No. AJAK/M/3/2003/928/29, dtd. 5-2-2003.

INTRODUCTORY:

Prior to 1976, the Mochi Caste was recognized as Scheduled Caste only in as District and Umergaon Taluka of then Surat District and thus prior to 1976 Mochi Caste was confined to particular areas. As shown in Sr. No. (1) of the preamble by Act as shown before, the Govt. of India had removed this limit and had recognized it in whole of Gujarat State as Scheduled Caste. Accordingly, as per the Circular shown in above Sr. No. 2 above, instruction was issued to issue Scheduled Caste Certificate for Mochi Caste from all over Gujarat to the concerned competent authority.

2. The Act as shown in (3) above means the Constitution (Scheduled Caste) Orders (2nd amendment) Act, 2002, No. 61 of 2002 (dtd. 17-12-2003) is passed in the Parliament and it has been published in the Register No. DAL-33004-2002 in Extra Ordinary Gazette of Govt. of India, dtd. 18-12-2002 by Ministry of law and Justice, Legislative Section, New Delhi.

3. The amendments and additions made for caste in Entry Nos. 4 and 5 in Part-IV against Sr. No. 3 for Gujarat in Schedule-I of the Act, 2002 is as under:-

Entry No. 4:-The Caste/Sub Caste shown has addition of Chamar - Ravidas.

The area/extent shown for Caste/Sub Caste has the following for mocha Caste - "Mochi" (only in Dangs District and Umargaon taluka of Valsad District)

Entry No. 5:-The Caste/Sub Caste shown have addition of Barwashia, Barvasia, Jamphoda, Zampada, Rushi and Valmiki.

4. By letter shown at Sr. No. (4) of read above, all the Collectors/DDOs/Directors, S.C. Welfare and Competent authorities have been sent copies of Act, 2002 and instructed to take action for Caste Certificate and other auxiliary matters. Pursuant to that as per the letter referred above at Sr. No. 5, the Director, S.C. Welfare was asked to issue instructions with explanation for implementation of this revised Act and to issue resolution in this regard. Accordingly, after careful consideration of the above, it is resolved to implement the above Act in following way:-

RESOLUTION

The Act shown in Sr. No. 3 above for 2002 has been published in Govt. of India Gazette, dtd. 18-12-2002. It shall come into effect from that day.

2. New Castes/Sub Castes added by Act, 2002 are shown in para-3 of the introduction of the said Resolution. When demands are made for issue of Caste Certificates for people of this Scheduled Caste, sufficient checking should be made for them and then issue Certificate and benefits available to them.

3(1) No Caste Certificate for S.C. shall be issued to people of Mochi Caste except Dangs District and the area of Umargaon taluka of Valsad District under the Act, dtd. 18-12-2002 as per above and no benefits shall be given to them from 18-12-2002.

3(2) The people of Mochi Caste belonging to Dangs District and Umargaon taluka of Valsad District of original native shall be given Certificate for Scheduled Caste and benefits available to them after sufficient verification.

3(3) If any person of Mochi Caste except Dangs District and areas of Umargaon of Valsad District has got Caste Certificate of Scheduled Caste after Dtd. 18-12-2002 or if issued, it should be cancelled and no benefit available granted to them and Caste Certificate issued; before Dtd. 18-12-2002 but no benefit on it has been given till date/not availed no benefit under Certificate shall be given means such Certificate shall automatically stand cancelled.

4. The Director, Scheduled Caste Welfare is hereby informed to make available Caste Certificate for Scheduled Caste to members of this Caste and necessary instruction should be issued to competent authorities and to take necessary auxiliary steps in this regard.

By order and in the name of the Governor of Gujarat.

Sd/- (N.K. Varsat) Joint Secretary to the Government, Social Justice and Empowerment Department.

A plain reading of Clause-3 sub-clause(3) of the Resolution afore-noted, makes it clear that if any member of the Mochi Community had been issued a Caste Certificate certifying him to be a member of the Scheduled Caste excluding such persons residing within Dang District and Umergaon Taluka of the Valsad District after 18th December, 2002, then it would stand cancelled and no benefit would be available to such a person on the strength of such a Caste Certificate. It further clarifies that all those persons who had been issued the Certificates certifying them to be members of the Scheduled Caste prior to 18th December, 2002 and if no benefits had been extended even to such persons on the strength of such certificates issued prior to 18th December, 2002, then even such certificates will be considered as cancelled automatically.

6. Thus, to our mind, it is very clear that all those persons who availed of the benefit on the strength of a certificate issued prior to 18th December, 2002, then such benefits may not be withdrawn having already availed of, but at the same time no further benefits would enure in favour of such a person after 18th December, 2002, on the strength of a certificate of Scheduled Caste.

7. It appears that the validity of the Constitution (Scheduled Caste) Order (2nd Amendment) Act, 2002 to the extent that it excluded "Mochis" outside Dang District and Umergaon Taluka of Valsad District in the State of Gujarat from the Schedule-I to the Constitution (Scheduled Caste) Order, 1950 was challenged before a Division Bench of this High Court by a Public Trust registered in the name of Samast Gujarat Rajya Mochi Samaj on the ground that the provisions excluding them were violative of Articles, 14, 16, 19 and 341 of the Constitution of India and a declaration was sought that the Entry 4 in Part-IV relating to Gujarat of the Schedule to the Constitution (Scheduled Castes) Orders, 1950 as amended by the Constitution (Scheduled Castes) Orders (Second Amendment) Act, 2002 was unconstitutional, null and void to the extent that the said Entry-4 derecognized and despecified Mochis outside of Dang District and Umergaon Taluka of Valsad Districts from the notified list of the Scheduled Castes.

8. It appears that the main ground of challenge before the Division Bench of this Court was that right from the date of inclusion of the entire Mochi community in the Schedule to the Order of 1950, there had not been any reasonable and real change in the social and cultural status of the Mochis outside of Dang District and Umergaon Taluka of Valsad District and that most of the Mochis in Gujarat were engaged in the work which was considered to be untouchable.

9. It was also argued before the Division Bench at the relevant point of time that consequent upon the change effected by the Amendment Act of 2002, the Resolution dated 18th February, 2003 was passed by the Government of Gujarat providing that all certificates of the Scheduled Castes issued to the Mochis of such other areas were to be treated as cancelled and such action caused discrimination amongst those who were similarly situated by imposing unwarranted area restriction thereby violating the provisions of Articles- 14, 15, 16, 19(1)(d) and (e) of the Constitution.

10. It appears that the said challenge by Samast Gujarat Rajya Mochi Samaj failed before the Division Bench of this Court and the petition which was preferred was rejected upholding the Amendment Act of 2002 and the imposition of Area Restriction in respect of the Mochi Caste as done in the varied Entry-4 of the Order of 1950, as well as against the impugned Government Resolution dated 18th February, 2003.

11. We may quote with profit the observations of the Division Bench of this Court in Samasta Gujarat Rajya Mochi Samaj Vs. Union of India (UOI) .

26.3 Extreme social & economic backwardness arising out of traditional practices of untouchability is normally considered as criterion for including a community in the list of Scheduled Castes (See decision of the Supreme Court in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, . Though "untouchability" is a symptom of backwardness, all backward classes are not untouchables. Among the backward classes, untouchables are the worst lot socially and if the law provides that a group or a part within the Mochi caste be specified as scheduled caste, while others are classified as O.B.C. on the basis of the historical factual data based on the local practices, it cannot be said that equals are treated unequally. The concept of equality is contextual. The context of Mochis of Dangs district and Umargaon Taluka of Valsad district by virtue of their being treated as untouchables was sufficient to classify them as scheduled castes while other members of the Mochi community in other parts of Gujarat who though backward but were not treated untouchables in the other parts of the State and were classified as O.B.C. (for whom also benefits similar to those admissible to the scheduled castes could be provided) cannot claim to be falling in the same class of those who were treated as untouchables. Such classification is reasonable and has sufficient nexus with the object sought to be achieved by the law dealing with the claims of the Scheduled Castes persons. The challenge against the constitutionality of the impugned Amendment Act, 2002 and the impugned entry No. 4 of the Schedule to the Presidential Order 1950, raised by the petitioner, therefore, fails.

27. There cannot be an embargo on the legislative process of amending the list of scheduled castes under Article 341(2) and even if area restriction was earlier removed by the Amendment Act of 1976, re-imposition of area restriction by the subsequent Amendment Act of 2002 was within the legislative competence of the Parliament. Exercise of such legislative power by making the Amendment Act of 2002 under Article 341(2) cannot be questioned on the ground that the earlier Act of 1976 viewed the matter differently. The decision of the Division Bench of this Court which was rendered in the context of the Act of 1976 cannot therefore assist the petitioner. The validity of the Amendment Act of 2002 cannot be judged on the basis of the ratio of the decision rendered in the context of the earlier Amendment Act of 1976 in view of the clear legislative competence of the Parliament not only to make law but to change the law by subsequent legislation. The exercise of legislative power on a subject is not a static matter and one time

exercise on that subject and there is no justification for such stultifying view of the power of the legislature. The Parliament has plenary power to make and unmake the laws in accordance with the Constitution. Therefore, the power of the Parliament to frame the impugned Amendment Act of 2002 cannot be assailed on the ground of the earlier decision of this Court rendered in context of the earlier law.

Conclusions:

28. We, therefore, conclude:

(i) The List of Scheduled Castes specified in the public notification issued by the President under Article 341(1) of the Constitution whether varied or not by the Parliament under Article 341(2) can not be treated as the provision of the Constitution itself under the definition clause 366(24) and the Amendment Act made under Article 341(2) varying the Constitution (Scheduled Castes) Order, 1950 cannot be treated as an amendment of any constitutional provision.

(ii) The public notification issued by the President under Article 341(1) and the Amendment Act made by the Parliament under Article 341(2) are ordinary law within the meaning of Article 13(2) of the Constitution. The Amendment Act made under Article 341(2) is not made by the Parliament in exercise of constituent power, but is enacted while exercising its legislative power spelt out in Article 341(2).

(iii) Both the public notification issued by the President under Article 341(1) as well as the Amendment Act made by the Parliament under Article 341(2) being "law" within the meaning of Article 13(2) are amenable to judicial review on the ground of violation of fundamental rights conferred by Part III of the Constitution.

(iv) Though the process of making of the Presidential Notification under Article 341(1) and the legislative process of making of the Amendment Act under Article 341(2) cannot be subjected to judicial scrutiny and lacks adjudicatory disposition in view of the constitutional insulations contained in Articles 74(2) and 122, the impact of such "law" can be tested on the ground of constitutional violation.

(v) The Parliament has legislative power to exclude a caste or part of or group within the caste from the list of the Scheduled Castes under Article 341(2) even if by earlier law, it had included that caste or group or part thereof in such list.

(vi) The classification of the Mochi caste of Dangs district and Umargaon Taluka of Valsad district and the Mochi caste of the other areas of Gujarat on the ground of the former being treated as "untouchables" and the latter not, is a valid classification having reasonable nexus with the object sought to be achieved by the impugned legislation.

(vii) The impugned provisions of the Constitution (Scheduled Castes) Orders (Second Amendment) Act, 2002 and the Constitution (Scheduled Castes) Order, 1950, as varied by it, imposing area restriction for recognition of Mochi

community are neither discriminatory nor arbitrary and do not violate any fundamental right of the petitioner and are constitutionally valid provisions.

Final Order:

29. For the foregoing reasons, the challenge of the petitioner against the impugned Amendment Act of 2002 and the imposition of area restriction in respect of the Mochi caste as done in the varied entry 4 of the Order of 1950, as well as against the impugned Government Resolution dated 18-2-2003 fails and the contentions raised on behalf of the petitioner and the supporting respondent No. 10 have no substance. The petition is, therefore, rejected. Rule is discharged. There shall be no order as to costs.

12. We may also quote with profit a five Judge Bench decision of the Supreme Court in the case of State of Maharashtra Vs. Milind and Others, . The Supreme Court in paragraph 9 considered Articles 341 and 342 of the Constitution of India and the power of the President to issue public notification specifying the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of Constitution be deemed to be Scheduled Castes in relation to a State or Union Territory, as the case may be. We quote the observations made by the Supreme Court in paragraphs 9, 10 and 11, which, in our opinion, are relevant so far as the subject matter is concerned.

9. Articles 341 and 342 of the Constitution of India read as under:-

341. Scheduled Castes - (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 castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State [or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid notification issued under the said clause shall not be varied by any subsequent notification.

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 may be].

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

10. By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 mutatis mutandis applies to Article 342. The laudable object of the said Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words "castes" or "tribes" in the expression "Scheduled Castes" and "Scheduled Tribes" are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366(24) and 366(25). In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some Orders were issued under the said Articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued, by Amendment Acts passed by the Parliament.

11. Plain language and clear terms of these Articles show (1) the President under Clause (1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may be; (2) Under Clause (2) of the said Articles, a notification issued under Clause (1) cannot be varied by any subsequent notification except by law made by Parliament. In other words, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under Clause (1) of the said Articles. In including castes and tribes in Presidential Orders, the President is authorized to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them could be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. States had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to entire State or parts of State. It appears that the object of Clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of the Constitution.

Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be within the meaning of the entries contained in the Presidential Orders issued under Clause (1) of Articles 341 and 342 is to be determined looking to them as they are. Clause (2) of the said Articles does not permit any one to seek modification of the said orders by leading evidence that the caste/tribe (A) alone is mentioned in the Order but caste/tribe (B) is also a part of caste/tribe (A) and as such caste/tribe (B) should be deemed to be a scheduled Caste/Scheduled Tribe as the case may be. It is only the Parliament that is competent to amend the Orders issued under Articles 341 and 342. As can be seen from the Entries in the Schedules pertaining to each State whenever one caste/tribe has another name it is so mentioned in the brackets after it in the Schedules. In this view it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste/tribe is a Scheduled Caste/Scheduled Tribe for the purpose of Constitution, even though it is not specifically mentioned as such in the Presidential Orders once issued under Clause (1) of the said Articles, cannot be varied by subsequent order or notification even by the President except by law made by Parliament. Hence it is not possible to say that State Governments or any other authority or Courts or tribunals are vested with any power to modify or vary said Orders. If that be so, no enquiry is permissible and no evidence can be let in for establishing that a particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included in the Orders. Since any exercise or attempt to amend the Presidential Order except as provided in Clause (2) of Articles 341 and 342 would be futile, holding any enquiry or letting in any evidence in that regard is neither permissible nor useful.

13. We shall now look into the decision of the Supreme Court in the case of E.V. Chinnaiah Vs. State of Andhra Pradesh and Others, , on which strong reliance has been placed by Mr. Trivedi.

In the said case before the Supreme Court, the facts were that the validity of A.P. Scheduled Castes (Rationalization of Reservations) Act, 2000 (A.P. Act 20 of 2000) was challenged before the High Court of Andhra Pradesh at Hyderabad, which came to be dismissed by a five judge Bench on a majority of 4:1. The Court having certified the case as being fit for appeal to the Supreme Court, the appeals were taken up for hearing by a Constitution Bench. The State of Andhra Pradesh had appointed a Commission headed by a retired High Court Judge to identify the groups amongst the scheduled castes found in the list prepared under Article 341 of the Constitution of India by the President, who had failed to secure the benefit of the reservations provided for the scheduled castes in the State in admission to professional colleges and appointment to services in the State. The argument before the Supreme Court on behalf of the appellants was that the State legislature had no competence to make any law in regard to bifurcation of the Presidential List of scheduled castes prepared under Article 341(1) of the Constitution. It was also argued that once the castes are put in the Presidential List, the said castes become one homogeneous class for all purposes

under the Constitution. Therefore, there could be no further division of the said castes in the scheduled list by any Act of the State legislature. It was argued that in the guise of Entry 41 and List II or Entry 15 of List III, the State legislature could not exercise its legislative power so as to make a law tinkering with the Presidential List because the said entries do not permit any law being made in regard to scheduled castes. On the other hand the argument on behalf of the State-respondents was that Article 341 only empowered the President to specify the castes in the Presidential List and the parliament to include or exclude from the specified list any cast or tribe, and beyond that, no further legislative or executive power was vested with the Union of India or the parliament to decide to what extent the castes included in the scheduled castes list should be given the benefit of reservation, which according to the State-respondents, depended upon their degree of backwardness.

14. In the facts of that case, three questions arose for the consideration of the Supreme Court. They were as under:-

- (1) Whether the impugned Act is violative of Article 341(2) of the Constitution of India?
- (2) Whether the impugned enactment is constitutionally invalid for lack of legislative competence?
- (3) Whether the impugned enactment creates sub-classification or micro classification of Scheduled Castes so as to violate Article 14 of the Constitution of India?

Mr. Trivedi placed reliance on this decision to make good his submission that the State Government has no power considering Article 341 of the Constitution to tinker with the Presidential List, and once the castes are included in the Presidential List, it forms a class and the State legislature or its executive has no power to disturb the list. There is no doubt that such is the view taken by the Supreme Court in *E.V. Chinnaiah* (supra), but we fail to understand how the decision of the Supreme Court in *E.V. Chinnaiah* (supra) would help the client of Mr. Trivedi.

15. Here is not a case where the Government Resolution dated 18th February, 2003 has disturbed the Presidential List of Scheduled Castes for the State. Therefore, it could not be said that the State Government interfered, disturbed, rearranged, regrouped or reclassified the various castes found in the Presidential List on its own thereby violating the scheme of the Constitution, more particularly Article 341 of the Constitution. The Government Resolution dated 18th February, 2003 is a fall out or an offshoot of the Constitution (Scheduled Castes) Orders (2nd Amendment) Act, 2002 and the Constitution (Scheduled Castes) Order, 1950, as varied by it imposing area restriction for recognition of Mochi community, which has been held by the Division Bench of this High Court in *Samasta Gujarat Rajya Mochi Samaj* (supra), as neither discriminatory, nor arbitrary.

Thus, in our opinion, we do not find any merit in this appeal and the appeal deserves to be dismissed.

In the result, the appeal fails and is hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.